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No.: **ICC-01/14-01/18**

Date: **22 April 2021**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Prosecution’s Request for the Formal Submission of the
Prior Recorded Testimony of P-1074 pursuant to Rule 68(3)”,
(ICC-01/14-01/18-963-Conf), 22 April 2021**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-1074, in accordance with rule 68(3) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the conduct of the proceedings” (“Request”).¹ P-1074’s prior recorded testimony comprises his 29 November 2018 Witness Statement (“Prior Statement”)² and its associated exhibits.³ Should the Chamber deem the Prior Statement formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, currently estimated at approximately three hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1074 was [REDACTED]. He details the political and military background to the 2013-2014 conflict in CAR, and describes the emergence of both the Seleka and the Anti-Balaka. He describes the structure of the Anti-Balaka, including NGAISSONA’s position as its coordinator. He gives details of the crimes committed by the Anti-Balaka in BOEING from 5 December 2013 onwards; in attacks in BODA, YALoke, BERBERATI, BOUAR, and BOSSEMPTELE; and in MBAIKI and in the LOBAYE committed by YEKATOM’s Group.

3. Granting the Request would reduce the presentation of the Prosecution’s examination-in-chief and help to streamline the proceedings. Moreover, it would not

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2127-4238.

³ See ICC-01/05-01/08-1386, paras. 79-81 (“Bemba Appeals Decision”), confirming that written witness statements can be introduced as “previously recorded testimony”. See also ICC-01/09-01/11-1938-Red-Corr, paras. 30-33, analysing the term “previously recorded testimony” in light of the Rules’ *travaux préparatoires*, the Court’s prior case-law and the need to ensure language consistency within the rule in interpreting it; ICC-01/05-01/08-2012-Red, para. 136; ICC-01/05-01/08-886, para. 6; ICC-01/04-01/06-1603, para. 18; ICC-01/04-01/07-2289-Corr-Red; ICC-01/04-01/07-2362.

unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.⁴

4. Having taken note of the Chamber's guidance, the Prosecution has carefully assessed the Prior Statement to provide the Chamber with the information necessary to conduct the required case-by-case assessment.⁵ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁶ the Prosecution has identified portions in the Prior Statement on which it does not seek to rely, which may assist the Chamber's assessment of the relevant and contested issues, and reduce (as much as possible) the volume of extraneous material in the case, as a whole.⁷

5. The relevance and probative value of the Prior Statement is set out in a brief summary of the salient issues, along with the associated exhibits or documents, and the sources of other corroborative evidence. *Confidential Annex A* (a Summary Chart) lists the relevant statement and the corresponding associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which the Witness's evidence relates. *Confidential Annex B* contains the Prior Statement itself, with grey highlights identifying the portions on which the Prosecution does not seek to rely. The associated exhibits are available to the Defence and the Trial Chamber in e-Court.

II. CONFIDENTIALITY

6. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Request and its annexes are filed as "Confidential", as they contain information

⁴ See Rule 68(3); see also ICC-01/14-01/18-685, para. 29 (noting that, other than the specific requirements of the witness's presence and absent objection to the introduction of the prior statement, "[n]o further restrictions are imposed with regard to the instances under which Rule 68(3) of the Rules may be used").

⁵ ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé Appeals Decision*").

⁶ See ICC-01/14-01/18-685, para. 31, 32.

⁷ Consistent with the Chamber's decision: ICC-01/14-01/18-907-Conf, para.16 (even though the entire Prior Statement as a whole is submitted).

concerning a witness which should not be made public. A “Public Redacted” version of the Request will be filed as soon as practicable.

III. SUBMISSIONS

A. Applicable Law

7. The Prosecution incorporates by reference its summary of the applicable law set out in paragraphs 4 to 8 of its observations on its intended approach to rule 68(3) in the presentation of its case,⁸ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁹ and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).¹⁰

B. The Prior Recorded Testimony fulfils all Requirements of Rule 68(3)

8. The Prior Statement may be deemed formally submitted under rule 68(3). P-1074 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

9. As described below, the Prior Statement is highly relevant and probative. It goes to the Anti-Balaka’s planning of the 5 December 2013 attack on BANGUI, to NGAISSONA’s financial contributions to the Anti-Balaka, and to the alleged criminal conduct of Yekatom’s Group. P-1074 further provides evidence of the contextual elements of war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group, and its intent to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014 (“Relevant Period”).

⁸ ICC-01/14-01/18-655 (“Rule 68(3) Observations”); *see also*, ICC-01/14-01/18-710-Conf, para. 8 (identifying the relevant jurisprudence on the nature of ‘prior recorded testimony’).

⁹ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

¹⁰ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

10. P-1074's Prior Statement of 29 November 2018 comprises 49 pages. There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on the Prior Statement.

11. The witness's Prior Testimony consists of the following:

- P-1074 was [REDACTED].
- He outlines the background of political and military conflict in CAR leading up to the 2013-2014 conflict.
- He describes the emergence of the Seleka and the crimes they committed after their takeover in BANGUI.
- The witness describes the emergence of the Anti-Balaka and its origins in localised self-defence groups in the villages. He refers to the planning that took place in CAMEROON between BOZIZE and his supporters to use these groups to re-take power from the Seleka.
- P-1074 gives information on the Anti-Balaka's planning of the 5 December 2013 attack on BANGUI and its aftermath.
- He describes the Anti-Balaka's ensuing crimes against the Muslim population of murder, pillage and property destruction in BANGUI, and their attacks on KM5 and BOEING beginning on 5 December 2013.
- He describes the Anti-Balaka's structure and functioning, including NGAISSONA's role as a political coordinator and the roles of Com-Zones and FACA elements within the group. He states that the Anti-Balaka *militaires* were led by NGAISSONA, Bernard MOKOM, Maxime MOKOM, and ANDJILO, and that their strategy was to send masses of youth to attack the Muslims. He states that NGAISSONA was the head of the Anti-Balaka groups organised in each neighbourhood of BANGUI, and that NGAISSONA was the link between

BOZIZE and the Anti-Balaka elements. He describes the Anti-Balaka's attacks against the Muslim population in BODA, YALoke, BERBERATI, BOUAR, and BOSSEMPTELE.

- The witness refers to the Anti-Balaka's assassination of the mayor of MBAIKI (*i.e.*, Djido SALEH – MBAIKI's Deputy Mayor). He also relates the crimes of murder and pillage committed by YEKATOM's Group in the LOBAYE prefecture.
- P-1074 notes that the [REDACTED] NGAISSONA's alleged use of the money given by FIFA to the Central African Football Federation to finance the Anti-Balaka, including for food, *per diems*, and ammunition.
- P-1074 recounts a meeting [REDACTED] with YEKATOM and KAMEZOLAI, concerning the commission of Anti-Balaka crimes, particularly by Yekatom's Group.
- He describes the large-scale displacement of CAR's Muslim population, including from BOSSANGO, to CHAD and CAMEROON.
- The witness refers to both the Seleka and the Anti-Balaka's use of child soldiers.

12. P-1074's proposed evidence is corroborated by, *inter alia*, the evidence of P-2625, P-2841, P-2328, P-0306, P-1719, P-0287, P-0801, as well as by documentary evidence,¹¹ in relation to the plan of BOZIZE's supporters in CAMEROON to use and coordinate pre-existing self-defence groups to re-claim power from the Seleka. His proposed evidence on NGAISSONA's role as political coordinator and leader of the Anti-Balaka is corroborated by P-0884, P-0808, P-2232, P-0889, P-0458, P-2841, P-2012, and P-0801, as well as by documentary evidence.¹² His proposed evidence on the large-scale displacement of CAR's Muslim population to CAMEROON and CHAD is

¹¹ See CAR-OTP-2088-1179, at 1194; CAR-OTP-2079-0540, at 0540 and CAR-OTP-2001-5739, at 5782-5783, 5793.

¹² See, in particular, CAR-OTP-2101-4059, at 4059.

corroborated by documentary evidence,¹³ and – specifically in relation to BOSSANGO – by P-2200, P-2049, P-2462, P-2453, P-0287, P-0567, P-2658, P-2657, P-2652, P-1231, P-2133, P-0314, and P-2328.

C. Associated Exhibits

13. The Prosecution tenders 15 associated exhibits for formal submission, set out at Confidential Annex A. Ten of these are documents annexed to the Prior Statement, and referenced therein. Two of these are audio-visual materials shown to and commented upon by the witness in his statement. The remaining three documents are the transcripts and translations of the two audio-visual materials.

14. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish its probative value if excluded. As tendered, the associated exhibits avoid flooding the Parties, Participants, and the Chamber with material that is superfluous or tangential to the import of the witness's testimony, while assisting the Chamber in its assessment of the relevant evidence in its article 74 decision. As an integral part of the Prior Statement, each exhibit is directly relevant to and probative of material issues in dispute, and their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-1074's evidence.

¹³ CAR-OTP-2001-4429, at 4429; CAR-OTP-2001-7145, at 7167; CAR-OTP-2083-0437, at 0474; CAR-OTP-2083-0433, at 0434; CAR-OTP-2127-4059, at 4059-4060; CAR-OTP-2127-4061, at 4061; CAR-OTP-2127-4062, at 4062; CAR-OTP-2127-4063, at 4063; CAR-OTP-2127-4064, at 4068 and 4071; CAR-OTP-2127-4094, at 4094; CAR-OTP-2127-4096, at 4098; CAR-OTP-2127-4124, at 4125-4126.

D. A supplementary examination-in-chief is necessary and appropriate

15. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-1074's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

16. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹⁴ the Prosecution has carefully reviewed its three-hour estimate given for P-1074 in its Final Witness List.¹⁵ The Prosecution considers that it can further reduce the estimate to three hours. This estimated supplemental examination of P-1074 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁶ and accounts for the prospect of appropriate redirect examination.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1074's evidence through the use of some of the associated exhibits, other documents, or as concerns other relevant evidence. The limited examination requested is necessary not only to fully understand and contextualise the Prior Statement, including those parts relating to the Accused's acts and conduct, but also to advance the Chamber's fundamental truth-seeking function.

18. Alternatively, in the absence of the formal submission of the Prior Statement under rule 68(3), the Prosecution estimates that the witness's testimony on direct examination would require at least nine hours to present – three times as long.

¹⁴ ICC-01/14-01/18-685, para. 36.

¹⁵ ICC-01/14-01/18-724-Conf-AnxA, p. 42.

¹⁶ See e.g., ICC-01/14-01/18-T-1-ENG ET, p. 6 ln. 18-25; see ICC-01/14-01/21-T-1-ENG ET, p. 3 ln. 14-22, p. 4 ln. 20-22 (noting practical complications involved in the live in-Court interpretation).

E. Balance of interests

19. The projected shortening of P-1074's in-court-testimony by two thirds is "considerable", and on balance that the introduction of P-1074's Prior Statement under rule 68(3) is appropriate. Moreover, there is no resulting prejudice. The Chamber's and the Parties' interests in advancing this large and complex case efficiently, good trial management, the expeditious conduct of the proceedings, and that the Prior Statement is supported and corroborated by other evidence to be tested at trial, warrants its formal submission in the fair exercise of the Chamber's broad discretion.

IV. CONCLUSION

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1074 together with its associated exhibits as set out at Annex A, noting those on which the Prosecution intends to rely, subject to the fulfilment of the further conditions of rule 68(3). Should the Chamber do so, it should further grant the Prosecution leave to conduct a limited examination-in-chief of this witness as indicated above.



Fatou Bensouda, Prosecutor

Dated this 22nd day of April 2021
At The Hague, The Netherlands