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**Cour
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**International
Criminal
Court**

Original: **English**

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

Date: **7 March 2023**

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***

Confidential

Yekatom Defence Observations pursuant to the Chamber's "Order regarding the Remainder of the Prosecution's Presentation of Evidence and Order pursuant to Article 64(6)(d) of the Statute", ICC-01/14-01/18-1739-Conf, 31 January 2023

Source: Defence for Mr. Alfred Rombhot Yekatom

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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 provides its observations further to the Chamber's order to the Parties to provide their views on the potential submission of P-0952's prior recorded testimony pursuant to Rule 68(3) of the Rules of Procedure and Evidence.¹
2. The Defence respectfully submits that it would not be in the interests of justice for P-0952's prior recorded testimony to be submitted under Rule 68(3) in light of its content and of the unique position the witness held during the events as President of the Central African Republic.

PROCEDURAL HISTORY

3. On 10 November 2020, the Prosecution included P-0952 in its Final Witness List, categorized as a "live witness" with an expected testimony duration of 5 hours.²
4. On 11 June 2021, P-0952 refused to testify before the Chamber should the hearings be held in public.³
5. On 31 January 2023, the Chamber decided to hear P-0952 as a Chamber witness pursuant to Articles 64(6)(d) and 69(3) of the Statute; it also ordered the "participants to provide their views on the potential introduction of the previously recorded testimony of witness P-0952 pursuant to Rule 68(3) of the Rules no later than 10 March 2023".⁴ On the same day a public redacted version of the Chamber's order was notified.⁵

SUBMISSIONS

¹ ICC-01/14-01/18-1739-Conf, para. 15. A public redacted version is also available : [ICC-01/14-01/18-1739-Red](#).

² ICC-01/14-01/18-724-Conf-AnxA, page 42, witness #82.

³ ICC-01/14-01/18-T-045-CONF-FRA CT at [10:01:17].

⁴ ICC-01/14-01/18-1739-Conf, page 8.

⁵ [ICC-01/14-01/18-1739-Red](#).

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6. The Defence submits that submission of P-0952's prior recorded testimony pursuant to Rule 68(3) would not be in the interests of justice.
7. Indeed, the Defence recalls that the Chamber found that the high number of Rule 68 applications in the current case, which was described as "unprecedented", may have an impact on the principles of orality and publicity.⁶ Submission of the approximately 400 pages of P-0952's interview with the Prosecution pursuant to Rule 68(3) would result in some information not being elicited orally and consequently staying out of the public domain.
8. This infringement to the principle of publicity should be carefully assessed by the Chamber, and prevented in this instance, in light of the unique position of witness P-0952 as President of the Central African Republic during the majority of the temporal scope of the case.
9. The Defence notes that the last Registry's report on the victims admitted to participate in the proceedings highlights a desire from Central African citizens to follow the current proceedings; in addition, some "victims expressed the wish for the Court to remobilise the media for a better follow-up of the trial in all the areas where victims reside".⁷ In the same vein, a visit of several community leaders and NGO members, a group named Central African Ambassadors for Justice, was recently organized to the seat of the Court;⁸ with the aim of publicizing the work of the Court and the current status of the

⁶ [ICC-01/14-01/18-685](#), para. 21.

⁷ [ICC-01/14-01/18-1695](#), page 14.

⁸ See <https://twitter.com/CourPenaleInt/status/1617977512356708374> : Des ambassadeurs de la justice de #RCA (ONG & leaders communautaires) ont rencontré Procureur adjoint Niang. Pendant leur visite à la #CPI, ces derniers ont suivi affaires #Yekatom & #Ngaïssona, & #Said, pour partager infos avec communautés en RCA. Merci @UKinDRC @CanadaCameroon ;

See also <https://twitter.com/CourPenaleInt/status/1619006655269568514> : #AccèsÀLaJustice: Des ambassadeurs de la justice #RépubliqueCentrafricaine ont rencontré Conseils de la Défense dans affaires #Yekatom & #Ngaïssona & #Said – Me Dimitri, Me Knoops & Me Naouri. 10 jours à La Haye pour découvrir affaires #CPI concernant #RCA @UKinDRC @CanadaCameroun.

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proceedings with local communities.⁹ This is proof of a high public interest in the work of the Court and in ongoing trials.

10. In this context, the testimony of P-0952, as the former president of the Central African Republic, will be a highlight of the proceedings for anyone affected by the crisis and, more generally, for all Central Africans. This was also recognised by the Chamber through the 11 June 2021 words of the Presiding Judge to P-0952 during her first appearance:

“Given your unique position at the time of the crisis, the interest in your testimony being public is even higher than it might be under other circumstances or for some other witnesses. This is not only out of a general need for publicity of the proceedings, which also translate into certain rights of the accused. Rather, and given your outstanding position both at the time of the crisis and still within the CAR society now, your public testimony can make a substantial contribution not only to the truth in these proceedings and in potential further proceedings before this Court, but hereby also to the historical truth of your country. The truth must be heard so that it can unfold its purifying effect. The truth about the events of the past is what the people of the Central African Republic need and are looking for. Moreover, the truth is the prerequisite for justice and for reconciliation of the people in your country. It is the prerequisite for any attempt to live in peace with each other in the future. In that regard, your public testimony will very likely have a positive impact, favouring justice and reconciliation in the CAR.”¹⁰

11. The submission of P-0952's prior recorded interview pursuant to Rule 68(3) would keep some information about how the crisis unfolded from being elicited orally, which would be regrettable in light of the potential importance of this testimony and expectations from the general public.
12. On this aspect it should be noted that the mere disclosure of P-0952's interview with the Prosecution, well after the hearing,¹¹ cannot be considered a proper alternative; indeed the possibility to read the transcripts on the Court's website, only in French, will not have the same impact on the public, as well as any

⁹ See <https://twitter.com/CourPenaleInt/status/1627292731885211650> : Après avoir assisté à des sessions d'info à la #CPI à #LaHaye & suivi des audiences dans les affaires concernant la #RCA, les ambassadeurs de la justice se sont réunis de nouveau à #Bangui, avec @UKinDRC @CanadaCameroun. «L'accès à l'info mène à l'AccèsàlaJustice», concluent-ils.

¹⁰ ICC-01/14-01/18-T-045-CONF-ENG ET at [9:37:40].

¹¹ See email chain from the Chamber “Publishing of prior recorded testimonies” dated 3 June 2021 at 15:58.

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interested media, as the possibility to follow live, in French and Sango, the testimony of P-0952. The percentage of people that will be reached by the information provided live by the witness is incommensurably more important than the percentage of interested people that will read the approximately 400 pages of interview on the ICC website.

13. The Defence also notes that the Prosecution anticipated that its examination of P-0952, without submission of the prior recorded testimony via Rule 68(3), would have lasted approximately 5 hours.¹² It is submitted that in light of the importance of this witness, an examination by the Chamber and the Prosecution of one, or even two, days of hearings is not unreasonable and would not unduly affect the expeditiousness of the proceedings. Moreover, in light of P-0952's status and expected testimony,¹³ a majority of events mentioned in her interview with the Prosecution would have to be elicited orally,¹⁴ which would nullify the very limited time saved by the submission of her prior recorded interview pursuant to Rule 68(3).
14. Finally, the Defence notes that in her interview P-0952 makes several allegations about Mr Yekatom, and more specifically, about crimes that he allegedly committed around the PK9 bridge.¹⁵ While relatively limited in the context of the overall length of her prior recorded testimony, the Defence submits that the presence of such allegations also militates in favour of a fully *viva voce* testimony of P-0952.

¹² ICC-01/14-01/18-724-Conf-AnxA, page 42, witness #82.

¹³ See the document "OTP Summary – P-0952" provided by the Prosecution in its email "OTP examination list P-0952 and Summary" dated 7 June 2021 at 17:00.

¹⁴ The Defence submits that at the very least sections "Origins of the Crisis" and "The Anti-Balaka" from the document "OTP Summary – P-0952" would need to be elicited orally for P-0952's testimony to have any meaningful impact in the Central African Republic and towards its citizens.

¹⁵ **P-0952** : CAR-OTP-2107-0897 at 0901-0902, lns 120-181.

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15. In light of the above, the Defence respectfully requests the Chamber to find that P-0952's testimony should be held fully *viva voce* and her previously recorded testimony unsuitable for a Rule 68(3) submission.

CONFIDENTIALITY

16. The present observations are filed on a confidential basis corresponding to the classification of the Chamber's order and due to identifying information of witness P-0952. A public redacted version will be filed forthwith.

RELIEF SOUGHT

17. In light of the above, the Defence respectfully requests Trial Chamber V to:
RULE that P-0952's prior recorded testimony is unsuitable for a Rule 68(3) submission.

RESPECTFULLY SUBMITTED ON THIS 7th DAY OF MARCH 2023



Me Mylène Dimitri
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