



Original: **English**

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

Date: **25 November 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-0992 pursuant to Rule 68(3)”,
ICC-01/14-01/18-1111-Conf, 17 September 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 Karim A. A. Khan QC

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

Mr Nigel Verrill

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-0992, 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-0992’s prior recorded testimony comprises two Witness Statements (“Prior Statements”), dated 14 May 2019 and 21 August 2020 (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 three hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-0992 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 [REDACTED] NGAISSONA’s role as National General Coordinator. He describes NGAISSONA’s contributions to the Anti-Balaka, including through providing funds. P-0992 discusses Anti-Balaka [REDACTED] meetings held in BANGUI in the presence of ComZones and provides other information about interactions between [REDACTED] and Anti-Balaka groups based in the Provinces. He discusses YEKATOM’s role as the ComZone of the PK9-MBAIKI axis area and [REDACTED]. P-0992 also discusses the 5 December 2013 attack on BANGUI and further provides details about crimes committed by the Anti-Balaka, including their targeting of Muslim civilians.

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-0992'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-0992 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-0992'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-0992's Prior Statements of 14 May 2019 and 21 August 2020 comprise 28 and 33 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-0992 was [REDACTED] during the Relevant Period.

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

- P-0992 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 provides information about the presence of NGAISSONA and Bernard MOKOM in CAMEROON, following the Seleka's take-over of BANGUI, and meetings held there to organise the Anti-Balaka.

- P-0992 describes the organisation of the Anti-Balaka, including the coordination between the Anti-Balaka in BANGUI, the Provinces, and those initially based in ZONGO, DRC. He also describes the gathering of new recruits in GOBERE.
- P-0992 provides information about NGAISSONA's financial contributions to the Anti-Balaka, [REDACTED].
- 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-0992 provides information about the [REDACTED]. The witness explains that [REDACTED].
- He describes the organisation and role of the ComZones, including [REDACTED]. P-0992 explains that [REDACTED]¹⁰ [REDACTED]. The witness explains that, in addition, [REDACTED], visited the Provinces, pursuant to mission orders signed by NGAISSONA.
- P-0992 provides evidence about YEKATOM's role as the ComZone in charge of the PK9-MBAIKI axis area. He explains that YEKATOM [REDACTED]. P-0992 also provides information about extortions carried out by YEKATOM's elements at a roadblock along the PK9-MBAIKI axis.
- P-0992 describes the process behind the introduction of Anti-Balaka ID badges and explains that [REDACTED] badges were issued to members of the Anti-Balaka after their identities were verified. He explains that these badges were distributed from NGAISSONA's house.

¹⁰ CAR-OTP-2110-0048, at 0061, para. 70.

- P-0992 provides information about the creation of a “special Unit” set up in order to “neutralise the fake Anti-Balaka”.¹¹ This Unit was supervised by Olivier FEISSONA and Olivier KOUDEMON (alias GBANGOUMA).
- P-0992 explains that, prior to 5 December 2013, attacks took place in the Provinces, including in BOSSANGO, ZERE, BENZAMBE, BOSSEMBELE, and BOUAR. [REDACTED].
- He also provides information about the 5 December 2013 attack on BANGUI. P-0992 explains that the Anti-Balaka were stationed at the hill in BOY-RABE and descended into BANGUI on the day of the attack. P-0992 provides information about the participation of, *inter alia*, NGAIKOSSET, Sebastien WENEZOU, and Emotion NAMSIO, on the day of the attack.
- P-0992 provides evidence on the Anti-Balaka’s targeting of Muslim civilians, explaining that during the 5 December attack, “[c]ivilians were also killed in BANGUI. The Anti-Balaka targeted anyone they saw wearing a long *boubou* because that identified the person as a Muslim”.¹²
- P-0992 also provides information about Anti-Balaka press releases, [REDACTED]. P-0992 authenticates a number of these press releases.

14. P-0992’s proposed evidence is corroborated by, *inter alia*: (i) the evidence of P-0884, P-0954, P-0966, P-1193, and P-2232 regarding NGAISSONA’s financial contributions to the Anti-Balaka; (ii) the evidence of P-0567, P-0966, P-2232, P-2328, and P-2462 regarding the pre-December 2013 attacks on BOSSANGO, ZERE, BENZAMBE, BOSSEMBELE, and BOUAR; (iii) 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 prior to the 5 December 2013 attack on BANGUI; (iv) the evidence of P-0446, P-0889, P-0975, P-1339, P-1521, and P-2232 regarding the Anti-Balaka’s actions

¹¹ CAR-OTP-2110-0048, at 0064, para. 89.

¹² CAR-OTP-2110-0048, at 0060, para. 61.

on the day of the 5 December 2013 attack on BANGUI; (v) the evidence of P-0306, P-0446, P-0487, P-0808, 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; (vi) the evidence of P-0306 and P-1858 on mission orders issued by NGAISSONA; and (vii) the evidence of P-0808, P-1193, P-1521, P-1962, and P-2012 in relation to the issuance of Anti-Balaka ID badges. P-0992's proposed evidence is also corroborated by documentary evidence.¹³

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-0992's Prior Statements, of the following nature: (1) P-0992's curriculum vitae; and (2) 35 copies of documents [REDACTED] related to the Anti-Balaka [REDACTED], including Anti-Balaka press releases.

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-0992's evidence.

¹³ See for example CAR-OTP-2003-1076, at 1140-1141; CAR-OTP-2029-0171; CAR-OTP-2108-0050; CAR-OTP-2001-0835, at 0875; CAR-OTP-2091-0290; CAR-OTP-2091-0291.

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-0992's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

18. The Prosecution's three-hour estimated supplemental examination of P-0992¹⁴ takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁵ 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-0992'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-0992's in-court-testimony is "considerable" and, on balance, the introduction of P-0992's Prior Statements under rule 68(3) is

¹⁴ ICC-01/14-01/18-724, AnxA, p. 24.

¹⁵ 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 lns. 14-22, p. 4 lns. 20-22.

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.

IV. CONCLUSION

22. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statements of P-0992 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.



Karim A. A. Khan QC, Prosecutor

Dated this 25th day of November 2021

At The Hague, The Netherlands