

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **10 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public Redacted Version of the “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”, 6 August 2024, ICC-01/14-01/18-2616-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
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Thomas Hannis
Mr Florent Pages Granier

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of Victims

Mr Dmytro Suprun

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

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

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

Ms Marie O'Leary

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. Counsel for Mr Alfred Rombhot Yekatom ("Defence") hereby respectfully requests the Chamber to reconsider its decision rejecting the introduction of D29-P-6042's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules ("Decision").¹
2. The Defence submits that by excluding paragraphs 29 and 39 of D29-P6042's statement, or clearly indicating that they will not be relied upon, a course of action adopted by the Chamber numerous times in these proceedings, the introduction of this witness prior recorded testimony pursuant to Rule 68(2)(b) is warranted.² This introduction is necessary to respect the right of Mr Yekatom to present an effective defence, and prevent an injustice resulting from the exclusion of the totality of D29-P6042's evidence due to the discrete reference which 'touches upon the acts and conduct of the accused' in two paragraphs.³ The Defence respectfully submits that reconsideration is also warranted in light of the Chamber's characterization of paragraphs 29 and 39, as the Defence's notification that it does not intend to rely on those paragraphs constitutes a new fact.

PROCEDURAL BACKGROUND

3. On 26 June 2024, the *Second Defence Consolidated Request for Leave to add items to its List of Evidence, P-6046 & P-6042 to its List of Witnesses and submit their prior recorded testimony pursuant to Rule 68(2)(b)* was notified ("Initial Request").⁴
4. On 18 July 2024, the Chamber issued its *Decision on the Yekatom Defence Requests for Leave to Add Six Witnesses and Submission under Rule 68(2)(b) of the Rules*. The

¹ ICC-01/14-01/18-2598-Conf, paras 28-32.

² **D29-P-6042** : CAR-D29-0009-0748, paragraphs 29 and 39 omitted.

³ ICC-01/14-01/18-2598-Conf, para. 31.

⁴ ICC-01/14-01/18-2555-Conf.

introduction of D29-P-6042's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules was rejected by the Chamber in this decision due to the presence of information which, the Chamber ruled, touched upon the acts and conduct of the accused.⁵

APPLICABLE LAW

5. Chambers of the Court have established that while the Statute does not provide guidance on reconsideration of judicial decisions, a Chamber has the power to reconsider its decisions upon request of the parties or *proprio motu*. Chambers have determined that reconsideration is exceptional and should only take place if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.⁶
6. In relation to the introduction of a prior recorded testimony pursuant to Rule 68(2)(b) of the Rules, the Appeals Chamber held that:

[I]n the first stage of a trial chamber's analysis under rule 68(2)(b) of the Rules, instead of rejecting the admission of the whole statement, the chamber may find it appropriate to admit parts of the statement that relate to proof of a matter other than the acts and conduct of the accused. The ultimate decision as to the appropriateness of admitting only parts of a statement is discretionary and depends upon the circumstances before the chamber.⁷

7. Trial Chamber V also ruled in relation to this provision that:

Limited, peripheral references to the accused in a prior recorded testimony do not per se preclude this testimony from being introduced under Rule 68(2)(b) of the Rules when (i) the calling party indicates that it does not intend to rely on that reference and (ii) this reference is not significant to the case or is, in any event, of limited importance and does not constitute the core of the testimony. Any such

⁵ ICC-01/14-01/18-2598-Conf, paras 28-32.

⁶ *Prosecutor v. Al Hassan*, [Decision on Defence request for reconsideration and, in the alternative, leave to appeal the 'Decision on witness preparation and familiarisation'](#), 9 April 2020, ICC-01/12-01/18-734, para. 11; see also *Prosecutor v. Ongwen*, [Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance](#), 15 June 2016, ICC-02/04-01/15-468, para. 4 ; and [ICC-01/14-01/18-2068](#), para. 4.

⁷ *Prosecutor v. Al Hassan*, [Judgment on the appeal of the Prosecution against Trial Chamber X's "Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68\(2\)\(b\) of the Rules"](#), 13 May 2022, ICC-01/12-01/18-2222, para. 51.

reference would in any case not be considered to establish the acts and conduct of the accused for the purposes of the Chamber's judgment pursuant to Article 74 of the Statute.⁸

SUBMISSIONS

8. The Defence recalls that the Chamber has previously introduced partial Rule 68(2)(b) statements which exclude portions of a statement which are deemed to go to the acts and conduct of the accused. This solution was adopted by the Chamber further to its determination that *"[l]imited, peripheral references to the accused in a prior recorded testimony do not per se preclude this testimony from being introduced under Rule 68(2)(b) [...]. Any such reference would in any case not be considered to establish the acts and conduct of the accused for the purposes of the Chamber's judgment pursuant to Article 74 of the Statute"*.⁹
9. As an example, in relation to P-2393's statement, the Chamber indicated that it would not rely on two paragraphs to establish Mr Ngaïssona's acts and conduct, and that it would not rely on ten other paragraphs as regard to Mr Yekatom's acts and conduct; a total of twelve paragraphs that would not be relied upon.¹⁰
10. Similarly, the Chamber introduced pursuant to Rule 68(2)(b) the prior recorded testimony of a resident of Boda, P-1773, with an indication that it would not rely on two paragraphs that made explicit reference to Mr Yekatom and his role.¹¹ As regards to P-2472 who *inter alia* identified Mr Yekatom on a picture,

⁸ [ICC-01/14-01/18-1833-Corr-Red](#), para. 29.

⁹ [ICC-01/14-01/18-1833-Corr-Red](#), para. 29.

¹⁰ [ICC-01/14-01/18-1833-Corr-Red](#), para. 156.

¹¹ ICC-01/14-01/18-1833-Conf-Corr, para. 97 : "The Chamber observes that paragraphs 80 and 94 of P-1773's statement make explicit reference to 'Rambo' and his role. However, these references are of limited and peripheral nature and are merely based on what the witness generally heard. Moreover, it notes that the Yekatom Defence did not object to these paragraphs, that the Prosecution does not intend to rely on this part of P-1773's statement, and that it would, in any case, not constitute the core of P-1773's testimony. In light of the above, the Chamber is satisfied that P-1773's statements suitable to be introduced pursuant to Rule 68(2)(b) of the Rules. However, it will not rely on paragraphs 80 and 94 for the purposes of establishing Mr Yekatom's accused's acts and conduct".

mentioned his role, and provided description of one of his alleged base;¹² the Chamber granted introduction of this witness' prior recorded testimony pursuant to Rule 68(2)(b) after indicating that it would not rely on those paragraphs.¹³

11. The Chamber expressly indicated that such option, to not rely on certain paragraphs of a statement that refer to an accused, could be open *inter alia* when *"the calling party indicates that it does not intend to rely on that reference"*.¹⁴
12. Within this context, the Defence takes note of the Chamber's Decision in which it ruled that *"the reference made to the fact that the witness did not see 'ROMBHOT se déplacer avec des enfants' touches upon the acts and conduct of the accused"* and that *"D29-P-6042 mentions 'Yekatom' as being the chief of the Anti-Balaka, and discusses his presence in [REDACTED] and the alleged absence of children within his group. The Chamber is not persuaded by the Defence's arguments that these references are limited"*.¹⁵ Those portions of the witness' statement being the basis of the Chamber's decision to reject its introduction pursuant to Rule 68(2)(b).
13. In light of this determination, and after careful consideration, the Defence hereby notifies that it has determined that the rights of Mr Yekatom would be preserved with the introduction of D29-P-6042's prior recorded testimony with the exception of paragraphs 29 and 39,¹⁶ which the Defence no longer intends to rely on.

¹² ICC-01/14-01/18-1833-Conf-Corr, para. 288 : "The witness indicates that 'Rambo', whom he identified in a picture, and Wenezoui were commanding the Anti-Balaka in Boeing, where many violent attacks 'came from', with 'Rambo' occupying the western zone in Boeing near the airport. The witness did not see 'Rambo' and Wenezoui at attacks, but believes that they were in charge 'because the Anti-Balaka who came to attack came from the direction of BOEING'. The witness says he got the information from self-defence groups in PK5. He also notes that 'Rambo' and Wenezoui 'were not hiding' but stating on the radio that they were 'Anti-Balaka chiefs'. Moreover, the witness describes that the base commanded by 'Rambo' and Wenezoui was close to the Muslim cemetery behind the airport of Bangui".

¹³ ICC-01/14-01/18-1833-Conf-Corr, para. 290.

¹⁴ ICC-01/14-01/18-1833-Corr-Red, para. 29.

¹⁵ ICC-01/14-01/18-2598-Conf, para. 31.

¹⁶ **D29-P-6042** : CAR-D29-0009-0748.

14. The Defence consequently respectfully requests the Chamber to reconsider its Decision and grant introduction of D29-P-6042's prior recorded testimony into evidence pursuant to Rule 68(2)(b) with the exception of paragraphs 29 and 39 of the statement.
15. This express notification of the Defence, that it will not rely upon paragraphs 29 and 39 in light of the Chamber's characterisation of paragraphs 29 and 39, constitute a new fact that warrant reconsideration. Indeed, this notification substantially changes the Initial Request in that two paragraphs with direct reference to Mr Yekatom are now expressly not included by the Defence in its Rule 68(2)(b) request. The formal indication that the Defence will not rely on those two paragraphs thus constitute a new fact both on the substance of the requested material to be introduced pursuant to Rule 68(2)(b) and on the law, with a criteria set out by the Chamber on the assessment of such request which is now fulfilled.
16. As regards to the two paragraphs that the Defence notifies that it will not rely upon, paragraph 29 relates to the arrival of the Anti-Balaka in [REDACTED] with D29-P-6042 identifying their chief as Mr Yekatom. Paragraph 39 concerns the witness' indication that he never saw Mr Yekatom moving around with children and that he does not know any children in the Anti-Balaka.
17. The Defence submits that those two paragraphs can be detached from the rest of the statement and their omission would not distort the overall substance and testimony of D29-P-6042's prior recorded testimony.
18. Indeed, as detailed in the Initial Request, this witness broaches multiple subjects such as the Seleka reign in [REDACTED];¹⁷ his recognition of names of various individuals and his comments on them;¹⁸ the arrival of the NGO ESF in

¹⁷ **D29-P-6042** : CAR-D29-0009-0748, paras 23-28.

¹⁸ *Ibid*, paras 41, 60-65.

[REDACTED] and how it registered individuals, including the strategies to look younger and the implication of [REDACTED] (P-1974) and [REDACTED] (P-2580);¹⁹ his knowledge of [REDACTED] who the Defence submits is the real identity of V45-P-0002.²⁰ None of those topics are related or impacted in any shape or form by paragraphs 29 and 39, each one of those subjects can be assessed independently from those two paragraphs.

19. Moreover, the omission of paragraphs 29 and 39 would also not impair the comprehension, analysis and assessment of the section titled "*Arrivée des Anti-Balaka*".²¹ Indeed, the exclusion of paragraph 29 regarding the fact that "Rombhot" was the chief of the Anti-Balaka when they arrived [REDACTED] has no bearing on (i) the witness describing the arrival of the Anti-Balaka,²² (ii) the witness providing names of some Anti-Balaka other than Mr Yekatom,²³ (iii) the whereabouts of parts of the Muslims population [REDACTED] when the Anti-Balaka arrived [REDACTED],²⁴ (iv) the presence of both Anti-Balaka and Gendarmerie at [REDACTED].²⁵ Such general information regarding [REDACTED], which is relevant in the context of the current case, can be analysed and assessed independently of paragraphs 29 and 39, without altering their substance.
20. Noting that the subject matter of paragraphs 29 and 39 is limited and that those paragraphs do not constitute the core of P-6042's evidence, their omission from his testimony would in no way alter the comprehension and meaning of the remaining of this witness' statement. Moreover, the submission of P-6042's statement with the exclusion of those paragraphs fits the very same pattern as

¹⁹ *Ibid*, paras 42-50.

²⁰ *Ibid*, paras 53-58.

²¹ **D29-P-6042** : CAR-D29-0009-0748, paras 29 to 40 in the Initial Request; paras 30-38 and 40 with the present reconsideration request taken into account.

²² **D29-P-6042** : CAR-D29-0009-0748, para. 31.

²³ *Ibid*, paras 30, 35-37.

²⁴ *Ibid*, paras 33-34.

²⁵ *Ibid*, para. 40.

the one shown above in paragraph 10 in relation to witnesses P-1773 and P-2472. The Defence respectfully submits that those factors favor the present reconsideration request by introducing D29-P-6042's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules, with the stipulation that paragraphs 29 and 39 will not be relied upon.²⁶

21. The Defence submits that this reconsideration is warranted in the present situation as the Decision as it stands, with the exclusion of the entirety of D29-P-6042's statement, would create an injustice to the detriment of Mr Yekatom's right to present an effective defence.
22. Article 67(1)(e) of the Statute enshrines the right of an accused to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, to raise defences and to present other evidence. As indicated above, the Chamber granted the introduction of prior recorded testimony from Prosecution witnesses, including P-1773 and P-2472, under Rule 68(2)(b). Although these witnesses also mentioned Mr. Yekatom, the Chamber explicitly stated that it would not rely on those specific sections. The Chamber also granted introduction under this provision of statements after excluding substantially more contentious paragraphs than those proposed in this request. For instance, only two paragraphs were omitted from the statement of D29-P-6042, whereas twelve paragraphs were excluded from P-2393's prior recorded testimony.²⁷
23. Indeed, by rejecting the totality of D29-P-6042's prior recorded testimony, Mr Yekatom is deprived of the possibility to submit before the judges a testimony which would also assist the Chamber in its truth-seeking function as

²⁶ The Defence hereby refers to its previous submissions as regard to D29-P-6042's prior recorded testimony respecting the other conditions set for an introduction pursuant to Rule 68(2)(b) of the Rules, see ICC-01/14-01/18-2555-Conf, paras 47-55, 58-60.

²⁷ [ICC-01/14-01/18-1833-Corr-Red](#), para. 156.

D29-P-6042 is an inhabitant [REDACTED], who was not part of the Anti-Balaka at any point, and who testifies of how the events unfolded and were lived by the inhabitants of this town, including by its Muslim's component. D29-P-6042 also offers to the Chamber the perspective and mindset of an individual who tried to join the ESF program, as well as the general strategies used by some individuals to appear younger in order to benefit from this program, which would complement the Rule 68(2)(b) witnesses who provided testimony on the ESF organisation.²⁸

24. More generally, D29-P-6042 also provides information as regard to witnesses P-2475 and P-0002,²⁹ which would assist the Chamber in its holistic assessment of the evidence as regard to Count 29 and of the fabrication of evidence related to this charge.³⁰ The Chamber's decision to reject the entirety of D29-P-6042's evidence, due to references to Mr. Yekatom in a limited number of paragraphs, is unsatisfactory and results in an injustice in light of the option offered to the Chamber to introduce the witness' prior recorded testimony with the stipulation that specific paragraphs will not be relied upon. Such solution would preserve the right of Mr Yekatom to present evidence in his defence as set out in Article 67(1)(e) and the letter of Rule 68(2)(b) by not introducing in evidence paragraphs that would go to the acts and conduct of the accused; in addition to advancing the Chamber's truth-seeking function with having at its disposal further evidence relevant for the adjudication of the case.
25. In light of the above, the Defence respectfully submits that the reconsideration of the Decision is warranted.

²⁸ ICC-01/14-01/18-2424-Conf, paras 71-79.

²⁹ The Defence recalls its submissions in the Initial Request as regard to the relevance of D29-P-6042 in relation to the identity of V45-P-0002, see ICC-01/14-01/18-2555-Conf, paras 39, 44

³⁰ See [ICC-01/14-01/18-2460-Red](#), para. 55 : "This evidence will be subject to the same scrutiny during the Chamber's deliberation as every other piece of evidence at the end of the trial. In this regard, the Chamber assures the Defence that it has taken due notice of the submissions in the present Request and during its opening statements, which all touch upon the standard evidentiary criteria of this evidence, and will duly examine them".

CONFIDENTIALITY

26. The present reconsideration request is filed on a confidential basis in light of the presence of information identifying protected witnesses. A public redacted version will be filed forthwith.

RELIEF SOUGHT

27. The Defence respectfully requests Trial Chamber V to:

RECONSIDER its Decision rejecting the introduction of D29-P-6042's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules;

INTRODUCE D29-P-6042's prior recorded testimony (CAR-D29-0009-0748), with the exception of paragraphs 29 and 39, pursuant to Rule 68(2)(b) of the Rules.

RESPECTFULLY SUBMITTED ON THIS 10th DAY OF SEPTEMBER 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands