



Original: **English**

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

Date: **13 October 2021**

**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-2388 pursuant to Rule 68(3)”,  
ICC-01/14-01/18-1132-Conf, 6 October 2021**

**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-2388, 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”).<sup>1</sup> P-2388’s prior recorded testimony comprises his 10 April 2019 Witness Statement (“Prior Statement”)<sup>2</sup> and its associated exhibits.<sup>3</sup> 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. 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.<sup>4</sup>

3. 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.<sup>5</sup>

---

<sup>1</sup> ICC-01/14-01/18-631, para. 58.

<sup>2</sup> CAR-OTP-2108-0003.

<sup>3</sup> 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. The associated exhibits are CAR-OTP-2108-0022 (certificates of nationality, residence, and birth) and CAR-OTP-2108-0025 (a sketch).

<sup>4</sup> 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”).

<sup>5</sup> ICC-01/14-01/18-685, para. 34; See ICC-02/11-01/15-744, para. 69 (“*Gbagbo and Blé Goudé Appeals Decision*”).

## II. CONFIDENTIALITY

4. 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 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

5. 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,<sup>6</sup> its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),<sup>7</sup> and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).<sup>8</sup>

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

6. The Prior Statements may be deemed formally submitted under rule 68(3). P-2388 will attest to their accuracy; he will be present in court; and will be available for examination by the Defence, Participants, and the Chamber.

7. In relevant part, the Prior Statement provides significant crime-base evidence relevant, *inter alia*, to the Anti-Balaka attacks on Muslims in BIMON, along the PK9-Mbaiki Axis, the destruction of houses, the flight of Muslims from there as well as other Anti-Balaka crimes in other villages and towns such as PISSA. The witness also describes the Anti-Balaka’s control of checkpoints along this axis, including at

---

<sup>6</sup> 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’).

<sup>7</sup> ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

<sup>8</sup> ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

SAMBA, BIMON, BOSSONGO, and PISSA through MBAIKI. The witness further describes the flight of Muslims from areas such as PISSA and BANGUI, as well as his own flight from BIMON [REDACTED] The Prior Statement also provides information he obtained regarding YEKATOM's leadership of the Anti-Balaka group extending from PK9 to MBAIKI. His evidence is directly relevant to the scope of the article 7 attack and the charged crimes, falling both within the temporal and geographic scope of the charges.

8. Further to the submission of the Prior Statement, the Prosecution would request up to two hours to lead very limited additional evidence clarifying certain topics in order to complete the witness's narrative of the relevant events.

### **C. Associated Exhibits**

9. The Prosecution tenders two associated exhibits for formal submission: CAR-OTP-2108-0022, a document containing copies of P-2388's certificates of nationality, residence, and birth; and CAR-OTP-2108-0025, P-2388's sketch of BIMON.

10. The items tendered with this application are assessed as necessary to the comprehension of the Prior Statement, or would otherwise diminish its 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. As an integral part of the Prior Statement, each exhibit is directly relevant to and probative of material issues in dispute, and their admission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2388's evidence.

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

11. Although the Prior Statement is comprehensive, a limited and focused supplemental examination-in-chief to clarify and elaborate P-2388's testimony would be beneficial to the proper adjudication of the issues arising from the charges.

12. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",<sup>9</sup> the Prosecution has carefully reviewed its two-hour estimate given for P-2388 in its Final Witness List.<sup>10</sup> The Prosecution considers that it cannot further reduce the estimate of two hours. This estimated supplemental examination of P-2388 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,<sup>11</sup> and accounts for the prospect of appropriate redirect examination.

13. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2388's evidence. The limited examination requested is necessary not only to fully understand and contextualise the Prior Statement but also to advance the Chamber's fundamental truth-seeking function.

14. 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 at least four hours to present.

---

<sup>9</sup> ICC-01/14-01/18-685, para. 36.

<sup>10</sup> ICC-01/14-01/18-724-Conf-AnxA, p. 13.

<sup>11</sup> 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).

#### **E. Balance of interests**

15. The projected shortening of P-2388's in-court-testimony by half is "considerable" and, on balance, the introduction of P-2388'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. Given the limited Prior Statement and its associated documents, the Prosecution considers that the disposition of this request in this manner would be appropriate and in the interest of the expeditious conduct of the proceedings.

#### **IV. CONCLUSION**

16. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2388 together with its 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 13<sup>th</sup> day of October 2021  
At The Hague, The Netherlands