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

Date: **19 August 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

with Confidential Annexes A and B

**Public Redacted Version of "Prosecution's Request for the Formal Submission of
the Prior Recorded Testimony of P-1442 pursuant to Rule 68(3)",
ICC-01/14-01/18-1521-Conf, 21 July 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-1442, 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-1442’s prior recorded testimony comprises his witness statement dated 24 May 2018 (“Prior Statement”).² Should the Chamber deem the Prior Statement formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, estimated currently at approximately two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1442 is a Muslim civilian who fled Central African Republic (“CAR”) in January 2014, due to fear of the Anti-Balaka after their targeted attacks against Muslims throughout the country. P-1442 evidence is relevant to the contextual elements for war crimes and crimes against humanity, in particular, the Anti-Balaka’s being an organised armed group and its intent to target Muslims pursuant to a criminal organisational policy. P-1442 further provides evidence on the 5 December 2013 attack in BOEING; YEKATOM’s role in 5 December the attack; the forced displacement of Muslims as a result of Anti-Balaka’s actions; and YEKATOM’s command over his elements. The witness’s evidence also bears on other Anti-Balaka crimes, such as the group’s involvement in the destruction of religious buildings. 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-2077-0520.

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 documents and 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, 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 is filed as "Confidential", as it contains information concerning a witness which should

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).

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-1442 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 counts 24-28, and YEKATOM’s Group’s alleged 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 perceived to be associated

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.

with the Seleka pursuant to a criminal organisational policy,¹⁰ particularly in BOEING. P-1442'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-1442's Prior Statement consists of 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 concern the following:

- P-1442 is a Central African Muslim civilian who lived in BOEING until fleeing to Chad in January 2014 in reaction to the Anti-Balaka's targeting of Muslims and attacks throughout the country.
- P-1442 describes the situation and events in CAR preceding the conflict, as well as the growing animosity towards the Muslim population in the country.
- P-1442 states that with the news of the Seleka's rebellion the manhunt against Muslims began. He explains that between January and February 2013, Muslims were targeted by BOZIZE's regime, and particularly targeted by the National Police and the *gendarmerie*. P-1442 states that many Muslims were arbitrarily arrested, imprisoned, and tortured.
- P-1442 states that between three to six months after the Seleka seized power, RFI broadcast that summary executions were being carried out by the Anti-Balaka. He states that Levy YAKETE, at the time the spokesperson for BOZIZE, claimed responsibility for the Anti-Balaka's conduct.

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).

- P-1442 recounts the 5 December 2013 attack in BOEING. He describes the Anti-Balaka having gathered at BOY RABE and subsequently invading BOEING, MISKINE, LAKOUANGA, KINA, and PK5 neighbourhoods.
- P-1442 explains that in DOLOKO, a district in BOEING, the Anti-Balaka killed several traders, including one that [REDACTED] called Hassan who was reportedly killed by the Anti-Balaka while he slept at his shop.
- P-1442 affirms that the Anti-Balaka looted Muslim houses on the day of the attack and many Muslim civilians were killed. Their bodies were taken to the ALI BABOLO Mosque. There he saw around 70 bodies, including nine from the BOEING market. He describes that some bodies had bullet marks and others machete wounds.
- P-1442 explains that as a result of the 5 December attack, Muslims fled the BOEING district to take refuge in other districts such as GBAYA, DOMBIA, and MOUSSA LADI.
- P-1442 states that YEKATOM (aka “RAMBO”) was responsible for the attack, and having seen a video on Facebook in which RAMBO communicated with a Captain of the Sangaris, and addressed his elements stating that the Sangaris would attack Muslim neighbourhoods at 2am while they – YEKATOM’s Group – would be in position to attack the Muslims attempting to flee.
- P-1442 affirms that YEKATOM is one of the leaders in the Anti-Balaka movement, and that his group was based in a school called KOKORO 2, in the YAMWARA neighbourhood. He explains that he recognized the school after seeing a video in which YEKATOM was speaking at the school premises.
- P-1442 states that the Anti-Balaka committed many attacks between 20 December 2013 and 30 January 2014, and constantly attacked on the side of BOEING, CATTIN, FATIMA, KPETENE, PONT JAKSON, and YAKITE, especially on the east side.

- P-1442 explains that Christians placed mango leaves on their doors to indicate it was a Christian house to avoid looting or attacks by the Anti-Balaka.
- P-1442 recounts the destruction of two mosques in BOEING after he fled to Chad, one near a chapel and other behind the BOEING market. He adds that several mosques were completely destroyed by the Anti-Balaka in BANGUI, citing the mosques of BOY RABE, NOUCIMENT, YASSIMANDJI, FOUH, PK12, PK13, LAKOUANGA, PETEVO, BIMBO, MISKINE, COMBATANTS, COBONGO, KINA, YAPERRE, SEYDON. P-1442 explains that he saw on international television the reports on the destruction of Muslim religious buildings by the Anti-Balaka.
- P-1442 recounts the murders of MANDARA, a major Muslim trader in PK5, who was severed with a machete by the Anti-Balaka, and MOCTAR, who was killed defending his shop from Anti-Balaka attacks. P-1442 also recounts the torture of ISSA, a Muslim man who was taken by the Anti-Balaka when on his way to the BOEING market.

12. P-1442's proposed evidence on the 5 December attack and the destruction of a BOEING Mosque is corroborated by, *inter alia*, the evidence of P-1339. P-1442's proposed evidence on YEKATOM'S Group establishing a school in YAMWARA as their base is corroborated by, *inter alia*, the evidence of P-1704, P-1705, and P-1811. P-1442's proposed evidence on YEKATOM's leadership over his Group is corroborated by, *inter alia*, the evidence of P-1858, P-1074, P-0287, P-1974, P-1839, P-1921, and P-2328. P-1442's proposed evidence on the forced displacement of Muslims is corroborated by, *inter alia*, the evidence of P-1838 and P-1813. P-1442's proposed evidence on how YEKATOM's Group perpetuated an increasingly hostile environment towards Muslims, targeting them and causing them to flee *en masse* 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. 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-1442'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-1442 in its Final Witness List.¹² The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-1442 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.

15. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1442's evidence through the use of some of documents or 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 approximately five hours to present – almost three times as long.

¹¹ ICC-01/14-01/18-685, para. 36.

¹² ICC-01/14-01/18-724-Conf-AnxA, p. 33.

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).

D. Balance of interests

17. The projected shortening of P-1442's in-court-testimony by two-thirds is "considerable". On balance the introduction of P-1442'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 are supported and corroborated by other evidence to be tested at trial, warrants their 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-1442, 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