



Original: **English**

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

Date: **14 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-2419 pursuant to Rule 68(3)”, 13 April 2022,
ICC-01/14-01/18-1360-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
Ms Anta Guissé

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

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-2419, 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-2419’s prior recorded testimony comprises his 20 June 2019 Witness Statement (“Prior Statement”).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 four hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2419, a [REDACTED], was [REDACTED] in BIMON until his flight to BANGUI as a consequence of the Anti-Balaka’s violence in January 2014. His Prior Statement discusses (i) the attack of the Muslim population of BIMON and of its properties by locals, on the Saturday following DJOTODIA’s resignation (i.e. on 11 January 2014);³ (ii) the arrival of YEKATOM and his men in BIMON on the day following that attack; (iii) YEKATOM’s appointment of three of the locals who took part in the attack as group chiefs, and his recruitment of locals to serve as Anti-Balaka elements in BIMON; (iv) the Anti-Balaka’s pillaging and destruction of Muslim properties in BIMON; and (v) the forcible displacement of the Muslim civilian population of BIMON.

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-2112-0036.

³ See P-2419’s Statement CAR-OTP-2112-0036, at 0043, para. 36, and Annex 1 to the statement (CAR-OTP-2112-0063) noting that the attack took place on the Saturday following DJOTODIA’s 10 January 2014 resignation (a Friday).

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 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 and, where applicable, any charged incidents the Witness discusses. *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 23*bis*(1) of the Regulations of the Court ("RoC"), this Request and its annexes are filed as "Confidential", as they contain information

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).

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

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-2419 will attest to its accuracy; he will be present in court; and 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 provides evidence of (i) the targeting of the Muslim population of BIMON and of its properties by the Anti-Balaka, from around 11 January 2014; (ii) YEKATOM’s control of the area of BIMON from about that date; (iii) the structure of command of YEKATOM’s group, and his leadership over the Anti-Balaka stationed in BIMON; and (iv) the forcible displacement of the Muslim population of BIMON as a result of the Anti-Balaka’s violence.

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. P-2419's Prior Statement of 20 June 2019 comprises 27 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:

- P-2419 is a [REDACTED]. He was a resident of BIMON until his flight from the village around [REDACTED] January 2014;¹¹
- He discusses the 11 January 2014 attack of the Muslim population of BIMON and their property by what he describes as Christian locals;
- He recounts the arrival of YEKATOM, his deputies COEUR DE LION and ALKANTO, and some of YEKATOM's elements, in BIMON on the following day. P-2419 witnessed YEKATOM appoint three individuals who had taken part in the above-mentioned attack as group chiefs, and give them the instruction to recruit and enlist locals into the Anti-Balaka. YEKATOM attributed to each of these three appointed chiefs an area of responsibility in or around BIMBO, and left the village on the same day. P-2419 overheard COEUR DE LION and ALKANTO say that they were planning to go to BODA and MBAIKI;
- He explains that the Anti-Balaka erected barriers in NDANGALA, YAMBORO, SEKIA, NGYABOUROU, and SAMBA;
- He describes the targeting of the Muslims and of their properties by the Anti-Balaka in BIMON; Christian inhabitants providing assistance to Muslims would be beaten;

¹¹ On the determination of this date, P-2419 stated having fled BIMON [REDACTED] (see CAR-OTP-2112-0036, at 0043, para.36, at 0048, para. 69, at 0054, para. 103).

- He provides evidence of the forcible displacement of the Muslim civilian population of BIMON. The witness took refuge in the PK5 district of BANGUI, at the Central Mosque;
- Finally, P-2419 will discuss the enclaving of Muslims in PK5 by the Anti-Balaka, who “had blocked all the roads”, the Muslim refugees’ dire living conditions at the Central Mosque, and the subsequent departure of several of them to CAMEROON, MALI, and CHAD.

12. P-2419’s proposed evidence is corroborated by, *inter alia*, the evidence of P-1647 and P-2388 regarding the taking over of BIMON by YEKATOM’s Group in January 2014. His evidence on the forcible displacement of the Muslim population of BIMON is corroborated *inter alia* by the evidence of P-0954, P-1838, P-2388, and P-2475. His evidence on the establishment of checkpoints by YEKATOM’s Group in the areas of SEKIA and BIMON, in particular, is corroborated by, *inter alia*, the evidence of P-0487, P-1647, P-1839, P-1858, P-2233, and P-2475.

C. Associated Exhibits

13. The Prosecution tenders an associated exhibit for formal submission, as set out at Confidential Annex A, namely a calendar for the year 2014.

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 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, the exhibit is directly relevant to and probative of material issues in dispute, and its admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2419’s evidence.

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

15. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-2419's testimony 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",¹² the Prosecution has carefully reviewed its four-hour estimate given for P-2419 in its Final Witness List.¹³ The Prosecution considers that it cannot further reduce it. This estimated supplemental examination of P-2419 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.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2419's evidence through 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 eight hours to present – a significantly longer period.

¹² ICC-01/14-01/18-685, para. 36.

¹³ ICC-01/14-01/18-724-Conf-AnxA, p. 36.

¹⁴ 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).

E. Balance of interests

19. The projected shortening of P-2419's in-court-testimony by half is "considerable", and the Prosecution considers on balance that the introduction of P-2419'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-2419 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 14th April 2022
At The Hague, The Netherlands