

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**
Date: **16 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

**Corrected version of “Public redacted version of “Prosecution’s Request for the
Formal Submission of the Prior Recorded Testimony of P-2083 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-2083, 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 [REDACTED] 20 May 2019 Witness Statement (“Prior Statement”)² and its 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 one and half hours, elaborating specific issues raised therein, and other matters highly relevant to the case.

2. P-2083 was an [REDACTED] involved in the 2014-2015 UNICEF-funded project to free children from armed groups in CAR. The witness gives evidence on the establishment of the project and knowledge of child soldiers present in YEKATOM’s Anti-Balaka group (“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.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

¹ ICC-01/14-01/18-631, para. 58.

² CAR-OTP-2110-0333.

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.

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”).

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 23bis(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.

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).

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-2083 will attest to its accuracy, will be present in court, and 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 the presence of child soldiers in YEKATOM's Group. It also provides evidence of the contextual elements of war crimes, in particular the Anti-Balaka being an organised armed group.

10. P-2083's Prior Statement comprises 15 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.

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.

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

- P-2083 was [REDACTED] involved in the 2014-2015 UNICEF-funded project "*Projet pour les enfants sortis du group armées*" ("project"). [REDACTED].
- The witness describes the establishment of the project, and the respective roles of UNICEF and [REDACTED]. The aim of the project was to remove children from armed groups and to provide them with training in a trade.
- The witness explains the process by which [REDACTED] would identify children in armed groups, negotiate their release with the relevant ComZones and then coordinate that release.
- The witness confirms that the only armed group operating in the LOBAYE during the project period was the Anti-Balaka, and that all ComZones in the LOBAYE were under the command of YEKATOM.
- The witness refers to the circumstances leading to the children joining the Anti-Balaka, *i.e.*, some being forcibly taken by the Anti-Balaka, some joining the Anti-Balaka after being abandoned in their villages when their parents fled the attacks.
- The witness gives details of the process by which [REDACTED] verified that the rescued children had indeed served in the Anti-Balaka. This occurred in all cases through interviews with the children upon registration after their release. In some cases, the officers were able to make relevant observations about the children in the group during the negotiation and release process. Only children deemed to be associated with an armed group (*i.e.* the Anti-Balaka) became part of the project.
- The witness refers to periodic reports about the progress of the project from [REDACTED] UNICEF.

- The witness refers to the Anti-Balaka's general reputation for committing sexual violence against women.

12. P-2083's proposed evidence on the presence of child soldiers within YEKATOM's Group is corroborated by, *inter alia*, the evidence of P-2233, P-2476, P-2620, P-2511, P-1974, P-2475, P-2582, and P-2018.

C. Associated Exhibits

13. The Prosecution tenders two associated exhibits for formal submission. They comprise two documents mentioned in the Prior Statement, as listed in Confidential Annex A.

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. Each exhibit is an integral part of the Prior Statement and their submission pursuant to rule 68(3) would further be the most efficient and effective way to manage P-2083'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-2083'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",¹¹ the Prosecution has carefully reviewed its two-hour

¹¹ ICC-01/14-01/18-685, para. 36.

estimate given for P-2083 in its Final Witness List.¹² The Prosecution considers that it can reduce its estimate to one and a half hours. This estimated supplemental examination of P-2083 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.

17. A lesser amount of time would not provide the Prosecution with a reasonable opportunity to develop, explain, or clarify, limited facets of P-2083's evidence through the use of some 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.

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 three hours to present – twice as long.

E. Balance of interests

19. The projected shortening of P-2083's in-court-testimony by half is "considerable". On balance the introduction of P-2083'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

¹² ICC-01/14-01/18-724-Conf-AnxA, p. 40.

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).

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-2083 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 initial 'K' followed by a horizontal line and a small dot.

Karim A. A. Khan QC, Prosecutor

Dated this 16th day of December 2021

At The Hague, The Netherlands