



Original: **English**

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

Date: **24 June 2021**

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-1193 pursuant to Rule 68(3)”,
(ICC-01/14-01/18-1033-Conf), 21 June 2021**

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 James Stewart

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-1193, 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-1193’s prior recorded testimony comprises his 15 August 2016 Witness Statement (“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, currently estimated at approximately three hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-1193 was [REDACTED]. He details the structure of the Anti-Balaka, including NGAISSONA’s position as its Coordinator. He describes the roles of various members of the Anti-Balaka National Coordination including Sebastien WENEZOU, Maxime MOKOM, and Emotion NAMSIO. He describes the role of YEKATOM as an Anti-Balaka leader. He provides details of the crimes committed by the Anti-Balaka and the Disarmament, Demobilisation and Reintegration (“DDR”) process.

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

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2045-0048.

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.

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”).

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. *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. *Confidential* Annex B contains the Prior Statement itself, 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 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

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).

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-1193 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 NGAISSONA's financial contributions to the Anti-Balaka, and to the alleged criminal conduct of YEKATOM's Group. P-1193 further provides evidence of the 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.

10. P-1193's Prior Statement of 15 August 2016 comprises 16 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:

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.

- P-1193 [REDACTED].
- He describes the emergence of the Seleka and their commission of crimes.
- The witness describes [REDACTED] and his decision to join the Anti-Balaka.
- P-1193 describes the structure and functioning of the Anti-Balaka's "South-wing" group led by YEKATOM, including WENEZOUÏ's appointment as their coordinator on 15 May 2014.
- P-1193 provides information on the Anti-Balaka's "North-wing" led by NGAISSONA, including crimes committed by them.
- He describes the [REDACTED].
- P-1193 recounts a [REDACTED].
- P-1193 describes NGAISSONA's role as National General Coordinator, which included (i) summoning the Anti-Balaka members for meetings; and (ii) providing financial contributions to the National Coordination office.
- The witness discusses the roles of various members of the Anti-Balaka National Coordination including that WENEZOUÏ was the Deputy Coordinator; Maxime MOKOM was the National Coordinator of Operations; and Emotion NAMSIO was the Anti-Balaka Spokesperson during the relevant period.
- He describes [REDACTED].
- P-1193 describes YEKATOM's role as an Anti-Balaka leader, referring to him as the head of the Anti-Balaka movement in the south of the country, who controlled BIMBO, CARMEL, SEKIA, MOUNGOUMBA, and the areas up to BODA. The witness [REDACTED], and states that YEKATOM disciplined his men. He refers to an instance where YEKATOM killed two of his men who had stolen sheep from a former Gendarmerie captain.

- The witness describes the crimes committed by the Anti-Balaka. He states that the National Coordination contacted the ComZones and questioned them about these crimes.
- He further states that Anti-Balaka members trained military police units to handle the issue of criminal acts.
- P-1193 provides evidence of the issuance of Anti-Balaka identity cards and the DDR process.

12. P-1193's proposed evidence is corroborated by, *inter alia*, the evidence of P-1521, P-0291, P-0966, P-0884, P-0808, P-2232 in relation to NGAISSONA's role. His proposed evidence on YEKATOM's role is corroborated by, P-1839, P-1858, P-2328, P-1074, P-1813, P-1528, and P-0487. His proposed evidence on the issuance of Anti-Balaka identity cards and the DDR process is corroborated by P-0808, P-1521, and P-2012.

C. Associated Exhibits

13. The Prosecution tenders ten associated exhibits for formal submission. These comprise the ten annexes to the Prior Statement, as listed in Confidential Annex A, namely: (i) an annotated map of BANGUI's eight arrondissements (Annex A); (ii) a list of the composition of the Anti-Balaka National Coordination Office, dated 20 June 2014 (Annex B); (iii) an Anti-Balaka mission order, dated 28 July 2015 (Annex C); (iv) a document regarding DDR principles and integration, dated 10 May 2015 (Annex D); (v) a list of Anti-Balaka members from BANGUI (Annex E); (vi) [REDACTED] (Annex F); (vii) [REDACTED] (Annex G); (viii) correspondence between the principal private secretary for foreign affairs and the *Directeur de Cabinet* at the Ministry of Defence regarding a background check on YEKATOM (Annex H); (ix) a court record from the BANGUI Court of Appeals showing that YEKATOM had no previous convictions, dated 18 November 2015 (Annex I); and (x) [REDACTED] (Annex J) .

14. 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, 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-1193's evidence.

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

15. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-1193's testimony, and 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",¹¹ the Prosecution has carefully reviewed its three-hour estimate given for P-1193 in its Final Witness List.¹² The Prosecution considers that it cannot further reduce the estimate to three hours. This estimated supplemental examination of P-1193 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹³ and accounts for the prospect of appropriate redirect examination.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1193's evidence through

¹¹ ICC-01/14-01/18-685, para. 36.

¹² ICC-01/14-01/18-724-Conf-AnxA, p. 26.

¹³ 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).

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.

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 six hours to present – twice as long.

E. Balance of interests

19. The projected shortening of P-1193's in-court-testimony by half is "considerable", and the Prosecution considers on balance that the introduction of P-1193'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 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

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1193 together with its associated exhibits as set out at Annex A, noting those on which the Prosecution intends to rely, 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 24th day of June 2021
At The Hague, The Netherlands