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

Date: **22 March 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-2027 pursuant to Rule 68(3)”,  
(ICC-01/14-01/18-918-Conf), 18 March 2021**

**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-2027, in accordance with rule 68(3) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the conduct of the proceedings”.<sup>1</sup> P-2027’s prior recorded testimony comprises one Witness Statement (“Prior Statement”), dated 27 May 2018.<sup>2</sup> Should the Chamber deem the Prior Statement formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, estimated currently to take no longer than two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2027 is [REDACTED]. He further provides evidence concerning the crimes committed in YALOKÉ, BODA, BOSSEMPTELE, and BERBERATI, as part of the widespread Anti-Balaka attack carried out between September 2013 and December 2014 in the western CAR, as set out in the Pre-Trial Chamber’s 11 December 2019 Decision on Confirmation of Charges.<sup>3</sup> His Prior Statement covers evidence of the crime base forming a part of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka’s engagement in an armed conflict between September 2013 and December 2014 (“Relevant Period”), the group’s course of conduct involving the multiple commission of crimes and acts against the Muslim civilian population in western CAR, including the pattern and intensity of their protracted mistreatment in various localities, pursuant to a criminal organisational

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

<sup>2</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>3</sup> See ICC-01/14-01/18-403-Conf-Corr, paras. 64, 70, *et seq.*, and pp. 111, 107.

policy.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,<sup>7</sup> 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.<sup>8</sup>

5. The relevance and probative value of the Prior Statement is set out in a brief summary of the salient issues, and the sources of other corroborative evidence. *Confidential* Annex A (a Summary Chart) lists the relevant statement, and 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

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<sup>4</sup> See ICC-01/14-01/18-703-Conf, para. 45, 48 (observing that "several non-confirmed incidents fall within the 'facts and circumstances' of the case", and that the facts concerning crimes allegedly committed by the Anti-Balaka in Yaloké, Gaga, Zawa, Bossempaté, Boda, Carnot, Berbérati and Guen "pertain to the contextual elements of the charged crimes and form part of the 'facts and circumstances' of the case"); see also article 7(2); ICC-01/04-02/06-309, para. 23; See ICC-01/14-01/18-403-Conf-Corr, paras. 64, 70, *et seq.*, and pp. 111, 107; see para. 164 (noting that the perpetrator groups committing acts and crimes as part of the article 7(1) attack lasting from September 2013 to December 2014 "were formally and politically under the umbrella of the National Coordination").

<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.

<sup>8</sup> 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).

identifying the portions on which the Prosecution does not seek to rely. There are no associated exhibits.

## II. CONFIDENTIALITY

6. 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 concerning witnesses 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,<sup>9</sup> its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),<sup>10</sup> and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).<sup>11</sup>

### 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-2027 will attest to its accuracy; he will be present in court; and 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 proof of the nature and extent of the widespread attack carried out by the Anti-

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<sup>9</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>10</sup> ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

<sup>11</sup> ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

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 by the Anti-Balaka against Muslim civilians in towns and villages in western CAR pursuant to a criminal organisational policy,<sup>12</sup> particularly in YALoke, BODA, BOSSEMPTELE, and BERBERATI. P-2027'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-2027's Prior Statement of 27 May 2018 comprises approximately 32 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 Testimony consists of the following:

- P-2027 was [REDACTED].
- The witness recounts the Seleka's takeover of BANGUI on 23 March 2013.
- P-2027 explains that he refused to join the Anti-Balaka because was foreseeable that the Group would "turn out badly". He describes the Anti-Balaka seeking revenge against the Muslim civilian population.
- P-2027 describes the Anti-Balaka moving towards BANGUI from the provinces with the intention of retaking the city.
- [REDACTED].
- [REDACTED].

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<sup>12</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).

- The witness provides information on the phone calls he made [REDACTED], including his phone call to Maxim MOKOM – whom he identifies as the Anti-Balaka Coordinator in charge of the GOBERE group – on 5 December 2013.
- P-2027 provides information on members of the GOBERE Group, including the ex-FACA DEDANE and NDANGBA.
- P-2027 describes Anti-Balaka attacks being carried out, *inter alia*, in YALOKÉ, BODA, BOSSEMPTELE, and BERBERATI. He identifies Anti-Balaka leaders in the Provinces, and MOKOM's organisation and coordination Anti-Balaka attacks from ZONGO.
- The witness also provides information on prominent Anti-Balaka figures, *inter alia*, Alexis MANDAGO ("Sol-Sol"), Gilbert KAMEZOLAI, Charles NGREMANGOU, Joachim KOKATE, Brice Emotion NAMSIO, Yvon KONATE, Thierry LEBENE (DOUZE PUISSANCES), and YEKATOM. He describes that YEKATOM had been [REDACTED] a "*Libérateur*".
- The witness describes [REDACTED] meeting with NGAISSONA. He describes that NGAISSONA had proclaimed himself as the Coordinator of the Anti-Balaka, and was recognised as such by the "international community" and "everyone else".
- P-2027 acknowledges that some FACA joined the Anti-Balaka, including high-ranking members. He explains that KAMEZOLAI joined YEKATOM's Group.
- The witness describes the "quarrel between chiefs" of the Anti-Balaka. He says that MOKOM was the leader of the Anti-Balaka "in the beginning", but that NGAISSONA claimed to be the leader when he came back, and that YEKATOM was also a leader.

12. P-2027's proposed evidence is corroborated by, *inter alia*, the evidence of P-2232, P-0487, P-0801, P-0884, P-1847, P-2841, and P-2673, in relation to [REDACTED]. His

proposed evidence on Maxime MOKOM's role as *de facto* Anti-Balaka Operations Coordinator from ZONGO is corroborated by, *inter alia*, the evidence of P-2232, P-0627, P-2012, P-0966, P-1994, P-0889, P-1719, P-0884, P-0646, and P-1521, as well as by documentary evidence included in the Prosecution's List of Evidence.<sup>13</sup> Further, his proposed evidence on Maxime MOKOM's contact with the GOBERE Group leadership is corroborated by, *inter alia*, the evidence of P-0889, P-1521, and P-0458, as well as by CDR evidence.<sup>14</sup> Finally, his proposed evidence on Maxime MOKOM's deployment of Anti-Balaka elements from ZONGO to BANGUI is corroborated by, *inter alia*, the evidence of P-2232, P-1521, and P-0446.

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

13. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-2027's testimony 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",<sup>15</sup> the Prosecution has carefully reviewed its three-hour estimate given for P-2027 in its Final Witness List.<sup>16</sup> The Prosecution considers that it can conduct a limited supplemental examination of P-2027 in about two hours and possibly less. This adjusted two-hour estimated supplemental examination of P-2027 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>17</sup> and accounts for the prospect of appropriate redirect examination.

<sup>13</sup> See for example CAR-OTP-2066-3003, at 3071; CAR-OTP-2066-1601, at 1778.

<sup>14</sup> See footnote 206 of the Prosecution's Trial Brief: ICC-01/14-01/18-723-Conf, para. 87.

<sup>15</sup> ICC-01/14-01/18-685, para. 36.

<sup>16</sup> ICC-01/14-01/18-724, AnxA, p. 45.

<sup>17</sup> See e.g., ICC-01/14-01/18-T-1-ENG ET, p. 6 ln. 18-25; ICC-01/14-01/21-T-1-ENG ET, p. 3 ln. 14-22, p. 4 ln. 20-22.



15. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2027's evidence through the use of 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.

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 at least four hours to present – twice as long.

#### **D. Balance of interests**

17. The projected shortening of P-2027's in-court-testimony by nearly half is "considerable", and the Prosecution considers on balance that the introduction of P-2027'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

18. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2027 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.



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**James Stewart, Deputy Prosecutor**

Dated this 22<sup>nd</sup> day of March 2020  
At The Hague, The Netherlands