

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/14-01/18
Date: 6 September 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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Confidential

**Decision on the Yekatom Defence Request for Reconsideration of the Rule
68(2)(b) Decision regarding D29-6042**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Marie-Hélène Proulx
Lauriane Vandeler

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67(1) and 69 of the Rome Statute and Rules 68(1) and (2)(b) of the Rules of Procedure and Evidence (the 'Rules'), issues this 'Decision on the Yekatom Defence Request for Reconsideration of the Rule 68(2)(b) Decision regarding D29-6042'.

I. Procedural history and submissions

1. The Chamber recalls the procedural history as set out in its 'Decision on the Yekatom Defence [the 'Defence'] Requests for Leave to Add Six Witnesses and Submission under Rule 68(2)(b) of the Rules' (the 'Rule 68(2)(b) Decision').¹ In particular, it recalls that it rejected the submission of D29-6042's prior recorded testimony as it found that it was not suitable to be introduced under Rule 68(2)(b) of the Rules, given that paragraphs 29 and 39 of the witness's statement contain references that touch upon the acts and conduct of the accused.²
2. On 6 August 2024, the Defence requested the Chamber to reconsider its Rule 68(2)(b) Decision and to introduce D29-6042's prior recorded testimony, with the exception of paragraphs 29 and 39 of the witness's statement, under Rule 68(2)(b) of the Rules (the 'Request').³ The Defence indicates that, 'after careful consideration', it decided that it no longer intends to rely on these paragraphs. It submits that this notification constitutes 'a new fact that warrant[s] reconsideration' in order to respect the right of Mr Yekatom to present an effective defence and to prevent an injustice resulting from the exclusion of the totality of D29-6042's evidence.⁴
3. The Defence argues *inter alia* that, by rejecting the totality of D29-6042's prior recorded testimony, the Defence is deprived of the possibility to submit before the Chamber a testimony which would assist it in its truth-seeking function. It also submits that due to the fact that Mr Yekatom is referenced in a limited

¹ Rule 68(2)(b) Decision, 18 July 2024, ICC-01/14-01/18-2598-Conf, paras 1-7.

² Rule 68(2)(b) Decision, ICC-01/14-01/18-2598-Conf, paras 31-32, p. 13.

³ Yekatom Defence request for reconsideration of the Chamber's decision regarding the introduction of D29-P-6042 pursuant to Rule 68(2)(b) of the Rules, ICC-01/14-01/18-2598-Conf, 18 July 2024, ICC-01/14-01/18-2616-Conf, paras 1, 27.

⁴ Request, ICC-01/14-01/18-2616-Conf, paras 2, 13-15.

number of paragraphs, the Chamber's decision to reject the entirety of the witness's evidence is 'unsatisfactory and results in an injustice in light of the option offered to the Chamber to introduce the witness's prior recorded testimony with the stipulation that specific paragraphs will not be relied upon'.⁵ In this regard, the Defence argues that the Chamber previously granted the introduction of P-1773 and P-2472's prior recorded testimonies under Rule 68(2)(b) of the Rules, after indicating that it would not rely on a certain number of paragraphs that contain explicit references to the accused's acts and conduct.⁶

4. On 14 August 2024, the Office of the Prosecutor (the 'Prosecution') opposed the Request, arguing that the criteria for reconsideration are not met (the 'Response').⁷

II. Analysis

5. The Chamber recalls the applicable law as previously set out regarding Rule 68(2)(b) of the Rules.⁸
6. The Chamber further recalls that reconsideration of a decision is exceptional and should be done only if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.⁹
7. The Chamber considers that the Defence has not presented any new facts or arguments. In the Chamber's view, the Defence's decision not to rely anymore

⁵ Request, ICC-01/14-01/18-2616-Conf, paras 21-25.

⁶ Request, ICC-01/14-01/18-2616-Conf, paras 8-11, 22 *referring to* Corrected version of 'First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules', 17 April 2023, ICC-01/14-01/18-1833-Conf-Corr (corrected public redacted version notified on the same day, ICC-01/14-01/18-1833-Corr-Red) (the '17 April 2023 Decision'), paras 97, 156.

⁷ Prosecution's Response to the Yekatom Defence's Request for Reconsideration of the Chamber's Decision regarding the introduction of D29-P-6042 pursuant to Rule 68(2)(b) of the Rules, ICC-01/14-01/18-2598-Conf (ICC-01/14-01/18-2616-Conf), ICC-01/14-01/18-2627-Conf, paras 1, 3-12.

⁸ See 17 April 2023 Decision, ICC-01/14-01/18-1833-Conf-Corr, paras 16-47. See also Decision on Yekatom Defence Requests for Formal Submission of Prior Recorded Testimonies Pursuant to Rule 68(2)(b) and 68(3), 18 December 2023, ICC-01/14-01/18-2272-Conf, para. 6 *and the references cited therein*.

⁹ See for example Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings, 29 August 2023, ICC-01/14-01/18-2068, para. 4 *with further references*.

on paragraphs 29 and 39 of D29-6042's statement cannot be construed as a new fact warranting reconsideration, but rather a change in strategy resulting from the outcome of the Rule 68(2)(b) Decision. In addition, the Chamber notes that the Defence could have requested the Chamber to exclude paragraphs 29 and 39 when it first sought to introduce D29-6042's prior recorded testimony under Rule 68(2)(b) of the Rules.¹⁰

8. Furthermore, the Chamber notes that the Defence does not argue the existence of any clear error of reasoning in the Rule 68(2)(b) Decision.¹¹
9. Lastly, the Chamber considers that the Defence failed to demonstrate that reconsideration is warranted to prevent an injustice. The Chamber recalls that an assessment under Rule 68(2)(b) of the Rules is discretionary. It further notes that the Defence has merely substantiated that this discretion should have been exercised differently.¹² This, in itself, does not satisfy the standard requirement for reconsideration.
10. In light of the above, the Chamber finds that reconsideration of the Rule 68(2)(b) Decision is not warranted. Accordingly, the Request is rejected.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

ORDERS the Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2616-Conf; and the Response, ICC-01/14-01/18-2627-Conf, respectively, within one week of notification of this decision.

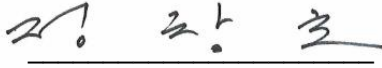
¹⁰ See also Response, ICC-01/14-01/18-2627-Conf, paras 5-7.

¹¹ See also Response, ICC-01/14-01/18-2627-Conf, paras 3-4.

¹² See Request, ICC-01/14-01/18-2616-Conf, paras 8-11, 17-25.

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

Done in both English and French, the English version being authoritative.

 _____ Judge Péter Kovács	 _____ Judge Bertram Schmitt Presiding Judge	 _____ Judge Chang-ho Chung
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Dated 6 September 2024

At The Hague, The Netherlands