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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 Prior Recorded
Testimony of P-2083 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1218-Conf)”, 18
January 2022, ICC-01/14-01/18-1253-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. The Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby responds to the 'Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-2083 pursuant to Rule 68(3)¹ ('Request').
2. The request should be denied. The Defence will demonstrate that P-2083's statement contains allegations central to core issues in the case that are materially disputed and uncorroborated by other evidence. The Defence further submits that the admission of the prior recorded testimony of P-2083 under Rule 68(3) would not serve the interest of justice and would unfairly prejudice Mr Yekatom's rights.

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. 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 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

¹ [ICC-01/14-01/18-1210-Conf](#). A public redacted version is also available [ICC-01/14-01/18-1210-Red](#). On 20 December 2021, the Chamber granted an extension of the deadline to respond to the Request, to 20 January 2022; see, Email from Trial Chamber V to Parties and Participants, 20 December 2021 at 09.26.

fairness of the trial generally, to allow for the evidence in question to be introduced under Rule 68 (3).²

5. 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.³

SUBMISSIONS

I. The Statement contains allegations central to core issues in the case materially in dispute and uncorroborated by other evidence

A. Allegations regarding child soldiers

6. P-2083's statement contains highly prejudicial allegations regarding the presence of child soldiers in Mr Yekatom's group and their demobilisation through the *Enfant Sans Frontières* ('ESF') program, thus directly related to Count 29.
7. The Prosecution relies, *inter alia*, on P-2083's statement to support its allegations that children under age 15 were enlisted in Mr Yekatom's group.⁴
8. In her statement, P-2083 describes the launching of the ESF demobilisation program and the identification of the alleged child soldiers. She associates the children enrolled in the ESF program with Mr Yekatom's group mentioning that 'the Anti-balaka was the only armed group that was active in Lobaye at

² *Prosecutor v. Gbagbo & 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\(3\)"](#), ICC-02/11-01/15-744, 1 November 2016 ('Gbagbo & Blé Goudé Judgment'), para. 71.

³ *Prosecutor v. 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"](#), 3 May 2011, ICC-01/05-01/08-1386, para 78.

⁴ [ICC-01/14-01/18-723-Conf](#), paras 203, 377, 484, 485, 486, 487; Public redacted version: [ICC-01/14-01/18-723-Red](#).

that period' and that the Comzones present in this area would be under the command of Mr Yekatom.⁵

9. P-2083's statement provides also information about the age of the alleged demobilised children. She alleges that they were carrying knives, weapons and *gris-gris*, that they were drugged and that some of them had been forcibly taken by the Anti-balaka; and that some children were sexually abused. P-2083 further provides information regarding the activities of the alleged child soldiers within the armed groups and describes their presence at checkpoints.
10. While P-2083's statement is essentially dedicated to the description of the launching of the ESF program, her own direct experience with ESF is realistically very limited. The witness indeed started [REDACTED], towards the end of the project.⁶ In addition, P-2083's [REDACTED] in the initial stage of the process of *identifying* the children.⁷
11. Her limited personal involvement is emphasized by the contradictions between her statement and other evidence in the case. While P-2083 describes the negotiations with the Comzones as 'long and difficult', [REDACTED]. He specifies that [REDACTED] and that by 4 August 2014 the demobilisation ceremony in Pissa was organised.⁸ This information is further corroborated by P-2018 who confirms that Mr Yekatom [REDACTED].⁹
12. On the same topic, P-2083 is referring to multiple negotiations between the Comzones and the ESF animators and long negotiations,¹⁰ while other witnesses involved in the project at the time of its implementation, do only mention [REDACTED]. They do not refer to any meeting whatsoever with Comzones

⁵ [CAR-OTP-2110-0333-R01](#), para. 60.

⁶ [CAR-OTP-2110-0333-R01](#), paras 12, 13, 21, 31 and 53.

⁷ [CAR-OTP-2109-0452](#), para. 80

⁸ [CAR-OTP-2068-0222-R03](#), paras 27, 31-33, 38 and 42.

⁹ [CAR-OTP-2071-0259-R03](#), para. 33.

¹⁰ [CAR-OTP-2110-0333-R01](#), para. 34.

involving a long process to demobilize the children. On the contrary they describe the process as a one-day event where children were simply asked to report to the town hall in PISSA on the 4th August.¹¹

13. P-2083 indicates that ESF was responsible for identifying the children associated with an armed group¹² while the ESF report specifies that a representative of the movement was designated to gather the children.¹³
14. During her interview, P-2083 informed the Prosecution investigators of the implementation of only two sites allocated to the project, one in Mbaïki and the other one in Pissa.¹⁴ She specifically states that [REDACTED] but does not mention the site of Mbata. However, Mbata [REDACTED], is one of five sites to which ESF refers in its report, namely the social centre of Mbaïki and the four gathering sites in Pissa, Mbata, Batalimo and MOUNGOUNBA.¹⁵
15. In the same vein, P-2083 states that the children were originally from the Mbaïki axis and other villages in the Lobaye such as Lesse, Mbata, Nazareth or Baléloko.¹⁶ However, the ESF report only mentions four localities in which the alleged child soldiers were demobilised.¹⁷
16. Furthermore, P-2083 claims that one ceremony was organized in Pissa without the presence of any representative of the armed groups.¹⁸ Not only that the affirmation is hearsay [REDACTED] but it is also contradicted by other evidence.¹⁹ For instance, the ESF report which confirms the presence of Anti-Balaka members including Mr Yekatom at the PISSA ceremony.²⁰

¹¹ [CAR-OTP-2068-0222-R03](#), par. 40 and 43.

¹² [CAR-OTP-2110-0333-R01](#), para. 27.

¹³ [CAR-OTP-2068-0558](#) at 0559.

¹⁴ [CAR-OTP-2071-0259-R03](#), para.35.

¹⁵ [CAR-OTP-2068-0558](#) at 0564; [CAR-OTP-2068-0568](#) at 0572.

¹⁶ [CAR-OTP-2110-0333-R01](#), para. 36.

¹⁷ [CAR-OTP-2068-0558](#) at 0559 and 0560.

¹⁸ [CAR-OTP-2068-0222-R03](#), para. 22.

¹⁹ [CAR-OTP-2110-0333-R01](#), para. 21.

²⁰ [CAR-OTP-2068-0558](#).

17. Based on the information that the ESF coordinators provided her with, including P-2580, P-2083 states that the children were aged between 8 and 17 years old. However, her evidence is contradicted by P-2580 who told to the Prosecution's investigators that the youngest child was 13 years old²¹ as well as by P-2018 and P-2082 about the age range of the children.²²
18. Besides, P-2083 alleges that four girls, [REDACTED], were sexually abused when they were among the Anti-balaka. Not only does this claim appears to be based on speculation, drawn from her subjective observation that the girls 'did not love their children', but this prejudicial claim is also contradicted by other evidence. Indeed P-2580 informed the Prosecution's investigators that 'there were girls who were raped by SELEKA' and that he 'did not see any girls who were in Anti-balaka as wives'.²³
19. Importantly, P-2083 fails to indicate in her statement that among the 'demobilised' children who were not in fact enlisted in the Anti-Balaka - despite the fact that this is conceded by P-2085,²⁴ himself [REDACTED] regarding ESF and the demobilisation.²⁵ Whether this is a deliberate omission or further indication of her lack of reliability on this matter, the fact that this critical information was not included in her statement further militates against its introduction under Rule 68(3).
20. Finally, as already pleaded by the Defence in previous submissions, the validity of the ESF demobilisation ceremonies and lists are disputed.²⁶
21. In this regard, P-2083 particularly supports the recent testimony of witness P-0876 who stated, in relation to the NGOs tasked with receiving and

²¹ [CAR-OTP-2117-0043-R01](#) at 0047.

²² P-2018: [CAR-OTP-2071-0259-R03](#) at 0272-0274; P-2082: [CAR-OTP-2109-0452-R02](#), para. 45.

²³ [CAR-OTP-2117-0043-R01](#) at 0047.

²⁴ [CAR-OTP-2117-0043-R01](#) at 0047

²⁵ [CAR-OTP-2110-0333-R01](#), paras. 29, 31.

²⁶ [ICC-01/14-01/18-1237-Conf](#); Public redacted version: [ICC-01/14-01/18-1237-Red](#).

administering UNICEF funding, that ‘there was indeed a huge gap between what was announced and what we saw in the field’.²⁷ Notably, P-2083 herself mentions the mismanagement of funds within the ESF program and the impact that this had on the training and reintegration of the children in the civil society.²⁸

22. The opacity of the program and the validity of the list of the alleged child soldiers is shown through P-2083’s statement. Despite [REDACTED], P-2083 informed the Prosecution investigators that [REDACTED] because [REDACTED] refused to provide her with, claiming that ‘[REDACTED] came from a job that needed a lot of effort and that he could not give this information freely, mostly because UNICEF was telling them to keep all their information confidential’.²⁹ This claim is not in line [REDACTED].³⁰

B. Allegations concerning the organisation and behaviour of the Anti-balaka and Mr Yekatom’s acts and conduct

2. According to witness P-2083, the only armed group present in the Lobaye was the Anti-balaka and she explains the division of the area between zone commanders under Mr Yekatom’s command.³¹
3. Her statement contains extensive reference to Mr Yekatom’s acts and conduct and it should be noted in this regard that the Prosecution concedes in its application that P-2083’s statement goes to that aspect.³²
4. At the outset, it is notable that in her statement, P-2083 exhibits negative bias and makes broad-brush claims against the Anti-Balaka, explaining that she

²⁷ [ICC-01/14-01/18-T-087-CONF-ENG](#), page 28, ln 3-11.

²⁸ [CAR-OTP-2110-0333-R01](#), paras 23 and 52.

²⁹ [CAR-OTP-2110-0333-R01](#), para 49.

³⁰ [CAR-OTP-2109-0452-R02](#), para 80.

³¹ [CAR-OTP-2110-0333-R01](#), paras 32 and 60.

³² [ICC-01/14-01/18-1218-Conf](#), para. 17.

never had any interactions with any member of the Anti-balaka because ‘they had a bad reputation’ and were ‘known to be sexually violent toward women’.³³

5. Further, the Defence submits that it clearly appears from her statement that P-2083 has a strong view about Mr Yekatom, an opinion she appears to have formed based on unsubstantiated rumours. She notably describes her fears of him while admitting that she never had the opportunity to interact with him.³⁴ For instance, she makes the prejudicial and unfounded claim that after the elections of 2016, some young people complained about Mr Yekatom accusing the latter of defrauding them, coercion to vote for him and sexually abusing women.³⁵
6. P-2083 provides further hearsay to the Prosecution investigators, to the effect that Mr Yekatom buried an individual alive, and that he abused many people in the Zila area.³⁶ P-2083 states that the negotiations between ESF animators and the Comzones could take a very long time. She adds that some Comzones were stubborn during the negotiations and that they finally decided to release the children only because they feared to be prosecuted. She mentions also that ESF animators and the children needed to be escorted to avoid the children to be harassed at the checkpoints. P-2083 further alleges that no verification was made by the animators when collecting the children as the goal was to ‘liberate them as soon as possible’ and avoid that the Comzones changed their minds.³⁷
7. As developed above, those allegations are uncorroborated by [REDACTED] who gave different description of those meetings that [REDACTED] and who explained that the children were simply asked to report to Pissa.³⁸

³³ [CAR-OTP-2068-0222-R03](#), para. 63.

³⁴ [CAR-OTP-2110-0333-R01](#), para 64.

³⁵ [CAR-OTP-2110-0333-R01](#), para. 64.

³⁶ *Ibid.*

³⁷ [CAR-OTP-2068-0222-R03](#), paras 33-35, 45.

³⁸ See above paras 11-12 ; see also [CAR-OTP-2068-0222-R03](#), paras 40, 43.

II. The admission of the prior recorded testimony of P-2083 would not serve the interest of Justice and would unfairly prejudice Mr Yekatom's rights

8. The Defence submits that the insufficient reliability of the information provided by witness P-2083 strongly militates against the admission of her statement under Rule 68 (3).
9. *First*, P-2083 was [REDACTED] when the demobilisation program was launched. She [REDACTED] P-2082, [REDACTED] toward the end of its implementation.³⁹ She also specifies that most of the [REDACTED] in the Lobaye Prefecture were in [REDACTED] and not ESF.⁴⁰
10. *Second*, Witness P-2083's own direct experience is very limited. She herself admits that she did not have many interactions with the children who were involved in the project and [REDACTED] of the children enrolled in the ESF program.⁴¹
11. *Third*, P-2083's knowledge of ESF organisation and program depends on the information provided by [REDACTED] and the undetermined ESF's staff.⁴² She specifies that the animators were named '*Animateurs andogènes*' because they were not formally trained⁴³ which renders the evidence even less probative.
12. *Fourth*, parts of P-2083's statement are inconsistent.
13. When OTP investigators asked P-2083 about the affiliation of the children to an armed group, she responds that the only armed group active in the Lobaye at that time was the Anti-Balaka under the command of Mr Yekatom. However, she subsequently mentions that another NGO [REDACTED] had a similar project [REDACTED], also located in the Lobaye prefecture, where the children

³⁹ [CAR-OTP-2110-0333-R01](#), paras 13, 21-22.

⁴⁰ [CAR-OTP-2068-0222-R03](#), para. 59.

⁴¹ [CAR-OTP-2068-0222-R03](#), paras 49 and 58.

⁴² [CAR-OTP-2068-0222-R03](#), paras 50, 60 and 61.

⁴³ [CAR-OTP-2110-0333-R01](#), para. 30.

involved in the project were associated with both the Seleka and the Anti-balaka. This contradiction is another indicia of P-2083's unreliability.⁴⁴

14. P-2083's evidence is particularly speculative, generalised and indirect concerning allegations as significant as the *mens rea* of the Comzones,⁴⁵ children being drugged in the armed groups⁴⁶ or allegations of sexual abuses.⁴⁷ The latter allegation is particularly important as the Prosecution relies on this paragraph in its Trial Brief to support its submission that 'some children were subject to sexual violence'.⁴⁸
15. *Finally*, the erroneous designation by P-2083 of Alfred NGAYA as the national coordinator of the Anti-balaka is further indicia of her lack of knowledge of the Anti-Balaka and the unreliability of her statement.⁴⁹
16. The Defence submits that the probative value of her statement is clearly outweighed by the prejudice that the Defence would suffer should the statement be admitted under Rule 68(3).
17. In this regard, it should also be noted that [REDACTED], P-2083's [REDACTED], which renders even more difficult for the Defence to test the evidence she provides on her statement.

⁴⁴ [CAR-OTP-2110-0333-R01](#), para.59.

⁴⁵ [CAR-OTP-2110-0333-R01](#), para. 34: 'I think the Comm Zones eventually felt fearful that they could be prosecuted and they decided to allow the children to leave'; see also See, *Prosecutor v. Al Hassan*, [Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68\(2\)\(b\) of the Rules](#), 15 November 2021, ICC-01/12-01/18-1924, para. 16.

⁴⁶ [CAR-OTP-2110-0333-R01](#), para. 60: 'From what I understood [REDACTED], the children associated with the armed groups were drugged in order to make them feel stronger and fearless'.

⁴⁷ [CAR-OTP-2110-0333-R01](#), para 61: 'I do remember hearing about four underage girls who got pregnant while they were in the armed groups'. (...) 'From what I was told'; see also para.63: 'there were generally known to be sexually violent towards women'. (...) If a woman found herself alone within these armed groups, they would all sexually abuse her'.

⁴⁸ [ICC-01/14-01/18-723-Conf](#), para. 203, fn. 566. Public redacted version: [ICC-01/14-01/18-723-Red](#).

⁴⁹ [CAR-OTP-2110-0333-R01](#), para. 68.

18. The Defence recalls that *viva voce* testimony given entirely under oath will allow the Chamber and Mr Yekatom to hear a natural and spontaneous account from the witness.

III. The time saved by the Prosecution should the statement be admitted under Rule 68(3) is negligible

19. The Prosecution estimates that, if the witness testifies fully *viva voce*, its direct examination would require three hours while if admitted under Rule 68 (3) it would need one and half hours. The difference is minor and would result in an addition of only one court session.
20. Compared to the importance of the allegations provided by P-2083's statement and the prejudice that Mr Yekatom would suffer from its admission under Rule 68(3), the time saved is negligible.
21. The Defence also submits that the argument of the expeditiousness of the proceedings finds its limit in circumstances where the time that might be saved by the Prosecution would have to be used by the Defence to obtain clarification on questions that could have been elucidated during the witness' interview or during the examination by the calling party, for example, the sources of the hearsay evidence she provides, or the basis for her speculative claims.

CONFIDENTIALITY

22. The present response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version is being filed as soon as possible.

RELIEF SOUGHT

23. For the above reasons, the Defence respectfully requests that the Chamber:
- DENY** the Request.

RESPECTFULLY SUBMITTED ON THIS 26TH DAY OF JANUARY 2022



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