

**Cour
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**International
Criminal
Court**

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No.: **ICC-01/14-01/18**
Date: **15 December 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-1595 pursuant to Rule 68(3)",
15 December 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-1595, 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-1595’s prior recorded testimony comprises only his witness statement² dated 19 March 2019 (“Prior Statement”)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-1595 [REDACTED]. The witness provides information about the background of the CAR conflict and describes the origins of the division between CAR’s Muslim and Christian communities in and around MBAIKI. He discusses the consequences of the 5 December 2013 attack on BANGUI for the Muslim population in the LOBAYE region, and provides details about the crimes committed by the Anti-Balaka, and their targeting of Muslim civilians. P-1595 further provides details about the evacuation of the Muslim population in and around MBAIKI, and the destruction of mosques and Muslim property in the area. He witnessed the arrival of YEKATOM and his elements in MBAIKI, and their setting up bases and check-points. P-1595 was evacuated from MBAIKI [REDACTED] evacuation convoys of Muslims fleeing from the area out of fear of being killed by the Anti-Balaka. Finally, P-1595 provides information about the killing of Deputy Mayor Djido SALEH.

¹ ICC-01/14-01/18-631, para. 58.

² 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.

³ CAR-OTP-2104-0274.

3. P-1595's evidence is relevant to the contextual elements for war crimes and crimes against humanity; YEKATOM's Group's targeting of the Muslim civilian population; the location of the Group's bases and checkpoints in and around MBAIKI; and the massive displacement of Muslims from the LOBAYE region as a result of the Anti-Balaka's behaviour. The Prior Statement is thus *prima facie* relevant to, and probative of material issues at trial.

4. 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.⁴

5. 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

6. The relevance and probative value of the Prior Statement is set out in a brief summary of the salient issues, and the sources of other corroborative evidence. *Confidential Annex A* lists the relevant portions of the Prior Statement being tendered for formal submission. It also identifies the relevant paragraphs of the Confirmation Decision to which the witness's evidence relates. *Confidential Annex B* contains the

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).

Prior Statement itself, with grey highlights identifying the portions on which the Prosecution does not seek to rely.

II. CONFIDENTIALITY

7. 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

8. 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)

9. The Prior Statement may be deemed formally submitted under rule 68(3). P-1595 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.

10. As described below, the Prior Statement is highly relevant and probative. P-1595’s evidence goes directly to the crimes alleged at **counts 24-28**, and YEKATOM’s

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.

Group's perpetration of these crimes. As such, it also provides proof of the contextual elements for war crimes and crimes against humanity, in particular, YEKATOM's Group's intent to target Muslim civilians pursuant to a criminal organisational policy. It further bears on the identity of the Anti-Balaka as an 'organisation' or 'group' involved in the commission of the article 7 widespread attack.

11. P-1595'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.

12. P-1595 [REDACTED]. The witness's Prior Statement establishes the following:

- P-1595 provides information about the background of the conflict in CAR, including the arrival of the Seleka in MBAIKI, the subsequent division between the Muslim and Christian communities, and his efforts to prevent the escalation of the violence.
- P-1595 explains the consequence of the 5 December 2013 attack on BANGUI on the Muslim community in and around MBAIKI.
- The witness describes the arrival of YEKATOM's elements in MBAIKI, and their setting up bases and check-points. He also details the arrival of YEKATOM in MBAIKI, how he was welcomed by his elements, and the initiatives he undertook.
- The witness provides evidence on the Anti-Balaka's targeting of Muslim civilians, and the commission of crimes against Muslims, including by YEKATOM's Group.
- The witness details the resulting evacuation of Muslims from PISSA, BOUCHIA, MBATA, BATALIMO, MOUGOMBA, ESCADE, BAKANDOU,

NDOLOBO, BOUKOKO, BOBOUA and BOUAKA to MBAIKI, and their lives in the makeshift refugee camp in MBAIKI.

- P-1595 further describes their subsequent evacuation to BANGUI, including *via* convoys organised with the assistance of the Chadian government, private individuals, and MISCA.
- The witness provides details about the destruction of mosques and property by the Anti-Balaka in and around MBAIKI.
- Finally, P-1595 provides information on the killing of Deputy Mayor Djido SALEH and others.

13. P-1595's proposed evidence is corroborated by, *inter alia*: (i) the evidence provided by P-0954, P-1558, P-1647, P-1666, P-1719, P-1786, P-1839, P-2041, P-2388, P-2419, P-2475, and P-2476 regarding the arrival at, the take-over of, and crimes committed in the LOBAYE region, including by YEKATOM's Group; (ii) the evidence provided by P-0954, P-0974, P-1647, P-1666, P-1838, P-1839, P-2084, P-2041, P-2233, P-2353, P-2354, P-2388, P-2389, P-2419, P-2432, P-2475, and P-2476 regarding the displacement of the Muslim population in this region as a result of the increasingly hostile environment; (iii) the evidence provided by P-1595, P-1813, P-1838, P-2196, and P-2476 regarding the killing of DJIDO SALEH. P-1595's proposed evidence is also corroborated by documentary evidence.¹¹

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

14. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-1595's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

¹¹ See for example CAR-OTP-2094-7618, CAR-OTP-2053-0567, CAR-OTP-2045-0525, CAR-OTP-2053-0576, CAR-OTP-2008-0923, CAR-OTP-2117-0687, CAR-OTP-2001-2248, CAR-OTP-2048-0129.

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-1595 in its Final Witness List.¹³ The Prosecution considers that it cannot further reduce its estimate. This estimated supplemental examination of P-1595 takes into consideration the *realistic* pace of the proceedings, including the 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-1595's evidence through the use of 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.

17. 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.

D. Balance of interests

18. The projected shortening of P-1595's in-court-testimony by half is "considerable", and on balance the introduction of P-1595'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

¹² ICC-01/14-01/18-685, para. 36.

¹³ ICC-01/14-01/18-724-Conf-AnxA, p. 26.

¹⁴ 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).

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

19. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1595, 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 15th day of December 2021

At The Hague, The Netherlands