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**International
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Date: **6 April 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-1042 pursuant to Rule 68(3)”, 25 March 2022,
ICC-01/14-01/18-1334-Conf**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim A. A. Khan QC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Landry Omissé-Namkeamaï
Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-1042, 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-1042’s prior recorded testimony comprises the transcribed statement of the witness’s four day interview from 12 September 2018 through 15 September 2018 (“Prior Statement”), and its 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 three hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1042 is an Anti-Balaka insider. His Prior Statement discusses: (i) his role and activities as the Anti-Balaka Coordinator for [REDACTED]; (ii) the Anti-Balaka attacks on [REDACTED]; (iii) the Anti-Balaka policy of targeting Muslims, in particular in [REDACTED]; (iv) the structure of the Anti-Balaka movement; (v) meetings and activities of the National Coordination, and the issuance of badges; and (vi) the Muslim enclave in [REDACTED].

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.

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 below 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* lists the relevant portions of the Prior Statement being tendered for formal submission, and the corresponding associated exhibits. *Confidential Annex A* also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates. The associated exhibits are available to the Defence and the Trial Chamber in e-Court.

6. Due to the length of the Prior Statement,⁷ a summary thereof, 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 for formal submission, rather, it clearly and concisely sets out the substance of the transcripts comprising the

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 16 interview transcripts totalling approximately 539 pages.

Prior Statement hereby tendered. The portions of the Prior Statement on which the Prosecution is *not* relying are referenced in the footnotes of the paragraphs highlighted in grey in *Confidential Annex B*.

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-1042 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

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.

10. As described below, the Prior Statement is relevant and probative. It contains evidence regarding P-1042's role as the Anti-Balaka Coordinator of [REDACTED], as well as the activities of the National Coordination. The Prior Statement also goes to proof of the contextual elements for war crimes and crimes against humanity.

11. P-1042's Prior Statement comprises 539 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 Statement establishes the following:

- P-1042 describes his role and activities as the Anti-Balaka Coordinator for [REDACTED];
- He discusses the origins of the Anti-Balaka movement as self-defence groups that emerged in BOSSANGOVA;
- He recounts the Seleka's withdrawal from [REDACTED] and the subsequent Anti-Balaka attack on [REDACTED], including by elements from the BOSSANGOVA area;
- P-1042 discusses the Anti-Balaka attack on [REDACTED];
- The witness provides evidence of the Anti-Balaka policy of targeting Muslims, in particular in [REDACTED]. He describes the commission of crimes by the Anti-Balaka against the Muslim population, comprising killings, forcible displacement, and the destruction of property;
- P-1042 describes the structure of the Anti-Balaka movement:
 - He describes how every town had a ComZone, a Deputy Comzone, Coordinator and person in charge of operations.
 - He provides information about the duties of ComZones.

- He describes the mobilisation of the Anti-Balaka.
- He describes the issuance of Anti-Balaka badges in [REDACTED];
- P-1042 discusses the role of Maxime MOKOM. He provides evidence about a split within the Anti-Balaka around the time of the NAIROBI talks in January 2015, and MOKOM's declaration that he was the new National Coordinator;
- He recounts the Anti-Balaka's recruiting youth from [REDACTED];
- P-1042 describes how the Anti-Balaka's violence and threat of violence caused the displacement of Muslims from [REDACTED] and its surrounding villages. He explains how [REDACTED] remaining Muslim population sought refuge at a church, together with Muslims from neighbouring villages and towns including [REDACTED], forming an enclave that lasted for years that was protected by international peacekeepers.
- P-1042 discusses the National Coordination's role from 2015 onwards ordering the arrest of those Anti-Balaka elements who committed crimes. He describes NGAISSONA advising the elements to stop committing crimes;
- He details his efforts at [REDACTED] after the crisis.

13. P-1042's proposed evidence on: i) the Anti-Balaka attack on [REDACTED] is corroborated by, *inter alia*, the evidence of P-1719, P-0889, P-0966, P-2084; P-2393, P-2132, and P-0289; ii) the Muslim enclave in [REDACTED], is corroborated by, *inter alia*, P-1719, P-1074, P-2393, P-2132, P-1739, and P-0289; and iii) the structure of the Anti-Balaka is corroborated by, *inter alia*, P-1647, P-0966, and P-1962.

C. Associated Exhibits

14. The Prosecution tenders 21 associated exhibits for formal submission, as set out in Confidential Annex A. These comprise a selection of items detailed with precision in P-1042's Prior Statement, that were either provided by or shown to the witness,

namely: (i) two satellite images of [REDACTED];¹¹ (ii) a map of western CAR with an annotation of [REDACTED];¹² (iii) a handwritten list of Anti-Balaka perpetrators of crimes in [REDACTED];¹³ (iv) a handwritten list of victims of Anti-Balaka crimes [REDACTED];¹⁴ (v) P-1042's Anti-Balaka badge;¹⁵ (vi) [REDACTED] document signed by NGAISSONA as General Coordinator of the ex-Anti Balaka movement giving P-1042 mandate over [REDACTED];¹⁶ (vii) a signed copy of the July 2014 BRAZZAVILLE agreement;¹⁷ (viii) an excerpt of a news report on Maxime MOKOM;¹⁸ (ix) a 10 December 2014 document from the PCUD (*Parti Centrafricain pour l'Unité et le Développement*);¹⁹ (x) four open-source articles commented on by the witness;²⁰ (xi) two videos depicting Anti-Balaka members who were identified by the witness;²¹ (xii) one video of the [REDACTED] enclave;²² and (xiii) one video of the witness's interview with [REDACTED];²³ (xiii) a copy of Communiqué Radio, Calendar of discussions between [REDACTED];²⁴ (xiv) post-it notes of [REDACTED] Muslims compiled by witness;²⁵ and (xvi) a copy of [REDACTED] signed by the CAR transitional authorities and representatives of armed groups.²⁶

15. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish its probative value if excluded. As tendered, the associated exhibits avoid flooding the Parties,

¹¹ CAR-OTP-2090-0482; CAR-OTP-2090-0483.

¹² CAR-OTP-2090-0481.

¹³ CAR-OTP-2090-0487.

¹⁴ CAR-OTP-2090-0484.

¹⁵ CAR-OTP-2090-0490.

¹⁶ CAR-OTP-2090-0497.

¹⁷ CAR-OTP-2090-0501.

¹⁸ CAR-OTP-2090-0500.

¹⁹ CAR-OTP-2030-0445.

²⁰ CAR-OTP-2001-2247; CAR-OTP-2001-4330; CAR-OTP-2001-4401; CAR-OTP-2001-2306.

²¹ CAR-OTP-2023-1972; CAR-OTP-2001-7012.

²² CAR-OTP-2012-0477.

²³ CAR-OTP-2019-1359.

²⁴ CAR-OTP-2090-0498.

²⁵ CAR-OTP-2090-0499.

²⁶ CAR-OTP-2090-0513.

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.²⁷

16. As an integral part of the Prior Statement, the exhibits are directly relevant to and probative of material issues in dispute.²⁸ As such, their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-1042's evidence.

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

17. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-1042's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

18. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",²⁹ the Prosecution has carefully reviewed its four-hour estimate given for P-1042 in its Final Witness List.³⁰ The Prosecution considers that it can further reduce the estimate to three hours. This estimated supplemental examination of P-1042 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court

²⁷ The Prosecution does not consider all documents mentioned in the statement sufficiently 'discussed', insofar as being "used and explained by [the witness in their] prior recorded testimony and are necessary to understand [the witness's] testimony" - ICC-01/04-02/06-1029, para. 23; *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 (same).

²⁸ ICC-01/14-01/18-907-Conf, para. 13.

²⁹ ICC-01/14-01/18-685, para. 36.

³⁰ ICC-01/14-01/18-724-Conf-AnxA, p. 15.

personnel, interpretation considerations,³¹ and accounts for the prospect of appropriate redirect examination.

19. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1042'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.

20. 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 – a significantly longer period.

E. Balance of interests

21. The projected shortening of P-1042's in-court-testimony by more than half is "considerable", and on balance the introduction of P-1042'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, warrants its formal submission in the fair exercise of the Chamber's broad discretion.

³¹ 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

22. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1042 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 be 'K.A.K.', with a horizontal line underneath it.

Karim A. A. Khan QC, Prosecutor

Dated this 6th day of April 2022
At The Hague, The Netherlands