

**Cour
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**International
Criminal
Court**

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

Date: **28 December 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***

**Public
With Confidential Annex A**

**Public Redacted Version of the “Yekatom Defence Application for the
Introduction of P-6025 prior recorded testimony pursuant to Rule 68(3)”,
ICC-01/14-01/18-2210-Conf, 17 November 2023**

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 applies for the introduction of P-6025’s prior recorded testimony pursuant to Rule 68(3) of the Rules of Procedure and Evidence (“Rules” and “Application” respectively).¹
2. Granting the Application would significantly reduce the examination by the Defence of P-6025, which would help streamline the proceedings. In addition, P-6025 will be available for examination by the Chamber and Parties.

PROCEDURAL HISTORY

3. On 16 October 2020, the Chamber issued its “Decision on the Prosecution Extension Requests and Initial Guidance on Rule 68 of the Rules”.²
4. On 10 March 2021, the Chamber set out the applicable law to the present case when assessing Rule 68(3) applications.³
5. On 29 May 2023, the Chamber issued the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)”, set out to 17 November 2023 the deadline for the Defence to file its applications pursuant to Rule 68(2) and (3) of the Rules.⁴
6. On 17 November 2023, the Defence submitted its Final Witness List.⁵

APPLICABLE LAW

7. Rule 68(1) and (3) of the Rules states that :

- (1) When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraphs 2 and 4, and after

¹ **P-6025** : CAR-D29-0009-0280-R01, also provided in Annex A.

² ICC-01/14-01/18-685.

³ ICC-01/14-01/18-907-Red, paras 8-16.

⁴ ICC-01/14-01/18-1892, para. 21.

⁵ The Defence’s Final Witness List is filed simultaneously of the present application. As its notification is pending, the Defence does not have its reference yet.

hearing the parties, allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that this would not be prejudicial to or inconsistent with the rights of the accused and that the requirements of one or more of the following sub-rules are met.

- (3) 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.

8. Trial Chamber V found in relation to Rule 68(3) applications that:

Subject to the fulfilment of the requirements of Rule 68(3) of the Rules, the Chamber's determination to allow the introduction of prior recorded testimonies is discretionary and requires a case-by-case assessment. Several factors may guide the Chamber's decision to allow the introduction of such testimony. For example, depending on the relevant circumstances, the Chamber may consider, *inter alia*, whether the evidence relates to issues that are not materially in dispute, whether the evidence is not central to core issues in the case or whether it is corroborative of other evidence.⁶

9. The Appeals Chamber has also stated that "expeditiousness is a factor relevant to the implementation of rule 68 (3) of the Rules, since its use in principle aims at reducing the amount of time devoted to hearing oral testimony in court".⁷

SUBMISSIONS

10. The Defence develops below in relation to P-6025's prior recorded testimony: its content (I), its corroboration of other evidence (II), and its fulfilment of the Rule 68(3) criteria (III).

I. On the content of P-6025's prior recorded testimony

11. The Defence tenders for formal submission P-6025's statement collected on 13 October 2023, totalling 14 pages.⁸ There are no agreements as to facts contained

⁶ ICC-01/14-01/18-907-Red, para. 14.

⁷ *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)", 1 November 2016, [ICC-02/11-01/15-744](#), para. 61.

⁸ **P-6025** : CAR-D29-0009-0280-R01.

in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-6025's statement.

12. The witness' proposed testimony establishes the following:

- P-6025 is the [REDACTED] and has [REDACTED];⁹
- P-6025 explains that [REDACTED]. The oldest child is called [REDACTED] (aka [REDACTED] / CAR-V45-P-0001) and the youngest child is called [REDACTED] (see *infra*);¹⁰
- P-6025 attests that [REDACTED] (aka [REDACTED] / CAR-V45-P-0001) is currently a student at the [REDACTED]. P-6025 was [REDACTED];¹¹
- P-6025 only knows the name [REDACTED] (aka [REDACTED] / CAR-V45-P-0001) and not [REDACTED];¹²
- P-6025 recognized [REDACTED] (aka [REDACTED] / CAR-V45-P-0001) on a photograph shown by the Defence;¹³
- P-6025 explains that [REDACTED] now lives in [REDACTED];¹⁴
- P-6025 explains that [REDACTED];¹⁵
- P-6025 explains that [REDACTED];¹⁶

⁹ *Ibid*, para. 15.

¹⁰ *Ibid*, paras 21, 24.

¹¹ *Ibid*, para. 27.

¹² *Ibid*, para. 28.

¹³ *Ibid*, para. 29. The photograph 2, on which P-6025 recognized [REDACTED] corresponds to the photograph of P-0001 provided by CLR V1 (CAR-V45-00000010) pursuant to the Chamber's email "*Decision on Yekatom Defence Request regarding Disclosure of Photographs from CLR V1*" dated 5 September 2023. In order to respect the conditions set for the disclosure of the photographs from CLR V1, the photograph shown to P-6025 was on a computer, and consequently not signed and annexed to his statement.

¹⁴ *Ibid*, paras 30-32.

¹⁵ *Ibid*, paras 34-35.

¹⁶ *Ibid*, paras 38, 41-42.

- P-6025 explains that there were no child soldiers in [REDACTED] and that [REDACTED] told him that [REDACTED] trained the participants to invent a fake story whereby they were to say [REDACTED];¹⁷
- P-6025 indicates that [REDACTED];¹⁸
- P-6025 explains that [REDACTED] advised [REDACTED] to change their names [REDACTED];¹⁹
- P-6025 explains [REDACTED];²⁰
- P-6025 explains that [REDACTED];²¹
- P-6025 explains that [REDACTED] trained the children to learn a narrative [REDACTED].
- P-6025 explains that [REDACTED];²²
- P-6025 explains that [REDACTED];²³
- P-6025 explains that [REDACTED];²⁴
- P-6025 explains that an individual named [REDACTED] told him that he is producing false birth certificates, [REDACTED];²⁵
- P-6025 explains that [REDACTED] discouraged [REDACTED] from cooperating with the Defence, [REDACTED];²⁶

¹⁷ *Ibid*, paras 48-49.

¹⁸ *Ibid*, para. 47.

¹⁹ *Ibid*, paras 54, 56-57.

²⁰ *Ibid*, paras 58-59.

²¹ *Ibid*, paras 63, 65.

²² *Ibid*, para. 72.

²³ *Ibid*, paras 72, 74.

²⁴ *Ibid*, para. 75.

²⁵ *Ibid*, paras 80-81.

²⁶ *Ibid*, paras 84-85.

- P-6025 explains that [REDACTED];²⁷
- P-6025 explains that [REDACTED] asked [REDACTED] to change the name of [REDACTED];²⁸
- P-6025 was informed that [REDACTED].²⁹

II. On the corroboration of P-6025's prior recorded testimony

13. P-6025's evidence on the real identity of [REDACTED] (aka [REDACTED] / CAR-V45-P-0001) is cumulative and corroborative of i) documentary evidence showing the real identity of P-0001;³⁰ (ii) the testimony of P-0002 [REDACTED];³¹ and (iii) the proposed rule 68(2) testimony of P-6028³² and P-6034.³³ P-6034 also attests of [REDACTED] and [REDACTED] (aka [REDACTED] / CAR-V45-P-0001).³⁴

14. P-6025's evidence regarding the procurement of birth certificate [REDACTED] is corroborated by documentary evidence;³⁵ as well as P-6022's statement.³⁶

15. P-6025's evidence regarding the fact that [REDACTED], is supported by the proposed Rule 68(2)(b) statements of P-6012 and P-6019³⁷ as well as documentary evidence.³⁸

²⁷ *Ibid*, paras 86-92.

²⁸ *Ibid*, para. 88.

²⁹ *Ibid*, paras 93-95.

³⁰ See *inter alia* CAR-D29-0013-0252 ; CAR-D29-0013-0256 ; CAR-D29-0013-0265 ; CAR-D29-0014-0165, at 0167 ; CAR-D29-0013-0250.

³¹ **P-0002** : ICC-01/14-01/18-T-247-CONF-FRA ET from 13:57:10 to 13:58:47.

³² **P-6028** : CAR-D29-0009-0499-R01, paras 17-25.

³³ **P-6034** : CAR-D29-0009-0372-R01, paras 17-26.

³⁴ **P-6034** : CAR-D29-0009-0372-R01, para. 21.

³⁵ See [REDACTED].

³⁶ **P-6022** : CAR-D29-0009-0217-R01.

³⁷ **P-6012** : CAR-D29-0009-0410 ; **P-6019** : CAR-D29-0009-0331 and CAR-D29-0009-0340.

³⁸ See [REDACTED].

16. P-6025's evidence regarding [REDACTED] is corroborated by the statements of P-6012,³⁹ P-6019,⁴⁰ and P-6010.⁴¹ This is also corroborated by evidence from [REDACTED];⁴² [REDACTED].⁴³

III. On the fulfilment of Rule 68(3) criteria by P-6025's prior recorded testimony

17. The Defence first recalls the jurisprudence of the Chamber as regard to the notion of "prior recorded testimony" for the purpose of a Rule 68(3) application. The Chamber found that a "prior recorded testimony" includes audio-video recorded testimony, transcripts of a testimony of a witness and written statement taken under Rules 111 and 112 of the Rules. It further clarified that "[a] statement can be considered prior recorded testimony if the person when providing the statement understands that they are 'providing information which may be relied upon in the context of legal proceedings'. This is the case when the person is questioned in the capacity of a witness in the context of or in anticipation of legal proceedings".⁴⁴

18. The Defence highlights that P-6025's statement squarely falls within the definition set out by the Chamber as : (i) P-6025 was explained the context of his interview with the Defence ;⁴⁵ (ii) P-6025 was informed that his statement was taken for the purpose of legal proceedings and that he could be called to testify;⁴⁶ P-6025 re-read his statement and was assisted by an Registry's interpreter.⁴⁷ Consequently, P-6025's statement should be assessed as a previous recorded testimony susceptible of being submitted pursuant to Rule 68(3) of the Rules.

³⁹ **P-6012** : CAR-D29-0009-0410-R01, paras 25-41, with a particular attention to paragraph 36.

⁴⁰ **P-6019** : CAR-D29-0009-0340-R01, paras 25-29. See also second statement CAR-D29-0009-0331-R01.

⁴¹ **P-6010** : CAR-D29-0009-0248-R01, paras 21-24.

⁴² See [REDACTED].

⁴³ See [REDACTED].

⁴⁴ ICC-01/14-01/18-907-Red, para. 11, as well as references mentioned in footnotes 15-17.

⁴⁵ **P-6025** : CAR-D29-0009-0280-R01, paras 1-4.

⁴⁶ **P-6025** : CAR-D29-0009-0280-R01, paras 11-12 and paras 96-97.

⁴⁷ **P-6025** : CAR-D29-0009-0280-R01, pages 0292-0293.

19. P-6025's prior recorded testimony relates to the conspiracy put in place by various individuals to fabricate evidence as regards to Count 29. The Defence notes that this witness' evidence is limited to the fabrication of evidence, corroborated by other evidence (as shown in section II above), and does not go over the acts and conduct of Mr Yekatom. Furthermore, the Chamber and Parties will have the opportunity to examine P-6025. Consequently, the Defence submits that the content of P-6025's prior recorded testimony is suitable for a Rule 68(3) submission.
20. Rule 68(1) of the Rules provides the general condition that submission of a prior recorded testimony should not be prejudicial or inconsistent with the rights of the accused. While the introduction of P-6025's statement pursuant to Rule 68(3) is obviously not inconsistent with the right of the accused in light of its content, the Defence further highlights that this introduction causes no prejudice to the other Parties as P-6025 will still testify before the Court and available to be examined by the Chamber and other Parties should they deem it necessary.
21. Moreover, the Defence highlights the limited amount of Rule 68(3) submissions envisaged, with P-6025 currently being the only witness whose evidence is sought to be submitted pursuant to this rule. Any prejudice to other Parties that could arise from P-6025's evidence not being elicited fully *viva voce* is consequently extremely limited. This single Rule 68(3) application is also a guarantee that the principle of orality is not unduly affected.
22. Finally, the Defence recalls that the purpose of Rule 68 is to streamline the proceedings.⁴⁸ Given the breadth and scope of P-6025's anticipated testimony, the Defence estimates the time necessary for its examination of P-6025 to amount to 8 hours in total *i.e.* almost two days of court hearings. However, the Defence's examination would be shortened to no more than 3 hours with the

⁴⁸ See paragraph 9 above.

introduction of P-6025's statement pursuant to Rule 68(3). This limited examination will provide the Defence with an adequate opportunity to develop, explain, or clarify, limited facets of P-6025's evidence which is consistent with the terms of rule 68(3) and the Chamber's guidance.⁴⁹ The streamlined examination will also undoubtedly expedite proceedings and is in line with the Chamber's prior determination that a shortened examination of a witness by two hours was promoting the expeditiousness of the proceedings.⁵⁰

23. Consequently, in light of all the above, the Defence respectfully requests the Chamber to allow the introduction of P-6025's prior recorded testimony pursuant to Rule 68(3) of the Rules, pending the witness' approval during his in-court appearance.

CONFIDENTIALITY

24. This motion is being filed on a confidential basis as it refers to confidential information which would reveal the identity of P-6025, as well as the identities of CLRV's clients and Prosecution's witnesses. A public redacted version will be filed in due course.

RELIEF SOUGHT

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

GRANT the submission of P-6025's prior recorded testimony pursuant to Rule 68(3) of the Rules.

⁴⁹ ICC-01/14-01/18-685, para. 36.

⁵⁰ See ICC-01/14-01/18-1858-Red, para 20 : "[...] the introduction of P-2084's statement would cut the time for the Prosecution's examination of the witness at least by half [...]", and the Prosecution's ICC-01/14-01/18-1210-Conf, paras 14-16 which indicated an examination of two hours with a submission of P-2084's statement pursuant to Rule 68(3), or in the alternative an examination of four hours.

RESPECTFULLY SUBMITTED ON THIS 28th DAY OF DECEMBER 2023

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

Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands