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**International
Criminal
Court**

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

Date: **19 August 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

with Confidential Annexes A and B

**Public Redacted Version of "Prosecution's Request for the Formal Submission of
the Prior Recorded Testimony of Witness P-1558 pursuant to Rule 68(3)",
29 July 2022, ICC-01/14-01/18-1533-Conf**

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-1558 (“Request”), in accordance with rule 68(3) of the Rules of Procedure and Evidence (“Rules”) and the “Initial Directions on the conduct of the proceedings”.¹ P-1558’s prior recorded testimony comprises his witness statement dated 30 March 2019 (“Prior Statement”)² and its associated exhibits.³ Should the Chamber deem the Prior Statement formally submitted, the Prosecution further requests leave to conduct a limited examination-in-chief, estimated currently at approximately two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1558 is a Central African [REDACTED]. P-1558’s evidence is relevant to the contextual elements for war crimes and crimes against humanity; the targeting of the Muslim population, their forced displacement to MBAIKI as a result of the Anti-Balaka’s actions, and YEKATOM’s command over his elements. P-1558 further provides evidence on the organisation of the Anti-Balaka, including YEKATOM’s role therein. He also provides evidence on YEKATOM’s Group activities in SEKIA and PISSA. 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 CAR-OTP-2105-0195.

³ 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.⁴

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.⁵ Additionally, 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 the volume of extraneous material in the case, as a whole.⁶

5. The Request includes a brief summary of the salient issues, which sets out the relevance and probative value of the Prior Statement, along with the associated exhibits or documents and the sources of other corroborative evidence. *Confidential* Annex A lists the Prior Statement and the associated exhibits. It also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates. *Confidential* Annex B contains the Prior Statement, 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

6. Pursuant to regulation 23bis(1) of the Regulations of the Court, this Request is filed as "Confidential", as it contains information concerning a witness which should not be made public. A "Public Redacted" version of the Request will be filed as soon as practicable.

⁴ 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").

⁵ ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé* Appeals Decision").

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).

III. 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-1558 will attest to its accuracy; he will be present in court; and he will be available for examination by the Defence, Participants, and the Chamber.

9. As described below, the Prior Statement is highly relevant and probative. It goes to YEKATOM's involvement in crimes such as forcible transfer. P-1558's evidence further points to the Anti-Balaka as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack.

10. P-1558's Prior Statement consists of 17 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 concern the following:

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.

- P-1558 is a Central African [REDACTED], who in 2011 and 2012 worked making [REDACTED]. P-1558 states that towards the end of the Seleka's regime, he started to [REDACTED].
- P-1558 describes that a few days after the release of PK9, in January 2014, [REDACTED].
- ROMBHOT related that after the 5 December attack, BOZIZE and NGAISSONA called and asked him to join the Anti-Balaka. After joining NGAISSONA's Anti-Balaka, ROMBHOT started to receive money.
- P-1558 explains that [REDACTED], and states that ROMBHOT's forces controlled the area. P-1558 affirms that PISSA was a city with many Muslims before ROMBHOT established control over the area.
- P-1558 recounts a meeting in St Michael's Church in PISSA. He states that Muslims and Imams from the region were present, as well as chiefs of MBAIKI and the Sangaris. After the meeting, ROMBHOT addressed the population outside, and warned that Muslim civilians were not to be harmed.
- P-1558 would [REDACTED], so he did not participate in every operation carried out by him. ROMBHOT would perform operations without [REDACTED], including constantly carried out operations in MBAIKI.
- P-1558 affirms that the Anti-Balaka were a group led by ROMBHOT. The latter had a deputy called COEUR DE LION, who had his own *aide de camp*.
- P-1558 affirms that ROMBHOT's elements followed his orders, and those who did not left the group.
- P-1558 states that ROMBHOT communicated with the Zone Commanders usually by phone or in person.

- P-1558 affirms that KAMEZOLAI was ROMBHOT's military consultant, and before each mission ROMBHOT went to KAMEZOLAI for military advice. ROMBHOT himself confirmed that he met KAMEZOLAI to this end.
- P-1558 states that in 2014, the PK9- MBAIKI axis was controlled by ROMBHOT and his elements. The Anti-Balaka established barriers on the road to MBAIKI, and would demand a toll from people passing by.
- Muslims were concentrated in MBAIKI, but no Muslims dared to go on the road nor pass the toll. P-1558 affirms that Muslims would be killed either by the Anti-Balaka or by the population, if they tried to pass.
- P-1558 states that Muslims went to MBAIKI as their lives were threatened.
- P-1558 affirms that YEKATOM is one of the leaders in the Anti-Balaka movement.
- Lastly, P-1558 recognises [REDACTED], shown to him by the investigators, and provides identification of Anti-Balaka elements and locations appearing in the video.

P-1558's proposed evidence on YEKATOM and his Group's takeover of the PK9-MBAIKI axis is corroborated by, *inter alia*, the evidence of P-2475, P-0954, P-2419, P-2388, P-2353, P-2354, and P-2084. P-1558's proposed evidence on the forced displacement of Muslims is corroborated by, *inter alia*, the evidence of P-1838, and P-1813. P-1558's proposed evidence on how YEKATOM's Group perpetuated an increasingly hostile environment towards Muslims is corroborated by, *inter alia*, the evidence of P-0954, P-1647, P-1823, P-1839, P-2582, P-2196, P-2041, P-2354, P-2475 and P-2084.

C. Associated exhibits

12. The Prosecution tenders two associated exhibits for formal submission, as listed in Confidential Annex A, namely: (i) [REDACTED] propaganda video titled

[REDACTED], upon which the witness commented during the course of his interview;

(ii) a documentary titled “Special Investigation”: P-1558 indicated identifying “ROMBHOT” and other Anti-Balaka elements in this documentary that was shown to him during his interview.

13. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish their probative value if excluded. The 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 Statement, each exhibit is directly relevant to and probative of material issues in dispute, and their introduction into evidence pursuant to rule 68(3) would further be the most efficient and effective way to manage P-1558’s evidence.

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

14. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-1558’s testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

15. Mindful of the Chamber’s direction concerning the need to “streamline its questioning considerably”,¹⁰ the Prosecution has carefully reviewed its two-hour estimate given for P-1558 in its Final Witness List.¹¹ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-1558 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel,

¹⁰ ICC-01/14-01/18-685, para. 36.

¹¹ ICC-01/14-01/18-724-Conf-AnxA, p. 33.

interpretation considerations,¹² and accounts for the prospect of appropriate redirect examination.

16. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1558's evidence through the use of some of documents or 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.

17. 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 approximately five hours to present – almost three times as long.

E. Balance of interests

18. The projected shortening of P-1558's in-court-testimony by two-thirds is "considerable". On balance, the introduction of P-1558'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 Prior Statement is supported and corroborated by other evidence to be tested at trial, warrant its formal submission in the fair exercise of the Chamber's broad discretion.

¹² See e.g., ICC-01/14-01/18-T-001-ENG ET, p. 6 ln. 18-25; see ICC-01/14-01/21-T-001-ENG ET, p. 3 ln. 14-22, p. 4 ln. 20-22 (noting practical complications involved in the live in-Court interpretation).

IV. CONCLUSION

19. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1558 together with its associated exhibits, as set out in 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 19th day of August 2022
At The Hague, The Netherlands