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No.: **ICC-01/14-01/18**
Date: **16 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-0966 pursuant to Rule 68(3)”, 16 December 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-0966, 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-0966’s prior recorded testimony comprises his witness statement dated 25 June 2016 (“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 four hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-0966 is an Anti-Balaka insider, who provides evidence, *inter alia*, on (i) the presence, activities, and leadership of the Anti-Balaka in GOBERE in 2013; (ii) [REDACTED] Anti-Balaka attacks on BENZAMBE and BOSSANGO, including on 5 December 2013; (iii) the organisation of the Anti-Balaka in 2014, including bases, leaders, discipline, and the issuance of ID cards to Anti-Balaka elements; and (iv) NGAISSONA’s role as the National Coordinator, including his organisation of and financial support to the Anti-Balaka, as well as his taking advantage of the movement for his personal interest.

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-2031-0241.

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* lists the relevant portions of the Prior Statement being tendered for formal submission, 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,⁸ 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

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).

⁸ Please note that a courtesy copy of a lesser redacted statement has been attached to this request. The lesser redacted statement will be formally disclosed at the end of next week.

6. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, 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,⁹ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),¹⁰ and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).¹¹

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-0966 will attest to its accuracy; he will be present in court; and he will be available for examination by the Defence, Participants, and the Chamber.

9. As described below, the Prior Statement is highly relevant and probative. In addition to the issues described above at paragraphs 2, the Prior Statement goes to proof of the nature and extent of the widespread attack carried out by the Anti-Balaka against the Muslim civilian population between September 2013 and December 2014 (“Relevant Period”), as a part of the contextual elements of Crimes against Humanity and War Crimes, under articles 7 and 8, respectively. It provides evidence of the campaign of retributive violence committed by the Anti-Balaka against Muslims perceived to be associated with the Seleka in towns and villages in western CAR

⁹ 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’).

¹⁰ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

¹¹ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

pursuant to a criminal organisational policy,¹² particularly in BENZAMBE, and BOSSANGO, in 2013. P-0966's evidence further bears on the identity of the Anti-Balaka as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack.

10. P-0966's Prior Statement comprises 24 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-0966, an Anti-Balaka insider, was the [REDACTED] of the Anti-Balaka self-defense group [REDACTED], who existed even before the Seleka took power;
- P-0966 describes the Seleka attack on his village and their crimes, including killing his cousin, burning his house, and stealing his property;
- P-0966 recounts [REDACTED] a group of youngsters from his village to join the Anti-Balaka in GOBERE in June 2013, and their joining of the [REDACTED]. In GOBERE there were 14 companies of 500-1000 individuals, each divided in 4 sectors according to the provenance of elements;
- P-0966 describes the structure, organisation, and leadership of the Anti-Balaka in GOBERE under Presidential Guard (Danboy) DEDANE who was present in GOBERE, and Maxim(e) MOKOM from ZONGO. He further explains [REDACTED];
- P-0966 describes the Anti-Balaka attacks in the provinces under DEDANE's orders, in particular [REDACTED]: (i) the attack on BENZAMBE; (ii) the "first" failed Anti-Balaka attack on BOSSANGO; and (iii) the "second" attack on

¹² See ICC-01/14-01/18-403-Conf-Corr, paras. 64, *see further* pp. 107, 111 (referencing paragraphs 90-114 of the Document Containing the Charges - ICC-01/14-01/18-286-Conf-AnxB1).

BOSSANGOA on 5 December 2013, led by (Florent) KEMA and (Théophile) DANGBA. P-0966 describes the Anti-Balaka's targeting of the Muslims who remained in their houses during these attacks, as they were assimilated to the Seleka;

- The Witness recounts [REDACTED] the organisation of the Anti-Balaka in each neighbourhood, following the attack on BANGUI on 5 December 2013;
- P-0966 describes the organisation of the Anti-Balaka National Coordination in BANGUI from January 2014, including the set-up of the Military Police and issuance of ID cards;
- P-0966 explains the role of NGAISSONA as the National Coordinator, including:
 - (i) allowing prisoners to be brought back to his base, prior to the set-up of the Military Police;
 - (ii) organising weekly meetings with the ComZones and Chiefs;
 - (iii) providing money to the ComZones and Chiefs for housing and reimbursing transportation fees when attending meetings;
 - (iv) issuing orders to the Anti-Balaka, such as to create roadblocks in town to avoid his arrest;
 - (v) taking advantage of the movement for his personal interest, *inter alia* for his Presidency candidacy and for his personal wealth;
- P-0966 explains the split which occurred in the Anti-Balaka once NGAISSONA announced their transformation into a political movement, which led to many elements siding with an apolitical self-defense movement promoted by Maxime MOKOM.

12. P-0966's proposed evidence on structure, organisation, and leadership of the Anti-Balaka in GOBERE is corroborated by, *inter alia*, the evidence of P-2602, P-2251, P-0306, P-0458, and P-1521. P-0966's proposed evidence on the attack on BOSSANGOA, is corroborated by, *inter alia*, P-2200, P-0314, and P-0287. Finally, P-0966's proposed evidence on NGAISSONA's role as the National Coordinator,

including the distribution of money to ComZones in BANGUI is corroborated by, *inter alia*, P-0954, P-0992, P-1193, and P-2251.

C. Associated Exhibits

13. The Prosecution tenders five associated exhibits for formal submission, set out at Confidential Annex A, namely: (i) a waiver of counsel signed by the P-0966 (Annex A to his Prior Statement); (ii) an annotated map indicating the road taken by P-0966 [REDACTED] to GOBERE and the towns the Anti-Balaka attacked near BOSSANGOA (Annex B to his Prior Statement); (iii) a sketch of the towns near GOBERE where the Anti-Balaka were deployed (Annex C to his Prior Statement); (iv) a sketch of Anti-Balaka bases in [REDACTED] (Annex D of his Prior Statement); and (v) four scanned photos of the Witness [REDACTED], with at least one depicting him with gris-gris (Annex E of his Prior Statement).

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 avoids 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, the exhibits are directly relevant to and probative of material issues in dispute, and its submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-0966's evidence.

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

15. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-0966's testimony, and 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",¹³ the Prosecution has carefully reviewed its four-hour estimate given for P-0966 in its Final Witness List.¹⁴ The Prosecution considers that it cannot further reduce the estimate of four hours. This estimated supplemental examination of P-0966 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.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-0966's evidence through the use 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-0966's in-court-testimony by almost half is "considerable", and on balance the introduction of P-0966'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

¹³ ICC-01/14-01/18-685, para. 36.

¹⁴ ICC-01/14-01/18-724-Conf-AnxA, p. 26.

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).

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-0966 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 16th day of December 2021

At The Hague, The Netherlands