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No.: **ICC-01/14-01/18**
Date: **14 December 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-1416 pursuant to Rule 68(3)”,
14 December 2021**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan QC

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri

Mr Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Mr Richard Landry Omissé-Namkeamaï

Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun

Mr Abdou Dangabo Moussa

Ms Elisabeth Rabesandratana

Mr Yaré Fall

Ms Marie-Edith Douzima-Lawson

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-1416, 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-1416’s prior recorded testimony comprises his 11 December 2016 Witness Statement (“Prior Statement”).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 two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1416 was a trader in BANGUI and a resident of the [REDACTED] His Prior Statement discusses: (i) the commission of widespread crimes by the Seleka in BANGUI from their arrival in the city on 24 March 2013; (ii) the killing of Muslim traders by elements of YEKATOM’s group in the BOEING market in the context of the Anti-Balaka’s 5 December 2013 attack of BANGUI; and (iii) the circumstances of the killing of [REDACTED] by Anti-Balaka based behind the BANGUI airport in July 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.³

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2045-0150.

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. 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 sources of corroborative evidence. *Confidential* Annex A (a Summary Chart) lists the relevant statement. 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 Statement itself, with grey highlights identifying the portions on which the Prosecution does not seek to rely

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.

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).

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-1416 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 provides evidence of the killing of seven Muslim traders at the BOEING market by members of YEKATOM's group in the course of the Anti-Balaka's 5 December 2013 attack of BANGUI.¹⁰ It also 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, and its intent to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014 ("Relevant Period").

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.

¹⁰ Counts 1 to 3. *See* ICC-01/14-01/18-403-Conf-Corr, p.104, 106-110.

10. P-1416's Prior Statement of 11 December 2016 comprises 15 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-1416 was a [REDACTED] trader in BANGUI, the [REDACTED], and a resident of [REDACTED] neighbourhood;¹¹
- He recounts the widespread commission of crimes by the Seleka in BANGUI, from their arrival in the city on 24 March 2013;
- He discusses the Anti-Balaka's commission of crimes in the course of their 5 December 2013 attack of BANGUI. In particular, he provides evidence of YEKATOM's elements' killing of seven Muslim traders at the BOEING market that day, [REDACTED] with those elements later that day;
- He reports on Seleka crimes in BOEING and other neighbourhoods of BANGUI on 5 December 2013 following the Anti-Balaka's attack;
- Finally, P-1416 discusses the circumstances of the [REDACTED] July 2014 killing of [REDACTED] by an Anti-Balaka named [REDACTED]. [REDACTED].¹² She was eventually slaughtered by [REDACTED].

12. P-1416's proposed evidence is corroborated by, *inter alia*, the evidence of P-1339, P-1437, P-1528, P-2233, P-2475, and P-2682 in relation to the 5 December 2013 killing of Muslim merchants at the BOEING market by members of YEKATOM's group.

¹¹ P-1416 also had a house in the [REDACTED] neighbourhood. On the day of the 5 December 2013 attack of BANGUI, he was at his house in [REDACTED].

¹² After [REDACTED] was abducted by [REDACTED] Anti-Balaka elements and taken to their base, [REDACTED] asked for money for the release of [REDACTED].

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

13. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-1416's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

14. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹³ the Prosecution has carefully reviewed its four-hour estimate given for P-1416 in its Final Witness List.¹⁴ The Prosecution considers that it can further reduce its estimate of four hours to two hours. This estimated supplemental examination of P-1416 takes into consideration the *realistic* pace of the proceedings, 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.

15. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1416's evidence through 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.

16. 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 five hours to present – a significantly longer period.

¹³ ICC-01/14-01/18-685, para. 36.

¹⁴ ICC-01/14-01/18-724-Conf-AnxA, p. 30.

¹⁵ 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).

D. Balance of interests

17. The projected shortening of P-1416's in-court-testimony by more than half is "considerable." On balance, the introduction of P-1416'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

18. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1416 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 14th day of December 2021
At The Hague, The Netherlands