

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **27 September 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 the Formal Submission of the Prior Recorded Testimony of P-0808 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1087-Conf)”, ICC-01/14-01/18-1097-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. Defence Counsel for Mr Alfred Rombhot Yekatom ('Defence') hereby respond to the 'Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-0808 pursuant to Rule 68(3)' ('Request').¹
2. The Defence submits that the Request should be denied.
3. The Statements of P-0808 ('Statements')² specifically provide information relating to a core issues in this case that is materially in dispute, for which no corroboration has been established. In addition, P-0808's role as a [REDACTED] Anti-Balaka insider witness further militates against the admission of the Statements.
4. Moreover, the Defence opposes the formal submission of document CAR-OTP-2030-0263 on the basis that it does not comprise an 'associated exhibit' to the Statements.³

APPLICABLE LAW

5. Rule 68(3) of the Rules of Procedure and Evidence ('Rules') states:

If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.
6. A Chamber must carry out an individual assessment of the evidence sought to be introduced under Rule 68(3), based on the circumstances of each case, which includes analysing the importance of this evidence in light of the charges and

¹ [ICC-01/14-01/18-1087-Conf.](#)

² [CAR-OTP-2025-0324-R05](#); [CAR-OTP-2093-0010-R02](#) (respectively "First Statement" and "Second Statement").

³ [ICC-01/14-01/18-1087-Conf-AnxA.](#)

other evidence presented or intended to be presented; this assessment is part and parcel of the analysis a Chamber must undertake in determining whether it is not prejudicial to or inconsistent with the rights of the accused or with the fairness of the trial generally, to allow for the evidence in question to be introduced under Rule 68 (3).⁴

7. In conducting this analysis, a Chamber may take into account a number of factors, including the following: (i) whether the evidence relates to issues that are not materially in dispute; (ii) whether that evidence is not central to core issues in the case, but only provides relevant background information; and (iii) whether the evidence is corroborative of other evidence.⁵

SUBMISSIONS

8. First, P-0808's evidence regarding the [REDACTED] demobilisation [REDACTED] ⁶ relates to an issue that is materially in dispute, and goes directly to Mr Yekatom's alleged acts and conduct regarding a core issue in this case – i.e. Count 29.⁷ Specifically, Mr Yekatom's presence at the ceremony in question is disputed, as is the presence of children within his group.
9. Moreover, the Prosecution seeks to rely on P-1974, P-2018, and P-2082 as providing corroborating evidence in relation to the demobilisation ceremony [REDACTED].⁸ The Defence here notes that in the Request, in support of its arguments regarding corroboration, the Prosecution merely provides P-numbers of those witnesses whose evidence purportedly corroborates allegations made in

⁴ *Prosecutor v Gbagbo and Blé Goudé*, [Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68\(2\)\(b\) and 68\(3\)"](#), 1 November 2016, ICC-02/11-01/15-744, para. 71.

⁵ *Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence"](#), ICC-01/05-01/08-1386, 3 May 2011, para 78.

⁶ [ICC-01/14-01/18-1087-Conf](#), para.13, p. 9.

⁷ [ICC-01/14-01/18-1087-Conf-AnxB](#), pp 24-25; [CAR-OTP-2093-0010](#), paras. 130, 136.

⁸ [ICC-01/14-01/18-1087-Conf](#), para. 14.

the Statements.⁹ In the absence of specific references to transcripts/statements, and to relevant page and/or paragraph numbers, the Prosecution, as the moving party, cannot be considered to have demonstrated corroboration for the purposes of its Request.

10. In any event however, P-1974's statement directly contradicts P-0808's allegations as regards the presence of Mr Yekatom during the [REDACTED] ceremony,¹⁰ as does the statement of P-2018¹¹ and the statement of P-2082.¹²
11. Second, P-0808's prominent role and actions as an Anti-Balaka insider witness during the relevant period militate against the introduction of his evidence under Rule 68(3).
12. P-0808 was [REDACTED]. The Prosecution indicates that his "highly relevant and probative" Statements "[describe] the position of the Anti-Balaka leadership within the framework of the group, as well as the respective roles of the Accused during the Relevant Period."¹³ He further claims to have been [REDACTED].¹⁴
13. As a [REDACTED] insider within the Anti-Balaka organisation during the relevant time period, P-0808 is thus in possession of first-hand information that is of significant 'importance' in light of the charges and other evidence intended to be presented.
14. Moreover, P-0808 is an Article 55(2) witness who, while he waived his right to counsel, nonetheless gave his Statements while on express notice of the Prosecution's determination that there exist grounds to believe that he has committed crimes within the jurisdiction of the Court. As previously submitted,

⁹ [ICC-01/14-01/18-1087-Conf](#), para. 14.

¹⁰ [CAR-OTP-2068-0222-R03](#), para. 54.

¹¹ [CAR-OTP-2071-0259-R03](#), para. 57.

¹² [CAR-OTP-2109-0452-R02](#), para. 40.

¹³ [ICC-01/14-01/18-1087-Conf](#), para. 10.

¹⁴ [CAR-OTP-2093-0010-R02](#), para. 130.

Article 55(2) witnesses may very well be motivated to downplay their potentially incriminating role or actions, and/or to exaggerate or fabricate the role and actions of others, during interviews given under the express threat of potential prosecution.¹⁵

15. In the circumstances therefore, P-0808 should provide his evidence *viva voce* in-full and under oath, so as to allow the Chamber and parties to hear a natural and spontaneous account from the witness, to directly and closely observe his reactions, demeanour and composure, and to immediately seek clarifications.¹⁶
16. Lastly, the Defences notes that the Prosecution has estimated that in-full *viva voce* testimony would require ten hours while the Prosecution would still require five hours should its Request be granted.¹⁷ The economy in time as suggested by the Prosecution, weighed against the submissions set out above and the prejudice to Mr Yekatom that would ensue, does not warrant the introduction of the Statements and the Associated Exhibits through Rule 68(3).
17. In addition, the Defence opposes in principle the admission of the document with ERN CAR-OTP-2030-0263, tendered as an associated exhibit to the Statements.
18. The Defence recalls that a document qualifies as an associated exhibit when it forms an integral part of statement as a result of its use and/or explanation by a witness.¹⁸
19. When P-0808 was shown the document, the witness only stated the following: “[i]t is my first time seeing or hearing about such a document like this.”¹⁹ It was

¹⁵ See, [ICC-01/14-01/18-1094-Conf](#), para. 19.

¹⁶ See, [ICC-01/14-01/18-685](#), para. 33.

¹⁷ [ICC-01/14-01/18-1087-Conf](#), paras. 1 and 20.

¹⁸ [ICC-01/14-01/18-907](#), para. 13; [ICC-02/04-01/15-596-Red](#), para. 10, and references cited therein; see also, [ICC-02/04-01/15-1288](#), para. 8.

¹⁹ [ICC-01/14-01/18-1087-Conf-AnxB](#), p. 52; [CAR-OTP-2093-0010](#), para. 121.

not 'used' or 'explained' in any meaningful sense; nor can it reasonably be argued that the document 'forms an integral part of the statement'.

20. Nor has the Prosecution demonstrated the *prima facie* relevance of the document to these proceedings.²⁰
21. The Prosecution will not be unduly prejudiced by the denial of the Request in relation to the document, as it can seek to introduce it through the witness who provided it to the Prosecution in the first place, i.e. , Prosecution witness P-0889.

CONFIDENTIALITY

22. This response is filed on a confidential basis corresponding to the classification of the Request.

RELIEF SOUGHT

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

DENY the Request;

or, should the Chamber be minded to grant the Request, to:

REJECT the admission of document CAR-OTP-2030-0263.

RESPECTFULLY SUBMITTED ON THIS 27TH DAY OF SEPTEMBER 2021



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²⁰ See, [ICC-01/14-01/18-1045-Conf](#), para. 11, fn. 10.