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**International
Criminal
Court**

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

Date: **4 October 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-0487 pursuant to Rule 68(3)", 4 October 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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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-0487, 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-0487’s prior recorded testimony comprises two transcribed interview statements (“Prior Statements”) on 5 May to 10 May 2016, and on 11 January to 14 January 2018 (respectively, “First Statement” and “Second Statement”), and 92 associated exhibits.² Should the Chamber deem the Prior Statements 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-0487 was a [REDACTED]. He [REDACTED] YEKATOM’s Group [REDACTED]. P-0487 provides evidence, *inter alia*, on (1) the organization and structure of the YEKATOM Group, its controlled areas, and bases; (2) YEKATOM’s involvement in the 5 December 2013 attack of BANGUI; and (3) the abduction and detention of relatives of General MAMOUR at the YAMWARA School base.³ P-0487’s evidence is relevant to the contextual elements for war crimes and crimes against humanity. His Prior Statements are *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.

³ Counts 11 to 17.

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 Statements to provide the Chamber with the information necessary to conduct the required case-by-case assessment.⁵ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁶ 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.⁷

5. The relevance and probative value of the Prior Statements are 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) lists the interview transcripts, 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.

6. Due to the length of the Prior Statements,⁸ the transcribed statements have been summarised and organised topically. This summary is attached as *Confidential Annex B* to facilitate the Parties', Participants', and Chambers' understanding of their content, and to more easily identify their relevance and probative value ("Summary"). The Summary is not tendered for formal submission. Rather, it clearly and concisely sets out the substance of the transcripts comprising the Prior Statements tendered.

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 See ICC-01/14-01/18-685, para. 31, 32.

⁷ Consistent with the Chamber's decision: ICC-01/14-01/18-907-Conf, para. 16 (even though the entire Prior Statements are submitted).

⁸ The Prior Statement comprises 38 interview transcripts totalling approximately 565 pages.

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 a witness 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,⁹ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),¹⁰ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).¹¹

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-0487 will attest to their accuracy; he will be present in court; and he will be available for examination by the Defence, Participants, and the Chamber.

10. As described below, the Prior Statements are highly relevant and probative. They provide evidence of the organization of the YEKATOM Group, including of YEKATOM’s command and control, of YEKATOM’s involvement in the 5 December 2013 attack of BANGUI, and regarding the abduction and detention of members of General MAMOUR’s family by members of the YEKATOM Group. They also go to

⁹ 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’).

¹⁰ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

¹¹ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

proof of the contextual elements for war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group between September 2013 and December 2014 (“Relevant Period”).

11. P-0487’s Prior Statements comprise 565 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 Statements.

12. The witness’s Prior Statements establish the following:

- P-0487 is [REDACTED], he joined YEKATOM and his elements based at the YAMWARA School in BOEING [REDACTED]. He left the Group in [REDACTED];
- [REDACTED];
- He discusses the organisation of the Anti-Balaka in 2013, particularly the mobilisation of the elements from the provinces to go to BANGUI, and BOZIZE’s and NGAISSONA’s role in their funding;
- He provides evidence of the organisation and structure of YEKATOM’s Group, the areas under its control, bases, and roadblocks;
- He describes YEKATOM’s involvement in the Anti-Balaka’s 5 December 2013 attack of BANGUI;
- He provides evidence of NGAISSONA’s authority as General Coordinator of the Anti-Balaka in 2014;
- He recounts [REDACTED].

- Finally, P-0487 describes the misconduct of YEKATOM and his men, including their commission of crimes against Muslims. In particular, he provides evidence on the abduction and detention of relatives of General MAMOUR at the YAMWARA School base.¹²

13. P-0487's proposed evidence on the structure and leadership of the YEKATOM Group, and the areas under its control, is corroborated by, *inter alia*, the evidence of P-0954, P-1339, P-1528, P-1647, and P-1839. His evidence on YEKATOM's involvement in the 5 December 2013 attack of BANGUI is corroborated by, *inter alia*, P-1339, P-1819, P-2328, and P-2475. Last, his evidence regarding the abduction and detention of relatives of General MAMOUR at the YAMWARA School base is corroborated by, *inter alia*, P-0967, P-1704, P-1705, P-1716, and P-1811.

C. Associated exhibit

14. The Prosecution tenders 92 associated exhibits for formal submission, as listed in Confidential Annex A, namely: (i) 76 photographs and one video provided by P-0487 during his first interview, mainly depicting Seleka elements and victims of Seleka violence; (ii) a press article provided by the witness during the same interview about the commission of crimes by the Seleka in BANGUI following the 5 December 2013 Anti-Balaka attack (iii) documents relating to [REDACTED] (Annexes A and B to his First Statement); (iv) a map annotated by the witness showing the location of the YAMWARA School base (Annex C to P-0487's First Statement); (v) handwritten notes authored by P-0487 about [REDACTED] (Annex D to P-0487's First Statement); (vi) six press articles [REDACTED] discussed during his first interview; (vii) an audio recording of an [REDACTED] interview [REDACTED], and discusses *inter alia* the 5 December 2013 attack; (viii) a sketch of YEKATOM's base in BOEING (Annex A to P-0487's Second Statement); (ix) a photograph showed to P-0487 during his second

¹² Counts 11 to 77.

interview (Annex B to P-0487's Second Statement) and (x) a sketch of [REDACTED] (Annex C to P-0487's Second Statement).

15. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statements, 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 Statements, they are directly relevant to and probative of material issues in dispute, and their submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-0487's evidence.

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

16. Although the Prior Statements are comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-0487'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",¹³ the Prosecution has carefully reviewed its three-hour estimate given for P-0487 in its Final Witness List.¹⁴ The Prosecution considers that it cannot further reduce the estimate. This estimated supplemental examination of P-0487 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.

¹³ ICC-01/14-01/18-685, para. 36.

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

¹⁵ 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).

18. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-0487's evidence through the use of the associated exhibit, other documents, or as concerns other relevant evidence. The limited examination requested is necessary not only to fully understand and contextualise the Prior Statements, 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 Statements under rule 68(3), the Prosecution estimates that the witness's testimony on direct examination would require at least nine hours to present – a significantly longer period.

E. Balance of interests

20. The projected shortening of P-0487's in-court-testimony by two thirds is "considerable", and on balance the introduction of P-0487'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.

IV. CONCLUSION

21. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statements of P-0487 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 black ink, appearing to read 'K.A.K.', with a horizontal line underneath it. The signature is centered on the page.

Karim A. A. Khan KC, Prosecutor

Dated this 4th day of October 2022
At The Hague, The Netherlands