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**International
Criminal
Court**

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

Date: **2 February 2021**

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

**Public Redacted Version of “Yekatom Defence Response to the
“Prosecution’s Request for the Formal Submission of the Experts Reports and
Associated Materials of P-0925, P-2193, P-2926 and P-2927 pursuant to rule
68(3) and article 69(4)”, 19 January 2021, ICC-01/14-01/18-834-Conf”, 1
February 2021, ICC-01/14-01/18-864-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

Ms. Fatou Bensouda

Mr. James Stewart

Mr. Kweku Vanderpuye

Counsel for Mr. Yekatom

Me Mylène Dimitri

Mr. Thomas Hannis

Mr. Florent Pages-Granier

Counsel for Mr. Ngaïssona

Me Geert-Jan Alexander Knoops

Mr. Richard Omissé-Namkeamaï

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**

Me Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom, respectively) hereby respond to the “Prosecution’s Request for the Formal Submission of the Expert Report and Associated Materials of P-0925, P-2193, P-2926, and P-2927 pursuant to rule 68(3) and article 69(4)” (the “Request”) filed on 19 January 2021.¹
2. The Defence presents for each of the four expert witnesses its observations on the Prosecution’s request. While the Defence defers to the Chamber’s discretion regarding the Request for Witnesses P-2193, P-0925 and P-2926, it recalls its previous submissions regarding P-2926² and respectfully requests the Chamber to defer its decision for P-0925 until an eventual sentencing phase, if any. As to P-2927, the Defence is of the view that the request should be rejected by the Chamber as P-2927 would provide no meaningful assistance, alternatively the Defence requests the Chamber to defer its decision until an eventual sentencing phase, if any.

PROCEDURAL BACKGROUND

3. On 10 November 2020, the Prosecution filed its Final Witness List which included P-0925, P-2193, P-2926 and P-2927 in the sub-section titled “Experts”.³
4. On 17 December 2020, the Defence filed its “Request of Mr. Yekatom to exclude the proposed Prosecution background expert P-2926 and his report” on the ground that P-2926’s appearance as an expert will not meaningfully

¹ [ICC-01/14-01/18-834-Conf](#).

² [ICC-01/14-01/18-780-Conf](#) ; Public redacted version : [ICC-01/14-01/18-780-Red](#).

³ [ICC-01/14-01/18-724-Conf-AnxA](#), pages 39-40.

advance the proceedings.⁴ That Request is supported by the Ngaïssona Defence⁵ and opposed by the Prosecution.⁶

5. On 19 January 2021, the Prosecution filed its “Request for the Formal Submission of the Expert Reports and Associated Materials of P-0925, P-2193, P-2926, and P-2927 pursuant to Rule 68(3) and Article 69(4)”.⁷ A Public Redacted Version of the Request was filed on 25 January 2021.⁸

SUBMISSIONS

6. The Defence will address in turn its position on the four experts for whom the Prosecution is seeking submissions of their report and associated material under Rule 68 (3) and Article 69(4).

I. Expert P-0925

7. The Defence defers to the Chamber’s discretion in relation to the Prosecution’s request to submit P-0925’s report and associated materials listed in Annex A of the Request under Rule 68(3) and Article 69(4). However, in light of the expertise of P-0925, the Defence respectfully requests the Chamber to defer its decision unless and until there is a finding of guilt and a sentencing hearing, if any.
8. While a party enjoys large discretion in the organisation and evidence presentation of its case, this discretion is, as the Chamber previously stated, subject to judicial oversight.⁹ Such an intervention of the Chamber is notably warranted in order to ensure a fair and expeditious trial.¹⁰

⁴ [ICC-01/14-01/18-780-Conf](#) ; Public redacted version : [ICC-01/14-01/18-780-Red](#).

⁵ E-mail to the Chamber dated 18 December 2020 15:27.

⁶ [ICC-01/14-01/18-797-Conf](#) ; Public redacted version : [ICC-01/14-01/18-797-Red](#).

⁷ [ICC-01/14-01/18-834-Conf](#).

⁸ [ICC-01/14-01/18-834-Red](#).

⁹ [ICC-01/14-01/18-685](#), paras. 23-24.

¹⁰ *Prosecutor v. Bemba at al*, [Decision on Relevance and Propriety of Certain Kilolo Defence Witnesses](#), ICC-01/05-01/13-1600, 4 February 2006, para. 6.

9. The Defence contends that the Chamber's interference in the scheduled testimony of expert P-0925 is in this instance necessary to ensure both a fair and expeditious trial.
10. In its Request, the Prosecution indicates that P-0925 addresses "mental health outcomes of trauma suffered by direct and indirect victims" of crimes charged in the present case, and that the report "is relevant to assess the extent of harm and damage caused to victims of these crimes".¹¹ The Prosecution also indicated that this witness is expected to testify about :
 - [REDACTED];
 - [REDACTED]; and
 - [REDACTED].¹²
11. In the Defence view, P-0925's intervention is useful in the context of a sentencing hearing, if any, as set out by Article 76 (2) of the Statute, as the witness testimony is relevant to assess the "extent of the damage caused, in particular the harm caused to the victims and their families" as stated by Rule 145 which is related to the determination of the sentence. The usefulness of P-0925 during the sentencing phase seems to have been recognized by another Chamber of this Court as the Prosecution indicated [REDACTED].¹³
12. However, the Defence fails to see the necessity for an intervention by P-0925 during the initial presentation of evidence of the Prosecution as the content of his testimony and report will have no value in the context of determining the guilt or innocence of the accused who is presumed innocent.
13. The Defence also argues that contrary to the Prosecution's submissions, the report is also not relevant in the context of Article 7(1)(k) crime.¹⁴ Count 11,

¹¹ [ICC-01/14-01/18-834-Conf](#), para. 13 ; Public Redacted Version : [ICC-01/14-01/18-834-Red](#).

¹² [ICC-01/14-01/18-724-Conf-AnxA](#), Page 39 Witness n°74.

¹³ [ICC-01/14-01/18-834-Conf](#), para. 11.

¹⁴ [ICC-01/14-01/18-834-Conf](#), para. 13 ; Public Redacted Version : [ICC-01/14-01/18-834-Red](#).

the only crime falling under Article 7(1)(k), relates to [REDACTED].¹⁵ However the report of P-0925 regarding trauma in relation to certain specific crimes only mentions [REDACTED],¹⁶ [REDACTED],¹⁷ [REDACTED],¹⁸ [REDACTED].¹⁹ As no relation can be made between Count 11 and the report of P-0925, the witness's intervention is *prima facie* unnecessary to the Chamber regarding the Article 7(1)(k) condition that the inhumane acts must cause "great suffering, or serious injury to body or to mental or physical health".

14. In light of the above, as a sentencing phase of the trial is hypothetical until an eventual conviction, the Defence contends that it is in the interest of justice and in accordance with the principles of a fair and expeditious trial to defer any appearance by P-0925 unless there is a finding of guilt and a sentencing phase of the case. Consequently, it requests the Chamber to defer its decision on the Prosecution's demand for P-0925 until the conclusion of the trial.

II. Expert P-2193

15. The Defence does not oppose the Prosecution request to submit P-2193's report and associated materials listed in Annex A of the Request under Rule 68 (3) and Article 69(4).
16. The Defence defers to the Chamber's discretion on the subject of [REDACTED].²⁰ [REDACTED].²¹

III. Expert P-2926

17. Regarding P-2926, the Defence recalls its 17 December 2020 request to exclude this particular witness and his report from the proceedings due to the fact that

¹⁵ [ICC-01/14-01/18-403-Conf-Corr](#), page 106.

¹⁶ [CAR-OTP-2127-6805](#), page 6827.

¹⁷ [CAR-OTP-2127-6805](#), page 6832.

¹⁸ [CAR-OTP-2127-6805](#), page 6841.

¹⁹ [CAR-OTP-2127-6805](#), page 6852.

²⁰ *Ibid*, para. 43.

²¹ Article 64 (2) of the Statute.

his expected testimony fully overlaps with information to be provided by factual witnesses.²²

18. In the event that the above-mentioned request is rejected by the Chamber, the Defence defers to the Chamber's discretion regarding the submission of P-2926's report and associated materials listed in Annex A under Rule 68 (3) and Article 69 (4).

IV. Expert P-2927

19. The Defence opposes the Prosecution request in regard to P-2927 as it fails to see how the reports of this witness would be of assistance to the Chamber in determining the guilt or innocence of Mr. Yekatom for Count 29.²³ The Defence challenges both the probative value and the relevance of the report.
20. P-2927's first report titled [REDACTED]²⁴ describes its content as an historical view of child soldiers in CAR. Of the 73 pages of the report, only four relate to the [REDACTED]²⁵ which is very general in nature. While interesting as an academic study, the Defence contends that this specific report, centered on the history, would not be of assistance to the Chamber and should thus not be introduced as expert evidence as it has no specific relevance or probative value.²⁶
21. The Defence also argues that the second report titled [REDACTED]²⁷ suffers from the same defect: failure to provide meaningful assistance on specific issues that are outside the Chamber's experience and knowledge. Indeed, the only section of the report which could have provided assistance are the nine

²² [ICC-01/14-01/18-797-Conf](#); Public redacted version : [ICC-01/14-01/18-797-Red](#).

²³ [ICC-01/14-01/18-403-Conf-Corr](#), page 105 ; Public redacted version : [ICC-01/14-01/18-403-Red-Corr](#), page 101.

²⁴ [CAR-OTP-2122-9082](#)

²⁵ [CAR-OTP-2122-9082](#), pages 9138-9141.

²⁶ *Prosecutor v. Al Hassan*, [Decision on Prosecution's proposed expert witnesses](#), ICC-01/12-01/18-989-Red, 21 October 2020, para. 16.

²⁷ [CAR-OTP-2122-9155](#).

pages [REDACTED]²⁸. However, an overview of the said chapter shows that it is mostly comprised of a collection of testimonies of anonymous sources,²⁹ with no specific link to the present case. In addition, the report does not refer to Mr. Yekatom, contrary to other Anti-Balaka leaders.³⁰ The majority of the children interviewed did not come from locations or areas relevant for Count 29.³¹ Whether or not children were enlisted in Anti-Balaka groups of [REDACTED] have no relevance in this case.³²

22. The proposed expert report provides a summary of testimonial evidence which goes beyond the scope of admissible expertise before the Court. The Chamber is perfectly capable, without the assistance of expert testimony, of determining whether or not child soldiers were present in Mr. Yekatom's group through testimonial evidence. The core function and role of the Trial Chamber is to assess the credibility of factual witnesses. The Chamber is equally capable, without the assistance of expert testimony, of determining whether they were enlisted or forced to, whether they were below 15 years old and whether or not they actively participated in hostilities. A summary of interviews [REDACTED]³³ does not amount to opinion evidence but rather is the equivalent of evidence which is testimonial in nature although within the form of a report.
23. The Defence further submits that, even if the Chamber were in principle inclined to receive assistance from an expert on the presence of child soldiers in other groups, remote from Mr. Yekatom's alleged group, the report fails to

²⁸ *Ibid*, pages 9179-9188.

²⁹ *Ibid*, page 9180, fn. 11.

³⁰ *Ibid*, page 9168.

³¹ See [CAR-OTP-2122-9155](#) at page 9168 : [REDACTED] ; and [ICC-01/14-01/18-403-Conf-Corr](#) at page 105 describing Count 29 as follow “ [...] for the conscription and/or enlistment of children into his group at various locations, including [REDACTED]”

³² [CAR-OTP-2122-9155](#), p. 12

³³ [CAR-OTP-2122-9155](#), p. 12

provide meaningful assistance on specific issues of a technical nature that are outside of the Chamber's experience and knowledge.

24. In light of the above the Defence respectfully requests the Chamber to reject the Prosecution's request in relation to P-2927 as it would not advance the proceedings in any way.
25. Alternatively, should the Chamber rule that P-2927's intervention and report may be of assistance to the Chamber, the Defence argues that, like P-0925, the decision should be deferred to the conclusion of the trial and a hypothetical sentencing phase. This is due to the content of the second report³⁴ which, [REDACTED] and as the Prosecution argued relates to the "long-term effects that membership within the Anti-Balaka had on these children".³⁵ In the Defence's view, the effects of being a child soldier are better suited for an eventual sentencing phase, if any, as it does not pertain to the guilt or innocence of the accused. Consequently, it is in the interest of justice and the right of Mr. Yekatom to be tried fairly and without undue delay to defer the decision until the conclusion of the trial, during a sentencing phase, if any.

CONFIDENTIALITY

26. The present Response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed in due course.

RELIEF SOUGHT

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

DEFER its ruling regarding P-0925 until the conclusion of the trial;

³⁴ [CAR-OTP-2122-9155](#).

³⁵ [ICC-01/14-01/18-834-Conf](#), para. 37 ; Public Redacted Version : [ICC-01/14-01/18-834-Red](#).

REJECT the Prosecution's Request regarding P-2927 or, alternatively, **DEFER** its ruling until the conclusion of the trial.

RESPECTFULLY SUBMITTED ON THIS 2ND DAY OF FEBRUARY 2021



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom



Mr. Thomas Hannis
Associate Counsel for Mr. Yekatom

The Hague, the Netherlands