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No.: **ICC-01/14-01/18**  
Date: **10 February 2022**

**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-0314 pursuant to Rule 68(3)”, 10 February 2022**

**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-0314, 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”).<sup>1</sup> P-0314’s prior recorded testimony comprises his 29 May 2015 Witness Statement (“Prior Statement”)<sup>2</sup> and its associated exhibits.<sup>3</sup> 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-0314 has been [REDACTED]. He provides information about, *inter alia*, (i) the Seleka’s presence, leadership, and crimes in BOSSANGO and surrounding region in 2013; (ii) the emergence of the Anti-Balaka in that period; (iii) the Anti-Balaka’s 5 December 2013 attack of BOSSANGO, their commission of crimes against the Muslim population, and their leadership (referring to Florent KEMA (“KEMA”) as the local Anti-Balaka Coordinator); and (iv) the forcible displacement of the Muslim population of BOSSANGO and neighbouring villages, as a consequence of the Anti-Balaka’s attacks and crimes.

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

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<sup>1</sup> ICC-01/14-01/18-631, para. 58.

<sup>2</sup> CAR-OTP-2008-1188.

<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,<sup>6</sup> 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.<sup>7</sup>

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 relevant statement 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 Statement itself, 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 23*bis*(1) of the Regulations of the Court ("RoC"), this Request and its annexes are filed as "Confidential", as they contain information

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<sup>4</sup> 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").

<sup>5</sup> ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé Appeals Decision*").

<sup>6</sup> See ICC-01/14-01/18-685, para. 31, 32.

<sup>7</sup> 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).

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,<sup>8</sup> its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),<sup>9</sup> and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).<sup>10</sup>

#### 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-0314 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 bears evidence of the Anti-Balaka’s 5 December 2013 attack of BOSSANGO, and of their commission of crimes against the Muslim civilians in BOSSANGO and neighbouring villages, including the forcible displacement of the Muslim population. P-0314 discusses the Anti-Balaka’s leadership in BOSSANGO and its ties to the Anti-Balaka National Coordination. He further provides evidence 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 the Muslim civilians pursuant

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<sup>8</sup> 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’).

<sup>9</sup> ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

<sup>10</sup> ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

to a criminal organisational policy between September 2013 and December 2014 (“Relevant Period”).

10. P-0314’s Prior Statement comprises 35 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 Testimony consists of the following:

- P-0314 has been [REDACTED];
- He discusses the causes of the conflict in the Central African Republic (“CAR”), the circumstances of the Seleka coup of 24 March 2013, and recounts the Seleka’s arrival in BANGUI and in the BOSSANGO region. The Witness also explains the origins of the Anti-Balaka movement;
- He describes the situation in BOSSANGO prior to the Anti-Balaka’s 5 December 2013 attack, the commission of crimes by the Seleka, and provides information about the Seleka’s leadership;
- P-0314 also provides information about the Anti-Balaka’s leadership in BOSSANGO after the 5 December 2013 attack thereof. He indicates that KEMA (a former FACA) was the local Anti-Balaka coordinator, and a member of the group’s national leadership;
- He discusses the forcible displacement of the Muslim population of BOSSANGO following the 5 December 2013 Anti-Balaka attack, and explains that the Muslim population took refuge at *École de la Liberté* (noting that Muslims from surrounding villages had already taken shelter there, as a result of prior Anti-Balaka attacks). He recounts the eventual evacuation of these Muslims to CHAD.

- P-0314 further discusses the commission of crimes by the Anti-Balaka against the Muslim population and its properties in BOSSANGO and the surrounding region.
- The Witness describes the Anti-Balaka's attack of BANGUI on 5 December 2013 (P-0314 was in BANGUI on that day);
- He provides evidence regarding NGAISSONA's role as the Anti-Balaka's general coordinator in 2014, [REDACTED];
- Finally, P-0314 discusses the presence of child soldiers within the Anti-Balaka's ranks, explaining that boys were used as "look outs".

12. P-0314's proposed evidence is corroborated by, *inter alia*, the evidence of P-0287, P-0505, P-1576, P-2049, P-2200, P-2543, P-2462, P-2467, P-2652, P-2657, and P-2658 regarding the forcible displacement of the Muslim population of BOSSANGO and neighbouring villages as a direct consequence of the Anti-Balaka's violence. His evidence relating to KEMA's leadership of the Anti-Balaka in BOSSANGO and his ties to the Anti-Balaka's national leadership is corroborated by, *inter alia*, the evidence of P-0287, P-0966, P-1521, P-2232, P-2269, and P-2453, as well as by documentary evidence.<sup>11</sup>

### C. Associated Exhibits

13. The Prosecution tenders ten associated exhibits for formal submission, as set out at Confidential Annex A,<sup>12</sup> namely: (i) memoranda, articles, and the text of a speech authored by P-0314, discussing *inter alia* the conflict situation in the CAR and the commission of crimes by the Seleka and the Anti-Balaka, notably in BOSSANGO and its region (Annexes A, B, C, E, F, G, H, and I); (ii) a compilation of two documents

<sup>11</sup> See, *inter alia*, CAR-OTP-2001-0835, at 0886; CAR-OTP-2001-6924, at 6926; CAR-OTP-2030-0280, at 0280.

<sup>12</sup> The Prosecution does not submit, and will not rely on, annexes D, K, L, and M to P-0314's statement. Annex D is a duplicate of annex B; and annexes K, L, and M are assessed as non-material and/or of no relevance. Nevertheless, these annexes are made available to the Chamber and the Parties in e-Court.

reporting on crimes committed by the Seleka in the area of BOUCA in May and June 2013 (Annex J); and (iii) a letter from [REDACTED], mentioning the Seleka's take-over of BATANGAFO on 21 March 2013, and reporting on looting perpetrated by the Seleka (Annex N).

14. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statement, 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.<sup>13</sup>

15. As an integral part of the Prior Statement, 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-0314'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-0314'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",<sup>14</sup> the Prosecution has carefully reviewed the three-hour estimate given for P-0314 in its Final Witness List.<sup>15</sup> The Prosecution considers that it

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<sup>13</sup> The Prosecution does not consider all documents mentioned in the statement sufficiently 'discussed', insofar as being "used and explained by [the witness in their] prior recorded testimony and [as] necessary to understand [the witness's] testimony" - ICC-01/04-02/06-1029, para. 23; *see also* ICC-01/09-01/11-1938-Red-Corr, para. 33 (defining associated exhibits as "use[d] or explain[ed] [by the witness] in the prior recorded testimony" and "necessary to read and understand the prior recorded testimony being introduced"); *see also* ICC-01/04-02/06-1653, para. 23 (same).

<sup>14</sup> ICC-01/14-01/18-685, para. 36.

<sup>15</sup> ICC-01/14-01/18-724-Conf-AnxA, p. 47.

cannot further reduce it. This estimated supplemental examination of P-0314 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,<sup>16</sup> 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-0314'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 six hours to present – a significantly longer period.

#### **E. Balance of interests**

20. The projected shortening of P-0314's in-court-testimony by half is "considerable", and the Prosecution considers on balance that the introduction of P-0314'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.

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<sup>16</sup> 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).

#### IV. CONCLUSION

21. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-0314 together with its 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.



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**Karim A. A. Khan QC, Prosecutor**

Dated this 10<sup>th</sup> day of February 2022  
At The Hague, The Netherlands