

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **30 August 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**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 Partial Reconsideration of the “Decision on the
Prosecution Request for Formal Submission of Prior Recorded Testimonies
pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460, P-0732,
P-1779, P-1864 and P-1871”, (ICC-01/14-01/18-2605)’, 2 August 2024, ICC-
01/14-01/18-2613-Conf”, 14 August 2024, ICC-01/14-01/18-2626-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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SUBMISSIONS

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') opposes the Prosecution's request for partial reconsideration ('Reconsideration Request')¹ of the 'Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules concerning Witnesses P-0460, P-0732, P-1779, P-1864 and P-1871' rejecting the formal submission of CAR-OTP-P-1864's prior recorded statement pursuant to rule 68(2)(c) of the Rules ('Decision').²
2. The Reconsideration Request fails to meet the threshold for reconsideration, as it does not provide any new facts, nor does it raise new legal arguments that would justify the exceptional remedy of revisiting the Decision.
3. The Prosecution argues that a reconsideration would be warranted to prevent an injustice³ as a "clear error of reasoning" led to rejection of the '*Prosecution's Request for a Variation of Time Limit pursuant to Regulation 35 to seek the Submission of the Prior Recorded Testimonies of P-0460, P-0732, P-1779, P-1864, and P-1871 pursuant to Rule 68(2)(c)*' ('First Request').⁴ However, the Prosecution fails to set any error in the Chamber's reasoning nor any resulting injustice.
4. The Reconsideration Request does not provide information that would indicate that the decision was made in ignorance of relevant information.⁵ The basis advanced in regard to the Article 56 in the Reconsideration Request were previously "within the Chamber's contemplation at the time of issuing the Decision".⁶ The Prosecution had the opportunity to provide its submissions in

¹ ICC-01/14-01/18-2613-Conf.

² ICC-01/14-01/18-2605-Conf.

³ ICC-01/14-01/18-2613-Conf, para. 1.

⁴ ICC-01/14-01/18-2285-Conf.

⁵ ICC-01/04-01/06-2705, para. 18.

⁶ *Prosecutor v. Ruto*, Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, 10 February 2015, [ICC-01/09-01/11-1813](#), para. 21.

its First Request for the formal submission of the prior recorded testimony of OTP-P-1864 under Rule 68(2)(c) of the Rules, and it did so. It appears the Prosecution simply disagrees with the Chamber's assessment and reiterates its arguments from its First Request, which the Chamber has already considered and dismissed. The Prosecution implicitly concedes this by acknowledging that reconsideration is justified to "avoid an unsound and unsatisfactory consequence."⁷

5. The Prosecution's position regarding its consideration to Article 56 measures for P-1864 is inconsistent and it should not be entertained at this stage. In the First Request, the Prosecution unequivocally stated that they had no information prompting the consideration of evidence-preserving measures under Article 56.⁸ Yet, in its Reconsideration Request, it submits that Article 56 measures were never a viable alternative and any attempts would have likely foreclosed the limited chance for the witness to remain cooperative.⁹ If the Prosecution believed that such measures were unsuitable, it should have made this argument at the outset. On the other hand, if it did not anticipate the need for these measures at all, then no error occurred in the Chamber reasoning, given that there were clear indicators that suggested the witness might withdraw her cooperation, as the Chamber noted.¹⁰
6. It appears clearly from the Decision that the Chamber was cognisant of P-1864's vulnerability and the repeated impacts the process had on her well-being which ultimately led her to cease to cooperate with the Prosecution. The Chamber noted that as early as in [REDACTED] 2020 the witness has had a strong emotional response when she was informed that the Defence had requested to

⁷ ICC-01/14-01/18-2613-Conf, para. 3.

⁸ ICC-01/14-01/18-2285-Conf, para. 60.

⁹ ICC-01/14-01/18-2613-Conf, paras. 6, 7.

¹⁰ ICC-01/14-01/18-2605-Conf, para. 45.

speak to her and complained afterward about physical symptoms.¹¹ The Chamber further found that:

“in light of the apparent vulnerability of the witness and the strong physical and emotional distress caused by discussions surrounding her evidence the Prosecution could have reasonably foreseen that P-1864 might cease to engage in a process that caused her to relive her victimisation over long periods of time”.¹²

7. The Prosecution further argues that no measures could have been viably considered under Article 56 as they “would inherently cause[d] [P-1864] to relive the deep personal trauma of her sexual victimisation”¹³ and invoking article 56 “at any point – would have risked inflicting significant hardship on P-1864, potentially resulting in permanent psychological damage”.¹⁴ At the outset, the Prosecution claimed that there was no information to prompt consideration of Article 56 measures and made no mention of these concerns, yet they now raise the potential harm to the witness as a key issue. This inconsistency further demonstrates that the Prosecution is attempting to shift its position and supplement its earlier omissions rather than demonstrating any error in the reasoning of the Chamber.
8. This Prosecution’s assertion that any attempt to resort to Article 56 measures “would very likely have foreclosed [...] the already limited chance that she might remain cooperative”¹⁵ is entirely speculative, especially since it did not even attempt to invoke these measures in a timely manner given the witness’s strong emotional reaction in [REDACTED] 2020.
9. Furthermore, the Prosecution fails to demonstrate any injustice resulting from the Chamber’s reasoning. The rejection of the Prosecution’s request for the formal submission of P-1864’s prior recorded testimony which it deems as

¹¹ ICC-01/14-01/18-2605-Conf, para.45.

¹² ICC-01/14-01/18-2605-Conf, para. 45.

¹³ ICC-01/14-01/18-2613-Conf, para.9.

¹⁴ ICC-01/14-01/18-2613-Conf, para. 9.

¹⁵ ICC-01/14-01/18-2613-Conf, para. 7.

significant evidence of sexual violence committed by the Anti-Balaka¹⁶ does not relate to the charges in this case. Indeed, the Prosecution fails to substantiate how the testimony is significant or how its exclusion leads to an injustice such that the exceptional remedy of reconsideration is warranted. There are no charges of rape related to either accused in the [REDACTED] locality, which is not a charged location but is relevant for contextual purposes. [REDACTED] has been sufficiently contextualized, as it is covered by the largest number of witnesses—whether called by the Prosecution or the Defence—and is supported by hundreds of reports, audio and video materials, governmental documents, and more. Considering the extensive evidence the Chamber has already heard on [REDACTED], the Defence does not see how the Prosecution meets its burden to demonstrate that the Chamber's decision has resulted in an injustice by excluding the testimony of P-1864.

10. Therefore, the Reconsideration Request should be rejected as it fails to demonstrate any error in the reasoning and any resulting injustice, and thus does not meet the threshold for reconsideration.

CONFIDENTIALITY

11. 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

12. In light of the above, the Defence respectfully requests the Trial Chamber V to:

REJECT the Prosecution's Request.

RESPECTFULLY SUBMITTED ON THIS 30th DAY OF AUGUST 2024

¹⁶ ICC-01/14-01/18-2613-Conf, para. 2.

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

Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands