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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-0876 pursuant to Rule 68(3)”,
(ICC-01/14-01/18-1082-Conf), 30 July 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-0876, 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-0876’s prior recorded testimony comprises the transcribed statement of the witness’s three day interview from 7 to 9 August 2016 (“Prior Statement”) and two associated exhibits.² 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-0876, an Anti-Balaka [REDACTED], was [REDACTED]. His Prior Statement discusses: (i) the circumstances of the Seleka coup, including BOZIZE and his supporters’ attempts to resist the Seleka offensive through anti-Muslim propaganda, and the creation and arming of youth militias; (ii) the Seleka’s widespread commission of crimes in BANGUI and in the provinces; (iii) the emergence of the Anti-Balaka movement, as well as its structure before and after the Anti-Balaka’s 5 December 2013 attack of BANGUI; (iv) the Anti-Balaka’s large-scale commission of crimes against the Muslim population in BANGUI and the provinces, including the commission of crimes by YEKATOM’s group; (v) the forcible displacement of the Muslim population from BANGUI and the enslaving of Muslims in its PK5 district; and (v) NGAISSONA’s contributions to the Anti-Balaka, as a leader.

¹ ICC-01/14-01/18-631, para. 58.

² 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.

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 unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.³

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.⁴ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁵ 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.⁶

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 interview transcripts, and the corresponding associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which the witness' evidence relates and, where applicable, any charged incidents the witness discusses.

6. Due to the length of the Prior Statement,⁷ a summary thereof, organised by topic, is attached at *Confidential Annex B* to facilitate the Parties', Participants', and Chambers' understanding of its content, and to more easily identify its relevance and probative value ("Summary"). The Summary is not tendered for formal submission,

³ 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").

⁴ ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé Appeals Decision*").

⁵ See ICC-01/14-01/18-685, paras. 31, 32.

⁶ 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).

⁷ The Prior Statement comprises 15 interview transcripts totalling approximately 332 pages.

rather, it clearly and concisely sets out the substance of the transcripts comprising the Prior Statement hereby tendered.

II. CONFIDENTIALITY

7. 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 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

8. 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)

9. The Prior Statement may be deemed formally submitted under rule 68(3). P-0876 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

10. As described below, the Prior Statement is highly relevant and probative. It goes to the proof of the contextual elements for war crimes and crimes against humanity,

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.

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”). It also describes NGAISSONA’s role within the Anti-Balaka notably as a political leader, and the commission of crimes by YEKATOM’s group targeting the Muslim population, notably in BANGUI and on the MBAIKI axis.

11. P-0876’s Prior Statement comprises 332 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.

12. The witness’s Prior Testimony establishes the following:

- P-0876 was an Anti-Balaka [REDACTED]. [REDACTED].
- He recounts the circumstances of the Seleka coup of 24 March 2013, and BOZIZE and his supporters’ strategy to resist the Seleka offensive through anti-Muslim propaganda and the creation and arming of youth militias.
- He describes the widespread commission of crimes by the Seleka in BANGUI and in the provinces after the Seleka coup.
- He discusses the origins of the Anti-Balaka movement: self-defence groups emerged spontaneously in reaction to the Seleka crimes before being coordinated by BOZIZE’s supporters.
- He describes the structure of the Anti-Balaka movement:
 - He distinguishes two Anti-Balaka branches: one supportive of BOZIZE’s return to power (of which NGAISSONA was a leader), and which was representing the majority of the Anti-Balaka elements; the second, opposed to it (Captain Gilbert KAMEZOLAI and YEKATOM being the military leaders of that second branch, [REDACTED]).

- He characterizes the Anti-Balaka's structure as "pyramidal" at the time of the 5 December 2013 attack of BANGUI: above the ComZones, military coordinators were answering to Captain NGREMANGOU, who in turn was liaising with BOZIZE. "Intermediaries" were in charge of collecting money for the groups in the field. The members of the Anti-Balaka political structure (including François BOZIZE, Francis BOZIZE, NGAISSONA, Lin BANOUKEPA, Lévi YAKETE, KOKATE, and others) were in control of everything.
- He provides evidence of NGAISSONA's contributions to the Anti-Balaka prior to the 5 December 2013 attack of BANGUI, describing him as a "financier".
- He recounts the 5 December 2013 attack of BANGUI, its military objectives and leadership.
- He discusses the Anti-Balaka's large scale commission of crimes against the Muslim population in BANGUI and the provinces, including the commission of such crimes by YEKATOM's group, and provides evidence of the forcible displacement of the Muslim population, as well as of the enclaving of Muslims in the PK5 district of BANGUI.
- Finally, he recounts the circumstances of [REDACTED].

13. P-0876's proposed evidence is corroborated by, *inter alia*, the evidence of P-0461, P-0967, P-1437, P-2200, and P-2232 as well as by documentary evidence,¹¹ in relation to BOZIZE's anti-Muslim propaganda prior to the Seleka coup, and the distribution of machetes to pro-BOZIZE youths in that period. His evidence on the Anti-Balaka's structure of command at the time of their 5 December 2013 attack of BANGUI is corroborated by, *inter alia*, the evidence of P-0965, P-1521, P-2232, and P-2841. Last, his

¹¹ See for example CAR-OTP-2000-0630, from [00:00:00] to [00:34:55] and its transcript and translation CAR-OTP-2060-0623 and CAR-OTP-2060-0678, at 0682-0692; CAR-OTP-2000-0632, from [00:03:23] to [00:05:24], from [00:10:22] to [00:12:31], from [00:14:49] to [00:16:12] and its transcript and translation CAR-OTP-2060-0631 and CAR-OTP-2060-0693, at 0695, 0698-0699, lns.30-40, 105-111, 141-144; CAR-OTP-2001-0172, at 0180, para. 34.

evidence on NGAISSONA's contributions to the Anti-Balaka from CAMEROON, notably as a financier, is corroborated by, *inter alia*, the evidence of P-0954, P-0965, P-0992, P-1074, P-2556, and P-2841.

C. Associated Exhibits

14. The Prosecution tenders two associated exhibits for formal submission, as set out in Confidential Annex A, namely: (i) an Anti-Balaka press release dated [REDACTED] (Annex A to his Prior Statement); and (ii) a press article titled [REDACTED], published on 24 June 2014 (Annex B to his Prior Statement).

15. Each associated exhibit is annexed to, and explained by the witness in his Prior Statement, and thereby forms an integral part of the testimony itself.¹² As such, 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-0876's evidence.

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

16. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-0876's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

17. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹³ the Prosecution has carefully reviewed its three-hour estimate given for P-0876 in its Final Witness List.¹⁴ The Prosecution considers that it cannot further reduce the estimate of three hours. This estimated supplemental examination of P-0876 takes into consideration the *realistic* pace of the proceedings,

¹² ICC-01/14-01/18-907-Conf, para. 13.

¹³ ICC-01/14-01/18-685, para. 36.

¹⁴ ICC-01/14-01/18-724-Conf-AnxA, p. 23.

including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁵ and accounts for the prospect of appropriate redirect examination.

18. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-0876'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.

19. 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 – a significantly longer period.

E. Balance of interests

20. The projected shortening of P-0876's in-court-testimony by one-third is "considerable", and on balance the introduction of P-0876'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 the fact 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.

¹⁵ See *e.g.*, ICC-01/14-01/18-T-1-ENG ET, p. 6 lns.18-25; see ICC-01/14-01/21-T-1-ENG ET, p. 3 lns.14-22, p. 4 lns.20-22 (noting practical complications involved in the live in-Court interpretation).

IV. CONCLUSION

21. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-0876 together with its associated exhibits as set out at Annex A, 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.



Karim A. A. Khan QC, Prosecutor

Dated this 6th day of September 2021
At The Hague, The Netherlands