

**Cour
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**International
Criminal
Court**

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

Date: **13 April 2023**

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 the “Yekatom Defence Response to ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1974 pursuant to Rule 68(3)’ 16 June 2022, ICC-01/14-01/18-1463-Conf”, 24 June 2022, ICC-01/14-01/18-1479-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby responds to the 'Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-1974 pursuant to Rule 68(3)' ('Request').¹
2. The Defence respectfully submits that the Request should be denied.
3. As has recently been demonstrated, the child soldier demobilisation programme [REDACTED] was fraudulent: [REDACTED], its participants were not in fact child soldiers, were not part of Mr Yekatom's group and/or were not under the age of 15 during the events.
4. In light of the evidence of the [REDACTED], the Defence position is that any statement or associated exhibits provided by [REDACTED] – who would have had (and continue to have) a compelling personal motivation to provide false information to maintain an appearance of validity as regards the [REDACTED] programme, [REDACTED] – is not appropriate for admission via Rule 68(3).
5. On the contrary, the interests of justice would require that P-1974 be called to testify *viva voce* in full, so as to allow the Chamber the uncurbed opportunity to assess his credibility, in accordance with its truth-seeking function.

APPLICABLE LAW

6. Rule 68(3) of the Rules of Procedure and Evidence ("Rules") states:

If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

¹ [ICC-01/14-01/18-1463-Conf.](#)

7. Regulation 43 of the Regulations of the Court, in relation to the testimony of witnesses, states:

Subject to the Statute and the Rules, the Presiding Judge, in consultation with the other members of the Chamber, shall determine the mode and order of questioning witnesses and presenting evidence so as to:

- (a) Make the questioning of witnesses and the presentation of evidence fair and effective for the determination of the truth;
- (b) Avoid delays and ensure the effective use of time.

8. A Chamber must carry out an individual assessment of the evidence sought to be introduced under Rule 68(3), based on the circumstances of each case, which includes analysing the importance of this evidence in light of the charges and other evidence presented or intended to be presented; this assessment is part and parcel of the analysis a Chamber must undertake in determining whether it is not prejudicial to or inconsistent with the rights of the accused or with the fairness of the trial generally, to allow for the evidence in question to be introduced under Rule 68 (3).²
9. In conducting this analysis, a Chamber may take into account a number of factors, including the following: (i) whether the evidence relates to issues that are not materially in dispute; (ii) whether that evidence is not central to core issues in the case, but only provides relevant background information; and (iii) whether the evidence is corroborative of other evidence.³

SUBMISSIONS

I. The [REDACTED] child soldier demobilisation programme was fraudulent.

² *Prosecutor v. Gbagbo & Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled “Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)”, [ICC-02/11-01/15-744](#), 1 November 2016, para. 71.

³ *Prosecutor v. Bemba Gombo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled “Decision on the admission into evidence of materials contained in the prosecution’s list of evidence”, 3 May 2011, [ICC-01/05-01/08-1386](#), para 78.

10. As the Defence has previously submitted, the child soldier demobilisation programme [REDACTED] was fraudulent: [REDACTED], its participants were not in fact child soldiers, were not part of Mr Yekatom's group and/or were not under the age of 15 during the events.
11. In the interests of judicial economy, the Defence respectfully refers the Chamber to its previous submissions regarding the evidence currently on the trial record, as set out in detail in its recent response to the Prosecution's Rule 68(3) request in relation to [REDACTED] witness P-2018 ('Response to P-2018 Rule 68(3) Request'), which serve to bear out the Defence's position in this regard.⁴
12. It is highly improbable that P-1974 was not implicated [REDACTED] fraudulent scheme.
13. P-1974, [REDACTED].⁵ Given P-1974's position, [REDACTED], his motivation to provide false information and evidence would arguably be even more compelling than that of other, [REDACTED].
14. P-1974 [REDACTED].⁶ He also [REDACTED].⁷ The Chamber will recall P-2475's evidence, that two photographs of very young children contained in the [REDACTED], which P-1974 describes as depicting children attending recreational activities at an [REDACTED] 'day centre' for the demobilised child soldiers, in fact simply depicted a gathering of local children who had been attracted by the singing and dancing that had been taking place at the ceremony.⁸ In the circumstances, it is notable that P-1974 stated to Prosecution investigators that [REDACTED] – despite the fact that [REDACTED]

⁴ [ICC-01/14-01/18-1456-Conf](#), paras 10-21.

⁵ [CAR-OTP-2068-0222-R03](#), paras 13, 15, 29-30; see also, [CAR-OTP-2109-0452-R02](#), para. 33.

⁶ [CAR-OTP-2068-0222-R03](#), para. 56; [REDACTED] has ERN [CAR-OTP-2068-0558](#), tendered as Annex B.

⁷ [CAR-OTP-2068-0568](#), tendered as Annex C.

⁸ See, [CAR-OTP-2068-0568](#), at 0582-0583; and ICC-01/14-01/18-T-131-CONF-FRA, 50:13-26, 53:20-54:5.

programme events and ceremonies appears to have been well-publicised affairs, attended by journalists and government figures.⁹

15. It is also notable that P-1974 claims that in July 2014, [REDACTED] had first witnessed the presence of children among the Anti-Balaka at a checkpoint in PISSA; that [REDACTED] this information and met with Mr Yekatom; and [REDACTED].¹⁰ This account diverges with that provided by P-2018, who claims that ‘sometime about March 2014, [REDACTED] to ask if there were children within the Anti-Balaka groups in LOBAYE’; and that P-2018 subsequently [REDACTED].¹¹ The divergence in these accounts is relevant, [REDACTED]. In light of P-2475’s claim that [REDACTED] conducted the fraud with the aim of exploiting the programme participants for their own benefit,¹² this portrayal of [REDACTED] takes on a new light.
16. The Defence also notes that P-1974 appears to be in ongoing contact via Facebook with [REDACTED].¹³ The Defence does not suggest that this instance of contact is of itself evidence of impropriety. However, given that [REDACTED] have been taking an active role in the context of these proceedings, including by attempting to procure witnesses and evidence, including apparently falsified evidence;¹⁴ and given the evidence produced by the Defence indicating that [REDACTED];¹⁵ it is submitted that this ongoing Facebook contact on the part of P-1974 is nonetheless a material consideration for the purposes of the Request.

⁹ See e.g., ICC-01/14-01/18-T-131-CONF-FRA, 50:13-26, 53:20-54:5; see also, [CAR-OTP-2068-0222-R03](#), para. 44, 47, 53.

¹⁰ [CAR-OTP-2068-0222-R03](#), paras 20-22.

¹¹ [CAR-OTP-2071-0259-R04](#), paras 24-26.

¹² ICC-01/14-01/18-T-132-CONF-FRA, 24:-11.

¹³ See, [CAR-D29-0016-0061](#); see also, ICC-01/14-01/18-T-133-CONF-FRA, p. 55, lines 2-13.

¹⁴ [ICC-01/14-01/18-1456-Conf](#), paras 23-29.

¹⁵ [REDACTED]; see, [CAR-D29-0013-0100](#), [CAR-D29-0013-0098](#) and [CAR-D29-0014-0068](#); see also, ICC-01/14-01/18-T-133-CONF-FRA, pp 49-50.

17. In the circumstances, the fact that P-1974's statements contain multiple references to the acts and conduct of Mr Yekatom as charged, further compounds the prejudice that their admission via Rule 68(3) would occasion to the fairness of these proceedings.¹⁶ In this regard, the Defence highlights the interactions that P-1974 claims to have had with 'child soldiers' at [REDACTED], as well as the [REDACTED] that P-1974 claims to have had with Mr Yekatom [REDACTED], which respectively go directly to the *actus reus* and *mens rea* of Count 29.¹⁷
18. In the circumstances therefore, and the mounting evidence on the trial record of the fraud [REDACTED], allowing the introduction of P-1974's statement and exhibits via Rule 68(3) would gravely prejudice the fairness of these proceedings. Instead, recalling that *viva voce* testimony 'enables the Chamber and the accused to hear natural and spontaneous accounts from witnesses, to directly and closely observe their reactions, demeanour and composure, and to immediately seek clarifications',¹⁸ the Defence submits that P-1974 should be called to provide his evidence before the Chamber, under oath and in full.
19. Lastly, the Defence notes that the Prosecution anticipates time-savings of four hours, should the Request be granted.¹⁹ In the circumstances, it would be contrary to the integrity and fairness of these proceedings to allow the manifestly unreliable statements and associated exhibits of P-1974 to form part of the trial record at this stage, and to thereby deprive the Chamber of the full, unrestricted opportunity to assess the credibility of P-1974's claims, for the sole purpose of saving four hours of court time in these proceedings.

II. The 'corroborating' evidence cited by the Prosecution does not meaningfully support the Request.

¹⁶ [ICC-01/14-01/18-1463-Conf](#), paras 9, 11.

¹⁷ [CAR-OTP-2068-0222-R03](#), paras 31-40; [CAR-OTP-2122-8673-R01](#), paras 20, 23-24.

¹⁸ [ICC-01/14-01/18-685](#), para. 33, and reference cited therein.

¹⁹ [ICC-01/14-01/18-1463-Conf](#), paras 1, 17.

20. In the Request, the Prosecution claims that P-1974's evidence is corroborated by P-2018, P-2475, and P-2082.²⁰
21. The Prosecution's reliance on P-2018 is misplaced. As set out in the Response to P-2018 Rule 68(3) Request, P-2018 was personally and knowingly [REDACTED], and would therefore have been likewise motivated to [REDACTED].²¹ Moreover, evidence on the record shows that P-2018 [REDACTED].²²
22. As regards P-2475 and P-2082, in the interests of judicial economy, the Defence respectfully refers the Chamber to its previous submissions as set out in the Response to P-2018 Rule 68(3) Request.²³
23. In addition, the evidence on the record showing that P-2475 falsely portrayed [REDACTED], further demonstrates the misplaced nature of the Prosecution's reliance on his evidence.²⁴

CONFIDENTIALITY

24. This Response is filed on a confidential basis corresponding to the classification of the Request.

RELIEF SOUGHT

25. In light of the above, the Defence respectfully requests that Trial Chamber V:
- DENY** the Request.

²⁰ [ICC-01/14-01/18-1463-Conf](#), para. 11.

²¹ [ICC-01/14-01/18-1456-Conf](#), paras 15, 20, 22.

²² [ICC-01/14-01/18-1456-Conf](#), para. 24.

²³ [ICC-01/14-01/18-1456-Conf](#), paras 32-33.

²⁴ [REDACTED], ICC-01/14-01/18-T-133-CONF-FRA, p. 66-73; see also [CAR-D29-0013-0004](#), [CAR-D29-0014-0065](#), [CAR-D29-0016-0066](#), [CAR-D29-0016-0071](#); and where the Defence provided documentary evidence demonstrating that ages of other alleged 'child soldiers' [REDACTED] were systematically incorrect, see e.g. ICC-01/14-01/18-T-131-CONF-FRA, p.57:2-14, 60:6-14, 64:12-15, 69:11-17, 70:22-71:7, 72:1-10, 75:18-21, see also [CAR-D29-0015-0027](#), [CAR-D29-0013-0075](#), [CAR-D29-0013-0080](#), [CAR-D29-0013-0087](#).

RESPECTFULLY SUBMITTED ON THIS 13TH DAY OF APRIL 2023

A handwritten signature in blue ink, appearing to read 'Mylène Dimitri'.

Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands