

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23 September 2020**

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

**Yekatom Defence Response to
the Prosecution's Intended Approach to Rule 68(3)**

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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1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully respond to the *Prosecution’s Observations on its intended approach to Rule 68(3) in the presentation of its case (“Observations”)*.¹
2. The Defence takes note of the Prosecution’s intention to make an “extensive use of rule 68(3)” in order to present its case within 400 hours.² While the Defence takes no issue at this stage with the approach *per se*, it wishes to accentuate its impact on the adequacy of the allocated time for cross-examination.
3. At the outset, the Defence notes that most Rule 68(3) witnesses are still expected to undergo hours of direct examination notwithstanding the tendered statements.³ Indeed, 42 witnesses are expected to testify in chief for 2 hours, 31 witnesses for 4 hours, 3 witnesses for 6 hours, and only 1 witness for 1 hour.
4. Meanwhile, among the 77 witnesses who are intended to be called pursuant to Rule 68(3),⁴ the underlying statement of many runs in hundreds of pages.⁵ This includes witnesses whose expected testimony relates closely to Mr. Yekatom.⁶ Should the Prosecution seek to tender a large portion, or all, of a lengthy statement in lieu of examination-in-chief, the presentation of its case

¹ [ICC-01/14-01/18-655](#).

² [ICC-01/14-01/18-655](#), para. 2.

³ See [ICC-01/14-01/18-642-Conf-AnxA](#).

⁴ [ICC-01/14-01/18-655](#), para. 7; [ICC-01/14-01/18-642-Conf-AnxA](#).

⁵ For example, the interviews of **P-0487** rendered 21 transcripts of 309 pages; the interviews of **P-1048** rendered 15 transcripts of 367 pages; the interviews of **P-0801** rendered 23 transcripts of 790 pages; the interviews of **P-0306** rendered 30 transcripts of 412 pages. The Prosecution anticipates the examination-in-chief of each witness to last for 4 hours. See [ICC-01/14-01/18-642-Conf-AnxA](#).

⁶ See, e.g., the description and the expected areas of testimony of **P-0487**, **P-0801**, and **P-0306** per [ICC-01/14-01/18-642-Conf-AnxA](#). For Rule 68(3) witnesses with lengthy statement(s), see, e.g., the description and the expected areas of testimony of **P-1792** (with three statements at CAR-OTP-2064-0822-R01, CAR-OTP-2069-0003-R01, and CAR-OTP-2075-1743-R01 amounting to a total of 33 pages); **P-1962** (with two statements at CAR-OTP-2068-0037-R02, and CAR-OTP-2071-0003-R01 amounting to a total of 51 pages); **P-0475** (with one statement at CAR-OTP-2104-0116-R01 of 33 pages); **P-1819** (with one statement at CAR-OTP-2065-0003-R01 of 33 pages); **P-1074** (with one statement at CAR-OTP-2094-0228-R02 of 49 pages).

would be well streamlined.

5. The Defence, however, ought to address both the evidence led during the direct examination and that tendered through Rule 68(3) during its cross examination. Yet, the Defence is not given more hours to complete such task.
6. When the Chamber allocated the same number of total hours for the Prosecution and the Defence for witness examination,⁷ the scale of the use of Rule 68(3) has not transpired. Although the Defence could reduce the hours of examining witness A so that more time is devoted to witness B, the time such manoeuvres could save would never be on the same magnitude as that of the extensive use of Rule 68(3) by the Prosecution. The detrimental effect, albeit seemingly tenuous for a single witness, could cumulate to a substantial prejudice to Mr. Yekatom.
7. The Defence therefore respectfully invites the Trial Chamber to take the above into consideration when assessing the *Observations* and safeguarding Mr. Yekatom's rights to adequate time and facilities for the preparation of his defence, and to examining the witnesses against him.⁸

RESPECTFULLY SUBMITTED ON THIS 23RD DAY OF SEPTEMBER 2020⁹



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⁷ [ICC-01/14-01/18-631](#), para. 24.

⁸ Article 67(1)(b) and (e).

⁹ The assistance of Legal Intern, Ms. Camille Gillain of France in the preparation of this response is gratefully acknowledged.