

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 October 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 “Yekatom Defence Response to ‘Prosecution’s Request for Submission of the Prior Recorded Testimony of P-2269 pursuant to Rule 68(2)(c)’”, ICC-01/14-01/18-1984-Conf, 17 July 2023

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
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Thomas Hannis
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

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

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-2269 pursuant to Rule 68(2)(c)'¹ ('Request').
2. The Request should be denied.
3. The Prosecution has not established that P-2269 is dead or presumed dead, nor that P-2269 is 'unavailable to testify orally', pursuant to rule 68(2)(c). Moreover, the submitted statement of P-2269 contains unreliable allegations that go to the acts and conduct of Mr Yekatom, which further militates against its introduction into evidence.

SUBMISSIONS

A. The Prosecution has not met any of the *chapeau* standards within rule 68(2)(c) for admission of P-2269's prior recorded testimony.

4. At paragraph two of the Request, the Prosecution argues that 'P-2269 was unavailable to testify due to obstacles that could not be overcome with reasonable diligence, and is now presumed dead'.² P
5. The Prosecution thus appears to take the position that, whereas P-2269 had previously simulated his death in an attempt to avoid testifying before the Chamber – as [REDACTED] argued in the Prosecution's request for a summons in respect of P-2269 ('Summons Request')³ – there is now evidence that, following this simulation, P-2269 [REDACTED].

¹ ICC-01/14-01/18-1957-Conf.

² Ibid., para. 2; see also, para. 8.

³ ICC-01/14-01/18-1701-Conf-Red2; see also, ICC-01/14-01/18-1738-Conf.

6. However, while the Prosecution expressly asks that the Chamber find that P-2269 is presumed dead, it also argues that ‘all reasonable measures to secure [P-2269’s] attendance’ have been exhausted.⁴
7. The Prosecution thus appears to be asking the Chamber to find that P-2269 is presumed dead and that, in any event, he is ‘unavailable to testify orally’ due to obstacles that cannot be overcome with reasonable diligence.
8. While the Defence does not suggest that the Prosecution’s alternative reliance on multiple limbs of rule 68(2)(c) is per se procedurally impermissible or internally contradictory, it does submit that this approach does not constitute license to collapse the boundaries between these distinct limbs, nor to amalgamate the evidence underpinning the Prosecution position. On the contrary, it is submitted that the evidence underpinning the Prosecution’s argument as to each limb – i.e. evidence of his presumed death on the one hand, and on the other, evidence that he is ‘unavailable to testify orally’ – must be considered on its own merits; and separate determination(s) as to whether either limb is established must be made.
9. In any event, the Defence submits that the evidence presented by the Prosecution in support of the Request is insufficient to establish either of these limbs.
 - i) *The Prosecution has not established that P-2269 is dead or presumed dead within the meaning of rule 68(2)(c).*
10. In the Request, the Prosecution relies on a bailiff’s report dated [REDACTED] (‘Second Bailiff’s Report’), in which it is stated that P-2269 allegedly [REDACTED].⁵

⁴ See, ICC-01/14-01/18-1957-Conf, para. 8.

⁵ See, [REDACTED] Bailiff’s Report (‘Second Bailiff’s Report’), p.1, attached to Email from Registry of 28 June 2023 at 16:35.

11. This sole piece of anonymous, nth-degree hearsay evidence – effectively little more than a rumour – is insufficient to sustain a finding that P-2269 is dead or presumed dead for the purposes of rule 68(2)(c).
12. No death certificate has been provided;⁶ nor any formal confirmation, oral or written, by an official at any level of government. No meaningful details regarding the incident been provided: no details regarding the source of this information; no timeframe for the alleged death;⁷ nor concrete information about the specific cause or manner of death. Not a single family member has been contacted to confirm the alleged death; nor indeed, has anyone who actually knew P-2269.⁸ Nor was any information received – let alone any statement taken – from anyone who attended or otherwise had knowledge of any burial or funeral ceremony in respect of P-2269.⁹
13. In this regard, it is notable that the individual who informed the bailiff that he had ‘received information’ about P-2269’s purported death, [REDACTED], had previously informed the bailiff that he did not actually know who P-2269 was;¹⁰ indeed, during the bailiff’s first mission, [REDACTED] appears to have led him to a different, unrelated individual who shared a last name with P-2269, apparently mistakenly believing them to be related.¹¹ [REDACTED] has not himself provided a statement; nor has he signed the Second Bailiff’s Report.¹²

⁶ Cf. ICC-01/14-01/18-1975-Conf, para. 25 and fn. 25; and *Prosecutor v Ongwen*, Decision on Defence Request Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence, [ICC-02/04-01/15-1288](#), 19 June 2018 (‘Ongwen Decision’), para. 9.

⁷ Cf. ICC-01/14-01/18-1975-Conf, para. 25; Ongwen Decision, para. 9; and *Prosecutor v Al Hassan*, Decision on the introduction into evidence of P-0125’s prior recorded testimony pursuant to Rule 68(2)(c) of the Rules, [ICC-01/12-01/18-1413](#), 14 April 2021 (‘Al Hassan Decision’) para. 10.

⁸ See, Second Bailiff’s Report, p. 2. Cf. ICC-01/14-01/18-1975-Conf, para. 25; Ongwen Decision, para. 9; and Al Hassan Decision, para. 10.

⁹ Cf. *Prosecutor v Ntaganda*, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103, [ICC-01/04-02/06-1029](#), 20 November 2015 (‘First Ntaganda Decision’), paras 17-19.

¹⁰ Cf. ICC-01/14-01/18-1975-Conf, para. 25; Ongwen Decision, para. 9; and Al Hassan Decision, para. 10.

¹¹ See, [REDACTED] Bailiff’s Report (‘First Bailiff’s Report’), p. 2, attached to Email from Registry of 28 June 2023 at 16:35.

¹² Cf. First Ntaganda Decision, paras 17-19.

14. The relevant provisions of the CAR national law on death certificates, as set out in the CAR *Code de la famille* ('CAR Family Code') are also illustrative of the paucity of evidence of P-2269's purported death.¹³ Article 146 stipulates that burials can take place only with the authorisation of a civil registrar ('*officier de l'état civil*') or with the authorisation of the *Chef de village* or *Chef du quartier*, along with two witnesses. As noted above, the Prosecution has not produced statements from such civil authorities. Indeed, no attempt appears to have been made to contact any such figures [REDACTED], i.e. the location of P-2269's purported death; in fact, there is no evidence that the Prosecution or bailiff attempted to contact anyone, or indeed conduct any investigation whatsoever, in [REDACTED]. In the same vein, [REDACTED] requires that in circumstances indicating the occurrence of a [REDACTED] – as presumably applicable to P-2269's alleged death – [REDACTED]. No such report has been produced; and again, no attempt appears to have been made to contact a member of the police to determine whether such a report was duly prepared – which is itself especially notable given that it is the CAR police that informed the Prosecution that P-2269 had simulated his own death.
15. It is also notable that, according to the CAR Prosecutor's office, the Second Bailiff's Report is apparently an insufficient basis for the CAR authorities to issue a death certificate, and that 'further verification' would be necessary before the latter could be issued.¹⁴ Indeed, the CAR Family Code limits those empowered to legally declare an individual's death to i) a relative of the deceased; ii) a witness to the alleged death; or iii) a doctor who has confirmed the death.¹⁵

¹³ CAR *Code de La Famille*, Loi No. 97.013 ('CAR Family Code'), articles 146-160; available at <http://jafbase.fr/docAfrique/Centrafrrique/code%20de%20la%20famille.pdf>.

¹⁴ See, Email from Registry of 28 June 2023 at 16:35.

¹⁵ See, CAR Family Code, article 148.

16. The Registry's claim that the Second Bailiff's Report 'has an indisputable legal value and constitutes an authentic act until registration of "forgery"' must be understood in this context.¹⁶ In this regard, while the fact that [REDACTED] received anonymous hearsay information regarding P-2269's purported death; or the fact that the bailiff himself failed [REDACTED] on P-2269 on account of his purported death, may themselves have 'indisputable legal value' on account of their being asserted in the Second Bailiff's Report, these facts should not be confused with the fact of P-2269's death or presumed death itself.
17. In this regard, the Defence notes that the Prosecution effectively suggests that the Chamber sidestep the applicable CAR national legal framework on deaths. While the Defence does not suggest that the Chamber is bound by this framework, it nonetheless submits that this suggestion displays an unfortunate lack of due respect for the CAR legal system and civil procedures.
18. The information contained in the Second Bailiff's Report thus cannot ground a finding that P-2269 is dead or presumed dead. This is especially the case, given that this information must be assessed against the backdrop of independent, corroborated evidence that P-2269 had simulated his own death in an attempt to avoid testifying before the Chamber.
19. In this regard, the Defence recalls that on 3 February 2023, i.e. five months before the Request was filed, the Prosecution filed its Summons Request, in which it had submitted *inter alia*:

P-2269 a cessé de coopérer avec l'Accusation dans cette affaire et ne répond plus aux appels téléphoniques visant à organiser sa déposition. Comme exposé infra, son épouse, qui a pu être contactée par [EXPURGÉ], a été claire : le témoin ne souhaite plus être contacté. Bien plus, il apparaît qu'il a tenté de se faire passer pour mort, avec l'assistance de proches, pour se soustraire à sa comparution devant la Chambre.¹⁷

¹⁶ Ibid.

¹⁷ ICC-01/14-01/18-1701-Conf-Red2, para. 2.

20. In the Summons Request, the Prosecution cited as evidence of P-2269's attempt to simulate his death and withdrawal of cooperation: i) the Prosecution's contact with P-2269 [REDACTED]; ii) information received from the CAR police in February 2022 that P-2269 had not in fact died, and that his wife indicated P-2269 [REDACTED]; iii) an [REDACTED] phone conversation with P-2269's daughter in which the latter 'seemingly confirmed' that P-2269 was alive; iv) an [REDACTED] phone conversation with P-2269's son, who claimed that P-2269 was deceased; v) an [REDACTED], during which it was confirmed that P-2269 was not listed in registries of deaths at the [REDACTED] hospital morgue and Town Hall; and vi) information from the CAR police that P-2269's wife had stated that she had simulated P-2269's death 'so that a white woman would stop calling him', presumably (according to the Prosecution) referring to a Prosecution representative.¹⁸
21. This evidence was cited by the Chamber in its Decision granting the Summons Request, in which it noted that 'according to the Prosecution, the witness even attempted to simulate his own death to avoid further contacts[.]'¹⁹ Needless to say, this evidence cannot be now recharacterized and repurposed to support the Prosecution argument that P-2269 is *bona fide* dead or presumed dead.
22. Moreover, coming against this backdrop, the purported manner of P-2269's death, i.e. [REDACTED], with its underlying implication that P-2269's [REDACTED], only gives rise to more cause to suspect the veracity of this information.
23. Lastly, the Defence notes that the Prosecution relies on the Registry's suggestion that the process of verification by the CAR authorities would take 'up to a

¹⁸ See, ICC-01/14-01/18-1701-Conf-Red2, para. 25; and ICC-01/14-01/18-1957-Conf, paras 9-13.

¹⁹ ICC-01/14-01/18-1957-Conf, para. 15.

month' in suggesting that the Chamber may find that P-2269 can be presumed dead for the purposes of the Request.

24. This argument is fundamentally flawed. The length of time that verification of an individual's death might require has no bearing on whether that individual can be legally presumed dead. This is especially so given that the required time in question is (at most) a mere month; and given that, had the Prosecution immediately requested that the CAR authorities commence the verification process, as mooted by the Registry on 28 June 2023, the process would have been completed well before the anticipated close of the Prosecution's presentation of evidence.²⁰
25. Nor can the fact that the issuance of a death certificate was contingent on the CAR authorities conducting said prior verification constitute a valid reason for the Prosecution's failure to obtain and provide a death certificate; not least given that there is no indication that the authorities are unwilling to do so.²¹
 - ii) *The Prosecution has not established that P-2269 is 'unavailable to testify orally' within the meaning of rule 68(2)(c).*
26. 'Unavailability' within the meaning of rule 68(2)(c) cannot be invoked where a witness has simply withdrawn their cooperation and/or is unwilling to testify; it must be established that the witness is inaccessible or otherwise incapable of testifying orally.²²

²⁰ See, ICC-01/14-01/18-1892, paras 3-8.

²¹ See, Email from Registry of 28 June 2023 at 16:35. Cf. Al Hassan Decision, paras 8-10; and First Ntaganda Decision, para. 43.

²² See, ICC-01/14-01/18-1975-Conf, para. 28, and fn. 32; and *Prosecutor v Ntaganda*, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0039, [ICC-01/04-02/06-1325](#), 19 May 2016, paras 9-10.

27. The Prosecution has failed to do so; and in the same vein, the Prosecution claim that it has '[REDACTED]' is without merit.²³ On the contrary, it is clear that a variety of 'further efforts to contact [P-2269] can still be made'.²⁴
28. At the outset, the Defence notes that [REDACTED], the bailiff having concluded that P-2269 was dead.²⁵
29. In any event, both the bailiff's first mission report of [REDACTED] ('First Bailiff Report') and the Second Bailiff Report evidence a litany of deficiencies in his attempts to [REDACTED].
30. First, it is unclear as to why the bailiff was tasked with serving the summons on P-2269 in [REDACTED], when the Prosecution had been informed by the CAR police that P-2269 was in fact in [REDACTED]. It is notable that the source of this information was the wife of P-2269 – the only individual who appears to have been upfront in disclosing that P-2269 had in fact faked his death to avoid testifying before the Chamber.²⁶ No further attempt appears to have been made to obtain further details from the wife of P-2269, about his whereabouts in [REDACTED]; nor from the CAR police.
31. With regard to the first mission: first, the address provided for P-2269 appears to have been incorrect.²⁷ In the same vein, according to the Bailiff, one of the two phone numbers provided for P-2269 was 'erroneous', while the second 'did not work'.²⁸ As noted above, [REDACTED] – who did not himself know P-2269 – led the Bailiff to an unrelated individual who shared the same last name as P-2269.²⁹ Notably, the bailiff himself conceded that he 'was not able to push the

²³ ICC-01/14-01/18-1957-Conf, para. 10.

²⁴ See, ICC-01/14-01/18-1975-Conf, para. 28, and fn. 33.

²⁵ See, *Procès-verbal de Carence*, [REDACTED], attached to Email from Registry of 28 June 2023 at 16:35; see also, where Prosecution Counsel cited 'the Registry's indication that [REDACTED]', Email from Prosecution of 20 June 2023 at 09:29.

²⁶ ICC-01/14-01/18-1957-Conf, para. 13.

²⁷ First Bailiff Report, p. 2.

²⁸ First Bailiff Report, p. 2.

²⁹ First Bailiff Report, p. 2.

search too far' during this mission, owing to a perceived 'reticence' on the part of unnamed 'certain persons'.³⁰ (This ambiguous and vague claim itself should be assessed alongside the fact that the list of persons contacted during this mission, compiled by the bailiff himself, is composed of a mere two individuals – [REDACTED] and the [REDACTED].³¹) Importantly, the bailiff also expressly suggested that the two day mission could have been successful had he been afforded more time to search for P-2269; a similar sentiment was also expressed by [REDACTED].³²

32. As regards the second mission: the bailiff was assisted by the same individuals who assisted on the first, unsuccessful mission.³³ No attempt to verify or corroborate the anonymous, nth-degree hearsay information about P-2269's purported death appears to have been made by the bailiff; indeed, he expressly concedes in the Second Bailiff Report that he did not contact a single family member for this purpose.³⁴ Importantly (and much like the first mission) the bailiff expressly conceded that he was unable to 'seriously pursue the inquiry' on account of insecurity in [REDACTED] and the 'very short' timeframe available to him.³⁵
33. During either mission, no attempt to contact the *Chef du quartier* [REDACTED], where P-2269 is purported to have live, appears to have been made; the bailiff instead having limited himself to seeking the assistance of a *chef du groupe* (i.e. a higher, and thus more remote, administrative rank) who did not himself know P-2269, and who was a *Chef du quartier* of a different neighbourhood [REDACTED].³⁶

³⁰ First Bailiff Report, p. 2.

³¹ See, '*Personnalités contactées*', attached to the *Proces-verbal de Carence*, [REDACTED], attached to Email from Registry of 28 June 2023 at 16:35.

³² First Bailiff Report, p. 2. See also, ICC-01/14-01/18-1975-Conf, para. 28.

³³ Second Bailiff Report, p. 1.

³⁴ Second Bailiff Report, pp 1-2.

³⁵ Second Bailiff Report, p. 2.

³⁶ See, First Bailiff Report and Second Bailiff Report.

34. Nor do any subsequent inquiries appear to have been made in [REDACTED]; for instance, any investigations into the alleged [REDACTED]; or interviews of individuals in that village.
35. The Prosecution's prior efforts to secure P-2269's appearance are similarly unavailing.
36. As noted above, the Prosecution was informed that P-2269 was in [REDACTED]; yet no effort appears to ever have been made to pursue this lead. The Prosecution also relies on an isolated bout of [REDACTED] – apparently limited to two calls to two family members of P-2269 (not including his wife), and an examination of death registers in [REDACTED].³⁷
37. While the Prosecution further claims to have made 'further attempts to contact the witness, including through continued calls to known and potential contact numbers, searches of social media, and the use of intermediaries' (which claims are notably absent from the Summons Request)³⁸ – not a single concrete detail of said attempts is provided.³⁹ Nor is any document that could support these claims: for example, an investigation report or contemporary notes. In this regard, the Defence recalls that, in support of a previous rule 68(2)(c) request in respect of a different witness, a claimed inability to contact an 'unavailable' witness 'for over five months' consisted of a total of thirteen phone calls, some of which appeared to have been made to a defunct contact number⁴⁰ – though in fairness, in that previous request, and in contrast to this Prosecution Request, the Prosecution was at least transparent about the number of calls that it had attempted to make.

³⁷ ICC-01/14-01/18-1957-Conf, paras 11-13.

³⁸ ICC-01/14-01/18-1701-Conf-Red2, para. 25.

³⁹ ICC-01/14-01/18-1957-Conf, paras 14.

⁴⁰ See, ICC-01/14-01/18-1010-Conf, paras 18-20, 25.

38. Lastly, the impending closure of the Prosecution's presentation of evidence in these proceedings should have little bearing, if any, on the matter of whether P-2269 witness is 'unavailable' to testify orally. Rule 68(2)(c) is among the limited exceptions to the rule that testimonial evidence 'shall be given in person', pursuant to the principle of orality and as enshrined in article 69(2). Underpinning the latter is an accused's right to examine witnesses brought against him, guaranteed under article 67(1)(e), itself of fundamental importance to the fairness of proceedings.⁴¹ Given what is at stake therefore, rule 68(2)(c) cannot be reduced to a fallback 'mopping-up' provision, to be employed for the purposes of admitting un-examined testimonial evidence wholesale at the end of the Prosecution case. Whether a witness is inaccessible or incapable of testifying orally is a matter to be determined on its own merits, and on the strength of the evidence for or against it. What is important to that determination is the quality of a party's efforts – their effectiveness, thoroughness and consistency – made to secure that witness's appearance; not the timing of the end of that party's case.
39. In light of the above, the Prosecution's efforts to secure the oral testimony of P-2269 do not rise to the necessary threshold for the admission into evidence of his prior recorded testimony.
- iii) The prior recorded testimony of P-2269 is insufficiently reliable, and goes to proof of the acts and conduct of Mr Yekatom.*
40. Rule 68(1) imposes, as a specific pre-condition of admission into evidence of prior recorded testimony, that said admission 'not be prejudicial to or inconsistent with the rights of the accused'; and further to rule 68(2)(c)(ii), 'the fact that prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction'.

⁴¹ See, *Prosecutor v Katanga & Ngudjolo*, Decision on the Prosecutor's Bar Table Motions, [ICC-01/04-01/07-2635](#), 17 December 2010, paras 42-43.

41. Moreover, in accordance with the jurisprudence of the Court, the impact of the Prosecution Request on the fairness of the proceedings must be considered: the probative value of the prior recorded testimony of P-2269 ‘vis-à-vis any prejudice that admission may cause to a fair trial or to a fair evaluation of the testimony of [P-2269] should also be taken into consideration’.⁴²
42. The tendered prior recorded testimony of P-2269 contains allegations that go to the acts and conduct of Mr Yekatom, or are insufficiently reliable, or both; all of which further militate against granting the Request.
43. First, P-2269 claims that Mr Yekatom fled to ZONGO [REDACTED], on or before the Seleka coup of 24 March 2013; the implication being that Mr Yekatom fled to ZONGO with individuals alleged by the Prosecution to be members of the ‘Strategic Common Plan’ and/or otherwise ‘loyal to BOZIZE’, including Maxime MOKOM, Francis BOZIZE and Aimé Abel DENAMGANAI.⁴³ This implication in turn is part of the Prosecution case as to Mr Yekatom’s alleged instrumentalization by key members of the ‘Strategic Common Plan’, who aimed to claim political power via criminal means.⁴⁴
44. Accordingly, in its Trial Brief, the Prosecution has alleged a direct link between MOKOM and Mr Yekatom – for instance, claiming that as part of his role in the ‘Strategic Common Plan’, MOKOM organised and coordinated ‘members of the FACA and PG who [...] fled with him to ZONGO after the 24 March 2013 Coup, such as YEKATOM’;⁴⁵ that ‘MOKOM and YEKATOM knew each other well, as they were both ex-libérateurs. They met regularly in ZONGO’;⁴⁶ or that

⁴² See, *Prosecutor v Gicheru*, Decision on the Prosecution’s Request to Admit Prior Recorded Testimony under Rule 68(2)(c), [ICC-01/09-01/20-235-Red](#), 26 November 2021, paras 7-8.

⁴³ See, CAR-OTP-2111-0336, para. 27. See also, ICC-01/14-01/18-282-Conf-AnxB1, paras 38-40.

⁴⁴ See, ICC-01/14-01/18-282-Conf-AnxB1, paras 3-7.

⁴⁵ ICC-01/14-01/18-723-Conf, para. 84.

⁴⁶ ICC-01/14-01/18-723-Conf, para. 86.

‘YEKATOM was in contact with MOKOM and agreed to participate in the 5 December 2013 BANGUI Attack’.⁴⁷

45. As the Chamber is aware however, the Prosecution case as to the link between Mr Yekatom and MOKOM has effectively collapsed: multiple Prosecution witnesses who were close to MOKOM while in ZONGO have testified to the fact that Mr Yekatom and MOKOM were not in contact in ZONGO (or elsewhere); and that there was in fact a conflict or misunderstanding between the two, stemming from MOKOM’s involvement in the imprisonment of Mr Yekatom while in ZONGO.⁴⁸
46. In the same vein, P-2269’s specific allegation as to the timing and circumstances of Mr Yekatom’s flight to ZONGO is directly contradicted by multiple Prosecution witnesses. P-2232, [REDACTED].⁴⁹ Further, multiple Prosecution witnesses have testified to the fact that following the Seleka coup on 24 March 2013, Mr Yekatom remained in BANGUI for a time, working as a FACA under the Seleka regime, before fleeing to ZONGO.⁵⁰
47. P-2269 also makes other unfounded allegations against Mr Yekatom, going to his purported acts and conduct as charged.
48. P-2269 claimed that the 5 December attack was planned from GOBERE, according to which plan Mr Yekatom was ‘to take the route from MBAIKI to BANGUI’. P-2269 also specifically claimed [REDACTED].⁵¹ However, [REDACTED].

⁴⁷ ICC-01/14-01/18-723-Conf, para. 90.

⁴⁸ See e.g., [P-2232] ICC-01/14-01/18-T-079-CONF-FRA ET, 14:25-15:4; [P-0889] CAR-OTP-2122-7653-R02, at 7659; CAR-OTP-2122-7684-R02, at 7692; CAR-OTP-2122-7626-R02 at 7630-7631; and CAR-OTP-2122-8002-R02 at 8033; [P-0888] ICC-01/14-01/18-T-121-FRA, 30:12-22; ICC-01/14-01/18-T-120-CONF-FRA, 23:5-10; and [P-0884] ICC-01/14-01/18-T-055-CONF-FRA, 83:3-27.

⁴⁹ See, ICC-01/14-01/18-T-079-CONF-FRA, 12:4-11.

⁵⁰ See e.g., [P-0888] ICC-01/14-01/18-T-120-CONF-FRA, 20:4-12; ICC-01/14-01/18-T-121-FRA, 8:5-10:12, 11:14-27; and [P-0954] CAR-OTP-00000303, at 000011. See also, [P-1786] ICC-01/14-01/18-T-197-CONF-FRA, 62:10-17; CAR-OTP-2127-4410, at 4432, l. 763-770; and CAR-OTP-2065-2348 (transcript at CAR-D29-0006-1178).

⁵¹ CAR-OTP-2111-0336, paras. 56.

49. He also claimed that Mr Yekatom's men attacked MAMBERE, BERBERATI (on 10 December 2013), and subsequently CARNOT⁵² – none of which are found on the PK9-MBAIKI axis, or for that matter, within the LOBAYE prefecture. P-2269 is unique among Prosecution witnesses in making these allegations.
50. Admission of P-2269's prior recorded testimony via rule 68(2)(c) would thus cause undue and unacceptable prejudice to Mr Yekatom's fair trial rights, given the Defence's inability to test these unfounded allegations brought against him by a Prosecution witness. To ensure due respect of the procedural safeguards within rule 68(1) and (2)(c)(ii) therefore, the Request should be denied.

CONFIDENTIALITY

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

RELIEF SOUGHT

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

RESPECTFULLY SUBMITTED ON THIS 16th DAY OF OCTOBER 2023



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

⁵² CAR-OTP-2111-0336, paras. 58-60.