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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-0954 pursuant to Rule 68(3)”,
ICC-01/14-01/18-1137-Conf, 12 October 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-0954, 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-0954’s prior recorded testimony comprises the statement of the witness’s interview on 26 February 2017 to 2 March 2017 (“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 four hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-0954 is an Anti-Balaka insider. His Prior Statement discusses: (i) the emergence of his group and its involvement in the Anti-Balaka movement; (ii) the Anti-Balaka’s 5 December 2013 attack on BANGUI and Alfred YEKATOM’s (“YEKATOM”) participation therein; (iii) the organisation and structure of the Anti-Balaka movement; (iv) several Anti-Balaka meetings in 2013 and 2014, some occurring at YEKATOM’s bases, which resulted in disagreement among members over François BOZIZE’s (“BOZIZE”) return to power and their restructuring under Patrice Edouard NGAISSONA’s (“NGAISSONA”) leadership; (v) the leadership roles of NGAISSONA and YEKATOM within the Anti-Balaka; and (vi) the crimes committed by YEKATOM and his elements against the civilian population, including the Muslim population in his area of control and General LAPO’s son.

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* lists the relevant portions of the Prior Statement being tendered for formal submission, the paragraphs (if any) which the Prosecution is excluding from this application, and the corresponding associated exhibits. *Confidential Annex A* also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates. *Confidential Annex B* contains the Prior Statement itself. The associated exhibits are available to the Defence and the Trial Chamber in e-Court.

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, para. 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).

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 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,⁷ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁸ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).⁹

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-0954 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 proof of the contextual elements for war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group between September 2013 and December 2014 (“Relevant Period”). It also describes NGAISSONA’s role

⁷ 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’).

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

⁹ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

within the Anti-Balaka, notably as a political leader, and the commission of crimes by YEKATOM's group in BANGUI and on the PK9-MBAIKI axis.

10. P-0954's Prior Statement comprises 21 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 Statement establishes the following:

- P-0954 is [REDACTED] and an Anti-Balaka insider. In June 2013, he created his own group and set up a base [REDACTED]. The group comprised a large number of FACA soldiers and civilian fighters. From October 2013 to January 2014, he temporarily [REDACTED]. The group did not participate in the 5 December 2013 attack on BANGUI.
- P-0954 describes YEKATOM's origins, career, involvement in the Anti-Balaka, as well as his and his group's participation in the 5 December 2013 attack on BANGUI, upon Captain NGREMANGOU's ("NGREMANGOU") orders.
- P-0954 recounts two meetings at YEKATOM's YAMWARA (aka "GNAWARA") school base, namely: i) on 27 December 2013, during which the participating Anti-Balaka chiefs discussed the name and structure of the group and appointed Captain Gilbert KAMEZOLAI as Chief of Staff, NGREMANGOU as his Deputy, and BARA as the Spokesperson; and ii) on 31 December 2013, during which NGREMANGOU explained that the previous appointments were refused by BOZIZE, which led to disagreements within the group over BOZIZE's return to power. [REDACTED] these disagreements created the Anti-Balaka "South" (rejecting BOZIZE's return), which included YEKATOM and P-0954 and the Anti-Balaka "North" (aiming for BOZIZE's return), which included NGAISSONA.

- P-0954 further describes that, upon DJOTODIA's resignation, [REDACTED]. The [REDACTED] neighbourhood was controlled by YEKATOM, whose group comprised 200 FACA and 3000 elements, and whose control extended from that point on to MBAIKI.
- P-0954 describes the crimes committed by YEKATOM and his group against the civilian population, including: i) the killing of General LAPO's son; ii) the killing of a young man from PETEVO; iii) the killing and pillaging of the Muslims who did not flee the villages on the PK9-MBAIKI axis; and iv) the pillaging of individuals at checkpoints on the PK9-MBAIKI axis. P-0954 further describes the crimes committed by YEKATOM and his group against Anti-Balaka elements under his [REDACTED] orders.
- P-0954 recounts the series of meetings preceding the establishment of the unified Anti-Balaka Coordination led by NGAISSONA, namely: i) a meeting organized in PISIMISI, chaired by Sebastien WENEZOU ("WENEZOU") where the structure of the group was discussed; ii) a month later, a meeting organised by NGO MOU-DA (aka 'MOUDA') at LAKWANGA (2nd *Arrondissement* in BANGUI) where WENEZOU was elected General Coordinator of the Anti-Balaka "South"; iii) a month after that, a mediation and meeting organised by MOU-DA with both Anti-Balaka "South" and "North", where they decided to restructure under a common Coordination; and iv) a month later, a meeting organized at hotel AZIMUT with over 500 participants, where they formally appointed a unified Coordination with NGAISSONA as the General Coordinator.
- P-0954 describes NGAISSONA's role as the National General Coordinator, including: i) giving orders to erect roadblocks or to create disorder; ii) the organisation of meetings under his leadership; iii) handing out money to Anti-Balaka groups; and vi) deciding on the Anti-Balaka participants in the BRAZAVILLE talks.

12. P-0954's proposed evidence on: i) YEKATOM's leadership over his group is corroborated by, *inter alia*, the evidence of P-1339, P-1521, P-1819, P-2232, P-1786, and P-2084; ii) YEKATOM's control over the area PK9-MBAIKI is corroborated by, *inter alia*, P-1839, P-1193, P-2328, and P-2012; iii) the commission of crimes by YEKATOM and his group against the Muslim population is corroborated by, *inter alia*, P-1339, P-2475, P-1839, and P-2233; iv) NGAISSONA distributing money to ComZones in BANGUI is corroborated by, *inter alia*, P-0992, P-1193, P-2232, and P-0966; v) NGAISSONA issuing orders to erect and remove roadblocks or to create disorder is corroborated by, *inter alia*, P-0966, P-0808, P-1719, and P-0876.

C. Associated Exhibits

13. The Prosecution tenders two associated exhibits for formal submission, as set out in Confidential Annex A. P-0954 provided these documents to investigators during his Prior Statement: (i) a sketch [REDACTED] from 11 January 2014 (Annex A to his Prior Statement); and (ii) a sketch of area [REDACTED] controlled by YEKATOM from 10 January 2014 (Annex B to his Prior Statement).

14. P-0954 discussed the associated exhibits during his Prior Statement, which form an integral part of the testimony itself.¹⁰ As such, their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-0954's evidence.

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-0954's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

¹⁰ ICC-01/14-01/18-907-Conf, para. 13.

16. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹¹ the Prosecution has carefully reviewed its four-hour estimate given for P-0954 in its Final Witness List.¹² The Prosecution considers that it cannot further reduce the estimate of four hours. This estimated supplemental examination of P-0954 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹³ 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-0954'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 seven hours to present – a significantly longer period.

E. Balance of interests

19. The projected shortening of P-0954's in-court-testimony by almost half is "considerable", and on balance the introduction of P-0954's Prior Statement under rule 68(3) is appropriate. Moreover, there is no resulting prejudice. The Chamber's

¹¹ ICC-01/14-01/18-685, para. 36.

¹² ICC-01/14-01/18-724-Conf-AnxA, p. 23.

¹³ 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).

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.

IV. CONCLUSION

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-0954 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 9th day of November 2021
At The Hague, The Netherlands