

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **12 July 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 ‘Prosecution’s Request for Leave to add P-2687 to its Final Witness List and for the Formal Submission of his Prior Recorded Testimony pursuant to Rule 68(2)(b)’ (ICC-01/14-01/18-1043-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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(Participation / Reparation)**

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INTRODUCTION

1. The Defence of Mr Alfred Rombhot Yekatom ('Defence') respectfully responds to the 'Prosecution's Request for Leave to add P-2687 to its Final Witness List and for the Formal Submission of his Prior Recorded Testimony pursuant to Rule 68(2)(b)' ('Request').¹
2. The Defence defers to the Trial Chamber's ('Chamber') discretion on the Prosecution's Request to add P-2687 to its Final Witness List. Should the Chamber grant the Prosecution's Request, the Defence does not oppose the withdrawal of P-1932 from its Final Witness list as well as his prior recorded testimony.
3. However, the Defence opposes to formal submission of P-2687's prior recorded testimony under Rule 68(2) of the Rules of Procedure and Evidence ('Rules') as it would deprive the Defence of its right of cross-examination on essential issues going to the reliability of important Prosecution evidence.

PROCEDURAL BACKGROUND

4. On 11 January 2021, the Prosecution filed its Seventh Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), seeking the formal submission of five Prosecution witnesses' prior recorded testimony, including P-1932 ('Seventh Rule 68(2) Request').²
5. On 2 March 2021, the Defence responded to the Prosecution's Rule 68(2) request, *inter alia* opposing the formal submission of his written statement under Rule 68(2) ('Response to Seventh Rule 68(2) Request').³

¹ [ICC-01/14-01/18-1043-Conf](#), [ICC-01/14-01/18-1043-Red](#).

² [ICC-01/14-01/18-808-Conf](#), [ICC-01/14-01/18-808-Red](#).

³ [ICC-01/14-01/18-845-Conf-Corr](#), [ICC-01/14-01/18-845-Corr-Red](#).

6. On 29 June 2021, the Prosecution filed its request for leave to add P-2687 to its Final Witness List and its Rule 68(2)(b) Application for his prior recorded testimony, additionally requesting the withdrawal of P-1932 from its Final Witness list as well as his prior recorded testimony.

RELEVANT PROVISION

Rule 68 (2)(b)(i) – Prior recorded testimony

2 If the witness who gave the previously recorded testimony is not present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony in any one of the following instances:

(b) The prior recorded testimony goes to proof of a matter other than the acts and conduct of the accused. In such a case:

(i) In determining whether introduction of prior recorded testimony falling under sub-rule (b) may be allowed, the Chamber shall consider, *inter alia*, whether the prior recorded testimony in question:

- relates to issues that are not materially in dispute;
- is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts;
- relates to background information;
- is such that the interests of justice are best served by its introduction;
- and
- has sufficient indicia of reliability.

ARGUMENT

7. In accordance with its Response to Seventh Rule 68(2) Request,⁴ the Defence submits that, for the same reasons as set out in regards to P-1932's statement, P-2687's prior recorded testimony should not be formally submitted under Rule 68(2).⁵

⁴ [ICC-01/14-01/18-845-Conf-Corr, ICC-01/14-01/18-845-Corr-Red](#).

⁵ [ICC-01/14-01/18-845-Conf-Corr](#), paras 60-63; [ICC-01/14-01/18-845-Corr-Red](#), paras 60-63.

8. The Prosecution will rely on P-2867's testimony to seek to establish how [REDACTED] Call Data Records ('CDRs') were generated, stored and produced. The admission of the prior recorded testimony of P-2687 via Rule 68(2) would be prejudicial to the rights of Mr Yekatom to challenge evidence in cross-examination as his testimony could have an essential influence on the Chamber's assessment of the reliability of the [REDACTED] telecommunications evidence in this case.
9. Moreover, as is apparent from his statement, P-2687's evidence is primarily indirect evidence based on P-1932's assertions as the [REDACTED]. It cannot be automatically inferred from P-2687's position [REDACTED] that he possesses personal knowledge on technical data extraction and storage. In the circumstances therefore, the Defence should have the opportunity to question P-2687's on his personal knowledge of the relevant technical issues and the extent of his ability to assist the Chamber.
10. Further, the Defence seeks the opportunity to put to the witness different examples of CDRs specificities that were not addressed by the Prosecution and may influence the Chamber's and Parties' understanding of CDRs in the course of the trial. Such questioning is all the more important as issues were previously raised regarding the quality of telecommunications data.⁶ In addition, the Defence seeks to question the witness regarding the possibility of geo-location of mobile phone users.
11. The Prosecution has tendered seven examples of CDRs, presented to P-1932 and to P-2687 during their interview, as associated exhibits to P-2687's statement as listed in *Annex A* of the Request. Should the Chamber be minded to grant the formal submission of the prior recorded testimony of P-2687 under Rule 68(2) (or Rule 68(3)), the Defence, consistently with its stance on

⁶ [ICC-01/14-01/18-845-Conf-Corr](#), para. 63, fns 84-87; [ICC-01/14-01/18-845-Corr-Red](#), para. 63, fns 84-87.

associated exhibits to P-1932's statement, requests that these associated exhibits are not formally submitted for the truth of their contents.⁷ In other words, the Defence does not oppose their formal submission on the basis that they be used only to contextualise the witness's evidence in his statement at this stage, and not for the purposes of demonstrating telephone contact, that calls were made or received at certain times or from certain locations, et cetera.

CONFIDENTIALITY

12. This motion is being filed on a confidential basis as it responds to a confidential Request. A public redacted version will be filed simultaneously.

CONCLUSION

13. In light of the above, the Defence respectfully requests the Chamber to:

REJECT the formal submission of P-2687's prior recorded testimony pursuant to Rule 68(2).

RESPECTFULLY SUBMITTED ON THIS 12TH DAY OF JULY 2021⁸



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⁷ [ICC-01/14-01/18-845-Conf-Corr](#), paras 64-65; [ICC-01/14-01/18-845-Corr-Red](#), paras 64-65.

⁸ The Defence thanks Legal Intern Yousra Lamqaddam for her substantial assistance with this filing.