

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **29 November 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-1193 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1033-Conf)”,
ICC-01/14-01/18-1045-Conf, 2 July 2021**

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. The Defence team for Mr Alfred Rombhot Yekatom ('Defence') hereby responds to the 'Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-1193 pursuant to Rule 68(3)' ('Request').¹
2. The Defence takes no position on the formal submission of the 15 August 2016 Witness Statement of P-1193 ('Statement').² However, it opposes the formal submission of Annexes F and G,³ on the basis that they do not comprise associated exhibits forming an integral part of the prior recorded testimony of P-1193.

APPLICABLE LAW

3. 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.

4. According to the jurisprudence of the Court, 'prior recorded testimony' which may be introduced under Rule 68 of the Rules also includes any annex to the witness's statement, or document otherwise associated with it, that is used or explained by the witness and which, as such, is an integral part of the testimony itself.⁴

¹ [ICC-01/14-01/18-1033-Conf.](#)

² [CAR-OTP-2045-0048-R03.](#)

³ [CAR-OTP-2039-0050](#), [CAR-OTP-2039-0063](#).

⁴ [ICC-02/04-01/15-596-Red](#), para. 10, and references cited therein; see also, [ICC-02/04-01/15-1288](#), para. 8.

SUBMISSIONS

5. According to P-1193, Annex F to the Statement comprises [REDACTED], while Annex G to the Statement comprises a [REDACTED] (collectively, 'Lists').⁵
6. The Lists do not qualify as associated exhibits to the Statement, as they were not 'used or explained' by P-1193 during his interview – neither in a meaningful sense, nor for the purposes of Rule 68(3).
7. The above-cited descriptions comprise the entirety of the information provided by P-1193 regarding the Lists.⁶
8. Moreover, in accordance with the jurisprudence of the Court, a document can qualify as an associated exhibit only if forms an integral part of a statement, as a result of its use and/or explanation by a witness.⁷ In other words, the mere fact that a document was used or explained by a witness during their interview is insufficient, on its own, to qualify that document as an associated exhibit.
9. Further support for such an interpretation of 'associated exhibits' can be found in established jurisprudence from the International Criminal Tribunal for the former Yugoslavia, requiring that, in order for a document to qualify as an associated exhibit, it 'must form an inseparable and indispensable part of the witness's testimony', without which the witness's testimony 'would become incomprehensible or of lesser probative value'.⁸ It cannot reasonably be argued that the Lists meet this standard - the Statement would be perfectly

⁵ [CAR-OTP-2045-0048-R03](#), paras 84(e), (f).

⁶ See also, [ICC-01/14-01/18-1033-AnxA](#), p. 3.

⁷ See above, para. 4, where the operative phrase is 'as such'.

⁸ See, [Prosecutor v. Dordevic, IT-05-87/1-T, Decision on Prosecution's Motions for Admission of Evidence Pursuant to Rule 92ter, 10 February 2009](#), para 5, and references cited therein.

comprehensible without the formal submission of the Lists, nor would its probative value be impacted.

10. As noted above, the Lists appear to have been provided to Prosecution investigators by P-1193 along with only the most cursory of descriptions. The manner in which other annexes tendered as associated exhibits to the Statement were used and/or explained provides an illustrative contrast in this regard.⁹
11. Moreover, given the lack of any meaningful explanation regarding the Lists, their *prima facie* relevance to the proceedings remains unclear. In this regard, the Lists do not meet the requirements of Article 69(2) and (3) of the Statute, to which regard must be had pursuant to Rule 68(1).¹⁰ As such, and recalling that in accordance with the Initial Directions, Rule 68 application must be ruled upon prior to the Chamber's assessment of evidence under Article 74,¹¹ the Defence submits that the *prima facie* relevance of associated exhibits must be established before their formal submission is granted.
12. In any event, the denial at this stage of the formal submission of the Lists will not unduly prejudice the Prosecution. Nothing impedes the Prosecution from attempting to establish the necessary foundation for their formal submission while P-1933 is on the stand.
13. Nor would this unduly prolong the Prosecution's examination-in-chief of P-1193. Indeed, given the lack of any meaningful explanation as to the Lists, and by extension, their lack of any showing of *prima facie* relevance, it can be

⁹ See e.g., [CAR-OTP-2045-0048-R03](#), para. 63, where Annex A is addressed; paras 45-59, where Annex B is addressed; or para. 84(b), where Annex C is addressed.

¹⁰ Under Rule 68(1) the Chamber may allow the introduction of prior recorded testimony 'in accordance with article 69, paragraphs 2 and 4'; Article 69(2) states in relevant part that 'The Court may permit [...] the introduction of documents [...] subject to this Statute [emphasis added]'; as such, it is submitted that Article 69(3), which requires that evidence submitted by the parties be relevant, applies to the submission of documents as 'associated exhibits' under to Rule 68(3).

¹¹ [ICC-01/14-01/18-631](#), para. 56.

reasonably assumed that the Prosecution intends to take the witness to them during his testimony in any event.

CONFIDENTIALITY

14. This Response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed forthwith.

RELIEF SOUGHT

15. In light of the above, the Defence respectfully requests that the Chamber:

DENY the formal submission of Annex F and Annex G pursuant to Rule 68(3).

RESPECTFULLY SUBMITTED ON THIS 29TH DAY OF NOVEMBER 2021



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