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No.: ICC-01/14-01/18  
Date: 17 February 2021

**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-0287 pursuant to Rule 68(3)”  
9 February 2021, (ICC-01/14-01/18-877-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-0287, 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”).<sup>1</sup> P-0287’s prior recorded testimony comprises one Witness Statement (“Prior Statement”), dated [REDACTED] 2018<sup>2</sup> and its associated exhibits.<sup>3</sup> 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 four hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. The Prosecution further requests the Chamber to issue an order [REDACTED].<sup>4</sup>

3. P-0287 [REDACTED] between February 2014 and February 2016. In this capacity, he travelled to CAR more than ten times. His Prior Statement describes the position of the Anti-Balaka leadership within the framework of the group (an ‘organisation’), as well as the respective roles of the Accused during the Relevant Period. His evidence concerns the planning of the 5 December 2013 attack on BANGUI, the crimes committed during the 5 December 2013 attack on BOSSANGO, and the targeting of the Muslim community during 2013-2014. The Prior Statement is thus *prima facie* relevant to and probative of material issues at trial.

4. Granting the Request would reduce the presentation of the Prosecution’s examination-in-chief and help to streamline the proceedings. Moreover, it would not

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<sup>1</sup> ICC-01/14-01/18-631, para. 58.

<sup>2</sup> CAR-OTP-2115-0239.

<sup>3</sup> 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.

<sup>4</sup> [REDACTED].

unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.<sup>5</sup>

5. 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.<sup>6</sup> Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,<sup>7</sup> the Prosecution has sought narrowly to identify the portions of the Prior Statement on which it intends to rely, in order to reduce (as much as possible) the overall volume of such material in the case as a whole.

6. The relevance and probative value of the Prior Statement is set out in a brief summary of the salient issues, along with the associated exhibits or documents, and the sources of other corroborative evidence. *Confidential Annex A* (a Summary Chart) lists the relevant statement, the paragraphs on which the Prosecution does not rely, and the corresponding associated exhibits. 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. The associated exhibits are available to the Defence and the Trial Chamber in e-Court.

## II. CONFIDENTIALITY

7. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Request and its annexes are filed as "Confidential", as they contain information

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<sup>5</sup> 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").

<sup>6</sup> ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé Appeals Decision*").

<sup>7</sup> See ICC-01/14-01/18-685, para. 31, 32.

concerning a 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**

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

#### **B. The Prior Recorded Testimony fulfils all Requirements of Rule 68(3)**

9. The Prior Statement may be deemed formally submitted under rule 68(3). P-0287 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

10. As described below, the Prior Statement is highly relevant and probative. It goes to the reports of the [REDACTED]; the structure and leadership of the Anti-Balaka in BANGUI and the provinces; the events that occurred in BOSSANGOA; and more generally the Anti-Balaka’s targeting of the Muslim population. It goes to proof of the nature and extent of the widespread attack carried out by the Anti-Balaka against the Muslim civilian population during the 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

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<sup>8</sup> 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’).

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

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

by the Anti-Balaka against Muslim civilians in towns and villages in western CAR pursuant to a criminal organisational policy,<sup>11</sup> in BANGUI and BOSSANGO. P-0287's evidence further bears on the leadership of the Anti-Balaka, and its identity as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack.

11. P-0287's Prior Statement of [REDACTED] 2018 comprises approximately 35 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.

12. The witness's Prior Testimony consists of the following:

- P-0287 describes the work of the [REDACTED] produced between 2014 and 2015: the 2014 [REDACTED];<sup>12</sup> the 2014 [REDACTED];<sup>13</sup> and the 2015 [REDACTED].<sup>14</sup> He further describes the methodology followed by the [REDACTED].
- The witness provides information on the hierarchical structure of the Anti-Balaka, identifying NGAISSONA as the political coordinator, and Maxime MOKOM as being in charge of military operations. He provides further information on the role and status of ComZones, and identifies Rodrigue NGAIBONA (aka 'ANDJILO') as one of them.
- The witness provides information on the initial planning in YAOUNDE in 2013 of the Anti-Balaka's 5 December 2013 attack on BANGUI.

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<sup>11</sup> 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).

<sup>12</sup> CAR-OTP-2001-0835.

<sup>13</sup> CAR-OTP-2001-5386.

<sup>14</sup> CAR-OTP-2023-0032.

- P-0287 describes NGAISSONA as being involved with the *Coalition citoyenne d'opposition aux rébellions armées* (COCORA).
- The witness describes Anti-Balaka elements manning checkpoints and extorting the local population in BANGUI. He also describes the Anti-Balaka youth from BOY-RABE and COMBATTANT erecting barricades in BANGUI, and the extent of the disruptions these barricades caused to both commercial and political activities in BANGUI.
- P-0287 describes the *modus operandi* of the Anti-Balaka in the mobilisation and recruitment of the Christian youth, and the role of NGAISSONA and MOKOM in these efforts.
- The witness recounts his mission to BOSSANGO on 30 April and 1 May 2014. He describes that the BORO neighbourhood – which he identifies as the Muslim neighbourhood in BOSSANGO – was completely deserted, and that every building had been pillaged and destroyed.
- P-0287 identifies Florent KEMA as the Anti-Balaka leader in BOSSANGO and Théophile DANGBA as one of his deputies.
- P-0287 noted the widespread view within the ranks of the Anti-Balaka that all Muslims were the enemy, and therefore “Muslims in general” needed to be expelled from CAR.
- The witness recounts [REDACTED] several Anti-Balaka leaders.
  - The witness describes [REDACTED] Joachim KOKATE on [REDACTED] 2014, who claimed to be YEKATOM’s political representative and explained that NGAISSONA was channelling money from BOZIZE to the Anti-Balaka with the intention of reinstating BOZIZE into power.

- P-0287 describes [REDACTED] LEBENE on [REDACTED] 2014, who explained that NGAISSONA was the political coordinator of the ANTI-BALAKA and that he reported to NGAISSONA. LEBENE also explained that YEKATOM controlled the road from BIMBO to PK9 and received financial support through KOKATE and KOLINGBA.
- He describes [REDACTED] NGAISSONA, who presented himself as the Coordinator of the “liberators” who had liberated the country from the Seleka. [REDACTED] NGAISSONA was about to hold a coordination meeting with commanders from the provinces and BANGUI. [REDACTED], NGAISSONA referred to a letter – [REDACTED] – that he (NGAISSONA) had sent on behalf of the Anti-Balaka to congratulate Catherine SAMBA-PANZA on her position.
- The [REDACTED] Florent KEMA on [REDACTED] 2015, who stated that the main objective of his group – the Anti-Balaka in OUHAM province – was “still” to chase out of OUHAM not only the Seleka, but also all of the Muslims.
- P-0287 describes [REDACTED] Maxime MOKOM on [REDACTED] 2015, who explained that NGAISSONA had pledged allegiance to the political transition and to the President of the transition on behalf of the Anti-Balaka in a document he signed on 17 April 2014.

13. P-0287’s proposed evidence is corroborated by, *inter alia*, the evidence of P-2625, P-1719, P-1847, P-0801, and P-1074, as well as by documentary evidence,<sup>15</sup> in relation to the planning meetings that took place in CAMEROON before the 5 December 2013 attack on BANGUI. His evidence on YEKATOM’s control of the PK9-MBAIKI axis is corroborated by, *inter alia*, the evidence of P-1839, P-1193, P-1858, P-2328, P-2012, P-0954, P-1074, P-1813, P-1921, P-1521, P-1647, P-1528, P-1503, P-0487, and P-1974 as well

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<sup>15</sup> See for example CAR-OTP-2088-1179, at 1194; CAR-OTP-2001-5739, at 5782-5783, 5793.



as by documentary evidence.<sup>16</sup> Further, his proposed evidence in relation to BOSSANGO, including KEMA's leadership of the Anti-Balaka there and their targeting of the Muslim population, and KEMA's relationship with NGAISSONA, is corroborated by *inter alia*, the evidence of P-0966, P-1521, P-1847, P-1521, P-0314, P-2232, P-0884, P-2453, P-2269, and P-0992.

### **C. Associated Exhibits**

14. The Prosecution tenders four associated exhibits for formal submission, set out at Confidential Annex A. They consist of the [REDACTED].

15. Although each exhibit referenced in the Prior Statement was discussed and may be helpful to contextualise and facilitate its understanding, the items tendered with this application are *narrowly* assessed as indispensable to its comprehension or would otherwise diminish its probative value if excluded. As tendered, the associated exhibits avoid flooding the Parties, Participants, and the Chamber with material that is superfluous or tangential to the import of the witness's testimony, while assisting the Chamber in its assessment of the relevant evidence in its article 74 decision. As an integral part of the Prior Statement, each exhibit is directly relevant to and probative of material issues in dispute, and their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-0287's evidence.

### **D. A supplementary examination-in-chief is necessary and appropriate**

16. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-0287's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

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<sup>16</sup> See for example CAR-OTP-0080-0821, at 0823.

17. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",<sup>17</sup> the Prosecution has carefully reviewed its four-hour estimate given for P-0287 in its Final Witness List.<sup>18</sup> The Prosecution considers that it cannot further reduce the estimate of four hours. This estimated supplemental examination of P-0287 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,<sup>19</sup> and accounts for the prospect of appropriate redirect examination.

18. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-0287's evidence through the use of some of the associated exhibits, 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.

19. 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 seven hours to present – a significantly longer period.

#### **E. Balance of interests**

20. The projected shortening of P-0287's in-court-testimony by almost half is "considerable", and the Prosecution considers on balance that the introduction of P-0287's Prior Statement under rule 68(3) is appropriate. Moreover, there is no resulting

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<sup>17</sup> ICC-01/14-01/18-685, para. 36.

<sup>18</sup> ICC-01/14-01/18-724, AnxA, p. 46.

<sup>19</sup> 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).

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.

#### F. [REDACTED]

21. [REDACTED]<sup>20</sup>

22. [REDACTED]:

i. [REDACTED];

ii. [REDACTED];

iii. [REDACTED];

iv. [REDACTED];

v. [REDACTED]

vi. [REDACTED]<sup>21</sup>

23. [REDACTED].<sup>22</sup> [REDACTED]<sup>23</sup> - [REDACTED].<sup>24</sup> [REDACTED];<sup>25</sup>  
[REDACTED];<sup>26</sup> [REDACTED].<sup>27</sup>

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<sup>20</sup> [REDACTED].

<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> [REDACTED].

<sup>24</sup> [REDACTED].

<sup>25</sup> [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

24. [REDACTED]<sup>28</sup> [REDACTED].

#### IV. CONCLUSION

25. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-0287 together with its associated exhibits 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.

26. The Prosecution further requests an order from the Chamber giving effect to the above-described [REDACTED].



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**James Stewart, Deputy Prosecutor**

Dated this 17<sup>th</sup> day of February 2021  
At The Hague, The Netherlands

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<sup>28</sup> [REDACTED].