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No.: **ICC-01/14-01/18**

Date: **10 May 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-2354 pursuant to Rule 68(3)”, 10 May 2022,
ICC-01/14-01/18-1400-Conf**

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-2354, 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-2354’s prior recorded testimony comprises his witness statement dated 15 April 2019 (“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-2354 was a trader from MBAIKI who fled the town together with his family and other Muslim civilians, out of fear of being killed by the Anti-Balaka, following the arrival of Alfred YEKATOM (aka “RAMBO”, “YEKATOM”) and his elements (“YEKATOM’s Group”). P-2354’s evidence is relevant to the contextual elements for war crimes and crimes against humanity; YEKATOM’s Group’s advancement from PK9 to MBAIKI and their targeting of the Muslim population; the mass displacement of Muslims from the LOBAYE region as a result of the Anti-Balaka’s actions; and YEKATOM’s command over his elements and involvement in the ransoming of civilians’ goods. The Prior Statement is thus *prima facie* relevant to, and probative of material issues at trial.

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-2105-0991.

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 sources of other corroborative evidence. *Confidential* Annex A lists the relevant portions of the Prior Statement being tendered for formal submission. 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, with grey highlights identifying the portions on which the Prosecution does not seek to rely.

II. CONFIDENTIALITY

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

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).

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-2354 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. It contains evidence that goes directly to the crimes alleged at counts 24-28, and YEKATOM’s Group’s perpetration of these crimes. The Prior Statement also 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

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.

perceived to be associated with the Seleka in towns and villages in western CAR pursuant to a criminal organisational policy,¹⁰ particularly in MBAIKI and surrounding villages. P-2354'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-2354's Prior Statement comprises 16 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-2354, a Muslim civilian trader, describes the arrival of the Seleka to MBAIKI after DJOTODIA rise to power and their commission of crimes, such as extortion and pillaging of both Christians and Muslims;
- P-2354 refers to the Anti-Balaka 5 December 2013 attack on BANGUI and the subsequent targeting of Muslims by the Anti-Balaka in the city;
- P-2354 recounts the killing by the Anti-Balaka of [REDACTED] respectively. He knows they were killed by Anti-Balaka elements as he was personally told by relatives of the victims, who were wounded but survived. P-2354 explains that RAMBO was in charge of these Anti-Balaka, as he had united all the Anti-Balaka in the region of LOBAYE;
- P-2354 describes the evacuation of Muslim civilians from villages between BANGUI and MBAIKI (including BAGANDOU, ESCADE, MBATA, NDOLOBO, CAFÉ MACHADO, SAFA, BOUKOKO, BOBOUA, BOULEMBA,

¹⁰ 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).

PISSA) starting in late December 2013. He explains that these civilians fled in fear of their lives as a result of Anti-Balaka threats and attacks in the area;

- P-2354 refers to YEKATOM's meeting at the Jeanne d'Arc Church. Although he did not attend the meeting, P-2354 was told that during the meeting, YETATOM said he had no problems with the Muslims civilians, and that he only came to MBAIKI to fight the Seleka. P-2354 also heard about a subsequent meeting at the bus station where RAMBO said he himself would kill any Anti-Balaka who would not obey his order not to harm Muslims;
- P-2354 describes how, after those meetings, the Anti-Balaka that had accompanied RAMBO, threatened the Muslim civilians in MBAIKI. P-2354 himself heard them making threats such as: "we will kill you Muslims, we will cut your throats, and we will eat you";
- P-2354 reports on YEKATOM's movements between MBAIKI and other towns, leaving COEUR DE LION in charge in his absence. He explains [REDACTED] was stolen by the Anti-Balaka to be brought to YEKATOM in BANGUI;
- P-2354 explains the subsequent evacuation of the Muslim civilians from MBAIKI by the Chadian forces on or around 6 February 2014. P-2354 recounts: (i) he had to leave most of his belongings behind, like many others Muslim who were being evacuated; (ii) that the Anti-Balaka, upon their leaving, started taking their belongings which remained in MBAIKI, and emptied their shops; (iii) that the Anti-Balaka established their base in all the locations previously used by the Seleka, such as PISSA and PK9, and were collecting tolls from the travellers when passing through the barriers; and (iv) that he went into exile in CHAD until late 2015.

- P-2354 reports on the killing of DJIDO, by YEKATOM's Anti-Balaka elements.

[REDACTED] a film clip of the killing, and P-2354 recognised some of the youngsters from MBAIKI in the film clip.

12. P-2354's proposed evidence on YEKATOM and his Group's takeover of the PK9-MBAIKI axis is corroborated by, *inter alia*, the evidence of P-1339, P-1647, P-1666, P-1786, P-1813, P-1838, P-1839, and P-2353. P-2354's proposed evidence on the commission of crimes by YEKATOM and his Group against the Muslim population is corroborated by, *inter alia*, P-0974, P-2475, P-1813, P-1838, P-1839, and P-2233. P-2354's proposed evidence on YEKATOM Group's killing of DJIDO Saleh is corroborated by, *inter alia*, P-1813, P-1838, P-1595, P-2196 and P-2476.

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

13. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-2354's testimony, and 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",¹¹ the Prosecution has carefully reviewed its two-hour estimate given for P-2354 in its Final Witness List.¹² The Prosecution considers that it cannot further reduce the estimate of two hours. This estimated supplemental examination of P-2354 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.

¹¹ ICC-01/14-01/18-685, para. 36.

¹² ICC-01/14-01/18-724-Conf-AnxA, p. 38.

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).

15. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2354's evidence through the use of 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.

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 four hours to present – twice as long.

D. Balance of interests

17. The projected shortening of P-2354's in-court-testimony by half is "considerable", and on balance the introduction of P-2354'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-2354, 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 10th day of May 2022
At The Hague, The Netherlands