



Original: **English**

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

Date: **25 November 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-0475 pursuant to Rule 68(3)”,
ICC-01/14-01/18-1147-Conf, 27 October 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 Omissé-Namkeamai

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-0475, 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-0475’s prior recorded testimony comprises one Witness Statement (“Prior Statement”), dated 10 March 2019 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, estimated currently to take no longer than three hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-0475 is [REDACTED]. The witness provides information about the background of the CAR conflict and describes the origins of the division between CAR’s Muslim and Christian communities. P-0475 discusses the 5 December 2013 attack on BANGUI and provides details about crimes committed by the Anti-Balaka, including their targeting of Muslim civilians. He further provides details about the destruction of mosques in BANGUI and in the provinces, and gives information about the evacuation of Muslims from CAR. P-0475 also refers to NGAISSONA’s role as the leader of the Anti-Balaka and discusses YEKATOM’s role as the one in charge of the Anti-Balaka in BIMBO and the PK9-MBAIKI axis area.

3. P-0475’s Prior Statement provides evidence about Anti-Balaka’s creation, and leadership, as well as evidence forming a part of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka’s engagement in

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.

an armed conflict between September 2013 and December 2014 (“Relevant Period”). His Prior Statement further describes the position of the Anti-Balaka leadership within the framework of the group (an organisation), as well as the respective roles of the Accused during the Relevant Period. The Prior Statement is thus *prima facie* relevant to, and probative of material issues at trial.

4. Granting the Request would reduce the time to present the Prosecution’s examination-in-chief, and help 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

5. 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

6. 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) list 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.

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, paras. 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).

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

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 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

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,⁷ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁸ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).⁹

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-0475 will attest to its accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

⁷ 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’).

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

⁹ 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 highly relevant and probative. P-0475's evidence goes to proof of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka's engagement in an armed conflict during the Relevant Period. It further bears on the identity of the Anti-Balaka as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack. It also describes the position of the Anti-Balaka leadership within the framework of the group, as well as the respective roles of the Accused during the Relevant Period.

11. P-0475's Prior Statement of 10 March 2019 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.

12. P-0475 is [REDACTED].

13. The witness's Prior Statement establishes the following:

- P-0475 provides information about the background of the conflict in CAR, including the Seleka coup of 24 March 2013, and the subsequent creation of the Anti-Balaka.
- He describes the origins of the division between CAR's Muslim and Christian communities, and describes BOZIZE's role in instigating this division.
- P-0475 describes [REDACTED]. He also provides general information about [REDACTED].
- P-0475 provides information about the 5 December 2013 attack on BANGUI and the subsequent degradation in the security situation in the city.
- The witness provides evidence on the Anti-Balaka's targeting of Muslim civilians, explaining that those based at KM5, and the 3rd and 5th *arrondissements*,

were the most heavily affected. P-0475 explains that if Muslims tried to leave these neighbourhoods “they were harassed, attacked and or killed by the Anti-Balaka”.¹⁰ This also prevented the Muslims from burying their dead in accordance with their religious principles, as they were unable to access the Muslim cemetery during the crisis.

- P-0475 describes the evacuation of Muslims from BANGUI and the provinces, including *via* convoys organised with the assistance of the Chadian government, IOM, and MINUSCA. Muslims who remained within CAR were often confined in enclaves.
- The witness describes that towards the end of the crisis, the Anti-Balaka would “sometimes” free Muslims they had captured or arrested. [REDACTED].
- P-0475 provides details about the destruction of mosques by the Anti-Balaka, at times assisted by local youth, in BANGUI. He further explains that houses belonging to the Muslims were also targeted and destroyed by the Anti-Balaka.
- P-0475 refers to NGAISSONA’s role as the leader of the Anti-Balaka groups. He further explains that NGAISSONA was in charge of the 4th *arrondissement*, and describes the presence of NGAISSONA’s Anti-Balaka group in BOEING.
- P-0475 provides information about YEKATOM’s role as the one in charge of the Anti-Balaka in BIMBO and the PK9-MBAIKI area. He explains that the “RAMBO Group” was located in PK9 on the road to MBAIKI. He also provides information about YEKATOM killing his *aide de camp*.

14. P-0475’s proposed evidence is corroborated by, *inter alia*: (i) the evidence of P-0567 and P-2328 regarding the Anti-Balaka’s targeting and destruction of mosques; (ii) the evidence of P-0589, P-1676, and P-2050 regarding the inability of Muslim civilians from BANGUI to bury their dead in accordance with their religious principles, due to

¹⁰ CAR-OTP-2104-0116, at 0123, para. 52.

the lack of access to the Muslim cemetery during the crisis; (iii) the evidence of P-1442, P-1437, P-1528, P-1676, P-2472, and P-2682 regarding the evacuation of Muslims from BANGUI and the provinces; (iv) the evidence of P-0954, P-0974, P-1339, and P-1839 regarding YEKATOM killing his *aide de camp*. P-0475's proposed evidence is also corroborated by documentary evidence.¹¹

C. Associated Exhibits

15. The Prosecution tenders five associated exhibits for formal submission, set out at Confidential Annex A. These comprise items specifically discussed in P-0475's Prior Statement of the following nature: (1) List of [REDACTED]; (2) List of [REDACTED]; (3) List of [REDACTED] ; (4) List of [REDACTED]; and (5) P-0475's business card. Annexes six and seven provided by the witness, containing, respectively, his CV and a copy of his passport, are not submitted as associated exhibits, as these documents do not contain information of relevance to the proceedings.

16. Each exhibit referenced in the Prior Statement was discussed as noted, and may be helpful to contextualise and facilitate its understanding. The items tendered with this application are assessed as indispensable to its comprehension or would otherwise diminish its probative value if excluded. The tendered associated exhibits will assist the Chamber in its assessment of the relevant evidence in its article 74 decision.¹² 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

¹¹ See for example CAR-OTP-2000-0630, from [00:10:00] to [00:12:30] and its transcript and translation CAR-OTP-2060-0623 and CAR-OTP-2060-0678, at 0685, 1.204-205; CAR-OTP-2101-0462, at 0462, 0465-0466; CAR-OTP-2001-7017, at 7101, paras. 384-385; CAR-OTP-2001-1075, at 1097, para. 102; CAR-OTP-2053-0538, at 0541-0542.

¹² 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 (emphasis added); 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).

68(3) would further be the most efficient and effective way to manage P-0475'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-0475's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

18. The Prosecution's three hour estimated supplemental examination of P-0475¹³ 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.

19. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-0475'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.

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 five hours.

¹³ ICC-01/14-01/18-724, AnxA, p. 28.

¹⁴ See e.g., ICC-01/14-01/18-T-1-ENG ET, p.6 ln.18-25; ICC-01/14-01/21-T-1-ENG ET, p.3 ln.14-22, p.4 ln.20-22.

E. Balance of interests

21. The projected shortening of P-0475's in-court-testimony is "considerable" and, on balance, the introduction of P-0475'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

22. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-0475 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.



Karim A. A. Khan QC, Prosecutor

Dated this 25th day of November 2021
At The Hague, The Netherlands