



Original: **English**

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

Date: **16 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-1974 pursuant to Rule 68(3)”, 16 June 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 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-1974, 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-1974’s prior recorded testimony comprises his two witness statements, dated 5 February 2018 and 21 September 2020 (respectively, “First Statement” and “Second Statement”)² and their associated exhibits. Should the Chamber deem the Prior Statements 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-1974 was [REDACTED]. The witness provides evidence on how the Anti-Balaka and YEKATOM’s group in particular, conscripted or enlisted children, including under the age of 15 years. He provides evidence on YEKATOM’s role in the recruitment and use of children within his group, as well as his role as an Anti-Balaka commander.

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-2068-0222; CAR-OTP-2122-8673 (“Prior Statements”).

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

5. The relevance and probative value of the Prior Statements 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 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, 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

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

⁴ ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 ("*Gbagbo and Blé Goudé Appeals Decision*").

the presentation of its case,⁵ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁶ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).⁷

B. The Prior Recorded Testimony fulfils all Requirements of Rule 68(3)

8. The Prior Statements may be deemed formally submitted under rule 68(3). P-1974 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 Statements are highly relevant and probative. They go to the conscription and use of children under the age of 15 years in hostilities within the Anti-Balaka including YEKATOM's group, as well as to the organisation and structuring of the Anti-Balaka in the LOBAYE prefecture under YEKATOM's leadership. They also provides evidence of the contextual elements of war crimes and crimes against humanity, in particular tending to show that the Anti-Balaka was an organised armed group, and its intention to target the Muslim population, pursuant to a criminal organisational policy between September 2013 and December 2014.

10. P-1974's Prior Statements consist of 22 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 Prior Statements establishes the following:

- P-1974 was [REDACTED];

⁵ 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').

⁶ ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

⁷ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

- P-1974 details how [REDACTED] and observed how the children were indeed integrated into the Seleka;
- P-1974 recounts how he learned [REDACTED] that YEKATOM was actively enlisting children in his group. According to the witness, the recruiting activity started from the Anti-Balaka 5 December 2013 attack on BANGUI;
- He further describes how, [REDACTED];
- P-1974 recounts how [REDACTED];
- The witness states that he knew at the time that YEKATOM was an Anti-Balaka leader and former FACA soldier, and explains how he came to learn that YEKATOM's area of control in 2014-2015 included the BANGUI – MBAIKI axis, as well as the PISSA - MBATA - BOUCHIA - BATALIMO – MOUNGOUMBA axes, and the villages situated south of MBAIKI in the BALE-LOKE area;
- P-1974 explains that [REDACTED];
- P-1974 recounts how after [REDACTED];
- P-1974 notes [REDACTED];
- [REDACTED], P-1974 recounts having seen children guarding the [REDACTED] checkpoint. He engaged in conversations with them and was told they were Anti-Balaka. He noted that the children were not armed but some wore FACA uniforms. All wore *gris-gris*. The witness estimated their ages to be between 10 and 18 years old. He similarly observed 7 children at the [REDACTED] checkpoint;
- P-1974 further describes [REDACTED];
- P-1974 details [REDACTED];
- P-1974 describes how [REDACTED];
- P-1974 further recounts another [REDACTED];

- P-1974 recounts [REDACTED]. He explains how YEKATOM [REDACTED] ordered his elements [REDACTED], and how YEKATOM ordered [REDACTED];
- The witness describes [REDACTED];
- He further describes what he observed [REDACTED] the children previously in YEKATOM's group. He estimates their ages ranged from 9 to 18 years old. Their roles were varied in the Anti-Balaka. They served as cooks, spies, fighters, and soldiers. He specifically recalls that the youngest child fighter was around 10 years old. According to the witness, [REDACTED] with YEKATOM's lieutenants;
- P-1974 recounts that [REDACTED]. He states that Anti-Balaka elements were responsible for the break-ins, as witnesses saw them running away from the scene;
- P-1974 refers to [REDACTED];
- P-1974's proposed evidence that children under the age of 15 in YEKATOM's group were stationed at checkpoints under his control is corroborated by, *inter alia*, the evidence of P-2018, P-2475, and P-2082. His evidence on [REDACTED] is corroborated by, *inter alia*, P-2018, P-2475, and P-2082. And, his evidence on the YEKATOM's [REDACTED] of children associated with his Anti-Balaka group is corroborated by, *inter alia*, P-2018 as well as documentary evidence, such as the [REDACTED].⁸

C. Associated exhibits

12. The Prosecution tenders 5 associated exhibits for formal submission. These comprise documents described in the Prior Statements listed in Confidential Annex

⁸ See CAR-OTP-2128-1373.

A, namely (i) a video recording⁹ [REDACTED]; (ii) a report titled “[REDACTED]”¹⁰; (iii) a report titled “[REDACTED]”¹¹; (iv) a [REDACTED] with the title “[REDACTED]”; and (v) a copy of the document [REDACTED].

13. Although each exhibit referenced in the Prior Statements was discussed and may be helpful to contextualise and facilitate their understanding, the items tendered with this application are *narrowly* assessed as indispensable to their comprehension 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 Prior Statements and its submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-1974’s evidence.

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

14. Although the Prior Statements are comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-1974’s testimony would be beneficial to the proper adjudication of the issues arising from the charges.

15. Mindful of the Chamber’s direction concerning the need to “streamline its questioning considerably”,¹² the Prosecution has carefully reviewed its two-hour estimate given for P-1974 in its Final Witness List.¹³ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-1974 takes into consideration the *realistic* pace of the proceedings, including the

⁹ Please note that this document ([REDACTED]) has been formally submitted via [REDACTED].

¹⁰ Please note that this document ([REDACTED]) was already formally submitted via [REDACTED].

¹¹ Please note that this document ([REDACTED]) was already formally submitted via [REDACTED].

¹² ICC-01/14-01/18-685, para. 36.

¹³ ICC-01/14-01/18-724-Conf-AnxA, p. 33.

presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁴ and accounts for the prospect of appropriate redirect examination.

16. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1974'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.

17. 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.

E. Balance of interests

18. The projected shortening of P-1974's in-court-testimony by two-thirds is "considerable". On balance the introduction of P-1974'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 its formal submission in the fair exercise of the Chamber's broad discretion.

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).

IV. CONCLUSION

19. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statements of P-1974 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 16th day of June 2022
At The Hague, The Netherlands