



Original: **English**

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-0801 pursuant to Rule 68(3)”,
(ICC-01/14-01/18-900-Conf), 5 March 2021**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri

Mr Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Mr Richard Omissé-Namkeamai

Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun

Mr Abdou Dangabo Moussa

Ms Elisabeth Rabesandratana

Mr Yaré Fall

Ms Marie-Edith Douzima-Lawson

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-0801, in accordance with rule 68(3) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the conduct of the proceedings” (“Directions”).¹ P-0801’s prior recorded testimony comprises the transcribed statement of the witness’s five day interview of 7 February 2018 to 11 February 2018 (“Prior Statement”), and its associated exhibits.² 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 four hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-0801 is [REDACTED]. He provides information on [REDACTED]. He describes [REDACTED]. P-0801 provides information on [REDACTED]. The witness provides evidence of the establishment and structuring of the Anti-Balaka’s National Coordination, and of NGAISSONA’s role as General Coordinator. He describes that NGAISSONA had knowledge of the Anti-Balaka’s commission of crimes, including sexual violence, and identifies YEKATOM as the Anti-Balaka leader in control of the LOBAYE prefecture. Finally, he provides evidence of the targeting of the Muslim population by the Anti-Balaka in BANGUI and BODA.

3. P-0801’s Prior Statement provides evidence about the Anti-Balaka’s creation, organisation, and leadership. The 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. P-0801’s Prior Statement

¹ ICC-01/14-01/18-631, para. 58.

² 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.

further provides evidence 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"). P-0801 provides evidence concerning the crimes committed against the Muslim civilian population in BANGUI and BODA, 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.³ The Prior Statement covers evidence of the Anti-Balaka'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 organizational policy.⁴ 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 unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.⁵

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.⁶

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

⁴ 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").

⁵ 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").

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

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, and the corresponding associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates and, where applicable, any charged incidents the witness discusses.

7. Due to the length of the Prior Statement,⁷ a summary thereof, organised by topic, is attached at *Confidential* Annex B to facilitate the Parties', Participants', and Chambers' understanding of its content, and to more easily identify its relevance and probative value ("Summary"). The Summary is not tendered for formal submission, rather, it clearly and concisely sets out the *substance* of the transcripts comprising the Prior Statement hereby tendered. The transcripts are incorporated by way of reference in the footnotes of the Summary.⁸ To avoid confusion and inaccuracies, each referenced *page* rather than the page and line number, is tendered.

8. Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁹ the Prosecution has identified *in grey*, in the Summary the portions of the Prior Statement on which it *does not* intend to rely. The Prosecution does not seek to tender the transcripts referenced in the footnotes of these portions.

II. CONFIDENTIALITY

9. 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

⁷ The Prior Statement comprises 22 interview transcripts totalling approximately 770 pages.

⁸ This approach differs from that followed by the Prosecution in ICC-01/14-01/18-879-Conf. Given the higher volume of transcript pages involved, and with the aim of facilitating the reader's understanding of the witness's evidence, the Prosecution believes that this new approach is a more efficient to present the substance of the witness's Prior Statement to the Chamber.

⁹ See ICC-01/14-01/18-685, para. 31, 32.

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

10. 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,¹⁰ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),¹¹ and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).¹²

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

11. The Prior Statement may be deemed formally submitted under rule 68(3). P-0801 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

12. As described below, the Prior Statement is highly relevant and probative. P-0801’s evidence bears on the identity of the Anti-Balaka as an ‘organisation’ or ‘group’ involved in the commission of the article 7 widespread attack, and establishes the roles of both Accused within the organisation’s leadership during the Relevant Period. It further 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 by the Anti-Balaka against Muslim civilians in towns and villages

¹⁰ 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’).

¹¹ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

¹² ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

in western CAR pursuant to a criminal organisational policy,¹³ particularly in BANGUI and BODA.

13. P-0801's Prior Statement of 7 to 11 February 2018 comprises 770 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.

14. P-0801 is [REDACTED].

15. The witness's Prior Statement establishes the following:

- P-0801 provides information on the political background in CAR, including on BOZIZE's regime after the 2003 *Coup*. He describes [REDACTED]. Finally, he describes [REDACTED].
- The witness provides information on the emergence of the Seleka [REDACTED]. He provides further information on the leadership of the Seleka, its seizing control of CAR, and BOZIZE's resulting exile to CAMEROON.
- P-0801 recounts [REDACTED]. He describes [REDACTED]. Finally, the witness describes [REDACTED].
- The witness describes [REDACTED].
- P-0801 provides information on [REDACTED]. He describes [REDACTED].
- The witness provides information on [REDACTED].
- P-0801 describes [REDACTED]. He recalls [REDACTED]. P-0801 further describes [REDACTED].

¹³ 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 evidence of the existence of an Anti-Balaka organised military structure.
- P-0801 provides information on [REDACTED]. He describes [REDACTED].
- The witness provides information on NGAISSONA's return to BANGUI in January 2014, [REDACTED]. He provides evidence of NGAISSONA declaring that he had returned to BANGUI to coordinate and take leadership of the movement, [REDACTED].
- The witness provides information on [REDACTED].
- P-0801 provides information on [REDACTED].
- P-0801 describes [REDACTED]. He further describes [REDACTED].
- P-0801 describes the establishment of the Anti-Balaka Coordination and NGAISSONA's role as General Coordinator. He provides information on the structure and functioning of the Anti-Balaka, including on the role of the ComZones, and identifies YEKATOM as the Anti-Balaka leader who controlled "the South".
- P-0801 provides evidence of [REDACTED].
- The witness discusses the roles of various other individuals within the ranks of the Anti-Balaka, [REDACTED].
- P-0801 provides evidence of NGAISSONA's disciplinary powers over the Anti-Balaka.
- The witness describes [REDACTED].
- The witness provides evidence of NGAISSONA's awareness of, and acknowledgment that the Anti-Balaka were committing crimes against the civilian population, including rapes. [REDACTED].
- The witness provides evidence of [REDACTED].

- P-0801 describes [REDACTED] and provides evidence of YEKATOM's influence in BODA and in the whole of the LOBAYE prefecture. He also provides evidence of the commission of crimes by the Anti-Balaka against the Muslim civilian population in BODA.
- The witness provides information on [REDACTED].
- P-0801 provides information on [REDACTED].

16. P-0801's proposed evidence is corroborated by, *inter alia*: (i) the evidence of P-2232, P-0884, P-1847, P-2841, P-2673, and P-1074 in relation to [REDACTED]; (ii) the evidence of P-2625, P-0884, P-1847, P-0808 in relation to [REDACTED]; (iii) the evidence of P-0884, P-0808, P-0889, P-0446, P-0487, P-1521, P-2012, P-1074, P-0314, and P-0888 in relation to the structure and leadership of the Anti-Balaka, including NGAISSONA's role as National Coordinator; (iv) the evidence of P-2232, P-2050, P-0884, P-1074, and P-2251 in relation to [REDACTED]; (v) the evidence of P-1962, P-1339, P-2138, P-1577, P-0954, P-0808, P-1815, and P-1193 in relation to YEKATOM's role as an Anti-Balaka leader, and his leadership in LOBAYE prefecture, including BODA; (vi) the evidence of P-1962, P-1339, P-2138, and P-1577 in relation to the Anti-Balaka attacks on BODA; (vii) the evidence of P-0884 and P-1719 in relation to NGAISSONA's knowledge of the crimes being committed by the Anti-Balaka; (viii) the evidence of P-0884, P-0889, P-0405, P-0808, P-0446, P-1074, P-2328, P-1962, and P-1847 in relation to NGAISSONA's decisional and disciplinary powers over the Anti-Balaka; and (ix) the evidence of P-0889 in relation to [REDACTED]. P-0801's proposed evidence is also corroborated by documentary evidence.¹⁴

C. Associated Exhibits

17. The Prosecution tenders several associated exhibits for formal submission, set out at Confidential Annex A. These comprise a selection of items detailed with great

¹⁴ See for example CAR-OTP-0080-0840; CAR-OTP-2077-0141; CAR-OTP-2066-1601; CAR-OTP-2003-0019, at 0103-0110, in particular at 0109.

precision in P-0801's Prior Statement, namely: (1) [REDACTED]; (2) [REDACTED]; (3) [REDACTED]; (4) [REDACTED]; (5) [REDACTED]; (6) [REDACTED]; (7) [REDACTED]; (8) [REDACTED]; and (9) [REDACTED].

18. Although each exhibit referenced in the Prior Statement was discussed and may be helpful to contextualise and facilitate their 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-0801's evidence.

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

19. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-0801's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

20. The Prosecution's four-hour estimated supplemental examination of P-0801¹⁵ takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁶ and accounts for the prospect of appropriate redirect examination.

21. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-0801's evidence through

¹⁵ ICC-01/14-01/18-724, AnxA, p. 43.

¹⁶ 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.

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, particularly as regards the Accused's acts and conduct, but also to advance the Chamber's fundamental truth-seeking function.

22. 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 20 hours to present – five times as long.

E. Balance of interests

23. The projected shortening of P-0801's in-court-testimony by one fifth is "considerable", and the Prosecution considers on balance that the introduction of P-0801'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

24. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-0801 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 these witnesses as indicated above.



James Stewart, Deputy Prosecutor

Dated this 22nd day of March 2021
At The Hague, The Netherlands