

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**
Date: **14 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-2084 pursuant to Rule 68(3)",
14 December 2021**

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-2084, 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-2084’s prior recorded testimony comprises his 4 December 2018 Witness Statement (“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-2084 was the [REDACTED] during the relevant period of September 2013 and December 2014 (“Relevant Period”). He gives evidence on YEKATOM’s control over his Anti-Balaka group (“YEKATOM’s Group” or “Group”), the forcible displacement of the Muslim population of the towns along the PK9-MBAIKI axis, and the presence of child soldiers within YEKATOM’s Group.

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 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

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2094-0968.

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”).

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.

II. CONFIDENTIALITY

6. 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

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

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).

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)

8. The Prior Statement may be deemed formally submitted under rule 68(3). P-2084 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 goes to YEKATOM's command and control over his Group, and to crimes committed by the Group along the PK9-MBAIKI axis. It also provides evidence of the contextual elements of war crimes and crimes against humanity, in particular the Anti-Balaka being an organised armed group, and its intention to target Muslim civilians pursuant to a criminal organisational policy between September 2013 and December 2014.

10. P-2084's Prior Statement comprises 21 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-2084 was the [REDACTED] during the Relevant Period.
- The witness describes the demographic composition of PISSA prior to the 2013-2014 conflict, referring to 400-500 Muslims in the district of PISSA who lived within the community among non-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.

- He recounts the political events leading up to the Seleka's takeover of PISSA on 27 March 2013 and describes life in PISSA under their control, including the Seleka's mistreatment of the local non-Muslim population. He also describes the good relationship between the Seleka and PISSA's Muslim population, and their perceived affiliation with one another based on common religious and cultural rites.
- He describes fleeing [REDACTED] to BANGUI, [REDACTED].
- The witness was present [REDACTED] during the Anti-Balaka's 5 December 2013 attack and heard gunshots coming from the centre of BANGUI in the early hours.
- He remained [REDACTED], which was protected by the Anti-Balaka until late January 2014. During this time, he became aware that the Muslim population of towns along the PK9-MBAIKI axis were fleeing to MBAIKI as the Anti-Balaka advanced.
- The witness recounts an [REDACTED] meeting [REDACTED] with, *inter alia*, YEKATOM as the Anti-Balaka leader for OMBELLA-POKO and LOBAYE, and representatives of the Sangaris forces, the police and *Gendarmerie*. The decision was taken for all Muslims to be evacuated [REDACTED] so that they would not be killed by the Anti-Balaka.
- He also recounts seeing armed children working with the Anti-Balaka in the towns of PISSA and MBAIKI on 30 January 2014. He estimated them to be aged from 10 upwards. He further corroborates [REDACTED].
- He describes the subsequent evacuation of thousands of Muslims from MBAIKI on 6 February 2014.
- The witness describes YEKATOM's command and control over his Group, which controlled the entire axis from BANGUI to MBAIKI.

- He refers to the activities of the Group, including levying tolls at barricades along the PK9-MBAIKI axis.

12. P-2084's proposed evidence on YEKATOM's command and control over his Group is corroborated by, *inter alia*, the evidence of P-1647, P-1339, P-1839, P-0954, P-0487, P-0974, P-1858, P-1786, and P-1819. His proposed evidence on the displacement of the Muslim population along the PK9-MBAIKI axis is corroborated by, *inter alia*, P-1838, P-2389, P-2419, P-2388, P-2353, and P-2354. Finally, his proposed evidence on the presence of child soldiers within the Group is corroborated by, *inter alia*, P-2233, P-2476, P-2620, P-2511, P-1974, P-2475, P-2582, and P-2018.

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

13. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-2084's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

14. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",¹⁰ the Prosecution has carefully reviewed its two-hour estimate given for P-2084 in its Final Witness List.¹¹ The Prosecution considers that it cannot further reduce this estimate. This estimated supplemental examination of P-2084 takes into consideration the *realistic* pace of the proceedings, including the presentation of documentary evidence in court as facilitated by Court personnel, interpretation considerations,¹² and accounts for the prospect of appropriate redirect examination.

15. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2084's evidence through

¹⁰ ICC-01/14-01/18-685, para. 36.

¹¹ ICC-01/14-01/18-724-Conf-AnxA, p. 38.

¹² 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).

the use of documents or 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.

16. 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

17. The projected shortening of P-2084's in-court-testimony by half is "considerable". On balance the introduction of P-2084'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

18. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-2084 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 black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

Karim A. A. Khan QC, Prosecutor

Dated this 14th day of December 2021
At The Hague, The Netherlands