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Date: **15 February 2022**

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-1858 pursuant to Rule 68(3)”, 15 February 2022**

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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II. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-1858, 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”).¹ P-1858’s prior recorded testimony comprises the statement of the witness’s interview on 11 October 2017 (“Prior Statement”) and five associated exhibits.² 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 three hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1858 is an Anti-Balaka insider. His Prior Statement discusses: (i) [REDACTED] Anti-Balaka group and their involvement in the Anti-Balaka movement; (ii) the Anti-Balaka’s 5 December 2013 attack on BANGUI and Alfred YEKATOM’s (aka ‘RHOMBOT’, “YEKATOM”) participation therein; (iii) several Anti-Balaka meetings in 2013 and 2014, some occurring at YEKATOM’s base; (iv) the leadership roles of NGAISSONA and YEKATOM within the Anti-Balaka; and (v) the crimes committed by YEKATOM and his elements (“YEKATOM’s Group”) against the civilian population, including the Muslim population in his area of control and the “son of FACA General LAPO”. 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

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.

unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.³

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.⁴ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁵ 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.⁶

5. 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 lists the relevant portions of the Prior Statement being tendered for formal submission, and the corresponding associated exhibits. *Confidential* Annex A 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.

III. 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

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, para. 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).

concerning a witness which should not be made public. A “Public Redacted” version of the Request will be filed as soon as practicable.

IV. 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,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

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-1858 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 relevant and probative. It contains evidence regarding YEKATOM’s Group’s perpetration of the crimes alleged at counts 24-28, as well as NGAISSONA’s role and authority as the Anti-Balaka National Coordinator. The Prior Statement also goes to proof of the contextual elements for war crimes and crimes against humanity.

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.

10. P-1858's Prior Statement comprises 24 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 Statement establishes the following:

- P-1858 describes the Seleka takeover of BANGUI in 2013 and their crimes against the civilian population;
- P-1858 explains joining [REDACTED] Anti-Balaka group in the bush in September 2013. According to P-1858, the group aimed to overthrow DJOTODIA's regime, and its members were trained to use weapons and in combat strategies. While the FACA members within the group used automatic weapons and sometimes grenades, several civilian elements used traditional weapons. P-1858's role included [REDACTED];
- P-1858 provides information about the 5 December 2013 attack on BANGUI and explains the participation of YEKATOM and his Group. He further describes YEKATOM's origins and his involvement in the Anti-Balaka;
- P-1858 describes the set-up of checkpoints following the 5 December 2013 attack on BANGUI, including by YEKATOM and his Group, explaining that that "there were incidents of theft and looting"¹⁰ at checkpoints under YEKATOM's control;
- P-1858 recounts [REDACTED] meetings at YEKATOM's [REDACTED] base: [REDACTED];
- P-1858 recounts that upon DJOTODIA's resignation: (i) the group which he joined moved their base to [REDACTED]; and (ii) YEKATOM and his Group

¹⁰ CAR-OTP-2063-0050, at 0058, para. 50.

left YAMWARA School base to set up bases on the PK9-MBAIKI Axis and to BODA;

- P-1858 describes YEKATOM's command and control over his Group as well as the crimes they committed against the civilian population, including: (i) the targeting and displacement of Muslim civilians. P-1858 explains that "Muslims could not go to the areas controlled by ROMBHOT's elements because they would be killed"¹¹; (ii) the protection of the displaced Muslim civilians' cattle, in exchange for payment; (iii) the killing of the "son of FACA General LAPO"; (iv) the killing of Anti-Balaka elements under YEKATOM's command, including his bodyguards; and (v) the arrest of FACA member [REDACTED] by YEKATOM's Group;
- P-1858 describes Patrice Edouard NGAISSONA's ("NGAISSONA") role within the movement, including: (i) becoming the Anti-Balaka National Coordinator upon his return to BANGUI; (ii) designating and sending members of the movement, including NDOMATE and OROFE, on missions to the provinces after June 2014; (iii) sending a delegation to negotiate the release of the FACA prisoner [REDACTED] from YEKATOM's Group; (iv) NGAISSONA's role in the planning of military operations; (v) disciplinary measures at NGAISSONA's disposal; and (vi) providing money to Anti-Balaka ComZones, including to MAZIMBELE (presumably *commandant* Guy MAZIMBELE), who was known for committing crimes in BOY-RABE;
- P-1858 provides information about a meeting organized on 15 May 2014 where Sebastien WENEZOU ("WENEZOU") was elected the General Coordinator of the Anti-Balaka and which created a division between the Anti-Balaka "South" (which included YEKATOM, MBOMON, WENEZOU) and the Anti-Balaka "North" (which included NGAISSONA, MOKOM, 12 Puissances (aka

¹¹ CAR-OTP-2063-0050, at 0063, para. 80.

‘Thierry LEBENE’), and ANDJILO). The witness also describes the general meeting of 16 June 2014, where the Anti-Balaka “South” and “North” factions were restructured under a common Coordination led by NGAISSONA;

- P-1858 explains that once the unified Coordination was established, [REDACTED], and Romaric VOMITIADE, Vivien BEINA, and Paleon ZILABO (aka ‘NZILABO’) represented YEKATOM in the National Coordination. P-1858 further explains that “meetings of the Coordination were held at Hotel AZIMUT under NGAISSONA’s authority”.¹² These meetings were sometimes attended by YEKATOM, MBOMON, and other Anti-Balaka leaders.

12. P-1858’s proposed evidence on: i) YEKATOM’s leadership over his Group is corroborated by, *inter alia*, the evidence of P-1339, P-1521, P-1819, P-2232, P-1786, and P-2084; ii) YEKATOM’s control over the area PK9-MBAIKI Axis is corroborated by, *inter alia*, P-1339, P-1647, P-1666, P-1786, P-1813, P-1838, P-1839, and P-2354; iii) the commission of crimes by YEKATOM and his Group against the Muslim population is corroborated by, *inter alia*, P-1339, P-2475, P-1813, P-1838, P-1839, and P-2233; iv) NGAISSONA’s leadership role, including appointing and dismissing members, is corroborated by, *inter alia*, P-0808, P-0966, P-1339, and P-1962.

C. Associated Exhibits

13. The Prosecution tenders five associated exhibits for formal submission, as set out in Confidential Annex A. These comprise a selection of items detailed with precision in P-1858’s Prior Statement, namely: (i) a list containing the names and contact details of [REDACTED] (Annex A to the Prior Statement); (ii) the statement pronounced by BARA in the Parliament on 18 January 2014 as an Anti-Balaka representative (Annex B to the Prior Statement); (iii) the list of Anti-Balaka members in [REDACTED] group (Annex C to the Prior Statement); (iv) the photograph of a victim kidnapped by

¹² CAR-OTP-2063-0050, at 0062, para. 76.

YEKATOM's Group (Annex D to the Prior Statement); and (v) "Special Investigation" documentary,¹³ upon which P-1858 commented (CAR-OTP-2012-0523).

14. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statement, 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.¹⁴

15. As an integral part of the Prior Statement, the exhibits are directly relevant to and probative of material issues in dispute.¹⁵ As such, their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-1858'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-1858's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

17. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹⁶ the Prosecution has carefully reviewed its four-hour estimate given for P-1858 in its Final Witness List.¹⁷ The Prosecution considers that it

¹³ Please note that this associated exhibit has been previously submitted in ICC-01/14-01/18-1176-Conf + Conf-Anxs, but the Trial Chamber has not yet decided upon it.

¹⁴ The Prosecution does not consider all documents mentioned in the statement sufficiently 'discussed', insofar as being "used and explained by [the witness in their] prior recorded testimony and are necessary to understand [the witness's] testimony" - ICC-01/04-02/06-1029, para. 23; *see also* ICC-01/09-01/11-1938-Red-Corr, para. 33 (defining associated exhibits as "use[d] or explain[ed] [by the witness] in the prior recorded testimony" and "necessary to read and understand the prior recorded testimony being introduced"); *see also* ICC-01/04-02/06-1653, para. 23 (same).

¹⁵ ICC-01/14-01/18-907-Conf, para. 13.

¹⁶ ICC-01/14-01/18-685, para. 36.

¹⁷ ICC-01/14-01/18-724-Conf-AnxA, p. 15.

can further reduce the estimate to three hours. This estimated supplemental examination of P-1858 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁸ 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-1858'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-1858's in-court-testimony by more than half is "considerable", and on balance the introduction of P-1858'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 the fact that the

¹⁸ 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).

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.

V. CONCLUSION

21. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1858 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.

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

Karim A. A. Khan QC, Prosecutor

Dated this 15th day of February 2022

At The Hague, The Netherlands