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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

**Public redacted version of “Prosecution’s Request for the Formal Submission of the
Prior Recorded Testimony of P-1813 pursuant to Rule 68(3)
(ICC-01/14-01/18-1452-Conf)”, 10 June 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-1813, 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-1813’s prior recorded testimony comprises two Witness Statements (“Prior Statements”), dated 31 January 2018 and 18 July 2018 (respectively, “First Statement” and “Second Statement”).² Should the Chamber deem the Prior Statements 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-1813 [REDACTED]. P-1813’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 LOBAYE, as a result of 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 unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.³

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2069-0035; CAR-OTP-2083-0279.

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. Having taken note of the Chamber's guidance, the Prosecution has carefully assessed the Prior Statements 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 Statements 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 Statements 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 Statements 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 Statements, with grey highlights identifying the portions on which the Prosecution does not seek to rely.

6. CONFIDENTIALITY

7. 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.

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).

II. SUBMISSIONS

A. Applicable Law

8. 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)

9. The Prior Statements may be deemed formally submitted under rule 68(3). P-1813 will attest to their accuracy; he will be present in court; and he will be available for examination by the Defence, Participants, and the Chamber.

10. As described below, the Prior Statements are 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 Statements also go 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 pursuant to a criminal organisational policy,¹⁰ particularly in MBAIKI and

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.

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).

surrounding villages. P-1813'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.

11. P-1813's Prior Statements comprise 20 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 Statements.

12. The witness's Prior Statements concern the following:

- P-1813 describes the arrival of the Seleka in BANGUI in around 24 March 2013. P-1813 was [REDACTED];
- From [REDACTED], P-1813 [REDACTED]. [REDACTED] relating incidents caused by both the Seleka and the Anti-Balaka;
- P-1813 states that he heard accounts on the 5 December 2013 attack in BANGUI and how the Anti-Balaka subsequently targeted Muslims in the city. He relates an incident in BANGUI-BOUCHIA, where two Muslims were killed by the Anti-Balaka in October 2013.
- P-1818 states that YEKATOM's (aka "RAMBO") Group was responsible for those killings;
- P-1813 recounts receiving an information that the Seleka carried out four killings in SAFA and six in MBATA. [REDACTED]. P-1813 was told [REDACTED] that a man nicknamed "LAWA LAWA" established a youth Anti-Balaka group in the village;
- P-1813 explains that the Muslims in MBATA fled to MBAIKI out of fear of retaliations by the Anti-Balaka because of the killings and destruction caused by the Seleka. He states that Muslims from other towns such as SCAD, DOLOBO, PISSA, BAGANDO, and BOBOUA also fled to MBAIKI;

- P-1813 recounts that he learned about the growing Anti-Balaka presence in the LOBAYE from individuals in MBAIKI, and describes that YEKATOM's Group was marching from BANGUI to MBAIKI. P-1813 states that YEKATOM [REDACTED];
- P-1813 explains how YEKATOM wanted to take control of MBAIKI, and even contacted the Seleka leaders in MBAIKI to tell them to leave the city;
- P-1813 recounts that after YEKATOM contacted the leaders, [REDACTED] a meeting with YEKATOM and COEUR DE LION in PISSA. He explains that [REDACTED] a meeting between the Anti-Balaka and the Seleka leaders in MBAIKI, but the Seleka left MBAIKI before the meeting could take place;
- When the Anti-Balaka arrived in MBAIKI, P-1813 describes that a meeting organised by Bishop "RHINO" was held at the church. YEKATOM and his elements then met with local community leaders;
- P-1813 recalls how the representatives of the Chadian and Malian Muslim communities expressed their desire to be evacuated, as they were feeling particularly threatened and exposed by the presence of the Anti-Balaka;
- P-1813 states that [REDACTED] told YEKATOM that he needed to ensure the Muslim population would not be harmed, in response to which YEKATOM made a declaration in front of a large crowd telling Muslims and non-Muslims to avoid any violence;
- The witness explains that the population did not feel that this speech was sincere, and recounts how, shortly after their arrival in MBAIKI, COEUR DE LION and Anti-Balaka elements took over the old Seleka base, and a group of Anti-Balaka attacked 1-2 gendarme that were patrolling the area [REDACTED]. The Anti-Balaka took their weapons and [REDACTED];
- After these events, with the heightened insecurity in MBAIKI, the Muslim population fled the town. They were escorted by the Chadian military;

- P-1813 recounts the killing of the Muslim Deputy Mayor Djido SALEH, who had refused to leave MBAIKI. He describes that SALEH was killed in front of the gendarmerie building on 28 February 2014, and that Anti-Balaka elements led by YEKATOM were responsible for his murder.
- Although P-1813 stated that [REDACTED] was on the phone with YEKATOM on the day of the killing as Call Data Records confirm, he not remember what they discussed. After SALEH's killing the Anti-Balaka were chased away by MISCA;
- The witness further describes how YEKATOM's elements committed a number of crimes in MBAIKI and surrounding areas. He recounts the barriers that YEKATOM's Group established on the roads to BANGUI, BODA, MBATA, BIMBO, PISSA, PK9, and PK17, and how the Anti-Balaka harassed and threatened people at their houses so that they could collect money and goods.
- P-1813 also describes the killing of Dewa ADAMOU, the Mayor of NOLA commune in MBAIKI, on the road to BODA. He received the news from, [REDACTED].
- P-1813 also describes [REDACTED] child soldiers that were part of the Anti-Balaka, and explains that [REDACTED] children under the age of 15 working at the Anti-Balaka barriers;
- P-1813 states that these children carried traditional weapons like knives, and bows and arrows. They would dress in a mix of military and civilian clothes, and that they were not around the bases to play, but were active members of the Anti-Balaka;
- P-1813 also describes a meeting with the *Enfants Sans Frontières* ("ESF") in around 2014 in MBAIKI. P-1813 [REDACTED] child soldiers at the meeting, both boys and girls;

- P-1813 explains that this meeting was organised by ESF in collaboration with the Anti-Balaka, and it concerned the demobilisation of children associated with the Anti-Balaka. Accordingly, some children were reunited with their families after the ceremony.

13. P-1813's proposed evidence on YEKATOM and his Group's takeover of the PK9-MBAIKI axis is corroborated by, *inter alia*, the evidence of P-1193, P-1647, P-1666, P-2475, P-1838, P-1839, and P-2354. P-1813'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-1813's proposed evidence on the commission of crimes by YEKATOM and his Group against the Muslim population is corroborated by, *inter alia*, P-1666, P-0974, P-1823, P-1838, P-1839, P-2196 and P-2354. P-1813's proposed evidence on YEKATOM Group's killing of DJIDO Saleh is corroborated by, *inter alia*, P-1823, P-1838, P-1595, P-2196, and P-2476. Finally, P-1813's proposed evidence on the use of children at Anti-Balaka checkpoints or barriers is corroborated by, *inter alia*, the evidence of P-1974 and P-2013.

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

14. The Prior Statements are brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-1813's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

15. 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-1813 in its Final Witness List.¹² The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-1813 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel,

¹¹ ICC-01/14-01/18-685, para. 36.

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

interpretation considerations,¹³ and accounts for the prospect of appropriate redirect examination.

16. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1813'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 Statements, including those parts relating to the Accused's acts and conduct, but also to advance the Chamber's fundamental truth-seeking function.

17. Alternatively, in the absence of the formal submission of the Prior Statements under rule 68(3), the Prosecution estimates that the witness's testimony on direct examination would require approximately six hours to present – three times as long.

D. Balance of interests

18. The projected shortening of P-1813's in-court-testimony by two-thirds is "considerable". On balance the introduction of P-1813's Prior Statements 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 Statements 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.

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).

III. CONCLUSION

19. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statements of P-1813, 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.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 15th day of November 2022
At The Hague, The Netherlands