

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **12 December 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 *THE PROSECUTOR v.*  
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

**Public**

**Public Redacted Version of “Yekatom Defence Response to ‘Prosecution’s  
Request for Submission of the Prior Recorded Testimony of P-1558  
pursuant to Rule 68(2)(c)’, 14 November 2022, ICC-01/14-01/18-1663-Conf”,  
25 November 2022, ICC-01/14-01/18-1675-Conf**

**Source:** Defence for Mr. Alfred Rombhot Yekatom

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

**The Office of the Prosecutor**

Mr Karim Asad Ahmad Khan  
Mr Mame Mandiaye Niang  
Mr Kweku Vanderpuye

**Counsel for Mr. Yekatom**

Ms Mylène Dimitri  
Mr Thomas Hannis  
Ms Anta Guissé  
Mr Gyo Suzuki

**Counsel for Mr. Ngaïssona**

Mr Geert-Jan Alexander Knoops  
Mr Richard Omissé-Namkeamaï  
Ms Marie-Hélène Proulx

**Legal Representatives of Victims**

Mr Dmytro Suprun

**Legal Representatives of Applicants**

Mr Abdou Dangabo Moussa  
Ms Elisabeth Rabesandratana  
Mr Yaré Fall  
Ms Marie-Edith Douzima-Lawson  
Ms Paolina Massidda

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation / Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

Mr Xavier-Jean Keïta

**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**

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby responds to the 'Prosecution's Request for Submission of the Prior Recorded Testimony of P-1558 pursuant to Rule 68(2)(c)'<sup>1</sup> filed on 14 November 2022 ('Request').
2. The Defence does not oppose the Request.<sup>2</sup>
3. However, again, <sup>3</sup> the Defence takes issue with the Prosecution's characterisation of P-1558's evidence as set out in the Request.
4. While the Defence is not suggesting that the Prosecution has the duty to bring any and all exonerating evidence to the specific attention of the Chamber, it nonetheless submits that a balance should be struck between the adversarial nature of these proceedings, and the Prosecution's statutory duty to assist the Chamber in establishing the truth. This balance requires that the Prosecution's characterisation of the evidence that it tenders be – if not objective – then at the very least, accurate and reasonably complete. This is especially the case where that evidence is tendered under Rule 68(2)(c), and the Defence will thus not be afforded the opportunity to cross-examine the witness in question, and to draw out and develop the exculpatory aspects of their evidence before the Chamber.
5. For instance, the Prosecution submission that 'P-1558 clarifies that YEKATOM would constantly perform operations in MBAIKI, without calling P-1558' is inaccurate, if not misleading.<sup>4</sup> P-1558 stated that Mr Yekatom was constantly going on the PK9-MBAIKI Axis, and that he carried out operations 'in the region'; and further, that he was sure that Mr Yekatom carried out operations

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<sup>1</sup> ICC-01/14-01/18-1663-Conf.

<sup>2</sup> Without prejudice as to the matter of whether the Prosecution could not have anticipated the necessity of Article 56 measures; see ICC-01/14-01/18-1663-Conf, paras 10-12.

<sup>3</sup> See, the Defence's submissions on the Prosecution's characterisation of the evidence of P-1819 in its Rule 68(3) request of 18 May 2022, ICC-01/14-01/18-1439-Conf, paras 3-4.

<sup>4</sup> ICC-01/14-01/18-1663-Conf, para. 18.

without always calling P-1558 – as opposed to constantly carrying out operations without calling P-1558.<sup>5</sup>

6. Further, the Prosecution submission that '[t]he Anti-Balaka established checkpoints on the road to MBAIKI, and would demand a toll from people passing by' is incomplete, in that P-1558 specifically stated that payment of the tolls on the PK9-MBAIKI Axis was 'optional'.<sup>6</sup>
7. Similarly, while the Prosecution submits that Muslims on the PK9-MBAIKI Axis 'did not dare to go on the road nor pass the toll, as they would be killed either by the Anti-Balaka, or by the population if they tried to pass', it omitted to include P-1558's subsequent comment that this was despite the fact that Mr Yekatom had given instructions not to hurt Muslims.<sup>7</sup>
8. The Prosecution submission that 'YEKATOM's elements followed his orders' is likewise incomplete, in that P-1558 stated that those who did not follow his orders simply left the group.<sup>8</sup>
9. In addition, P-1558's evidence contains a number of exonerating statements which, despite being highly relevant to the Chamber's function of establishing the truth, were not mentioned in the Response.
10. Specifically, P-1558 variously states:
  - that after the January 30 meeting in the St. Jeanne d'Arc Cathedral in MBAIKI, Mr Yekatom addressed the large crowd that had gathered outside

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<sup>5</sup> See, CAR-OTP-2105-0195, para. 38 ('Je suis sûr qu'il a effectué des opérations sans toujours m'appeler. Il se rendait constamment sur la route de MBAIKI et effectuait des opérations dans la région.').

<sup>6</sup> ICC-01/14-01/18-1663-Conf, para. 18; see, CAR-OTP-2105-0195, para. 50.

<sup>7</sup> ICC-01/14-01/18-1663-Conf, para. 18; see, CAR-OTP-2105-0195, para. 51 ('S'il se faisait prendre, il aurait été tué, soit par l'Anti-Balaka, soit par la population. Même si ROMBHOT avait dit de ne pas blesser un musulman, sortir serait tenté le diable.').

<sup>8</sup> ICC-01/14-01/18-1663-Conf, para. 18; see, CAR-OTP-2105-0195, para. 41 ('Les éléments de ROMBHOT qui étaient avec lui l'écoutaient. Ceux qui ne l'ont pas fait ont quitté le groupe.').

and told them that anyone who came to kill Muslim civilians would 'have a problem with him';<sup>9</sup>

- that Mr Yekatom wished to liberate the country from foreign Seleka, and not all Muslims;<sup>10</sup>
- that Mr Yekatom gave instructions to his elements in PISSA to protect the population and not to steal;<sup>11</sup> and,
- that he does not remember ever having seen Mr Yekatom use or recruit child soldiers.<sup>12</sup>

11. Notably, these exonerating statements are corroborated by the evidence heard from a number of Prosecution witnesses to date. For example, on Mr Yekatom's speeches in MBAIKI, in which he warned against harming the Muslim population, the Chamber has received corroborating evidence from ABOUBAKAR Diakite (P-1595)<sup>13</sup> and [REDACTED].<sup>1415</sup> On Mr Yekatom's aim of freeing the country from the foreign Seleka mercenaries, as opposed to targeting the Muslim civilian population, the Chamber has received corroborating evidence from e.g. Vivien BEINA (P-0888),<sup>16</sup> [REDACTED],<sup>17</sup> and P-1193.<sup>18</sup> Similarly, on Mr Yekatom's instructions to protect the population, the Chamber has received evidence<sup>19</sup> from e.g. Vivien BEINA (P-0888)<sup>20</sup> and

<sup>9</sup> See, CAR-OTP-2105-0195, para. 30 ('*Une fois la réunion terminée, ROMBHOT s'est rendu à l'extérieur de la cathédrale pour s'adresser au public - il y avait beaucoup de monde à l'extérieur. C'est là qu'il a dit publiquement que si quelqu'un venait à tuer un musulman civil, il aurait un problème avec lui.*').

<sup>10</sup> See, CAR-OTP-2105-0195, para. 30 ('*ROMBHOT voulait libérer le pays des Seleka étrangers, pas de tous les musulmans.*').

<sup>11</sup> See, CAR-OTP-2105-0195, para. 26 ('*Les conseils donnés étaient de protéger la population et de ne pas voler.*').

<sup>12</sup> See, CAR-OTP-2105-0195, para. 39 ('*Je ne me souviens pas avoir vu ROMBHOT utiliser ou recruter des enfants soldats.*').

<sup>13</sup> See, CAR-OTP-2135-2397, para. 78 and correction.

<sup>14</sup> See, [REDACTED].

<sup>15</sup> See also, *infra* fn. 17.

<sup>16</sup> See, ICC-01/14-01/18-T-122-CONF-FRA, 29:14-20.

<sup>17</sup> See, [REDACTED].

<sup>18</sup> See, ICC-01/14-01/18-T-126-CONF-FRA, 77:9-24.

<sup>19</sup> See also, Witness P-1647, whose statement the Prosecution has tendered in an application under Rule 68(3), currently pending before the Chamber; see, CAR-OTP-2050-0654, para. 34; and ICC-01/14-01/18-1179-Conf.

<sup>20</sup> See, ICC-01/14-01/18-T-122-CONF-FRA, 15:24-16:12.

[REDACTED].<sup>21</sup> Lastly, the Chamber will recall *inter alia* that Prosecution witness [REDACTED] had denied seeing any child soldiers in Mr Yekatom's group;<sup>22</sup> P-1786 stated that the Anti-Balaka at the YAMWARA School were '15 or 17 or older';<sup>23</sup> and P-1819 stated that she didn't see any child soldiers with Mr Yekatom's group at the 'second base'.<sup>24</sup>

12. This Response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed forthwith.

**RESPECTFULLY SUBMITTED ON THIS 12<sup>th</sup> DAY OF DECEMBER 2022**



Me Mylène Dimitri  
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

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<sup>21</sup> See, [REDACTED].

<sup>22</sup> See, [REDACTED].

<sup>23</sup> See, CAR-OTP-2058-0200, para. 25; [REDACTED].

<sup>24</sup> See, CAR-OTP-2065-0003, paras 128, 130; [REDACTED].