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No.: **ICC-01/14-01/18**
Date: **27 December 2023**

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 Response to the Yekatom Defence’s
‘Second Defence Request for the Formal Submission of Prior Recorded Testimony
pursuant to Rule 68(2)(b)’ (ICC-01/14-01/18-2214-Conf)”, ICC-01/14-01/18-2248-Conf,
dated 7 December 2023**

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Prosecution opposes the YEKATOM Defence's request to introduce P-3014's prior recorded testimony ("P-3014's Prior Statement") pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules"). P-3014's Prior Statement relates to issues that are materially in dispute and of significance for the Trial Chamber V's ("Chamber") eventual determination of the charges. Therefore, P-3014 should testify entirely *viva voce*, or at a minimum under Rule 68(3) of the Rules so that the Prosecution can question him on relevant issues.

2. With respect to P-3015, the Prosecution defers to the Chamber's discretion on whether her prior recorded testimony and associated materials ("P-3015's Prior Statement") should be submitted pursuant to Rule 68(2)(b) of the Rules, subject to the observations below.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this document is filed as "Confidential" because it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Prosecution refers to the applicable law on the introduction of prior recorded testimonies pursuant to Rule 68(2)(b) of the Rules, as previously set out by the Chamber.¹

¹ ICC-01/14-01/18-1833-Conf-Corr, ICC-01/14-01/18-1907-Conf.

A. P-3014

5. P-3014 should be called to testify entirely *viva voce* or, at a minimum, pursuant to Rule 68(3) of the Rules so that the veracity and reliability of his claims can be tested through cross-examination under oath before the Chamber.

6. *First*, contrary to the Defence's assertion, P-3014's evidence goes beyond "the contextual background of the conflict",² and relates to P-1962's credibility. Given that P-1962's testimony bears squarely on issues that are materially in dispute, such as the involvement of YEKATOM's elements in the Anti-Balaka's attack on BODA, their involvement in the forcible displacement of the Muslim population along the PK-9 MBAIKI axis³, the role of Habib SOUSSOU ("SOUSSOU") the Anti-Balaka ComZone and eventual Provincial Coordinator in BODA,⁴ the latter's link to the National Coordination⁵ and YEKATOM,⁶ and the role of YEKATOM's Deputy *caporal-chef* Freddy OUANDJIO.⁷ For example:

- P-3014 refutes the claim that [REDACTED], to organize FACA members to defend BODA,⁸
- P-3014 claims that he had no knowledge of any meetings held in [REDACTED] BANGUI to prepare for the BODA attack;⁹

² ICC-01/14-01/18-2214-Conf ("Second Defence Request"), para. 3.

³ CAR-OTP-2068-0037, at 0045, para. 35. *See also*, ICC-01/14-01/18-T-141-CONF-ENG, p. 18.

⁴ CAR-OTP-2001-5386 at 5466. *See also*, CAR-OTP-2068-0037, at 0054, paras. 80-83, CAR-OTP-2068-0077, CAR-OTP-2003-1076, at 1140-1141, and CAR-OTP-2074-3246, at 3247.

⁵ CAR-OTP-2068-0037, at 0052, para. 71, at 0054-0055, paras. 80 and 85-86, at 0056, para. 95. *See also*, ICC-01/14-01/18-T-139-CONF-ENG, p. 55

⁶ CAR-OTP-2068-0037, at 0062, para. 123 [REDACTED] *See also*, ICC-01/14-01/18-T-139-CONF-ENG, p. 11-12 .

⁷ ICC-01/14-01/18-T-141-CONF-ENG, p. 14-17.

⁸ CAR-D29-0009-0355, para. 33. *Contra*, CAR-OTP-2068-0037, at 0041, paras. 10-12 [REDACTED].

⁹ CAR-D29-0009-0355, para. 34. *Contra*, CAR-OTP-2068-0037, at 0041, paras. 10-12 [REDACTED] *See also*, [REDACTED].

- P-3014 claims that he never saw P-1962 in the period from 2013 to 2014 in [REDACTED] BANGUI.¹⁰

7. *Second*, in terms of potential bias, it is important to note that [REDACTED] directly implicated in the crimes committed during the BODA attack and was subject to international sanctions:

“[t]argeted killings, clashes and attacks by anti-Balaka in Boda against humanitarian organizations and aid workers have occurred on a weekly basis in areas for which Soussou is the anti-Balaka commander or coordinator. Soussou and the anti-Balaka forces in these areas have also targeted and threatened to target civilians.”¹¹

8. Finally, should the Chamber nevertheless decide to grant the Second Defence Request in respect of P-3014, his evidence should be given very limited weight, if any, based on the reasons set out above.

B. P-3015

9. The Prosecution defers to the Chamber’s discretion regarding the request to introduce P-3015’s Prior Statement. However, it makes the following observations:

10. *First*, P-3015’s Prior Statement concerns a tangential issue, rendering it inherently of marginal relevance, if any.¹² It is primarily focused on the alleged death of

¹⁰ CAR-D29-0009-0355, paras. 28-29. *Contra*, [REDACTED].

¹¹ CAR-OTP-2074-3246, at 3247. *See also*, CAR-OTP-2068-0037, at 0062, para. 123, [REDACTED].

¹² *See e.g.*, ICC-01/09-01/11-1776-Red, para. 18 (noting “the collateral evidence rule general[ly] requires that ‘the answers given by a witness to questions put to him [or her] in cross-examination concerning collateral facts must be treated as final. They may or may not be accepted by the [trier of fact], but the cross-examiner must take them for better or worse and cannot contradict them by other evidence. The rule has been described as ‘a sound general rule, based on the desirability of avoiding a multiplicity of issues.’ The Chamber is certainly not bound to follow this rule, especially as it is applied in national jurisdictions. But, its good sense (as indicated by its purpose of avoidance of multiplicity of issues and bringing an end to litigation) recommends a place for it in the practice and procedures of this Court”) (citations omitted).

[REDACTED], which is neither a charged incident nor considered to be “at the centre of this case”.¹³

11. *Second*, the principle of expeditious proceedings mandates that the trial focus on the charges in this case, and the consideration of ancillary matters should be restricted within the scope of litigation.¹⁴

12. Finally, the Defence has failed to substantiate the claim that P-3015 [REDACTED] through any corroborative evidence.

13. Should the Chamber decide to grant the request in respect of P-3015, little, if any, weight should be afforded to her evidence in light of the issues outlined above.

IV. CONCLUSION

14. For the foregoing reasons, the Prosecution: (i) opposes the request to introduce P-3014’s Prior Statement pursuant to Rule 68(2)(b) of the Rules; and (ii) defers to the Chamber’s discretion on the request to introduce the prior recorded testimony of P-3015 pursuant to Rule 68(2)(b) of the Rules.



Karim A. A. Khan KC, Prosecutor

Dated this 27th day of December 2023

At The Hague, The Netherlands

¹³ See [REDACTED].

¹⁴ ICC-01/09-01/11-1776-Red, para. 19. See also YEKATOM Defence’s repeated attempts to elicit evidence on the alleged death [REDACTED] during the hearings, [REDACTED].