



Original: **English**

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

Date: **25 January 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-2353 pursuant to Rule 68(3)”, 25 January 2022**

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-2353, 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-2353’s prior recorded testimony comprises his witness statement dated 21 January 2019 (“Prior Statement”)² and its associated exhibit.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 two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2353 was a trader from MBAIKI who fled the town together with his family and other Muslim civilians, out of fear of being killed by the Anti-Balaka, following the arrival of Alfred YEKATOM (aka ‘RAMBO’, “YEKATOM”) and his elements (“YEKATOM’s Group”). P-2353’s evidence is relevant to the contextual elements for war crimes and crimes against humanity; YEKATOM’s Group’s advancement from PK9 to MBAIKI and their targeting of the Muslim population; the mass displacement of Muslims from the LOBAYE region as a result of the Anti-Balaka’s actions; and YEKATOM’s command over his elements and involvement in the ransoming of civilians’ goods. The Prior Statement is thus *prima facie* relevant to, and probative of material issues at trial.

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 CAR-OTP-2100-0226.

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.

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 exhibit 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 exhibit. 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 exhibit is available to the Defence and the Trial Chamber in e-Court.

II. CONFIDENTIALITY

6. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Request and its annexes are filed as "Confidential", as they contain information concerning a

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).

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

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-2353 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 contains evidence that goes directly to the crimes alleged at counts 24-28, and YEKATOM’s Group’s perpetration of these crimes. The Prior Statement also goes to proof of the nature and extent of the widespread attack carried out by the Anti-Balaka against the Muslim civilian population between September 2013 and December 2014 (“Relevant Period”), as a part of the contextual elements of crimes against humanity and war crimes, under articles 7 and 8, respectively. It provides evidence of the campaign of retributive violence committed by the Anti-Balaka against Muslims

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.

perceived to be associated with the Seleka in towns and villages in western CAR pursuant to a criminal organisational policy,¹¹ particularly in MBAIKI and surrounding villages. P-2353's evidence further bears on the identity of the Anti-Balaka as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack.

10. P-2353's Prior Statement 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 Statement establishes the following:

- P-2353, a Muslim civilian trader, describes the arrival of the Seleka to MBAIKI in March 2013 and their commission of crimes, such as extortion and pillaging of both Christians and Muslims;
- P-2353 recounts the increasing lack of security along the PK9 – MBAIKI axis beginning in August 2013, when “[t]he Anti-Balaka started to come out of the bush and use violence”;¹²
- P-2353 refers to the Anti-Balaka 5 December 2013 attack on BANGUI and the subsequent targeting of Muslims by the Anti-Balaka in the city;
- P-2353 describes the evacuation of Muslim civilians from villages between BANGUI and MBAIKI beginning in late December 2013. He explains that these civilians fled in fear of their lives as a result of Anti-Balaka threats and attacks in the area;

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).

¹² CAR-OTP-2100-0226, at 0230, para. 26.

- P-2353 explains the role of YEKATOM and his Group, including: (i) their progression along the PK9-MBAIKI road following the Seleka's retreat; (ii) their threats to "our children, women and elders with their machetes. They said they were going to kill us, cut us in pieces. They threatened that they would destroy our houses";¹³ (iii) YEKATOM's command over his elements; (iv) YEKATOM's movement between MBAIKI and other towns, leaving COEUR DE LION in charge; and (v) YEKATOM's involvement in the ransoming of civilians' goods;
- P-2353 describes the Anti-Balaka threats against Muslim civilians in MBAIKI, explaining that "[t]hese threats and menacing gestures were made when RAMBO was in MBAIKI as well as when he was away";¹⁴
- P-2353 explains the subsequent evacuation of the Muslim civilians from MBAIKI by the Chadian forces. P-2353 recounts: (i) [REDACTED],¹⁵ [REDACTED]; and (iii) joining his relatives [REDACTED].

12. P-2353's proposed evidence on YEKATOM and his Group's takeover of the PK9-MBAIKI axis is corroborated by, *inter alia*, the evidence of P-1339, P-1647, P-1666, P-1786, P-1813, P-1838, P-1839, and P-2354. P-2353's proposed evidence on YEKATOM's leadership over his Group is corroborated by, *inter alia*, the evidence of P-1339, P-1521, P-1819, P-1839, P-2232, P-1786, and P-2084. Finally, P-2353's proposed evidence on the commission of crimes by YEKATOM and his Group against the Muslim population is corroborated by, *inter alia*, P-1339, P-2475, P-1813, P-1838, P-1839, and P-2233.

¹³ CAR-OTP-2100-0226, at 0235, para. 53.

¹⁴ CAR-OTP-2100-0226, at 0236, para. 55.

¹⁵ CAR-OTP-2100-0226, at 0238, para. 67.

C. Associated exhibit

13. The Prosecution tenders one associated exhibit for formal submission, as listed in Confidential Annex A: a map of the axis 'MBAIKI-BANGUI' where the Witness marked various locations mentioned in his Statement (CAR-OTP-2100-0242).

14. The item tendered with this application is assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish its probative value if excluded. As tendered, the associated exhibit avoids 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, the exhibit is directly relevant to and probative of material issues in dispute, and its submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2353'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-2353'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",¹⁶ the Prosecution has carefully reviewed its two-hour estimate given for P-2353 in its Final Witness List.¹⁷ The Prosecution considers that it cannot further reduce the estimate of two hours. This estimated supplemental examination of P-2353 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court

¹⁶ ICC-01/14-01/18-685, para. 36.

¹⁷ ICC-01/14-01/18-724-Conf-AnxA, p. 38.

personnel, interpretation considerations,¹⁸ 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-2353's evidence through the use of the associated exhibit, 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 four hours to present – twice as long.

E. Balance of interests

19. The projected shortening of P-2353's in-court-testimony by half is "considerable", and on balance the introduction of P-2353'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.

¹⁸ 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).

IV. CONCLUSION

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2353 together with its associated exhibit 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 January 2022
At The Hague, The Netherlands