

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **15 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-1823 pursuant to Rule 68(3)", 17 May 2022,
ICC-01/14-01/18-1411-Conf**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the formal submission of the prior recorded testimony of witness P-1823, 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-1823’s prior recorded testimony comprises his witness statement dated 17 October 2017 (“Prior Statement”)² 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-1823 was a businessman from MBAIKI and also [REDACTED]. He later was evacuated from MBAIKI together with his family and other Muslim civilians, out of fear of being killed by the Anti-Balaka following the arrival of Alfred YEKATOM (aka “RAMBO”, “YEKATOM”) and his elements (“YEKATOM’s Group”). P-1823’s evidence is relevant to the contextual elements for war crimes and crimes against humanity; YEKATOM’s Group’s advancement from PK9 to MBAIKI and their targeting of the Muslim population; the mass displacement of Muslims from the LOBAYE region as a result of the Anti-Balaka’s actions; and YEKATOM’s command over his elements and involvement in the ransoming of civilians’ goods. The Prior Statement is thus *prima facie* relevant to, and probative of material issues at trial.

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

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2063-0369.

unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.³

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.⁴ Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,⁵ 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.⁶

5. The relevance and probative value of the Prior Statement is set out in a brief summary of the salient issues, along with 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 Prior Statement itself, with grey highlights identifying the portions on which the Prosecution does not seek to rely.

6. 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

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

⁵ See ICC-01/14-01/18-685, para. 31, 32.

⁶ 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).

witness which should not be made public. A “Public Redacted” version of the Request will be filed as soon as practicable.

II. 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,⁷ its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),⁸ and in its first and second requests for the formal submission of prior recorded testimony under rule 68(2)(b).⁹

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-1823 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. It contains evidence that goes directly to the crimes alleged at counts 24-28, and YEKATOM’s Group’s perpetration of these crimes. The Prior Statement also goes to proof of the nature and extent of the widespread attack carried out by the Anti-Balaka against the Muslim civilian population between September 2013 and December 2014 (“Relevant Period”), as a part of the contextual elements of crimes against humanity and war crimes, under articles 7 and 8, respectively. It provides evidence of the campaign of retributive violence committed by the Anti-Balaka against Muslims

⁷ 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’).

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

⁹ ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

perceived to be associated with the Seleka in towns and villages in western CAR pursuant to a criminal organisational policy,¹⁰ particularly in MBAIKI and surrounding villages. P-1823's evidence 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-1823's Prior Statement comprises 11 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. The witness's Prior Statement establishes the following:

- P-1823, a Muslim businessman, describes the arrival of the Seleka to MBAIKI in 2012 and their commission of crimes against the people there, such as extortion and pillaging;
- P-1823 recounts the Anti-Balaka 5 December 2013 attack on BANGUI and how they subsequently targeted Muslims in the city. At the time, he was [REDACTED] and witnessed threats against Muslims and rising tensions between the Christian and Muslim communities;
- P-1823 describes his journey back to MBAIKI on a commercial truck, [REDACTED]. He recalls nine Anti-Balaka barricades between BANGUI and MBAIKI, including one at the PK9 Bridge. The Group was heavily armed and were stopping the vehicles in search of Muslims;
- At the first barricade on PK9, he recognized YEKATOM among the men present. He remembered him from when he came to [REDACTED]. The Witness identifies

¹⁰ See ICC-01/14-01/18-403-Conf-Corr, paras. 64, *see further* pp. 107, 111 (referencing paragraphs 90-114 of the Document Containing the Charges - ICC-01/14-01/18-286-Conf-AnxB1).

YEKATOM as the Chief of the Anti-Balaka, as he saw him instruct the men present to get everyone out of the truck in order to identify Muslims and they obeyed him;

- P-1823 recounts the evacuation of Muslim civilians from villages between BANGUI and MBAIKI beginning in late December 2013. He explains that these civilians fled in fear of their lives as a result of Anti-Balaka threats and attacks in the area;
- P-1823 and his family were later evacuated to BANGUI by MISCA's Chadian contingent, who brought him [REDACTED]. There he learned that on 14 February 2014 the Anti-Balaka killed Adamou DEWA, the Mayor of NOLA in BOUKOKO. [REDACTED], who was present, reported this to him. The Witness provides some of the names of the Anti-Balaka elements from MBAIKI who participated;
- He also mentions being told on 2 March 2014 of the murder of the deputy Mayor of MBAIKI Djido SALEH. He explains the Anti-Balaka carried out the killing, led by a named [REDACTED]. A man called [REDACTED] was also among them;
- P-1823 details how the Seleka attacked the Fatima Church in retaliation for the Anti-Balaka's attack of PK5. The Witness saw the Seleka first looting all the food items at the Mosque and then proceed to attack the Church, victimising many Christians.

13. P-1823's proposed evidence on YEKATOM and his Group's takeover of the PK9-MBAIKI axis is corroborated by, *inter alia*, the evidence of P-1193, P-1647, P-1666, P-2475, P-1838, P-1839, and P-2354. P-1823's proposed evidence on YEKATOM's leadership over his Group is corroborated by, *inter alia*, the evidence of P-0646, P-1339, P-1584, P-1819, P-1839, P-1921, and P-1786. P-1823's proposed evidence on the

commission of crimes by YEKATOM and his Group against the Muslim population is corroborated by, *inter alia*, P-1666, P-0974, P-1813, P-1838, P-1839, P-2353, and P-2354. Finally, P-1823's proposed evidence on YEKATOM Group's killing of DJIDO Saleh is corroborated by, *inter alia*, P-1813, P-1838, P-1595, P-2196, and P-2476.

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-1823's testimony, and 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",¹¹ the Prosecution has carefully reviewed its two-hour estimate given for P-1823 in its Final Witness List.¹² The Prosecution considers that it cannot further reduce the estimate. This estimated supplemental examination of P-1823 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹³ 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-1823's evidence through the use of 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.

¹¹ ICC-01/14-01/18-685, para. 36.

¹² ICC-01/14-01/18-724-Conf-AnxA, p. 38.

¹³ 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).

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-1823's in-court-testimony by half is "considerable", and on balance the introduction of P-1823'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.

III. CONCLUSION

19. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1823, 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 15th day of June 2022
At The Hague, The Netherlands