

**Cour
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**International
Criminal
Court**



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

Date: **22 November 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 ‘Third Yekatom Defence Request to Present Additional Evidence for Potential Sentencing’, 4 October 2024, ICC-01/14-01/18-2720-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. Pursuant to Trial Chamber V's "Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings",¹ the Defence hereby requests the introduction of the written statement of one additional witness ("Testimonial Material")² which it submits is relevant to the Chamber's determination of Mr Yekatom's sentence in the event of conviction pursuant to Article 76(1) of the Statute. The statement is probative, bears sufficient *indicia* of reliability for admission, and is not repetitive of evidence already on the record. It is therefore suitable and appropriate for admission for potential sentencing.
2. The Defence has done its best to meet with the witness as soon as he was available but, unfortunately, the meeting could not take place in time to include the Testimonial Material in the "Second Yekatom Defence Request to Present Additional Evidence for Potential Sentencing".³ However, considering that the P-8027's statement was disclosed on 4 October, and that a courtesy copy of the present Request is being sent on the same day, the Defence submits that little, if any, prejudice is caused to the Prosecution or participants.
3. The Defence respectfully submits that the testimonial material of this witness can be introduced for the purposes of potential sentencing without the procedural prerequisites of Rule 68 needing to have been met given the nature and purpose for which the statements are relied upon.
4. In the alternative, should the Chamber be minded to apply the framework under Rule 68, the Defence submits that the requirements are fulfilled for the Testimonial Material to be recognised as formally submitted under Rule 68(2)(b). However, the Defence requests to be dispensed from the requirement under Rule 68(2)(b)(ii) to have a member of the Registry witness the declarations accompanying the prior recorded testimony given the challenges in reaching the witness. In the alternative, and noting that completing Rule 68(2)(b)(ii) certifications requires significant time and resources from the Defence which are otherwise necessary to complete closing arguments, the

¹ ICC-01/14-01/18-2600.

² D29-P-8027.

³ ICC-01/14-01/18-2718-Conf filed and notified on 4 October 2024.

Defence requests that the deadline for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

PROCEDURAL BACKGROUND

5. On 18 July 2024, Trial Chamber V (“Chamber”) issued its “Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings” (“Sentencing Procedure Decision”) deciding to render any potential decision on sentencing pursuant to Article 76 of the Statute simultaneously with its judgement under Article 74 and setting a calendar for sentencing.⁴ *Inter alia*, the Chamber set the deadline for parties and participants to file any requests to present additional evidence for potential sentencing by 6 September 2024.⁵ The Chamber emphasised that “given the abundance of evidence already on the record, the Chamber will intervene in the selection and presentation of such evidence in order to ensure the fair and expeditious conduct of the present proceedings”.⁶
6. On 4 September 2024, the Defence requested a variation of the time limit to present additional evidence for potential sentencing to 15 October 2024 due to several unanswered cooperation requests and the challenges in organizing missions to meet with specific potential witnesses.⁷
7. On 5 September 2024, the Chamber partially granted the Defence’s request for a variation of time, extending the deadline to submit additional statements to 4 October 2024.⁸
8. On 6 September 2024, the Yekatom Defence Request to Present Additional Evidence for Potential Sentencing (“First Request”), in relation to twelve witnesses, was notified.⁹

⁴ ICC-01/14-01/18-2600.

⁵ ICC-01/14-01/18-2600, para. 5.

⁶ ICC-01/14-01/18-2600, para. 7.

⁷ ICC-01/14-01/18-2671-Conf.

⁸ Email from the Chamber to the Parties titled “Decision on the Yekatom Defence Request for Variation of Time Limit pursuant to Regulation 35 to Present Additional Evidence for Potential Sentencing” sent on 5 September 2024 at 15:17.

⁹ ICC-01/14-01/18-2678-Conf.

9. On 4 October 2024, the Second Yekatom Defence Request to Present Additional Evidence for Potential Sentencing was notified (“Second Request”).¹⁰

SUBMISSIONS

A. Preliminary matter: On the challenges faced by the Defence to collect P-8027 Statement before close of business on 4 October and the absence of prejudice of Parties and Participant

10. In its 4 September 2024 request for an extension of time limit to present additional evidence for potential sentencing, the Defence specifically referred to P-8077 as being “[o]ne witness, who held a position during Mr Yekatom’s mandate at the National Assembly” who, “[REDACTED] could not respond to the meeting request with the Defence in time for the 6 September 2024” but [REDACTED] “had agreed to a meeting [REDACTED]”.¹¹
11. While the meeting was initially scheduled end of September after the return of Counsel from a mission in Cameroon, the meeting could not actually take place prior to 4 October 2024. P-8027 requested the presence of his lawyer during his interview with the Defence, and the latter was not available before 4 October at 15:00 CEST – that is one hour prior to the expiration of the deadline pursuant to Regulation 33(2) of the Regulation of the Court.
12. The Defence submits that even though the present Request was not filed before close of business on 4 October, since P-8027’s statement has been disclosed to all Parties and Participants on 4 October, there is little, if any prejudice for the few hours of difference between the Second Request and the present Request. The Defence submits that it is therefore in the interest of justice to grant the present Request and receive the Testimonial Material so as to allow the Chamber to issue a fair and reasonable sentence in the event of any conviction.

B. The Testimonial Material is relevant for sentencing purposes

13. The Defence submits that the Testimonial Evidence is relevant to the Chamber’s determination of Mr Yekatom’s sentence in the event of conviction pursuant to Article 76(1) of the Statute. Moreover, the statement is probative, bears sufficient *indicia* of

¹⁰ ICC-01/14-01/18-2718-Conf

¹¹ ICC-01/14-01/18-2671-Conf, para. 11.

reliability for admission, and is not repetitive of evidence already on the record. It is therefore suitable and appropriate for admission for potential sentencing.

14. In order to assist the Chamber's assessment of the Testimonial Material, the Defence provides below (i) a comprehensive overview of the salient issues arising within the prior recorded testimony of the witness which it submits satisfies the relevance requirement stipulated in Article 76(1), and (ii) an indication of how the proposed additional evidence relates to factors under Article 78 of the Statute and Rule 145 of the Rules.

15. The Defence emphasises that where statements cover similar Rule 145 sub-factors, their comprehensive and collective consideration is essential to illustrate that Mr Yekatom's positive actions were not singular or isolated occurrences, but rather indicative of a consistent pattern of conduct. This further demonstrates the genuineness of Mr Yekatom's intent and actions and must therefore be considered in a cumulative manner.

i. MECKASSOUA Abdou Karim (P-8027)

16. The Defence tenders for formal submission P-8027's statement collected on 4 October 2024 at 17:00 CEST, totalling 6 pages.¹²

17. The witness's proposed testimony establishes the following:

- P-8027 is a Central African of Muslim faith who is the former President of the National Assembly. He was not in CAR in 2013 and returned to Bangui in January 2014;
- P-8027 explains how he first met Mr Yekatom in 2015 while he was campaigning to become a deputy of La Lobaye as an independent candidate;
- While P-8027 has heard that Mr Yekatom was an Anti-balaka, he has treated him as any elected "député" since his election had been validated by the "Cour constitutionnelle";
- P-8027 witnessed first-hand how Mr Yekatom was taking his mandate at heart and made a point to return in his "circonscription" to stay close the population of La Lobaye who had elected him.

¹² CAR-D29-0009-0934-R01.

- P-8027 also had the opportunity to see the commitment of Mr Yekatom in his work on the “Commission Défense” of the national assembly where he was pleading for a military system devoid of nepotism and tribalism;
- P-8027 also witnessed Mr Yekatom speak on different occasions in his capacity as “député” and never witnessed him say a bad word against Muslims; on the contrary Mr Yekatom was speaking in favor of social cohesion;
- P-8027 explains how Mr Yekatom was denouncing corruption against some of his colleagues and had refused to be bribed into voting in favor of P-8027’s destitution/removal;
- P-8027 explains that Mr Yekatom was among the “députés” who signed a request for annulment of the vote to be submitted to the Constitutional Court “Cour constitutionnelle”;
- P-8027 explains that the incident at the National Assembly, which led to Mr Yekatom’s arrest, occurred after he learned about the vote to elect a new President following the contested vote on P-8027’s destitution/removal.

18. P-8027’s evidence is relevant for the purpose of determining a sentence in accordance with Article 78(1) and Rule 145(1)(b) which states that the individual circumstances of the convicted person shall be taken into account. In this respect the statement is relevant for the judges to be fully apprised of the character of Mr Yekatom and of the way he behaved as an elected “député” of his country after the charged crimes. This witness’ evidence is therefore relevant in accordance with Rule 145(2)(a)(ii) as regard to Mr Yekatom’s conduct after the alleged acts.

19. Indeed, the statement shows that Mr Yekatom was committed to his mandate as “député” and determined to contribute to a better environment and functioning of the army, which he had personal experience of. P-8027 testimony also highlights the fact that Mr Yekatom was frequently returning to La Lobaye in order to stay connected with the population who had elected him.

20. The witness also gives insight on the circumstances that led to the arrest of Mr Yekatom, who had reacted to the aftermath of what he considered to be an injustice.

21. The statement provides the Chamber with information of the work of Mr Yekatom as “député”, his anti-corruption stance, his concern for the population he was representing and his speeches in favor of social cohesion. More generally, the statement assists in understanding his character.

C. The procedural prerequisites of Rule 68 are not applicable in the context of sentencing

22. The Defence requests the Chamber to find that for the purpose of sentencing Rule 68(2)(b) procedural requisites are not a procedural bar in the same way they were during the trial. Instead, in evaluating the introduction of the Testimonial Material for sentencing, the Chamber should limit itself as to whether the statements satisfy the relevance requirement as set out in Article 76(1) and how it relates to the various factors outlined in Article 78 and Rule 145.
23. In the spirit of judicial economy, the Defence fully refers to its submissions formulated in its First Request on this matter.¹³ It further notes that this position is shared by the Prosecution.¹⁴

D. Should the Chamber apply the Rule 68 framework, the Testimonial Material meets the admissibility criteria under Rule 68(2)(b)

24. Should the Chamber be minded to apply the framework under Rule 68, the Defence requests that the Testimonial Material be recognised as formally submitted under Rule 68(2)(b) as all the requirements therein are fulfilled. However, bearing in mind the more flexible sentencing framework as argued above, the Defence submits that the Chamber should adopt a more lenient interpretation of the Rule 68(2)(b) requirements.¹⁵
25. In addition, as previous Chambers have determined it appropriate, the Defence requests to be dispensed from the requirement to have a member of the Registry witness accompanying declarations with any prior recorded testimony, pursuant to Rule 68(2)(b)(ii) and (iii). In the alternative, and noting that completing the certifications requires significant time and resources from the Defence which are otherwise crucial to prepare closing arguments, the Defence requests that the deadline

¹³ ICC-01/14-01/18-2678-Conf, paras 6-16.

¹⁴ ICC-01/14-01/18-2679-Conf, paras 19-21.

¹⁵ Ibid.

for completing the certifications be set after the sentencing hearing scheduled for 8-10 January 2025.

a) *The Testimonial Material is appropriate for introduction through Rule 68(2)(b)*

i. *The Testimonial Material is correctly identified as 'prior recorded testimony' for the purposes of Rule 68(2)(b)*

26. The Testimonial Material comprises the written statement collected from P-8027.¹⁶

As reflected in the statement, the witness understood at the time that the information he provided may be relied upon in the context of legal proceedings specifically with regard to sentencing submissions and that he may be called upon to provide his testimony in public.¹⁷

ii. *The Testimonial Material has been prepared in a reliable manner*

27. The Testimonial Material has sufficient *indicia* of reliability for the purposes of formal submission pursuant to Rule 68(2)(b).¹⁸ The prior record testimony was: (i) taken in the ordinary course of proceedings, (ii) signed by the witness and the investigator conducting the interview, (iii) given voluntarily, (iv) verified by the witness at the time of the statement and, (v) includes information that the witness was given an explanation of the procedure before the ICC and was informed of the significance of providing the statement to the Defence, (vi) was made in the presence of the witness' lawyer who also signed the Statement. In this regard, the statement contains an express acknowledgement attesting to the voluntariness and the truth of its contents to the best of the witness' knowledge.

28. The statement was obtained in a language understood by the witness, namely French, and read back by the witness before signature. In doing so, the witness was informed of his right to make corrections and clarifications to his statement.

29. Nor does the statement exhibit any issues pertaining to the credibility of the information therein that are so manifest and of such nature that questioning the witness would be necessary.

¹⁶ ICC-01/14-01/18-1833-Conf-Corr, para. 24. A public redacted version is available: ICC-01/14-01/18-1833-Corr-Red.

¹⁷ ICC-01/14-01/18-1833-Conf-Corr, para. 23.

¹⁸ ICC-01/14-01/18-1833-Conf-Corr, para. 42.

iii. The Testimonial Material does not relate to matters concerning the charged acts and conduct of the accused

30. Further, the Defence submits that the Testimonial Material goes to proof of a matter other than the acts and conduct of the Accused. References to Mr Yekatom therein do not relate to the charged acts and conduct of the Accused as described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish the Accused's criminal responsibility for the crimes charged.¹⁹

31. Indeed, the testimony of P-8027 is limited to the matter of Mr Yekatom's character and work as an elected "député". The testimony of P-8027 relates to the conduct of Mr Yekatom in his tasks within the National Assembly during his mandate, and does not relate to the conduct of Mr Yekatom as described in the confirmed charges.

32. In any event, to the extent that any part of the Testimonial Material is deemed to pertain to the acts and conduct of the accused, it should not preclude the introduction of the written statements as part of the Chamber's holistic assessment to determine an appropriate sentence.

iv. The introduction of the Testimonial Material through Rule 68(2)(b) best serves the interests of justice

33. The interests of justice are best served by the introduction of the testimonial material through Rule 68(2)(b).²⁰ Its introduction would streamline the presentation of evidence during the sentencing phase and safeguard expeditiousness. It would also save the Chamber and Parties' resources that may instead be utilised for other activities, notably those related to the Defence preparation of closing briefs and arguments, including analysing the Prosecution and the CLRV's brief upon notification.

b) Request to dispense with certification requirement under Rule 68(2)(ii) and (iii)

34. The Sentencing Procedure Decision instructed the parties to submit "any proposed arrangement for the obtention of accompanying declaration(s) under Article 68(2)(b)(ii) of the Statute" at the time of filing any request for additional written testimonial evidence.²¹ In response to the Chamber's query, the Defence respectfully

¹⁹ ICC-01/14-01/18-1833-Conf-Corr, para. 28.

²⁰ ICC-01/14-01/18-1833-Conf-Corr, paras 40-41.

²¹ ICC-01/14-01/18-2600.

submitted in its First Request a detailed overview of the steps undertaken to secure the accompanying declaration for the witnesses. In the spirit of judicial economy the Defence respectfully refers to this overview provided in the First Request,²² and notes that it fully encompasses P-8027's situation.

35. The Defence additionally submits that specific challenges linked to P-8027's health status and location in France would arise should the Chamber order the production of an accompanying declaration made before a Registry's officer. The tight schedule of P-8027 would have to be taken into account as well as the organisation of a videolink. Additionally, given the legal framework of the French Republic, a request for assistance would have to be sent and the declaration would have to be made before the French judicial authorities.
36. Lastly, the Defence submits that dispensing with the certification requirement would not cause undue procedural prejudice. The Defence confirms that the written statement sought to be tendered for potential sentencing was given under declaration confirming the witness's identity; has been signed and given voluntarily; has been given under declaration of honour and conscience that the content is accurate and in the presence of the witness' lawyer. Further, the statement is internally consistent and coherent and therefore shows sufficient *indicia* of reliability.
37. In the alternative, and noting that completing the certification requires significant time and resources from the Defence, which is otherwise necessary to complete closing arguments, the Defence requests that the deadline for completing the certification be set after the sentencing hearing scheduled for 8-10 January 2025.

CONFIDENTIALITY

38. This request is filed on a confidential basis as it contains information Defence's investigations as well as identities of witness. A public redacted version will be filed in due course.

RELIEF SOUGHT

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

²² ICC-01/14-01/18-2678-Conf, paras 88-92.

INTRODUCE the Testimonial Material for the purposes of potential sentencing;

or, in the alternative;

RECOGNISE the Testimonial Material as formally submitted under Rule 68(2)(b); and

ORDER that the Defence be dispensed from the requirement to have a member of the Registry witness the accompanying declaration pursuant to Rule 68(2)(b)(ii), with respect to the prior recorded testimony sought to be introduced through Rule 68(2)(b) for sentencing purposes;

or, in the alternative,

ORDER that the deadline for completing the certification be set after the sentencing hearing scheduled for 8-10 January 2025.

RESPECTFULLY SUBMITTED ON THIS 22nd DAY OF NOVEMBER 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands