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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

with Confidential Annexes A and B

**Public Redacted Version of Prosecution's Request for the Formal Submission of the
Prior Recorded Testimony of P-1786 pursuant to Rule 68(3),
ICC-01/14-01/18-1502-Conf, 7 July 2022**

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 Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé

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-1786, 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-1786’s prior recorded testimony comprises his witness statement dated 27 July 2017 (“Prior Statement”)² and its associated exhibit.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 two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1786 was a member of the *Forces Armées Centrafricaines* (“FACA”) from [REDACTED] to [REDACTED], and later joined YEKATOM’s Group in the YAMWARA School. P-1786 provides evidence on the organisation of the Anti-Balaka, including YEKATOM’s role therein. He further provides evidence on the group’s advancements to, *inter alia* MBAIKI and BATALIMO. P-1786’s evidence is relevant to the contextual elements for war crimes and crimes against humanity; the targeting of the Muslim population, their mass displacement as a result of the Anti-Balaka’s actions, and YEKATOM’s command over his elements. 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-2058-0200.

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 exhibit 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 exhibit. 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. The associated exhibit 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, this Request and its annexes are filed as "Confidential", as they contain information concerning a

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).

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

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-1786 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 goes to YEKATOM’s involvement in crimes such as forcible transfer and the intention to conduct attacks in MBAIKI, BATALIMO, and BODA. P-1786’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.

⁸ 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’).

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

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

10. P-1786'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-1786 was a FACA member from [REDACTED] to [REDACTED], until he was [REDACTED]. After P-1786's [REDACTED] the FACA, and until the Seleka's arrival, he worked as a [REDACTED] and lived in [REDACTED];
- P-1786 recounts the arrival of the Anti-Balaka in BANGUI on 5 December 2013. Thereafter, stating that around 7 or 8 December, [REDACTED] asked him to meet and to join the Anti-Balaka. P-1786 then met [REDACTED] in the YAMWARA School in BOEING, and started to [REDACTED] for the Anti-Balaka;
- P-1786 affirms that there was no Muslim left in BOEING after the attack on the Market, and attests to their forced displacement by the Anti-Balaka;
- P-1786 states that YEKATOM led his group. He was the one to give orders, and whose permission was necessary for his elements to carry out any sort of activity. P-1786 also states that YEKATOM led and had control of Anti-Balaka elements at YAMWARA, BIMBO, and MBAIKI;
- P-1786 states that the Anti-Balaka included men, women, and boys and girls of various ages. He identifies a number of Anti-Balaka figures, such as BEINA, MOKOM, MOMOKAMA, Lt. DONAN, and others;
- P-1786 describes the structure and organisation of YEKATOM's Group, explaining that there were about 1,000 elements at the Yamwara School Base,

comprised of 10 companies with around four sections each. FACA members led the companies and sections. [REDACTED] Habib BEINA, his younger brother Aristide BEINA, (Rodrigue) MOMOKAMA, COEUR DE LION (aka “Freddy OUANDJIO”), and YEKATOM;

- P-1786 states that elements who did not behave or follow orders were “disciplined”, and that the command and FACAs would meet about elements causing problems. P-1786 explains that the command was also responsible for the security of the base and for the coordination of attacks;
- P-1786 recounts that people suspected of having ties with the Seleka, or Muslims by proxy, were brought as captives to the YAMWARA base;
- P-1786 recounts [REDACTED] YEKATOM and other elements to FATIMA, BIMBO, and PK9 to patrol the areas and chase out ‘the Seleka’. He also [REDACTED] Anti-Balaka elements to the LOBAYE region, to MBAIKI, BATALIMO, and BODA to attempt attacks on the Seleka. He notes that when they arrived in MBAIKI, the Chadian forces were evacuating Muslims from the town;
- P-1786 states that YEKATOM and his group took over houses from the Muslims in MBAIKI;
- P-1786 noted that he decided to distance himself from YEKATOM because YEKATOM not only wanted to chase the Seleka, but extended the conflict to everyone. He explains that YEKATOM wanted to kill people unnecessarily, and killed other FACA members, including (Oscar) SEDA and FADA (aka Vianney KOBOLA ZOUKOUNDE aka FADAL);

- Lastly, P-1786 identifies other Anti-Balaka figures and their role in the organisation and structure of the group, as well as certain persons and locations appearing in videos.

12. P-1786's proposed evidence on the forced displacement of Muslims is corroborated by, *inter alia*, the evidence of P-1838, and P-1813. P-1786's proposed evidence on how YEKATOM's Group perpetuated an increasingly hostile environment towards Muslims, targeting them and causing them to flee MBAIKI *en masse*, and leading to their evacuation by Chadian forces is corroborated by, *inter alia*, the evidence of P-0954, P-1647, P-1823, P-1839, P-2582, P-2196, P-2041, P-2354, P-2475 and P-2084.

C. Associated exhibit

13. The Prosecution tenders one associated exhibit for formal submission, as listed in Confidential Annex A namely, an annotated google earth image of the YAMWARA School.

14. The item tendered with this application is assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish its probative value if excluded. The associated exhibit will assist the Chamber in its assessment of the relevant evidence in its article 74 decision. As an integral part of the Prior Statement, it is 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-1786'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-1786'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",¹¹ the Prosecution has carefully reviewed its two-hour estimate given for P-1786 in its Final Witness List.¹² The Prosecution considers that it cannot further reduce the estimate. This estimated supplemental examination of P-1786 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-1786's evidence through the use of the associated exhibit, 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 four hours to present – twice as long.

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-001-ENG ET, p. 6 ln. 18-25; see ICC-01/14-01/21-T-001-ENG ET, p. 3 ln. 14-22, p. 4 ln. 20-22 (noting practical complications involved in the live in-Court interpretation).

E. Balance of interests

19. The projected shortening of P-1786's in-court-testimony by half is "considerable", and on balance the introduction of P-1786'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

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1786 together with its associated exhibit 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 19th day of August 2022
At The Hague, The Netherlands