



Original: **English**

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

Date: **4 February 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-1528 pursuant to Rule 68(3)”, 1 February 2022,
ICC-01/14-01/18-1266-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 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-1528, 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-1528’s prior recorded testimony comprises his witness statements dated 16 March 2017 and 15 January 2020 (“Prior Statement”)² and their associated exhibits.³ 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-1528 was [REDACTED]. He provides information about, *inter alia*, (i) the placement of palm leaves by Christians in front of their houses before the Anti-Balaka’s attack on BANGUI on 5 December 2013; (ii) the Anti-Balaka’s attack on BANGUI on 5 December 2013; (iii) the Anti-Balaka’s targeting of Muslims during and after the attack, including pillaging, violence and the murder of Muslim civilians; (iv) the destruction of the NOUR ALYAGUIN Mosque in BOEING; (v) the forced displacement of Muslims in BANGUI on and after 5 December 2013, including P-1528 and his family; (vi) the role of YEKATOM in the crimes committed by the Anti-Balaka in BANGUI from 5 December 2013 onwards.

3. Granting the Request would reduce the duration 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-2048-0757, CAR-OTP-2102-0184 (French Translation) and CAR-OTP-2121-2831, CAR-OTP-2122-4659 (French Translation).

³ 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.

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* lists the relevant portions of the Prior Statement 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 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-1528 will attest to its 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 bears evidence of the planning of the 5 December 2013 Anti-Balaka attack on BANGUI, the targeting of the Muslim civilian population and the deployment of YEKATOM’s elements in CATTIN and BOEING. The Witness describes the crimes committed by the Anti-Balaka and discusses the forcible displacement of the Muslims from CATTIN and BOEING in fear of their lives. It also goes to the proof of the contextual elements of war crimes and crimes against humanity, in particular the Anti-Balaka being an

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.

organised armed group, and its intent to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014.

10. P-1528's Prior Statement comprises 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 Statement.

11. The witness's Prior Statement establishes the following:

- P-1528 [REDACTED]. Following the Anti-Balaka's 5 December 2013 attack on BANGUI, P-1528 and his family were forced to flee their home in fear for their lives and took refuge in PK5, [REDACTED].
- P-1528 provides evidence of the planning and preparation of the Anti-Balaka's 5 December 2013 attack on BANGUI, and that Christians in his neighbourhood were warned of the impending attack and advised to place palm leaves in front of their houses to distinguish them from those of Muslims.
- He discusses the clashes between the Anti-Balaka and the Seleka early on 5 December 2013 and the subsequent crimes committed against the Muslim civilian population by the Anti-Balaka during and in the aftermath of the attack, including the killing of Muslim traders at the BOEING market.
- P-1528 describes the Anti-Balaka elements he saw during the 5 December 2013 attack on BANGUI and explains that "they were shouting that first they would kill DJOTODIA and then they would come back to kill all Muslims".¹¹
- He recounts the forcible displacement of the Muslim population from CATTIN and BOEING to PK5 - the only safe location for Muslims in BANGUI at the time - due to the Anti-Balaka's violence.

¹¹ CAR-OTP-2048-0757, at 0762, para. 30.

- He describes the destruction of his family compound, as well as several Mosques, including the BOEING and LAKOUANGA Mosques. P-1528, [REDACTED].
- P-1528 identifies the perpetrators of the crimes committed in CATTIN and BOEING as members of YEKATOM's Group.

12. P-1528's proposed evidence is corroborated by, *inter alia*, the evidence of P-2682, P-0306, P-2698, P-1584, and P-1442 regarding the preparation of the 5 December 2013 attack. His evidence on the 5 December 2013 Anti-Balaka's attack on BANGUI, and their commission of crimes against the Muslim civilian population, is corroborated by P-2682, P-1339, P-2328, P-2475, P-1442, and P-1416. His evidence on the forcible displacement of the Muslim population of CATTIN and BOEING is corroborated by P-2682, P-1339, P-1839, P-1442, P-1499, and P-1990. His evidence on the destruction of Muslims properties, including the BOEING Mosque, is corroborated by P-2682, P-1339, P-2125, and P-1442. Finally, his evidence on the leadership of YEKATOM and the deployment of his Anti-Balaka Group in CATTIN and BOEING, is corroborated by P-2682, P-2698, 1074, P-1839, and P-1921.

C. Associated Exhibits

13. The Prosecution tenders 23 associated exhibits for formal submission, as listed in Confidential Annex A. These comprise items detailed with precision in P-1528's Prior Statement, namely: (i) two satellite images showing relevant locations; (ii) a sketch plan drawn by the witness; (iii) 17 photographs showing the damage to the witness's family compound; (iv) two photographs and a video recording of the former location of the BOEING Mosque taken by the OTP investigators during a visit of the area with the witness on 15 January 2020, as described in his second statement.¹²

¹² See CAR-OTP-2121-2831, at 2835, paras. 27-30. Additional information about the collection of the two photographs and video footage is available in the Investigation Report at CAR-OTP-2121-2839.

14. The items tendered with this application are assessed as indispensable 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.

15. As an integral part of the Prior Statement, the exhibits are directly relevant to and probative of material issues in dispute, and their submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-1528's evidence.

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

16. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-1528's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

17. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹³ the Prosecution has carefully reviewed its two-hour estimate given for P-1528 in its Final Witness List.¹⁴ This estimated supplemental examination of P-1528 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹⁵ and accounts for the prospect of appropriate redirect examination.

¹³ ICC-01/14-01/18-685, para. 36.

¹⁴ ICC-01/14-01/18-724-Conf-AnxA, p. 46.

¹⁵ 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).

18. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1528's evidence through the use of the associated exhibits, other 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.

19. 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 four hours to present – twice as long.

E. Balance of interests

20. The projected shortening of P-1528's in-court-testimony by half is "considerable", and on balance the introduction of P-1528'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

21. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1528 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.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan QC, Prosecutor

Dated this 4th day of February 2022
At The Hague, The Netherlands