

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **7 April 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-1490 pursuant to Rule 68(3)", 7 April 2022**

**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 Mame Mandiaye Niang  
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**

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**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-1490, 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-1490’s prior recorded testimony comprises his 15 January 2020 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. P-1490 was [REDACTED]. He provides information about the arrival of the Anti-Balaka in BOEING in December 2013 and their search for, and targeting, of Muslims, including the killing of Muslim traders at the BOEING market. He also describes [REDACTED]. P-1490’s evidence is relevant to, *inter alia*, YEKATOM’s Group’s targeting of the Muslim civilian population pursuant to a criminal organisational policy between September 2013 and December 2014 (“Relevant Period”). The Prior Statement also provides evidence forming a part of the contextual elements for war crimes and crimes against humanity and describes the role of YEKATOM during the Relevant Period. It 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

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

<sup>2</sup> CAR-OTP-2053-0062.

<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.

unfairly prejudice the Defence, as the witness will be fully available for cross-examination and any inquiry by the Chamber itself.<sup>4</sup>

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.<sup>5</sup> Additionally, mindful of the concerns regarding the amount of written evidence to be tendered,<sup>6</sup> 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.<sup>7</sup>

5. The relevance and probative value of the Prior Statement are set out in a brief summary of the salient issues, along with the associated exhibits, 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, this Request and its annexes are filed as "Confidential", as they contain information concerning a

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<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*").

<sup>6</sup> See ICC-01/14-01/18-685, para. 31, 32.

<sup>7</sup> 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.

### 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,<sup>8</sup> its submissions in its first request for the formal submission of prior recorded testimony under rule 68(3),<sup>9</sup> and in its first and second requests for the formal submission of prior recorded testimony under Rule 68(2)(b).<sup>10</sup>

#### 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-1490 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 directly to the crimes alleged at counts 1-6 and 8, as part of the BOEING incident. P-1490’s evidence also goes to proof of the contextual elements for war crimes and crimes against humanity; in particular, the Anti-Balaka’s engagement in an armed conflict during the Relevant Period. 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 and describes the role of YEKATOM during the Relevant Period.

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<sup>8</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>9</sup> ICC-01/14-01/18-750-Conf, paras. 8-12, 23, 27-33.

<sup>10</sup> ICC-01/14-01/18-710-Conf, paras. 47-49; ICC-01/14-01/18-744-Conf, paras. 36-40.

10. P-1490's Prior Statement comprises 17 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-1490 was [REDACTED] in BOEING at the time of the events;
- He provides background information about BOEING, including information about [REDACTED] its Christian and Muslim population prior to, and following, the crisis;
- The witness refers to crimes committed by the Seleka in BANGUI in 2013, and to the Anti-Balaka's arrival in December 2013;
- He describes how, upon their arrival in BOEING, armed Anti-Balaka elements began searching for Muslims, which led to the displacement of Muslims from their homes, as they fled BOEING fearing for their lives. The witness further provides information about the Anti-Balaka's killing of Muslim traders at the BOEING market;
- P-1490 explains that Anti-Balaka elements destroyed and pillaged Muslim houses and the BOEING mosque;
- He provides information about roadblocks established by the Anti-Balaka within BOEING and describes hearing Anti-Balaka elements say "*On va aller au KM5 pour terminer avec les musulmans*".<sup>11</sup> The witness explains that the Anti-Balaka also blocked the access to the Muslim cemetery, forcing Muslims to bury their dead at, *inter alia*, the Catholic church of St Mathias during the crisis;
- P-1490 identifies YEKATOM and Freddy OUANDJIO ("*Coeur de Lion*") as leaders in charge of the Anti-Balaka elements in BOEING;

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<sup>11</sup> CAR-OTP-2121-2788, at 2794, para. 49.

- The witness recounts [REDACTED];
- He further describes [REDACTED];
- The witness recounts [REDACTED].

12. P-1490's proposed evidence is corroborated by, *inter alia*: (i) the evidence of P-1339, P-1437, P-1528, P-2233, P-2475, and P-2682 regarding the 5 December 2013 attack on BOEING and the killing of Muslim traders at the BOEING market; and (ii) the evidence of [REDACTED].

### **C. Associated Exhibits**

13. The Prosecution tenders five associated exhibits for formal submission, set out at Confidential Annex A. These comprise items specifically discussed in P-1490's Prior Statement, including: (1) the [REDACTED]; (2) P-1490's identity document; (3) satellite image of [REDACTED] marked by the witness; (4) photograph of Anti-Balaka elements; and (5) map of BIMBO, showing KOKORO and the BOEING cemetery, marked by the witness.

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. 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-1490's evidence.

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

15. The Prior Statement is brief. A limited and focused supplemental examination-in-chief would thus clarify and elaborate P-1490's testimony, and would be beneficial to the proper adjudication of the issues arising from the charges.

16. Mindful of the Chamber's direction concerning the need to "streamline its questioning considerably",<sup>12</sup> the Prosecution has carefully reviewed its two-hour estimate given for P-1490 in its Final Witness List.<sup>13</sup> The Prosecution considers that it cannot further reduce the estimate of two hours. This estimated supplemental examination of P-1490 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>14</sup> and accounts for the prospect of appropriate redirect examination.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-1490'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, but also to advance the Chamber's fundamental truth-seeking function.

18. 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 five hours to present.

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<sup>12</sup> ICC-01/14-01/18-685, para. 36.

<sup>13</sup> ICC-01/14-01/18-724-Conf-AnxA, p. 29.

<sup>14</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-001-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**

19. The projected shortening of P-1490's in-court-testimony by more than half is "considerable", and on balance the introduction of P-1490'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**

20. For the foregoing reasons, the Prosecution requests the Chamber to deem formally submitted the Prior Statement of P-1490 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.



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**Karim A. A. Khan QC, Prosecutor**

Dated this 7<sup>th</sup> day of April 2022  
At The Hague, The Netherlands