

Annex 38

Pineau, Carine

From: Trial Chamber V Communications
Sent: 06 October 2021 10:51
To: [REDACTED]; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: RE: P-2388 Request under 68(3)

Dear Counsel,

In light of the nature of the below request, the Single Judge considers that the Prosecution should formally file it on the record. Further noting P-2388's anticipated testimony dates (14-15 October 2021), the Prosecution is instructed to do so latest by tomorrow, 7 October 2021, 10:00.

Responses to the request, if any, are due on Friday, 8 October 2021.

Kind regards, TC V

From: [REDACTED]
Sent: 05 October 2021 18:53
To: Trial Chamber V Communications [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
Subject: P-2388 Request under 68(3)

Dear Trial Chamber,

Dear Counsel,

The Prosecution intends to call P-2388 within the current evidentiary block. We are currently working towards securing the Witness's attendance and aiming to get his testimony in late next week.

P-2388 is a rule 68(3) witness. As was noted during the proceedings last week, the Prosecution understands that the Yekatom Defence – which is most concerned with the prospective evidence of this witness has no objection to the rule 68(3) application being made outside the 45-day period. Moreover, the Prosecution further understands that the Yekatom Defence does not oppose the submission of the witness's 19-page prior statement, dated 10 April 2019 (ERN CAR-OTP-2108-0003 "Prior Statement"), subject to the satisfaction of the further conditions, namely his presence and availability for cross-examination and the absence of any objection by the witness.

Although the Ngaissona Defence did not indicate its position on the record last week when the matter was discussed in Court, a cursory review of the Prior Statement reveals that no real substantive or procedural objection lies under rule 68(3). As such, the Prosecution requests that the Chamber entertain this informal application for a provisional ruling on the submission of the Prior Statement together with its two associated documents, which comprise the witness's certificate of nationality, certificate of residence, his birth certificate, and a sketch made during the course of his interview (ERNs CAR-OTP-2108-0022 and CAR-OTP-2108-0025, respectively).

In relevant part, the Prior Statement provides significant crime-base evidence relevant, inter alia, to the Anti-Balaka attacks on Muslims in BIMON, along the PK9-Mbaiki Axis, the destruction of houses, the flight of Muslims from there

as well as other Anti-Balaka crimes in other villages and towns such as PISSA. The Witness also describes the Anti-Balaka's control of checkpoints along this axis, including at SAMBA, BIMON, BOSSONGO, and PISSA through MBAIKI. The witness further describes the flight of Muslims from areas such as PISSA and BANGUI, as well as his own flight from BIMON [REDACTED] The Prior Statement also provides information he obtained regarding Yekatom's leadership of the Anti-Balaka group extending from PK9 to MBAIKI. His evidence is directly relevant to the scope of the article 7 attack and the charged crimes, falling both within the temporal and geographic scope of the charges. Further to the submission of the Prior Statement, the Prosecution would request up to two hours to lead very limited additional evidence clarifying certain topics in order to complete the Witness's narrative of the relevant events.

The Prosecution anticipates that the witness will be present before the Court and available for examination by the Parties, Participants, and the Chamber, as may be appropriate, and will further agree to the submission of his Statement.

For these reasons, and particularly given the limited Prior Statement and its associated documents, the Prosecution considers that the disposition of this request in this manner would be appropriate and in the interest of the expeditious conduct of the proceedings. The Prosecution remains at the Chamber's disposal, should it require any further information or clarification. Thank you.

Kind regards,

On behalf of Kweku Vanderpuye