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**International
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Court**

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Date: **17 May 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-1819 pursuant to Rule 68(3)", 17 May 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-1819, 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-1819’s prior recorded testimony comprises a witness statement, dated 10 November 2017 (“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 to take no longer than four hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1819 is [REDACTED]. She provides evidence of the Anti-Balaka policy of targeting the Muslim community in the Central African Republic (“CAR”) in late 2013. She describes the commission of crimes by the Anti-Balaka against the Muslim civilians or perceived supporters of the Seleka in BANGUI and its surroundings, comprising killings, pillaging, cruel treatment, and torture. She also describes the Anti-Balaka attack on BANGUI on 5 December 2013 and the Muslims victims of the Anti-Balaka. She provides evidence on the structure and functioning of the Anti-Balaka group led by YEKATOM (“YEKATOM’s Group”), including (i) its leadership and YEKATOM’s control over the Anti-Balaka in BOEING; (ii) the training of new recruits; and (iii) the weaponry and *gris-gris* used in YEKATOM’s Group. She also discusses [REDACTED] established by YEKATOM, as well as the presence of children in YEKATOM’s Group. She further authenticates a [REDACTED].

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2065-0003, CAR-OTP-2093-0493 (ENG Translation)

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.

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 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, mindful of the concerns regarding the amount of written evidence to be tendered,⁶ 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.⁷

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. A *Confidential Annex A* (a Summary Chart) lists the relevant statement, 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 Statement itself. The associated exhibits and Prior Statement are available to the Defence and the Trial Chamber in e-Court.

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 Statement as a whole is submitted).

II. CONFIDENTIALITY

6. Pursuant to regulation 23bis(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

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,⁸ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁹ and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).¹⁰

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-1819 will attest to its accuracy; she 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 highly relevant and probative. It bears evidence of the 5 December 2013 Anti-Balaka attack on BANGUI, the targeting of the Muslim civilian population and the deployment of YEKATOM’s elements in CATTIN and BOEING. The Witness describes crimes committed by the Anti-Balaka and discusses the functioning of YEKATOM’s Group. It also goes to the proof of the

⁸ 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’).

⁹ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

¹⁰ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

contextual elements of war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group, and its intent to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014.¹¹

10. P-1819's Prior Statement comprises 33 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 Testimony establishes the following:

- P-1819 is [REDACTED], including (i) the first base [REDACTED] from BANGUI where, [REDACTED], she met several Anti-Balaka elements ready to conduct further attacks against the Seleka; (ii) the second base [REDACTED]; and (iii) the third base located at the YAMWARA school near BANGUI airport that she visited on several occasions and [REDACTED].
- The witness provides evidence of the Anti-Balaka's policy of targeting the Muslim community in villages of western CAR prior to 5 December 2013. In particular on 3 December, she saw Peuhl victims of Anti-Balaka's attack in a village located about 42 kilometres away from BANGUI.
- P-1819 describes the 5 December 2013 attack on BANGUI and the Seleka's riposte which forced the Anti-Balaka to retreat. She explains how she later learnt from which positions the offensives were launched and the Anti-Balaka's groups involved in the attack. The witness indicates that she saw the dead bodies of Muslims civilians at the Mosque in PK5 following the 5 December attack. She also provides evidence of the commission of crimes by YEKATOM's Group, comprising the cruel treatment, torture and illegal detention of Muslim

¹¹ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, *see further* pp. 107, 111 (referencing paragraphs 90-114 of the Document Containing the Charges - ICC-01/14-01/18-286-Conf-AnxB1).

civilians or elements within the group suspected of disloyalty and perceived as supporters of the Seleka.

- P-1819's evidence establishes that YEKATOM's Group was well organised under YEKATOM's authority. Particularly, she describes [REDACTED].
- She provides evidence of YEKATOM's authority, recounting that YEKATOM introduced himself as the leader of the group, planned attacks, and gave orders to his elements who turned to him when they needed authorisations. She also [REDACTED] and other Anti-Balaka leaders in BOEING and BANGUI.
- P-1819 describes [REDACTED] 'young' Anti-Balaka recruits at the third base.
- She recounts her [REDACTED] YEKATOM during which he often referred to the Seleka as "Arabs and foreigners" from whom he wanted to save CAR. [REDACTED] spent seven months in the bush waiting for the right time to attack the Seleka.
- P-1819 [REDACTED].

12. P-1819's proposed evidence is corroborated by, *inter alia*, the evidence of P-0487, P-0954, P-1339, P-1490, P-1558, P-1584, P-1618, P-1647, P-1704, P-1786, P-1815, P-1839, P-1921, P-2232, P-2233, P-2328, P-2475, P-2587, P-2698, in relation to (i) the Anti-Balaka attack on BANGUI on 5 December 2013; (ii) the Anti-Balaka's commission of crimes in BANGUI against the Muslim civilian population; (iii) the functioning of YEKATOM's Group, including his leadership over the elements located in various bases in BANGUI, the structure of his group, the training provided at the YAMWARA School base, (iv) YEKATOM's contacts with other Anti-Balaka leaders, and (v) the presence of children within YEKATOM's Group.

C. Associated Exhibits

13. The Prosecution tenders several associated exhibits for formal submission, set out at Confidential Annex A. These comprise certain items detailed in P-1819's Prior Statement, namely: (1) [REDACTED]¹² (and the corresponding transcript and/or translation¹³) [REDACTED]; (2) [REDACTED], dated between [REDACTED]; (3) a sketch drawn by P-1819 during her interview depicting the school where YEKATOM had established his base; (4) a satellite image of Camp de Roux; and (5) the [REDACTED], dated [REDACTED] on which P-1819 commented in her Prior Statement.

14. Although each exhibit referenced in the Prior Statement was discussed and may be helpful to contextualise and facilitate their understanding, the items tendered with this application are *narrowly* assessed as indispensable to their comprehension or would otherwise diminish their probative value if excluded. Although the Chamber's preference¹⁴ is to receive "all documents used or explained by the witness" under rule 68, not all documents mentioned expressly or implicitly in the Prior Statement are necessarily 'associated'. Here, the Prosecution has not included some [REDACTED] – because they are not sufficiently used or discussed as to form "an inseparable and indispensable part of the witness's written testimony",¹⁵ or such that their exclusion renders the Prior Statement less comprehensible or of lesser probative value.¹⁶

¹² The Prosecution notes that P-1819 provided a total of [REDACTED].

¹³ The Prosecution does not consider the metadata documents to be necessary to the comprehension of P-1819's statement given the witness's own acknowledgement that the date and times mentioned therein are likely inaccurate. *See* CAR-OTP-2065-0003, at 0032, para. 166.

¹⁴ *See* ICC-01/14-01/18-907-Conf, para. 73.

¹⁵ *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on the Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence *in Lieu of Viva Voce* Testimony Pursuant to Rule 92 bis (Witnesses for Sarajevo Municipality), 15 October 2009, para. 11

¹⁶ *See* ICC-01/04-02/06-1029, para. 23 (noting that associated documents must be "used and explained by [the witness in their] prior recorded testimony and are *necessary to understand* [the witness's] testimony"); *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; ICC-02/05-01/20-559-Red, para. 33. *See also, Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on the Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence *in Lieu of Viva Voce* Testimony Pursuant to Rule 92 bis (Witnesses for Sarajevo Municipality), 15 October 2009, para. 11; *Prosecutor v. Milošević*, Case No. IT-98-29/1-T, Decision on Admission of Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92ter, 22 February 2007, p. 3; *Prosecutor v. Perišić*, Case No. IT-04-81-T, Decision on Prosecution Motion for Admission of Evidence

Additionally, [REDACTED] do not comprise evidence on which the Prosecution relies and would, for obvious reasons, over burden the trial record with unnecessary and/or irrelevant information. As tendered, the associated exhibits thus 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. As an integral part of the Prior Statement, 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-1819's evidence.

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

15. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-1819's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

16. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹⁷ the Prosecution has carefully reviewed its four-hour estimate given for P-1819 in its Final Witness List.¹⁸ The Prosecution considers that it cannot further reduce the estimate. This estimated supplemental examination of P-1819 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁹ and accounts for the prospect of appropriate redirect examination.

Pursuant to Rule 92bis, 2 October 2008, para. 16 ; and *Prosecutor v. Dorđević*, IT-05-87/1-T, Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92ter, 10 February 2009, para. 5.

¹⁷ ICC-01/14-01/18-685, para. 36.

¹⁸ ICC-01/14-01/18-724-Conf-AnxA, p. 44.

¹⁹ See e.g., ICC-01/14-01/18-T-1-ENG ET, p. 6 ln. 18-25.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1819'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, but also to advance the Chamber's fundamental truth-seeking function.

18. 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 eight hours to present –twice as long.

E. Balance of interests

19. The projected shortening of P-1819's in-court-testimony by half is "considerable", and the Prosecution considers on balance that the introduction of P-1819'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 that the Prior Statement 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

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1819 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 black ink, appearing to read 'K.A.Khan', with a horizontal line underneath it.

Karim A. A. Khan QC, Prosecutor

Dated this 17th day of May 2022
At The Hague, The Netherlands