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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-0808 pursuant to Rule 68(3)”,
ICC-01/14-01/18-1087-Conf, 13 August 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-0808, 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-0808’s prior recorded testimony comprises two Witness Statements (“Prior Statements”), dated 9 April 2016 and 25 October 2018 (respectively “First Statement” and “Second Statement”) and their associated exhibits.² Should the Chamber deem the Prior Statements formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, estimated currently to take no longer than five hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-0808 was [REDACTED]. He provides information on the creation of the Anti-Balaka and his own role within the group. He describes the structure of the Anti-Balaka [REDACTED] and provides information about the roles of its members, including NGAISSONA’s role as National General Coordinator. P-0808 describes meetings convened by the Anti-Balaka [REDACTED]. P-0808 further provides details about the crimes committed by certain Anti-Balaka elements [REDACTED] in their attempt to bring BOZIZE back to power, and gives evidence on the targeting of Muslim civilians by the Anti-Balaka. P-0808 discusses the 5 December 2013 attack on BANGUI. He also provides information about the [REDACTED], and the demobilisation ceremony for the release of child soldiers [REDACTED].

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.

3. P-0808's Prior Statements provide evidence about the Anti-Balaka's creation, organisation, and leadership. The Prior Statements provide 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"). His Prior Statements further describe 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. The Prior Statements are thus *prima facie* relevant to, and probative of material issues at trial.

4. Granting the Request would reduce the time to present the Prosecution's examination-in-chief, and help 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

5. 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

6. The relevance and probative value of the Prior Statements 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)

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 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, paras. 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).

lists the relevant statements 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. *Confidential* Annex B contains the Prior Statements themselves, with grey highlights identifying the portions on which the Prosecution does not seek to rely. 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 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

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

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.

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-0808 will attest to their 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 Statements are highly relevant and probative. P-0808's evidence goes to proof of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka's engagement in an armed conflict during the Relevant Period. It further bears on the identity of the Anti-Balaka as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack. It also describes the position of the Anti-Balaka leadership within the framework of the group, as well as the respective roles of the Accused during the Relevant Period.

11. P-0808's Prior Statements of 9 April 2016 and 25 October 2018 comprise 29 and 30 pages, respectively. 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. P-0808 was [REDACTED] during the Relevant Period.

13. The witness's Prior Statements establish the following:

- P-0808 provides information about the background of the conflict in CAR, including the Seleka coup of 24 March 2013, and the subsequent creation of the Anti-Balaka. He describes the role of FACA elements in the creation of the movement.
- P-0808 provides information about [REDACTED] NGAISSONA and Bernard MOKOM in YAOUNDE in October 2013.

- He describes the structure of the Anti-Balaka [REDACTED]. He also details the roles of [REDACTED], including NGAISSONA's role as the National General Coordinator.
- P-0808 provides information about the [REDACTED]. The witness explains that [REDACTED].
- He describes the organisation and role of the ComZones, including their direct links to the Anti-Balaka Coordination. P-0808 provides information that ComZones, including those in the provinces, were in telephone contact with NGAISSONA and Maxime MOKOM. The witness explains that, in addition, several missions to the provinces took place in April, May, and June 2014.
- P-0808 provides evidence about YEKATOM's role as the ComZone in charge of the PK9-MBAIKI area, and about YEKATOM's participation in [REDACTED].
- He provides further details about the structure and organisation of the Anti-Balaka, explaining that [REDACTED]. The witness also provides details of the location of Anti-Balaka's bases in BANGUI.
- P-0808 describes the process and purpose behind the introduction of Anti-Balaka ID badges and explains how Anti-Balaka elements were identified by their respective ComZones for this purpose.
- P-0808 provides information about the creation and setting up of military police led by Olivier FEISSONA (head of the Military Police), Gustave YADJOUNGOU (his Deputy), and Brice Emotion NAMSIO.
- The witness speaks about the crimes committed by members of the Anti-Balaka [REDACTED], including Bernard MOKOM, Maxime MOKOM, ANDJILO, FEISSONA, and Thierry LEBENE ("*12 Puissances*"), in their attempt to bring BOZIZE back to power.

- He also provides information about the preparation and execution of the 5 December 2013 attack on BANGUI. P-0808 explains that the Anti-Balaka reached BANGUI at the end of November 2013 and set up a base behind the hill in BOY-RABE, BOEING and BIMBO in preparation for this attack. P-0808 provides information about the participation of, *inter alia*, Yvon Steve KONATE, YEKATOM, and their elements, on the day of the attack.
- P-0808 provides evidence on the Anti-Balaka's targeting of Muslim civilians, explaining that "Muslims, and not just the Seleka, became the target of the Anti-Balaka".¹⁰ Muslim civilians were targeted because the Anti-Balaka considered that they helped and protected the Seleka.
- He also describes the October 2014 operations in BANGUI, which involved roadblocks being set up by the Anti-Balaka in order to shut down the city. This operation was conducted with the aim of demanding Anti-Balaka representation in the transitional government and the release of Anti-Balaka elements from prison.
- P-0808 provides information about [REDACTED].
- He further provides information about the demobilisation ceremony [REDACTED].
- P-0808 also authenticates and comments on a number of Anti-Balaka documents, including several press releases.

14. P-0808's proposed evidence is corroborated by, *inter alia*: (i) the evidence of P-0306, P-0446, P-0889, P-0975, P-1521, and P-2027 in relation to the gathering of the Anti-Balaka behind the BOY-RABE hill in preparation for the 5 December 2013 attack on BANGUI; (ii) the evidence of P-0446, P-0889, P-0975, P-1339, P-1521, and P-2232 regarding the Anti-Balaka's actions on the day of the 5 December 2013 attack on

¹⁰ CAR-OTP-2093-0010, at 0017, para. 37.

BANGUI, including the involvement of KONATE and YEKATOM; (iii) the evidence of P-0306, P-0446, P-0487, P-0884, P-0888, P-0889, P-1074, P-1521, and P-2012 in relation to the structure and leadership of the Anti-Balaka, including NGAISSONA's role as National Coordinator; (iv) the evidence of [REDACTED]; (v) the evidence of P-0446, P-0888, P-0966, P-1521, and P-2232 on the creation and composition of the military police; (vi) the evidence of P-1193, P-1521, P-1962, and P-2012 in relation to the issuance of Anti-Balaka ID badges; (vii) the evidence of P-1974, P-2018, and P-2082 in relation to the demobilisation ceremony [REDACTED]; and (viii) the evidence of P-0801 and P-0889 on Anti-Balaka's October 2014 operations in BANGUI. P-0808's proposed evidence is also corroborated by documentary evidence.¹¹

C. Associated Exhibits

15. The Prosecution tenders 36 associated exhibits for formal submission, set out at Confidential Annex A. These comprise items specifically discussed in P-0808's Prior Statements, of the following nature: (1) two transcripts containing the introduction of P-0808's interviews and the reading of his rights pursuant to article 55(2); (2) two waivers signed by P-0808; (3) Decrees related to [REDACTED]; (4) three press-releases related to [REDACTED]; (5) two sketches containing the organigram of the Anti-Balaka structure; (6) "Order of Permanent Mission" appointing military police for the Anti-Balaka;¹² (7) "Project for Emergency Billeting of Anti-Balaka fighters"; (8) "Project for Emergency Aid to Regroup Anti-Balaka Fighters"; (9) "*Déclaration des Combattants Antibalaka relative à la situation sécuritaire en République Centrafricaine*"; (10) sketches and maps of Anti-Balaka bases in BANGUI; (11) two documents titled "*Contribution du mouvement des Patriotes Antibalaka pour la restauration de la Paix et de la Sécurité en République Centrafricaine*"; (12) Anti-Balaka press-releases; (13) joint

¹¹ See for example CAR-OTP-2068-0077, at 0077; CAR-OTP-2001-5386, at 5466-5468; CAR-OTP-2062-0074, at 0074-0076; CAR-OTP-2076-0825, from [00:02:40] to [00:03:47]; CAR-OTP-2091-0290; CAR-OTP-2091-0291; CAR-OTP-2023-2447, from [00:03:08] to [00:03:24], and; CAR-OTP-2032-1364, at 1367.

¹² Please note that this document (CAR-OTP-2025-0356) was already recognised as formally submitted via P-2251.

declaration of the Seleka and Anti-Balaka on the cessation of hostilities; (14) list of the [REDACTED]; (15) mission order signed by LEBENE;¹³ (16) appointment letter signed by NGAISSONA;¹⁴ (17) Anti-Balaka laissez-passé; and (18) Anti-Balaka Radio communiqué.

16. Each exhibit referenced in the Prior Statements was discussed as noted, and may be helpful to contextualise and facilitate their understanding. The items tendered with this application are assessed as indispensable to their comprehension or would otherwise diminish their probative value if excluded. The tendered associated exhibits will assist the Chamber in its assessment of the relevant evidence in its article 74 decision. As an integral part of the Prior Statements, 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-0808's evidence.

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

17. Although the Prior Statements are comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-0808's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

18. The Prosecution's five-hour estimated supplemental examination of P-0808¹⁵ takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel,

¹³ Please note that this document (CAR-OTP-2001-6251) was already recognised as formally submitted via P-2251.

¹⁴ Please note that this document (CAR-OTP-2001-5386) was already recognised as formally submitted via P-0287.

¹⁵ ICC-01/14-01/18-724, AnxA, p. 25.

interpretation considerations,¹⁶ and accounts for the prospect of appropriate redirect examination.

19. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-0808'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 Statements, particularly as regards the Accused's acts and conduct, but also to advance the Chamber's fundamental truth-seeking function.

20. 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 at least 10 hours.

E. Balance of interests

21. The projected shortening of P-0808's in-court-testimony by half is "considerable" and, on balance, the introduction of P-0808'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.

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.

IV. CONCLUSION

22. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statements of P-0808 together with their 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.

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

Karim A. A. Khan QC, Prosecutor

Dated this 23rd day of September 2021
At The Hague, The Netherlands