

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **5 April 2022**

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-2582 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1283-Conf)”, 7 March 2022, ICC-01/14-01/18-1306-Conf-Exp

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-2582 pursuant to Rule 68(3)'¹ ('Request').
2. The request should be denied. Given that P-2582's statement contains myriad materially disputed allegations going to a number of core issues in this case, and the extensive references to the acts and conduct of Mr Yekatom, the statement should not be admitted under Rule 68(3).
3. Further, considering the discrepancies highlighted in this response, the *viva voce* testimony of P-2582 in its entirety is necessary for the Parties and the Chamber to directly seek clarification; and further, it would assist them to receive a natural and spontaneous account from the witness.

APPLICABLE LAW

4. 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.

5. 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

¹ [ICC-01/14-01/18-1283-Conf.](#)

On 17 February 2022, the Chamber granted an extension of the deadline to respond to the Request, to 7 March 2022; See email from Trial Chamber V to Parties and Participants sent on 17 February 2022 at 16:42.

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).²

6. 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. Witness P-2582's statement goes materially disputed issues and is central to core issues in the case

7. The extent of P-2582's allegations contained in her statement goes well beyond the submissions set out by the Prosecution in its request. P-2582 gives evidence on no less than nine counts brought against Mr Yekatom, on Mr Yekatom's *mens rea*, on his alleged essential contributions to the crimes and on contextual elements.
8. P-2582 mentions the name 'RAMBO' no less than 65 times in her statement and identifies him in her victim's application form as the one responsible for her suffering.

A. Allegations regarding the presence of child soldiers in Mr Yekatom's group

9. P-2582 [REDACTED] Mr Yekatom's group.

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.

10. Extensive parts of her statement (no less than seventeen paragraphs) are relied on by the Prosecution in its Trial Brief to support Count 29,⁴ especially to demonstrate that at least 15 children part of Mr Yekatom's group, demobilised during the ESF ceremony in Pissa, were under the age of 15 years.⁵
11. P-2582 [REDACTED]. According to her statement, the child soldiers were trained by [REDACTED], one of Mr Yekatom's subordinates, to use machetes⁶ and guns⁷ and received medicines to make them feel powerful,⁸ drugs allegedly directly provided by Mr Yekatom.⁹
12. Not only does the witness relate [REDACTED], including graphic descriptions of the crimes they were forced to commit,¹⁰ but she also specifically names other children in the group,¹¹ and demobilised children who were part of the ESF training.¹²
13. Moreover, P-2582 claims to [REDACTED], as along with two other girls in her group, and alleges that [REDACTED].¹³ She says that she was 'sure' that Mr Yekatom [REDACTED] '[REDACTED]'.¹⁴
14. Finally, P-2582 alleges that [REDACTED].¹⁵

B. Allegations regarding Count 1

15. Witness P-2582 allegedly participated in the 5 December 2013 attack. She claims that [REDACTED] explained in advance that the goal was to fight the

⁴ [CAR-OTP-2117-0605-R05](#), paras 12, 21-22, 24, 28 89-101 referenced in [ICC-01/14-01/18-723-Conf](#) at para. 484, fn. 1216, para. 486, fns 1232 and 1234, para. 487, fn. 1237. Public redacted version: [ICC-01/14-01/18-723-Red](#).

⁵ [CAR-OTP-2117-0605-R05](#), para. 12 referenced in [ICC-01/14-01/18-723-Conf](#) at para. 487, fn. 1237.

⁶ [CAR-OTP-2117-0605-R05](#), paras 29, 32; (see especially, "we were told that our job would be to kill").

⁷ [CAR-OTP-2117-0605-R05](#), para. 53.

⁸ [CAR-OTP-2117-0605-R05](#), paras 29, 35, 51.

⁹ [CAR-OTP-2117-0605-R05](#), para. 51.

¹⁰ [CAR-OTP-2117-0605-R05](#), paras 35-39, 52-54, 58, 61, 65, 67.

¹¹ [CAR-OTP-2117-0605-R05](#), para. 32.

¹² [CAR-OTP-2117-0605-R05](#), paras 103, 112-114, 125-129.

¹³ [CAR-OTP-2117-0605-R05](#), paras 89-101.

¹⁴ [CAR-OTP-2117-0605-R05](#), para. 101

¹⁵ [CAR-OTP-2117-0605-R05](#), paras 102-103.

‘Arabs’, without distinguishing between men, women and children.¹⁶ She describes how the Anti-Balaka group she was part of reached the roundabout near PK5 and managed to overpower the ‘Arabs’ and capture them.¹⁷

16. P-2582 also claims that ‘RAMBO’ gave the order to kill one of the men captured and describes in details how the members of the group proceeded to murder him.¹⁸
17. She further claims that the Anti-Balaka killed civilians on that day, including a pregnant woman and her unborn baby while she was fleeing, and that they burned all the bodies.¹⁹
18. The witness also explains how the members of the group allegedly targeted houses belonging to ‘Arabs’ and burnt them.²⁰

C. Allegations regarding Counts 4, 5 and 8

19. As described in the above paragraphs, P-2582 gives evidence about Mr Yekatom’s group targeting Muslims civilians and their houses during the attack of 5 December 2013, and explains that this was also the goal of every attack they subsequently launched in various area of Bangui – specifically, in Fatima, Kina, Castors, and Combattant.²¹
20. In this context, P-2582 specifically alleges that during the attack in Kina, Mr Yekatom gave the order to attack the area ‘to give the Muslims a message that they did not want them to stay or ever return to the neighbourhood’.²²

¹⁶ [CAR-OTP-2117-0605-R05](#), para. 31.

¹⁷ [CAR-OTP-2117-0605-R05](#), para. 34.

¹⁸ [CAR-OTP-2117-0605-R05](#), para. 35.

¹⁹ [CAR-OTP-2117-0605-R05](#), paras 36-39.

²⁰ [CAR-OTP-2117-0605-R05](#), para. 39.

²¹ [CAR-OTP-2117-0605-R05](#), paras. 42, 56 (Kina area), para. 48 (Fatima), para. 60 (Castors), para. 65 (Combattant).

²² [CAR-OTP-2117-0605-R05](#), para. 56.

21. P-2582 specifies that they would also target the Christians supporting the Muslim population as they were seen as traitors, which too was allegedly in accordance with Mr Yekatom's express instructions.²³ Her evidence in this regard, as well as her claims regarding her ability to differentiate between Muslims and Christians,²⁴ also goes to the 'persecutory intent' element of Count 8.
22. She also mentions elements of the group participating in patrols in neighborhoods of Bangui to identify Muslims' properties and to report this information to the commanders.²⁵

D. Allegations regarding crimes allegedly committed on the PK9-Mbaïki axis
(Counts 24 to 27)

23. The Prosecution relies on P-2582's statement to support Counts 24 and 25, alleging that "the increasingly hostile environment towards Muslims, that Mr Yekatom's group perpetuated and heightened, caused Mbaïki's Muslim population to flee *en masse* from about 6 February 2014 onwards" which allegedly led to the displacement of Muslims by the Chadian forces to Chad, and the displacement of others to other parts of CAR.²⁶
24. P-2582 claims to have heard that Muslims were coming from different locations in the Lobaye area and that they had to leave because of the fights between them and the rest of the CAR population and states that the Muslims had to leave to escape from death.²⁷
25. P-2582's statement is also used to support the allegation that Mr Yekatom's group established checkpoints on the PK9-Mbaïki axis regulating and

²³ [CAR-OTP-2117-0605-R05](#), paras 48, 61, 65.

²⁴ [CAR-OTP-2117-0605-R05](#), para. 65.

²⁵ [CAR-OTP-2117-0605-R05](#), para. 42.

²⁶ [CAR-OTP-2117-0605-R05](#), paras 86-87 referenced in [ICC-01/14-01/18-723-Conf](#) at para. 469, fn 1187.

²⁷ [CAR-OTP-2117-0605-R05](#), para. 87.

preventing the circulation of Muslims and confiscating goods and money, among which, part was personally collected from Mr Yekatom.²⁸

26. P-2582 refers to an incident at the Sekia checkpoint during which a Muslim family was stopped, and from whom [REDACTED] and Mr Yekatom demanded money and stole their vehicle, before killing them in the bush.²⁹
27. Moreover, the witness describes Mr Yekatom's group preparing and launching an attack on Mbaïki because Mr Yekatom suspected MINUSCA and the Muslims to be accomplices.³⁰
28. P-2582 also provides evidence concerning the killing of Djido Saleh, the former deputy mayor of Mbaïki.³¹ Through her description of the attack on Mbaïki, P-2582 claims to be a first-hand eyewitness to the killing of Djido Saleh, which she directly attributes to Mr Yekatom.

E. Allegations regarding Mr Yekatom's men rea, on his essential contributions to the crimes and on contextual elements

29. Witness P-2582 is expected to testify about Mr Yekatom's alleged contribution to the charged crimes. In this regard, the Prosecution relies directly on her statement in the Trial Brief to support its claims that Mr Yekatom allegedly 'issued orders to Anti-Balaka members, including patently illegal instructions'³² and 'ordered such brutality as cutting throats, cutting ears off, execution or burying people alive'.³³
30. In addition to the Prosecution's direct reliance on P-2582's statement as set out in the Trial Brief, P-2582's allegations relate also to the remaining aspects of

²⁸ [CAR-OTP-2117-0605-R05](#), para. 70 referenced in [ICC-01/14-01/18-723-Conf](#) at para. 470, fn 1197.

²⁹ [CAR-OTP-2117-0605-R05](#), paras. 71-72.

³⁰ [CAR-OTP-2117-0605-R05](#), paras. 77-80.

³¹ [CAR-OTP-2117-0605-R05](#), paras 80-81.

³² [CAR-OTP-2117-0605-R05](#), paras 48 and 67 referenced in [ICC-01/14-01/18-723-Conf](#) at para. 374, fn 970.

³³ [CAR-OTP-2117-0605-R05](#), paras 35-39 referenced in [ICC-01/14-01/18-723-Conf](#) at para. 374, fn 974.

Mr Yekatom's alleged contributions to the charged crimes, i.e structuring, training, and equipping his elements;³⁴ preparing the Anti-Balaka attacks and advances,³⁵ and participating and leading his Group in their execution;³⁶ and conscripting and/or enlisting children under the age of 15 into his Group.³⁷ In other words, P-2582 is among the few Prosecution witnesses whose allegations go to the totality of Mr Yekatom's charged 'essential contributions'.

31. Finally, extensive parts of her statement also affect the contextual elements of the charged crimes as P-2582 gives information about the identity of the group, the recruitment of troops, the training of the elements, the intensity of the conflict and the effect of the violence on the civilian population.³⁸
32. P-2582 alleges that Mr Yekatom's group attacked and destroyed various religious buildings in different area of Bangui. ³⁹Although her statement does not directly refer to the Boeing mosque and is not directly relied upon by the Prosecution, this allegation relates to Mr Yekatom's essential contributions as well as Count 8 of the charges.
33. The Defence also emphasizes that P-2582 directly alleges Mr Yekatom's physical presence at the vast majority of the crimes scenes she describes, consequently strengthening Mr Yekatom's alleged *mens rea* as claimed by the Prosecution.⁴⁰ P-2582 describes multiple times Mr Yekatom addressing the group she was part of, therefore illustrating Mr Yekatom's awareness of the presence of children in his group which potentially characterise his *mens rea*.⁴¹

II. Witness P-2582 gives uncorroborated and/ or insufficiently reliable evidence

³⁴ [CAR-OTP-2117-0605-R05](#), paras 13, 19, 21-22, 24-29, 36-37, 45-48, 52, 56, 60-62, 81-84.

³⁵ [CAR-OTP-2117-0605-R05](#), paras 31, 48, 60, 64, 77.

³⁶ [CAR-OTP-2117-0605-R05](#), paras 13, 25, 47, 62, 79, 83.

³⁷ See above paras 9-14.

³⁸ See for instance [CAR-OTP-2117-0605-R05](#), paras 21, 22, 26, 29, 32, 86, 87 and above paras 15-19.

³⁹ [CAR-OTP-2117-0605-R05](#), para. 67.

⁴⁰ [CAR-OTP-2117-0605-R05](#), paras 35, 56, 70-71, 79-80.

⁴¹ See above paras 9-14.

34. The Defence submits that P-2582 provides extensive uncorroborated ⁴² evidence and insufficiently reliable information on crucial issues in the case, which should prevent the admission of her statement under Rule 68(3).

A. [REDACTED]

35. *First*, [REDACTED].

36. [REDACTED]. ⁴³ [REDACTED]. ⁴⁴ [REDACTED]. ⁴⁵ [REDACTED]. ⁴⁶ [REDACTED].⁴⁷

37. *Second*, [REDACTED].⁴⁸ [REDACTED].⁴⁹

38. [REDACTED].⁵⁰ [REDACTED]. [REDACTED].

39. *Finally*, [REDACTED].⁵¹ [REDACTED].⁵²

B. [REDACTED]

40. [REDACTED].⁵³ [REDACTED].⁵⁴

41. [REDACTED].

42. [REDACTED].⁵⁵ [REDACTED].⁵⁶ [REDACTED],⁵⁷ [REDACTED].⁵⁸

⁴² The Defence's underlining of contradictions in the present section between P-2582's statement and other Prosecution evidence in the case is by no means a concession as to the veracity of the allegations provided by other Prosecution witnesses.

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

43. Further, [REDACTED].⁵⁹ [REDACTED].⁶⁰ [REDACTED].⁶¹

C. [REDACTED]

[REDACTED]

44. [REDACTED]. [REDACTED].⁶²

45. [REDACTED].⁶³ [REDACTED].

[REDACTED]

46. [REDACTED].

47. [REDACTED].⁶⁴ [REDACTED].

48. [REDACTED].⁶⁵ [REDACTED].⁶⁶ [REDACTED],⁶⁷ [REDACTED].⁶⁸

49. [REDACTED],⁶⁹ [REDACTED].⁷⁰ [REDACTED].⁷¹

50. [REDACTED],⁷² [REDACTED].⁷³

51. [REDACTED].⁷⁴

52. [REDACTED].⁷⁵

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

[REDACTED]

53. [REDACTED]. [REDACTED].⁷⁶ [REDACTED].⁷⁷

54. [REDACTED].⁷⁸ [REDACTED].⁷⁹

55. Further, [REDACTED].⁸⁰ [REDACTED].

56. [REDACTED].⁸¹

57. [REDACTED].⁸²

58. [REDACTED].⁸³ [REDACTED].⁸⁴

D. [REDACTED]

59. [REDACTED].

60. [REDACTED]. [REDACTED].

61. [REDACTED]. [REDACTED].⁸⁵

62. [REDACTED].

63. [REDACTED]⁸⁶ [REDACTED].

64. [REDACTED].⁸⁷ [REDACTED].

65. [REDACTED].⁸⁸ [REDACTED]. [REDACTED].⁸⁹

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED]; [REDACTED].

⁸⁵ [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

66. [REDACTED].⁹⁰

67. [REDACTED].

F. [REDACTED]

68. [REDACTED].

69. [REDACTED],⁹¹ [REDACTED], [REDACTED].⁹² [REDACTED].⁹³

70. [REDACTED]⁹⁴ and [REDACTED],⁹⁵ or [REDACTED]⁹⁶ [REDACTED];
[REDACTED].

71. [REDACTED].⁹⁷

72. Finally, [REDACTED].

G. [REDACTED]

73. [REDACTED].⁹⁸

74. [REDACTED].⁹⁹

75. [REDACTED].¹⁰⁰ [REDACTED].¹⁰¹

76. Moreover, [REDACTED].¹⁰² [REDACTED];¹⁰³ [REDACTED].

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ [REDACTED].

⁹⁴ [REDACTED].

⁹⁵ [REDACTED].

⁹⁶ [REDACTED].

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

⁹⁹ [REDACTED].

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² [REDACTED].

¹⁰³ [REDACTED].

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

77. The Prosecution estimates that should the witness testifies *viva voce*, its examination would require 4 hours while if admitted under Rule 68(3) the examination would require 2 hours. This reduction of only 2 hours is negligible considering the prejudice the Defence would suffer should the statement be admitted under rule 68(3), considering the extent of prejudicial allegations contained in P-2582's statement.
78. The significance of the multiple contradictions are such that they are contrary to the spirit of Rule 68(3), and its concomitant implication that statements admitted thereunder are sufficiently reliable.

CONFIDENTIALITY

79. Pursuant to Regulation 23 *bis* (1) and (2) of the Regulations of the Court, this response is filed *ex parte* available only to the Defence of Mr Yekatom and the Defence of Mr Ngaïssona as it refers to significant and substantive parts of the Defence's strategy, as developed in the second part of this response.
80. Further, considering the dual status of P-2582, and in light of the spirit underlying the Decision on Protocols at Trial, including the aim of preventing the risk that a party might contaminate the witness's recollection by indirectly conveying its expectations of the witness's evidence, it is the Defence's position that a restricted notification of this response would fully guarantee the ability of the Parties to hear the witness' recollection of the events for the first time in Court without the risk of potential influence on the witness' testimony by a participant. A confidential redacted version of the response is filed simultaneously.

RELIEF SOUGHT

81. For the above reasons, the Defence respectfully requests that the Chamber:

DENY the Request.

RESPECTFULLY SUBMITTED ON THIS 5TH DAY OF APRIL 2022

A handwritten signature in blue ink, appearing to read 'Mylène Dimitri'.

Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands