



Original: **English**

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

Date: **14 June 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-2041 pursuant to Rule 68(3)”, 19 May 2022,
ICC-01/14-01/18-1418-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

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-2041, 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-2041’s prior recorded testimony comprises his March 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 two hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2041 was an [REDACTED] and [REDACTED] in BAGANDOU village. He later fled from MBAIKI 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-2041’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 unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.³

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2104-0003.

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. Having taken note of the Chamber's guidance, the Prosecution has carefully assessed the Prior Statements 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 Statements 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 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 Statements being tendered for formal submission 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 Statements, 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, 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.

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).

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,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)

8. The Prior Statement may be deemed formally submitted under rule 68(3). P-2041 will attest to their 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 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 intention to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014.

10. P-2041's Prior Statements comprise 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 Statements.

11. The witness's Prior Statements establish the following:

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.

- P-2041 lived in BAGANDOU village from 2002 until 2014 and worked as an [REDACTED]. He became the [REDACTED];
- He describes the arrival of the Seleka in BAGANDOU, approximately two months after they took over power in BANGUI. They were initially welcomed by the Christians and Muslims but the situation quickly changed. Soon the Seleka started to arrest people and take vehicles from the Christians in the village.
- [REDACTED] informed him of the events of the Anti-Balaka's 9 September 2013 attack on BOUCA . He learned from [REDACTED] that ANDJILO may have been the Chief of the Anti-Balaka in BOUCA. The Anti-Balaka also attacked BOSSANGO, killing both Seleka and civilians.
- He explains how, about a month after the attack on BOUCA, [REDACTED] decided to flee to CAMEROON and CHAD, in fear of becoming the next victims of the Anti-Balaka. Many members of the Muslim community in BOUCA shared the same apprehension and similarly decided to abandon their homes, which were later destroyed by the Anti-Balaka.
- He mentions having seen news on the television about the 5 December 2013 attack on BANGUI. He also heard on RFI, that NGAISSONA, Alfred ROMBHOT YEKATOM, and Levi YAKETE were leaders of the Anti-Balaka.
- P-2041 describes the Anti-Balaka's 25 January 2014 killing of Moustapha MATAR, the main Imam of the BAGANDOU Mosque. A Catholic priest, Father MICHEAL was trying to help the Imam escape through the river, but they were surrounded by Anti-Balaka youths and MATAR was killed. He later learned that, among those responsible for the killing, there were a named "Stephane" and "Rufin", who joined the Group in BAGANDOU.

- P-2041 also lived in the BAGUIRMI neighbourhood in MBAIKI in [REDACTED] - a Muslim friend. He was able to indicate on the map relevant locations in MBAIKI (Annex B).¹⁰ He also refers to the difficult living conditions many Muslims were facing, taken in by family members, friends or even strangers.
- He heard about Anti-Balaka killings and destruction in BOUCA, YALOKÉ, BOSSEMBELE, BOSSEMPTELE, BOGANGOLO, and BANGUI. He recounts the Anti-Balaka's arrival in MBAIKI on 30 January 2014 and explains they were approximately 2,000 in number, dressed in FACA military uniform, gris-gris and heavily armed. The Christians welcomed them, and also praised YEKATOM.
- [REDACTED].
- He describes how the Anti-Balaka had set up additional barriers around MBAIKI (Locations marked as point "O" on Annex B) in order to prevent Muslims from entering or leaving. A few days after the Anti-Balaka's arrival in MBAIKI, P-2041 was made aware of their plan to attack the city. Upon sharing this information with the SANGARIS, he was told SANGARIS was in control of the situation and that YEKATOM's Group was planning an attack.
- The witness explains that on the morning of the attack on MBAIKI, he noticed that the local Christian population had placed palm leaves in front of their homes, so that Muslim houses were distinguished from theirs. He later learned that the distinction would indicate to the Anti-Balaka which houses were Christian, and how they warned the Christians to do this the previous day. Eventually, SANGARIS intervened and stopped the Anti-Balaka, and escorted them to the MBAIKI Town Hall to disarm them.

¹⁰ CAR-OTP-2104-0020.

- P-2041 describes that on or about 6 February 2014, the Chadian MISCA forces assisted in the evacuation of the remaining Muslim civilians from MBAIKI in a convoy of fourteen trucks. He further describes how the Anti-Balaka attacked their convoy on its way to CHAD with automatic firearms.. He describes how he and his family had no choice but to leave because they risked being killed by the Anti-Balaka.

12. P-2041's proposed evidence on YEKATOM and his Group's takeover of the PK9-MBAIKI axis is corroborated by, *inter alia*, the evidence of P-2476, P-1786, P-1813, P-1823, and P-2354. P-2041's proposed evidence on the commission of crimes by YEKATOM and his Group against the Muslim population is corroborated by, *inter alia*, P-0954, P-1647, P-1666, P-1839, P-2196, P-2084, P-2233, and P-2432.

C. Associated exhibits

13. The Prosecution tenders three associated exhibits for formal submission. They comprise three documents mentioned in the Prior Statement, as listed in Confidential Annex A, namely i) copy of the *Communauté Islamique de Centrafrique* (CICA) identification card for Imam Moustapha MATAR,¹¹ ii) copy of [REDACTED] in MBAIKI,¹² and iii) a map of locations identified by the witness in MBAIKI.¹³

14. The items tendered with this application are assessed as indispensable to the comprehension of the Prior Statement, or would otherwise diminish their 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. Each exhibit is an integral part of the

¹¹ CAR-OTP-2104-0019.

¹² CAR-OTP-2104-0021.

¹³ CAR-OTP-2104-0020.

Prior Statement and their submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2041'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-2041'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",¹⁴ the Prosecution has carefully reviewed its two-hour estimate given for P-2041 in its Final Witness List.¹⁵ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-2041 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁶ 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-2041's evidence through the use of some of the associated exhibits, documents or other relevant evidence. The limited examination requested is necessary not only to fully understand and contextualise the Prior Statements, 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 Statements under rule 68(3), the Prosecution estimates that the witness's testimony on direct examination would require approximately six hours to present – three times as long.

¹⁴ ICC-01/14-01/18-685, para. 36.

¹⁵ ICC-01/14-01/18-724-Conf-AnxA, p. 33.

¹⁶ 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-2041's in-court-testimony by two-thirds is "considerable". On balance the introduction of P-2041's Prior Statements 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 Statements are supported and corroborated by other evidence to be tested at trial, warrants their 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 Statements of P-2041 together with their associated exhibits 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 day of June 2022

At The Hague, The Netherlands