

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

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**International
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Court**

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**No. ICC-01/14-01/18
Date: 11 October 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Confidential

**Seventeenth Decision on the Prosecution Request for Formal Submission of Prior
Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-2419**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67(1) and 69 of the Rome Statute (the ‘Statute’), and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Seventeenth Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-2419’.

I. Procedural history

1. On 10 March 2021, the Chamber issued its first decision under Rule 68(3) of the Rules (the ‘First Rule 68(3) Decision’), in which it set out the applicable law for requests for the introduction of prior recorded testimonies under Rule 68(3) of the Rules.¹
2. On 13 April 2022, the Office of the Prosecutor (the ‘Prosecution’) requested the introduction, under Rule 68(3) of the Rules, of the statement and associated document of P-2419 (the ‘Request’).²
3. On 25 April 2022, the Yekatom Defence responded to the Request, arguing that it should be denied. In addition, it submits that the Prosecution, when requesting the introduction of prior recorded testimonies under Rule 68(3) of the Rules, should be instructed to refer to specific portions of statements or transcripts of other witnesses which it deems to be corroborative, or alternatively, that the Chamber ‘should disregard such argument if not properly substantiated’ (the ‘Request for Specificity’).³

¹ Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16.

² Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-2419 pursuant to Rule 68(3), ICC-01/14-01/18-1360-Conf (with confidential Annexes A and B) (public redacted version notified on 14 April 2022, ICC-01/14-01/18-1360-Red).

³ Yekatom Defence Response to the “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, ICC-01/14-01/18-1376-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Ngaïssona Defence (confidential redacted version and public redacted version notified the same day, ICC-01/14-01/18-1376-Conf-Red and ICC-01/14-01/18-1376-Red2, respectively) (the ‘Response’), paras 1-2, 17, 34.

4. On the same day, the Ngaïssona Defence indicated that it does not intend to respond to the Request and defers to the Chamber's discretion.⁴

II. Analysis

5. The Chamber incorporates by reference the applicable law as set out in the First Rule 68(3) Decision.⁵

1. Submissions

6. The Prosecution seeks to introduce the prior recorded testimony of witness P-2419, comprising his statement and one associated document.⁶ It submits that the introduction of P-2419's prior recorded testimony would help streamline the proceedings, reducing the time for its examination from at least eight to four hours.⁷ According to the Prosecution, P-2419's statement is highly relevant and probative,⁸ and corroborated by several witnesses.⁹
7. The Yekatom Defence opposes the Request.¹⁰ It submits that P-2419's statement extensively relates to core issues of the case, namely the events unfolding in the village of Bimon, in the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki axis. It also contends that the witness's evidence 'goes over the acts and conduct of Mr Yekatom and his men' with regard to Counts 24 and 25, Mr Yekatom's *mens rea* and his alleged contribution to the charged crimes.¹¹ In addition, the Yekatom Defence argues that P-2419's statement is uncorroborated, contains a substantive amount of hearsay information, is inconsistent with other witnesses' statements and thus is partly unreliable.¹²

⁴ Email from the Ngaïssona Defence, 25 April 2022, at 09:35.

⁵ First Rule 68(3) Decision, ICC-01/14-01/18-907-Red, paras 8-16. *See also* Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, 29 April 2022, ICC-01/14-01/18-1383 (the 'Decision on the Request for Leave to Appeal the Twelfth Rule 68(3) Decision'), paras 4-17.

⁶ Request, ICC-01/14-01/18-1360-Red, paras 1, 13-14, 20; Annex A to the Request, ICC-01/14-01/18-1360-Conf-AnxA.

⁷ Request, ICC-01/14-01/18-1360-Red, paras 1, 3, 15-18.

⁸ Request, ICC-01/14-01/18-1360-Red, para. 9.

⁹ Request, ICC-01/14-01/18-1360-Red, para. 12.

¹⁰ Response, ICC-01/14-01/18-1376-Red2, paras 2, 34.

¹¹ Response, ICC-01/14-01/18-1376-Red2, paras 10-15.

¹² Response, ICC-01/14-01/18-1376-Red2, paras 16-23.

8. In this regard, the Yekatom Defence takes issue with 'the now established Prosecution's practice of arguing that corroboration has been established by simply listing P-numbers, without any reference to specific portions of the relevant transcripts or statements'. In particular, the Yekatom Defence submits that this does not allow it to make meaningful responses.¹³
9. Moreover, the Yekatom Defence argues that the 'numerous hearsays targeted against Mr Yekatom' would prejudice his rights as the Defence would have to examine the witness on each and every single one of them due to their incriminating nature, which would divert the Yekatom Defence's focus from the most relevant parts of his testimony and 'considerably increase the duration of its examination which would defeat the underlying purpose of the Rule 68(3) application'. In relation to this, the Yekatom Defence submits that the failure of the Prosecution's investigators to elicit further information regarding the witness's hearsay evidence should not result in 'shifting the burden of proof onto the Defence'.¹⁴
10. Lastly, it submits that the introduction of P-2419's statement under Rule 68(3) of the Rules is against the interests of justice, given that he is the 'sole witness, along P-2388, scheduled to testify about the locality of Bimon', and that even if P-2388 eventually testifies, P-2419 will still be 'the only direct eyewitness of the alleged arrival of Mr Yekatom in Bimon as well as the attack on Bimon for which he was in a position to name the perpetrators individually'.¹⁵

2. *The Chamber's determination*

11. In his statement,¹⁶ P-2419 discusses, *inter alia*, (i) the arrival of the Seleka in the Central African Republic, the emergence of the Anti-Balaka, and the witness hearing that the latter killed Muslim men in different villages before the attack on Bangui on 5 December 2013 (the 'Bangui Attack'); (ii) the witness hearing that, during the Bangui Attack, the Anti-Balaka 'killed many innocent Muslims' and thereafter established a base in Sekia, where they would stop vehicles and beat

¹³ Response, ICC-01/14-01/18-1376-Red2, para. 17.

¹⁴ Response, ICC-01/14-01/18-1376-Red2, para. 21.

¹⁵ Response, ICC-01/14-01/18-1376-Red2, paras 24-31.

¹⁶ CAR-OTP-2112-0036; CAR-OTP-2122-5012 (French translation).

any Muslim they would find; (iii) Muslim Chadians and people of Fulata ethnicity, who were also Muslims, leaving Bimon fearing an attack by the Anti-Balaka; (iv) Bimon being attacked on a Saturday in January 2014, the day after Djotodia resigned; (v) the witness hiding and seeing the local youth destroying the mosque, pillaging and burning down only Muslim houses in Bimon; (vi) the witness not knowing on which day the Anti-Balaka arrived in Bimon or whether they assisted the local youth in pillaging and burning the property of Muslims, and not being sure where they came from; (vii) the Anti-Balaka searching houses one-by-one for Muslims in Bimon; (viii) no Muslim being killed in Bimon, as most had fled either before or on the day of the attack; and (ix) the living conditions in the bush and in the Central Mosque in Bangui, where Muslim civilians sought refuge, and the subsequent departure of several of them to Cameroon, Mali and Chad.

12. In addition, the Chamber notes that the witness makes a number of references to Mr Yekatom, such as (i) the witness hearing that the chief of the Anti-Balaka in Lobaye was called 'RAMBO', and that 'RAMBO and his men' killed an elderly man in Bangui-Bouchia, and a Muslim trader in Gboundokoro; (ii) the witness hearing that 'RAMBO' and his men arrived in Bimon '[a]round 16h00 on the Sunday'; (iii) 'RAMBO' introducing himself as the 'Chief of the Anti-Balaka' and his two deputies 'ALKANTO' and 'Coeur de Lion', appointing three chiefs to oversee different sections of Bimon, and thereafter leaving Bimon; and (iv) 'RAMBO' stopping the Anti-Balaka from killing the Fulata people who were hiding in the bush.¹⁷
13. The Chamber takes note of the Yekatom Defence's submissions that P-2419's statement refers to core issues of the case as well as the alleged acts and conduct of Mr Yekatom. However, the Chamber recalls that references to the accused's acts and conduct do not *per se* constitute an obstacle to the introduction of a prior recorded testimony pursuant to Rule 68(3) of the Rules, and that this provision

¹⁷ CAR-OTP-2112-0036, at 0039-0041, paras 20, 23, 25-29; at 0048, para. 69; at 0051-0053, paras 84-87, 93-95, 99-100; at 0056, paras 115-116.

also does not preclude the introduction of evidence that is central to core issues of the case.¹⁸

14. The Chamber also notes that other witnesses have already testified or are expected to provide evidence concerning alleged crimes committed at the PK9-Mbaïki axis and/or Mr Yekatom's and/or his group's alleged involvement in these crimes, either fully *viva voce* or under Rule 68(3) of the Rules, including one witness who is expected to provide evidence specifically about the locality of Bimon.¹⁹ While the Chamber takes note of the Yekatom Defence's submission that P-2419 would be 'the only direct eyewitness of the alleged arrival of Mr Yekatom in Bimon as well as the attack on Bimon', it does not consider this to be a determinative factor barring the introduction of his statement under Rule 68(3) of the Rules. Relatedly, the Chamber does not find the number of witnesses testifying under either modality to be a determining factor in this instance.²⁰
15. Furthermore, the Chamber notes that, when referring to the alleged killing of Muslims in the Lobaye prefecture by 'RAMBO' and his elements, the witness indicates that he only 'heard' about such events.²¹ In addition, while the witness mentioned the existence of 'rumours [that] turned out to be true' about the presence of Anti-Balaka in Bimon before Djotodia's resignation, he also states that '[he] did not see any Anti-Balaka assist in the destruction of the mosque', and that he does not know whether they assisted 'the local youth in pillaging and burning Muslims' property'. In addition, the Chamber notes that while, according to the witness, Bimon was attacked on a Saturday in January 2014, the day after Djotodia resigned, he indicates that he saw the Anti-Balaka for the first time 'on the Sunday', and that he does not know whether they arrived 'that very morning' or 'the night before'.²² The witness also states that 'RAMBO' arrived in Bimon

¹⁸ See Sixteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1042 and P-2354, 19 August 2022, ICC-01/14-01/18-1547-Conf (public redacted version notified the same day, ICC-01/14-01/18-1547-Red) (the 'Sixteenth Rule 68(3) Decision'), para. 19 and the references cited therein.

¹⁹ See e.g. **P-2475**: transcript of hearing, 25 May 2022, ICC-01/14-01/18-T-130-CONF-ENG; **P-1647**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 14, entry 3; **P-2388**: Final Witness List, ICC-01/14-01/18-724-Conf-AnxA p. 38, entry 69.

²⁰ See Sixteenth Rule 68(3) Decision, ICC-01/14-01/18-1547-Red, para. 19.

²¹ See CAR-OTP-2112-0036, at 0039-0041, paras 20, 23, 25-29.

²² CAR-OTP-2112-0036, at 0047-0048, paras 64, 66.

‘[a]round 16h00 on the Sunday’ and left ‘at about 18h00’,²³ and that ‘RAMBO’ allegedly stopped some Anti-Balaka from killing some Fulata people who were hiding in the bush.²⁴

16. With regard to the ‘numerous hearsays’ contained in the witness’s statement, the Chamber highlights that Rule 68(3) of the Rules contains no requirement that the prior recorded testimony has sufficient indicia of reliability, contrary to other sub-rules of Rule 68 of the Rules. Furthermore, to the extent that the witness’s statement may contain second-hand information or indirect knowledge about the alleged acts and conduct of Mr Yekatom, the Yekatom Defence is free to explore these matters further with the witness during its examination. Relatedly, the Chamber is unpersuaded by the submission that hearing P-2419’s testimony fully *viva voce* would actually benefit the expeditiousness and judicial economy of the proceedings.²⁵
17. In relation to the above, the Chamber stresses that that it does not consider the burden of proof to be shifted with the introduction of P-2419’s statement under Rule 68(3) of the Rules. The Chamber also notes that it, as well as the participants, may examine P-2419 regarding the basis of his knowledge regardless of his mode of testimony, and that it will assess and weigh all of the evidence accordingly in the context of its judgment deliberations.²⁶
18. As to the alleged lack of corroboration and/or the existence of inconsistencies with other witnesses’ statements, the Chamber recalls that while corroboration may be among the factors to be considered when assessing whether to allow the introduction of a prior recorded testimony, it is not a requirement under Rule 68(3) of the Rules.²⁷ The Defence, as well as the other participants, will also have the opportunity to fully examine the witness on these issues in court, and the

²³ CAR-OTP-2112-0036, at 0048, 0053, paras 69, 99.

²⁴ CAR-OTP-2112-0036, at 0056, para. 116.

²⁵ See also Fifteenth Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-2353, 24 June 2022, ICC-01/14-01/18-1480-Conf (public redacted version notified the same day, ICC-01/14-01/18-1480-Red) (the ‘Fifteenth Rule 68(3) Decision’), para. 16.

²⁶ See Fifteenth Rule 68(3) Decision, ICC-01/14-01/18-1480-Red, para. 17.

²⁷ See Fourteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2556 and P-1077, 14 June 2022, ICC-01/14-01/18-1457-Conf, para. 12, and the references cited therein.

Chamber will assess the credibility of P-2419 in the context of the judgment. While the Chamber takes note of the Yekatom Defence's submissions that P-2419's statement might not be entirely corroborated by other evidence, it does not find that this should preclude the introduction of his statement under Rule 68(3) of the Rules in this instance.

19. Moreover, the Chamber notes that the introduction of P-2419's statement would cut the time for the Prosecution's examination of the witness by at least half, thereby promoting the expeditiousness of the proceedings.
20. Turning to the Defence's Request for Specificity, the Chamber recalls that corroboration is not a mandatory requirement under Rule 68(3) of the Rules.²⁸ By the same token, the Chamber notes that the Prosecution is not required to prove in this context that a statement under Rule 68(3) of the Rules is corroborated by other evidence, and finds the Yekatom Defence's submission that the Chamber 'should disregard such argument if not properly substantiated' to be inapposite.
21. The Chamber further notes that the Yekatom Defence already provides substantiated submissions on the alleged lack of corroboration of P-2419's statement with regard to other witnesses.²⁹ In this sense, the Chamber does not find that the Yekatom Defence has been deprived of the opportunity of 'making meaningful responses' to Rule 68(3) requests. In addition, it notes that the Yekatom Defence will have the opportunity – as it already did – to examine witnesses and confront them with statements made by other witnesses in court, including those that according to the Prosecution provide corroborative evidence for the purposes of Rule 68(3) applications.³⁰ For all these reasons, the Chamber rejects this request.
22. Lastly, the Chamber notes that the witness discussed a video that was shown to him during his interview with the Prosecution, which is not included in Annex A to the Request and which, according to the statement, had 'no ERN number

²⁸ See Decision on the Request for Leave to Appeal the Twelfth Rule 68(3) Decision, ICC-01/14-01/18-1383, paras 6, 9.

²⁹ See Response, ICC-01/14-01/18-1376-Conf-Exp, paras 18, 22.

³⁰ In relation to P-2419, for instance, the Defence will have the opportunity to question witness P-2388, who is also expected to provide evidence, *inter alia*, about Bimon. See Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 38, entry 69.

assigned to date'.³¹ The Chamber has meanwhile been informed that the ERN of this video is CAR-OTP-2094-7618,³² which it already recognised as submitted, and therefore need not rule on it again.³³

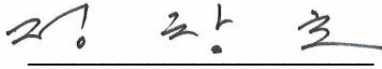
23. In light of the above, the Chamber considers that the introduction of P-2419's prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.
24. Accordingly, the Chamber grants the Prosecution's request to introduce P-2419's statement³⁴ and associated document³⁵ under Rule 68(3) of the Rules.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that, subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules, the prior recorded testimony of witness **P-2419** (CAR-OTP-2112-0036; CAR-OTP-2122-5012 (French translation)), together with its associated document CAR-OTP-2112-0063, is introduced into evidence; and

REJECTS the Defence's Request for Specificity.

Done in both English and French, the English version being authoritative.

		
	Judge Bertram Schmitt	
	Presiding Judge	
		
Judge Péter Kovács		Judge Chang-ho Chung

³¹ See Annex A to the Request, ICC-01/14-01/18-1360-Conf-AnxA; see also CAR-OTP-2112-0036, at 0060, paras 136-140.

³² Email from the Prosecution to the Chamber's legal officer, 7 October 2022, at 17:05.

³³ See Ninth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-0992, P-0446, P-0888, P-0889 and P-1416, 21 December 2021, ICC-01/14-01/18-1226-Conf, p. 17-18; transcript of hearing, 8 April 2022, ICC-01/14-01/18-T-120-Red-ENG, p. 13, lines 5-7.

³⁴ CAR-OTP-2112-0036; CAR-OTP-2122-5012 (French translation).

³⁵ CAR-OTP-2112-0063.

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

Dated 11 October 2022

At The Hague, The Netherlands