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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-0888 pursuant to Rule 68(3)”,
ICC-01/14-01/18-1119-Conf, 27 September 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-0888, 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-0888’s prior recorded testimony comprises his 27 June 2016 and 6 April 2019 Witness Statements (“Prior Statements”)² and their associated exhibits.³ Should the Chamber deem the Prior Statements 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-0888 [REDACTED]. P-0888 provides information about, *inter alia*, (i) the Seleka’s widespread criminality before and after the 24 March 2013 coup, (ii) the involvement of YEKATOM and his group in the 5 December 2013 attack of BANGUI, (iii) the origins of the Anti-Balaka movement and its structure in 2014, and (iv) the organisation and leadership of YEKATOM’s group, and the areas under its control in 2014.

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.⁴

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2031-0217 and CAR-OTP-2108-0333.

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.

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”).

4. Having taken note of the Chamber's guidance, the Prosecution has carefully assessed the Prior Statements 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 Statements 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 Statements 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 statements and the corresponding associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which the Witness's evidence relates and, where applicable, any charged incidents the Witness discusses. *Confidential* Annex B contains the Prior Statements themselves, 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 23bis(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.

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).

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 Statements may be deemed formally submitted under rule 68(3). P-0888 will attest to their 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 Statements are highly relevant and probative. They bear evidence of the involvement of YEKATOM and his group in the Anti-Balaka's 5 December 2013 attack of BANGUI, the structure of the Anti-Balaka movement in 2014, including NGAISSONA's role as the Anti-Balaka General Coordinator, and the organisation and leadership of YEKATOM's group. P-0888 further provides evidence of the contextual elements for war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group in 2014.

10. P-0888's Prior Statements of 27 June 2016 and 6 April 2019 comprise respectively 13 and 12 pages. There are no agreements as to facts contained in the charges,

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.

documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on the Prior Statements.

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

- P-0888, [REDACTED].
- The witness mentions the Seleka's widespread commission of crimes in BANGUI and the provinces before and after the Seleka coup.
- He provides evidence of the involvement of YEKATOM and his group in the Anti-Balaka's 5 December 2013 attack of BANGUI, reporting their presence in the vicinity of BANGUI (in BOEING, near the airport, and behind the bridge in BIMBO) prior to the attack.
- He explains the origins of the Anti-Balaka movement, and provides information about its structure in 2014. In particular:
 - [REDACTED], he discusses the April 2014 creation of an *ad hoc* committee for the Anti-Balaka of the South, representing the Anti-Balaka of BIMBO and BOEING, and the later establishment of a unified Coordination comprising "North and South Anti-Balaka groups", of which NGAISSONA was designated National General Coordinator;
 - He discusses the roles and activities of the Anti-Balaka Coordination (and of NGAISSONA), as well as the Anti-Balaka military police;
 - He recounts [REDACTED];
- The witness provides information on leaders and elements of YEKATOM's group in 2014, identifying some of them in videos (including Freddy OUANDJIO – aka COEUR DE LION –, Habib BEINA, and Salvador MANOUMANA)

- He discusses the areas under the control of YEKATOM's group after the 5 December 2013 BANGUI attack, including the YAMWARA area in BOEING, BIMBO, SEKIA, and locations on the MBAIKI axis (notably KAPOU and PISSA). P-0888 provides information about the location of some of its bases, *inter alia* at SEKIA and at the PK9 bridge.
- Finally, he recounts the presence of "children" within the Anti-Balaka ranks, stating that they joined the Group for "protection".

12. P-0888's proposed evidence is corroborated by, *inter alia*, the evidence of P-1339 and P-2475 regarding the presence of YEKATOM's group in BOEING, prior to the Anti-Balaka's 5 December 2013 BANGUI attack. His evidence on the structure of the Anti-Balaka movement in 2014, in particular about the establishment of an Anti-Balaka Coordination unifying the Anti-Balaka North and South factions with NGAISSONA as its General Coordinator, is corroborated by, *inter alia*, the evidence of P-0446, P-0801, P-0808, P-0876, P-0889, P-0954, P-1193, P-1521, and P-1858, as well as by documentary evidence.¹¹ Last, the witness's evidence on the leadership of YEKATOM's group in 2014, and its control at the time of the YAMWARA area in BOEING and of the Pk9-MBAIKI axis, is corroborated by, *inter alia*, the evidence of P-0954, P-1819, P-1339, P-1558, P-1647, P-1839, P-2232, and P-2475.

C. Associated Exhibits

13. The Prosecution tenders six associated exhibits for formal submission, as set out at *Confidential Annex A*, namely: (i) a press article titled « *Bangui: les Anti-Balaka se choisissent une nouvelle coordination générale* », dated 15 May 2014; (ii) an Anti-Balaka propaganda video titled « *Autre vision du combat* »; and (iii) four videos provided by P-1819 containing rushes depicting YEKATOM and members of his group.

¹¹ CAR-OTP-2006-1216; CAR-OTP-2029-0626; CAR-OTP-2030-0278; CAR-OTP-2039-0019.

14. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statements, or would otherwise diminish their 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 Statements, 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-0888's evidence.

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

15. Although the Prior Statements are comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-0888'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",¹² the Prosecution has carefully reviewed its three-hour estimate given for P-0888 in its Final Witness List.¹³ The Prosecution considers that it cannot further reduce the estimate of three hours. This estimated supplemental examination of P-0888 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁴ 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-0888's evidence through

¹² ICC-01/14-01/18-685, para. 36.

¹³ ICC-01/14-01/18-724-Conf-AnxA, p. 13.

¹⁴ 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).

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 Statements, 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 Statements under rule 68(3), the Prosecution estimates that the witness's testimony on direct examination would require at least 6 hours to present.

E. Balance of interests

19. The projected shortening of P-0888's in-court-testimony by half is "considerable", and the Prosecution considers on balance that the introduction of P-0888's Prior Statements 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 Statements are supported and corroborated by other evidence to be tested at trial, warrants their 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 Statements of P-0888 together with their 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.



Karim A. A. Khan QC, Prosecutor

Dated this 29th day of September 2021
At The Hague, The Netherlands