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**International
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Date: **13 June 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-2041 pursuant to Rule 68(3)”, 19 May 2022, ICC-01/14-01/18-
1418-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-2041 pursuant to Rule 68(3)" ("Request").¹
2. The Defence submits that the Request should be rejected in light of the numerous references to acts and conduct of Mr. Yekatom on core issues of the case in P-2041's statement. The unreliability and uncorroborated nature of this statement also militates against its submission pursuant to Rule 68(3) of the Rules.

PROCEDURAL HISTORY

3. On 16 October 2020, Trial Chamber V ("Chamber") issued its "Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules" in which it *inter alia* recalled that *viva voce* testimony should be the default mode of testifying,² and held that Rule 68 (3) may not be used without limits, noting that when considered against the specific circumstance of a case, its use might be disproportionate.³
4. On 10 November 2020, the Prosecution added P-2041 to its Final List of Witnesses, indicating that he is expected to testify on the issues of the "Incident PK9-Mbaiki axis" and "Yekatom's contributions".⁴
5. On 20 May 2022, the Request was notified.⁵

¹ [ICC-01/14-01/18-1418-Conf.](#)

² [ICC-01/14-01/18-685](#), para. 25.

³ *Ibid*, para. 31.

⁴ [ICC-01/14-01/18-724-Conf-AnxA](#), page 36, witness #62.

⁵ [ICC-01/14-01/18-1418-Conf.](#)

APPLICABLE LAW

6. 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.

7. A Chamber’s assessment as to whether prior recorded testimony may be introduced under Rule 68(3) should be made on a case-by-case basis where the factors to be considered may vary per witness.⁶
8. 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 fairness of the trial generally, to allow for the evidence in question to be introduced under Rule 68(3).⁷
9. 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.⁸

⁶ *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. 69.

⁷ *Ibid.*, para. 71.

⁸ *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.

SUBMISSIONS

10. The evidence of P-2041 relates to the crimes allegedly committed on the PK9-Mbaïki axis, an area which is core to the Prosecution's case against Mr. Yekatom, with five counts specifically dedicated to those locations. Despite the importance of this crime base, and as previously noted by the Defence,⁹ only one witness of the PK9-Mbaïki axis, P-1666, is currently scheduled to provide his testimony fully *viva voce*.
11. The Defence objects to the submission of P-2041's prior recorded testimony pursuant to Rule 68(3) as its content extensively relates to core issues of the case, and is uncorroborated and unreliable.
 - I. **On the content of P-2041's statement which is central to core issues of the case and is materially disputed**
12. The statement of P-2041 provides information regarding the alleged control of Mr. Yekatom over the Anti-Balaka in MBAIKI threatening Muslim civilians and includes claims on Mr. Yekatom's involvement in an attack in MBAIKI.
13. P-2041 describes the attitude and demeanour of the Anti-Balaka in MBAIKI, stating that they "were very threatening towards the Muslims"¹⁰ and that "they had the intention to hurt [the Muslim delegation and not the others who [REDACTED]]"¹¹ He further mentions that local Christian youth who "armed themselves with machetes and mixed with the Anti-Balaka"¹² on their arrival at

⁹ [ICC-01/14-01/18-1272-Conf](#), para. 9. A public redacted version is also available: [ICC-01/14-01/18-1272-Red](#); [ICC-01/14-01/18-1376-Conf](#), para. 25. A public redacted version is also available: [ICC-01/14-01/18-1376-Red2](#), [ICC-01/14-01/18-1421-Conf](#), para. 10. A public redacted version is also available: [ICC-01/14-01/18-1421-Red](#), [ICC-01/14-01/18-1447-Conf](#), para. 32. The Defence did not take into account witness P-2196, listed as a live witness, as his current participation in the trial remains unclear following the information provided by the Prosecution.

¹⁰ [CAR-OTP-2104-0003-R02](#), para. 56.

¹¹ [CAR-OTP-2104-0003-R02](#), para. 56.

¹² [CAR-OTP-2104-0003-R02](#), para. 51.

MBAIKI, “became threatening immediately after the arrival of the Anti-Balaka.”¹³

14. P-2041 states that [REDACTED]¹⁴. P-2041 further alleges that “it was ROMBHOT’s group who were planning the attack”¹⁵ in MBAIKI and that they would have targeted Muslims civilians, and warned Christians the previous day to mark their houses by placing leaves in front of their homes “to make the distinction between the Christians and Muslim houses.”¹⁶ P-2041 describes how “the Anti-Balaka entered MBAIKI intending to attack”¹⁷ but were stopped by the SANGARIS¹⁸ and then disarmed at the Town Hall.¹⁹ [REDACTED]²⁰ [REDACTED].
15. In light of the importance of these elements, which are not merely background information or contextualising the events, but go to core issues underlying the PK-9-Mbaiki Axis crime base charges, including acts and conduct of Mr. Yekatom, the Defence is of the view that they should be elicited orally before the Chamber and under its oversight.

II. On the uncorroborated and unreliable nature of P-2041’s evidence

16. The statement of P-2041 is uncorroborated and unreliable. It contains important contradictions between P-2041’s statement and the evidence of other Prosecution witnesses, as well as uncorroborated information regarding notable events in MBAIKI. These elements affect the witness’s claims as to Mr. Yekatom’s involvement therein and militate in favour of hearing the testimony of P-1838 *viva voce*.

¹³ [CAR-OTP-2104-0003-R02](#), para. 51.

¹⁴ [CAR-OTP-2104-0003-R02](#), para. 52.

¹⁵ [CAR-OTP-2104-0003-R02](#), para. 59.

¹⁶ [CAR-OTP-2104-0003-R02](#), para. 60.

¹⁷ [CAR-OTP-2104-0003-R02](#), para. 61.

¹⁸ [CAR-OTP-2104-0003-R02](#), para. 61.

¹⁹ [CAR-OTP-2104-0003-R02](#), para. 61.

²⁰ [CAR-OTP-2104-0003-R02](#), para. 54, *see also* paras. 54, 55.

17. There are contradictions between P-2041's statement and the evidence provided by other Prosecution witnesses present in MBAIKI at the time of the relevant events. P-2041 indicates that the Anti-Balaka arrived in MBAIKI with "12.7 (*douze-sept*) firearm which was mounted on a vehicle".²¹ However, [REDACTED] (P-1595), [REDACTED] who was present at the scene details the Anti-Balaka vehicles in which they arrived and states that he "did not see a big gun on the pick-ups"²². Witness-2041 also provides an exaggerated estimate with regard to the claimed arrival of "at least 2000 Anti-Balaka" in MBAIKI which undermines the credibility of his statement.²³ By way of comparison, P-1666 mentions 50 to 60 elements.²⁴
18. Furthermore, P-2041 claims that he was informed by [REDACTED]²⁵ [REDACTED]²⁶.
19. P-2041 refers to events regarding [REDACTED]²⁷ [REDACTED].²⁸
20. Furthermore, P-2041's statement exhibits negative bias against Mr. Yekatom and the Anti-Balaka. This can be observed in his recollection of [REDACTED].²⁹ P-2041 is the only witness who reports such warnings from [REDACTED].
21. Further, regarding the same [REDACTED], P-2041's statement disregards entirely Mr. Yekatom's speech on his peaceful intentions towards the Muslim population in MBAIKI, as mentioned by several witnesses,³⁰ including P-1595 who was also present [REDACTED].³¹ Additionally, P-2041 made no mention

²¹ [CAR-OTP-2104-0003-R02](#), para. 50.

²² [CAR-OTP-2101-0274-R02](#), para. 53.

²³ [CAR-OTP-2104-0003-R02](#), para. 50.

²⁴ P-1666: [CAR-OTP-2059-0361-R01](#), para. 40.

²⁵ [CAR-OTP-2104-0003-R02](#), para. 56

²⁶ [CAR-OTP-2059-0361-R04](#).

²⁷ [CAR-OTP-2104-0003-R02](#), para. 56.

²⁸ [CAR-OTP-2104-0003-R02](#), para. 56.

²⁹ [CAR-OTP-2104-0003-R02](#), para. 52, 54, 55.

³⁰ P-1666: [CAR-OTP-2059-0361-R03](#), para. 36; P-1839: [CAR-OTP-2072-1039](#), pp. 1059-1061; P-2389: [CAR-OTP-2104-0033-R01](#), para. 55; P-2353: [CAR-OTP-2100-0226-R01](#), para. 52, P-1838: [CAR-OTP-2100-0252-R01](#), para. 72; P-2084: [CAR-OTP-2094-0968-R01](#), para. 68.

³¹ P-1595, ICC-01/14-01/18-T-106-CONF-ENG, p. 7-8.

in his statement of the speech given by Mr. Yekatom shortly [REDACTED] in front of the entire population of MBAIKI, in which he reiterated his warning not to harm the Muslim population, as referred to by witnesses in MBAIKI that day,³² and especially P-1595 who testified that it was “before the entire population of Mbaiki”.³³ It would appear highly unlikely that P-2041 would not have been aware of both speeches; and his failure to bring either of them to the attention of the Prosecution is illustrative of this negative bias.

22. Additionally, [REDACTED] in MBAIKI mentioning the said warnings from [REDACTED] provide an incomplete and partial description of the meeting. Thus, the Defence argues that the associated exhibit tendered with P-2041’s statement is insufficiently reliable for admission via Rule 68.

23. In light of the above, the Prosecution’s Request should be denied.

CONFIDENTIALITY

24. The present response is filed on a confidential basis corresponding to the classification of the Request and due to the presence of identifying information of P-2041. A public redacted version is will be filed simultaneously.

RELIEF SOUGHT

25. In light of the above, the Defence respectfully requests Trial Chamber V to:

REJECT the Prosecution’s Request.

RESPECTFULLY SUBMITTED ON THIS 13th DAY OF JUNE 2022



³² P-1666: [CAR-OTP-2059-0361-R03](#), para. 39; P-1813: [CAR-OTP-2069-0035-R01](#), para. 55; P-2354: [CAR-OTP-2105-0991-R01](#), para. 54; P-1838: [CAR-OTP-2100-0252-R01](#), para. 73.

³³ ICC-01/14-01/18-T-106-CONF-ENG, p.8.

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