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**International
Criminal
Court**

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Date: **25 March 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-1077 pursuant to Rule 68(3)”,
ICC-01/14-01/18-1332-Conf, 24 March 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-1077, 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-1077’s prior recorded testimony comprises transcribed statements of the witness’s interview on 8 to 11 July 2018 (“Prior Statement”) and 15 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 two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1077 [REDACTED] following the July 2014 BRAZZAVILLE Summit. His Prior Statement discusses: (i) the emergence of the Anti-Balaka and the circumstances of him joining the movement; (ii) the Seleka’s commission of crimes in the provinces; (iii) the emergence of the Anti-Balaka movement in BERBERATI, its organisation and structure, including the [REDACTED] and the roles played by key members of [REDACTED]; (iv) the connection between the Anti-Balaka leadership in BERBERATI and the National Coordination, including various telephone communication and attendance to peace talks and other coordination meetings in BANGUI; (v) the Anti-Balaka’s use of membership ID badges, including their issuance and distribution in BERBERATI; and (vi) the leadership roles of both NGAISSONA and Maxime MOKOM within the Anti-Balaka.

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. 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.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* (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' evidence relates and, where applicable, any charged incidents the witness discusses.

6. Due to the length of the Prior Statement,⁷ a summary of the transcribed statement, organised by topic, is attached at Confidential Annex B to facilitate the Parties', Participants', and Chambers' understanding of its content, and to more easily identify its relevance and probative value ("Summary"). The Summary is not tendered

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).

⁷ The Prior Statement comprises 13 interview transcripts totalling approximately 308 pages.

for formal submission, rather, it clearly and concisely sets out the substance of the transcripts comprising the Prior Statement hereby tendered.

II. CONFIDENTIALITY

7. 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 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,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)

9. The Prior Statement may be deemed formally submitted under rule 68(3). P-1077 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

10. As described below, the Prior Statement is highly relevant and probative. It goes to the proof of the contextual elements for war crimes and crimes against humanity,

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.

in particular the Anti-Balaka being an organised armed group between September 2013 and December 2014 (“Relevant Period”). It also describes NGAISSONA’s role within the Anti-Balaka notably as a political leader, and the commission of crimes by the Anti-Balaka, notably in BERBERATI and in CARNOT.

11. P-1077’s Prior Statement comprises 308 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.

12. The witness’s Prior Testimony establishes the following:

- A few days after the Anti-Balaka attacked BERBERATI, P-1077 [REDACTED]. Following the July 2014 BRAZZAVILLE Summit, he [REDACTED] P-1077 [REDACTED] respectively.
- The witness recounts the circumstances of his joining the Anti-Balaka in a forest near BAORO where over 1000 men and women coming from BOSSEMPTELE, BOSSEMBELE, BAORO, BOUAR, BOZOUUM, BOCARANGA BOSSANGOYA gathered. He recounts that while in the forest near BAORO, he saw Anti-Balaka leaving to go and attack the Seleka further away.
- P-1077 describes the importance of the *gris-gris* and the badges for Anti-Balaka elements, as they showed their adhesion to the group.
- The witness recounts that on 10 or 11 February 2014, a group of about 1,000 Anti-Balaka from BOSSANGOYA, BOCARANGA, BOZOUUM, GAGA, YALOKÉ, and BOUAR came to BERBERATI and attacked the Muslims neighbourhoods of POTO-POTO and NDJAMBALA, causing the forced displacement of the Muslims residents. He describes the Anti-Balaka’s commission of crimes against the Muslim population in CARNOT and BERBERATI, such as the pillaging and destruction of Muslims’ properties. He

explains how the Anti-Balaka specifically targeted Muslims, in particular the Chadians and the Fulbe, whom they believed supported the Seleka, leading the Muslims to massively flee their homes. He also confirms that most Muslims residents of CARNOT and BERBERATI fled to CAMEROON or to the Catholic church.

- P-1077 describes the structure and organisation of the Anti-Balaka leadership in BERBERATI through [REDACTED], including its members and functioning, as well as its collaboration with local authorities and foreign armed groups deployed in BERBERATI, such as the MINUSCA and the Sangaris.
- The witness discusses the links between the leadership of BERBERATI and the National Coordination in BANGUI. He describes the venues, the attendees, and the objectives of the coordination meetings [REDACTED]. He also clarifies that [REDACTED] were in contact with the National Coordination, reporting on the situation in BERBERATI and getting information from the National Coordination about the DDR process. Similarly [REDACTED] to issue badges to Anti-Balaka elements who could afford them.
- P-1077 further confirms [REDACTED] contacts with members of the National Coordination during the relevant period, including Maxime MOKOM, OROFE, Come Hippolyte AZOUNOU, Thierry LEBENE, Yvon KONATE, and NDOMATE.
- The witness describes NGAISSONA's authority over the Anti-Balaka movement. He explains how NGAISSONA summoned local Anti-Balaka leaders from the provinces to attend coordination meetings in BANGUI, providing them with accommodation and money for food.

13. P-1077's proposed evidence is corroborated by, *inter alia*, the evidence of P-2324, P-2325, P-2326, P-2232, P-1042, P-2556, P-0446, P-0884, P-0889, P-0975, P-0801, P-0808, P-0966, P-1339, P-2138, P-0487, P-1193, P-0974, and P-1521.

C. Associated Exhibits

14. The Prosecution tenders 15 associated exhibits for formal submission, as set out in Confidential Annex A. Three of these documents are annexed to P-1077's Prior Statement and include P-1077's badge issued by the National Coordination and two satellite images of BERBERATI annotated by the witness during his interview. 12 of the associated documents were shown to P-1077 during his interview: (i) a video dated [REDACTED]; (ii) part of an intelligence report dated 12 November 2014 on the situation in BERBERATI included in an intelligence report covering the years 2014 to 2015; (iii) two lists of participants to the BRAZZAVILLE summit; (iv) a document titled '*Note de synthese / D17*', dated 28 January 2014; (v) two Anti-Balaka Declarations dated 18 February 2014 and 25 April 2015; (vi) an undated press release titled '*Communiqué de presse No. 027 / No. 026 / No. 025*'; (vii) a media article titled 'Christian militias invade second city in C. Africa', dated 18 February 2014; (viii) a press release signed by NGAISSONA and included in a Facebook record; (ix) two pages of appointment letters signed by NGAISSONA included in the 29 October 2014 UN Panel of Expert report; and (x) a record of the NGARAGBA prison [REDACTED].

15. P-1077 discussed all of the associated exhibits in his Prior Statement, which thereby form an integral part of the Prior Statement itself.¹¹ As such, their admission pursuant to rule 68(3) would be the most efficient and effective way to manage P-1077'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-1077's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

¹¹ ICC-01/14-01/18-907-Conf, para. 13.

17. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹² the Prosecution has carefully reviewed its two-hour estimate given for P-1077 in its Final Witness List.¹³ The Prosecution considers that it cannot further reduce the estimate of two hours. This estimated supplemental examination of P-1077 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁴ 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-1077'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 around six hours to present.

E. Balance of interests

20. The projected shortening of P-1077's in-court-testimony by one third is "considerable", and on balance the introduction of P-1077'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

¹² ICC-01/14-01/18-685, para. 36.

¹³ ICC-01/14-01/18-724-Conf-AnxA, p. 23.

¹⁴ 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).

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, warrants its 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 Statement of P-1077 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 initial 'K' followed by a horizontal line and a period.

Karim A. A. Khan QC, Prosecutor

Dated this 25th day of March 2022
At The Hague, The Netherlands