

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: **23 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-1813 pursuant to Rule 68(3)”, 10 June 2022, ICC-01/14-01/18-  
1452-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-1813 pursuant to Rule 68(3)” (“Request”).<sup>1</sup>
2. The Defence submits that the Request should be rejected in light of the role and position of P-1813 during the events and the numerous references to acts and conduct of Mr. Yekatom on core issues of the case made in P-1813’s statements.

## 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,<sup>2</sup> 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.<sup>3</sup>
4. On 10 November 2020, the Prosecution added P-1813 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”.<sup>4</sup>
5. On 10 June 2022, the Request was notified.<sup>5</sup>

## APPLICABLE LAW

6. Rule 68(3) of the Rules of Procedure and Evidence (“Rules”) states:

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<sup>1</sup> [ICC-01/14-01/18-1452-Conf.](#)

<sup>2</sup> [ICC-01/14-01/18-685](#), para. 25.

<sup>3</sup> *Ibid*, para. 31.

<sup>4</sup> [ICC-01/14-01/18-724-Conf-AnxA](#), p. 37, witness #66.

<sup>5</sup> [ICC-01/14-01/18-1452-Conf.](#)

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.<sup>6</sup>
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).<sup>7</sup>
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.<sup>8</sup>

## **SUBMISSIONS**

10. The evidence of P-1813 relates to the crimes allegedly committed on the PK9-Mbaïki axis, an area which is core to the Prosecution's case against

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<sup>6</sup> *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.

<sup>7</sup> *Ibid.*, para. 71.

<sup>8</sup> *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.

Mr. Yekatom, with five counts specifically dedicated to those locations i.e. Counts 24 to 28. Despite the importance of this crime base, and as previously noted by the Defence,<sup>9</sup> only one witness of the PK9-Mbaïki axis, P-1666, is currently scheduled to provide his testimony fully *viva voce*.

11. The evidence of P-1813 also relates to Count 29, “conscription, enlistment and use of children under 15 to participate actively in hostilities”. Indeed, one out of the two statements is exclusively focused on alleged child soldiers in the Lobaye prefecture.<sup>10</sup>
12. In this respect, the Defence objects to the submission of P-1813’s prior recorded testimony pursuant to Rule 68(3) as P-1813 had an important role and position during the events. More importantly, P-1813’s Statements relate to core issues of the case, including Mr. Yekatom acts and conducts.

**I. On the importance of P-1813’s role and position during the events**

13. P-1813 [REDACTED], i.e. during the events and the period of charges.<sup>11</sup> Given his role and activities before and during the events, P-1813 is one of the most important witnesses for the PK9-MBAIKI axis crime base.
14. P-1813 knowledge of MBAIKI is even more important in light of the fact that this location is highly relevant to the case. MBAIKI is the capital of the Lobaye prefecture, where Mr. Yekatom’s group allegedly “took over a number of villages” and “continued this pattern of crimes and threats”.<sup>12</sup> MBAIKI is also the location where “nearly all Muslims [...] were evacuated by Chadian

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<sup>9</sup> [ICC-01/14-01/18-1453-Conf](#), para. 10, fn. 9. 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. A public redacted version is also available: [ICC-01/14-01/18-1453-Red](#).

<sup>10</sup> [CAR-OTP-2083-0279-R01](#).

<sup>11</sup> [CAR-OTP-2069-0035-R02](#), paras. 16, 19.

<sup>12</sup> [ICC-01/14-01/18-403-Conf-Corr](#), para. 139. A public redacted version is also available : [ICC-01/14-01/18-403-Corr-Red](#).

forces”<sup>13</sup> as well as the municipality where Djido Saleh was killed.<sup>14</sup>

15. In this context, [REDACTED].<sup>15</sup>
16. [REDACTED], P-1813 had not only interactions with the Seleka<sup>16</sup> and the Anti-Balaka,<sup>17</sup> - including Mr. Yekatom -,<sup>18</sup> but also with the population<sup>19</sup>, local NGO such as ESF<sup>20</sup> and the international organisations such as the MISCA.<sup>21</sup> P-1813’s role involved discussions with all categories of actors during the events and was thus in a position to collect information from various sources. Therefore, according to him, [REDACTED].<sup>22</sup>
17. It is thus it is in the interest of justice to hear P-1813’s testimony *viva voce* in full due to his key role and position of influence during the events.

## **II. On the content of P-1813’s statements which are central to core issues of the case**

18. As implicitly conceded in the Request, the content of P-1813’s statements relate to core issues materially disputed.<sup>23</sup> This includes allegations regarding the conscription, enlistment and use of children under 15 to participate actively in hostilities (i), allegations regarding the dislocation of the Muslim population along the PK9-MBAIKI axis (ii), and allegations regarding the murder of Deputy Mayor SALEH in MBAIKI (iii).

*i) Allegations regarding the conscription, enlistment and use of children under 15 to participate actively in hostilities*

<sup>13</sup> [ICC-01/14-01/18-403-Conf-Corr](#), para. 139.

<sup>14</sup> *Ibid*, para. 136.

<sup>15</sup> [REDACTED].

<sup>16</sup> [CAR-OTP-2069-0035-R02](#), para. 24.

<sup>17</sup> [CAR-OTP-2069-0035-R02](#), para. 27.

<sup>18</sup> [CAR-OTP-2069-0035-R02](#), para. 40.

<sup>19</sup> [CAR-OTP-2069-0035-R02](#), paras. 25-27.

<sup>20</sup> [CAR-OTP-2083-0279-R01](#), para. 18.

<sup>21</sup> [CAR-OTP-2069-0035-R02](#), para. 27.

<sup>22</sup> [REDACTED].

<sup>23</sup> [ICC-01/14-01/18-1452-Conf](#), para. 12.

19. After having indicated that Mr. Yekatom would have told to P-1813 on the phone that he was “the person in charge of the Anti-Balaka in the area”,<sup>24</sup> P-1813 claims that he “would see very young boys from 10 years old at the SEKIA and PISSA Anti-Balaka barriers”, specifying that he “often travelled between BANGUI and MBAIKI”.<sup>25</sup> P-1813 also states that, among Mr. Yekatom’s group, a lot of them were young civilians who had joined the Anti-Balaka.<sup>26</sup> His statements were specifically relied upon by Pre-Trial Chamber II to confirm the presence of children at the Sekia and Pissa checkpoints.<sup>27</sup>

20. P-1813 also claims that the children wore “a mix of military uniforms and civilian clothes” and that some of them “wore gris-gris around their necks and arms”.<sup>28</sup> P-1813 alleges that he saw himself “the children, even the younger ones, carrying traditional weapons like knives, bows and arrows”. P-1813 emphasizes the fact that, for him, “these children were part of the Anti-Balaka, not children that would just come and play around the Anti-Balaka bases”.<sup>29</sup> As such, P-1813, which appears to be a direct witness, gives details regarding what the children were wearing, were carrying as weapons and what activities they were engaged with, at the barriers. All those elements are core issue of the case and materially disputed.

*ii) Allegations regarding the dislocation of the Muslim population along the PK9-MBAIKI axis*

21. P-1813 describes the attitude and demeanour of the Anti-Balaka in MBAIKI and along the PK9-MBAIKI axis. Referring to “ROMBO and his people”, P-1813 alleges that “they committed a number of crimes, establishing barriers,

<sup>24</sup> [CAR-OTP-2083-0279-R01](#), para. 43.

<sup>25</sup> [CAR-OTP-2083-0279-R01](#), para. 21.

<sup>26</sup> [CAR-OTP-2083-0279-R01](#), para. 57.

<sup>27</sup> [ICC-01/14-01/18-403-Conf-Corr](#), para. 146, fns 328 and 329.

<sup>28</sup> [CAR-OTP-2083-0279-R01](#), para. 23.

<sup>29</sup> [CAR-OTP-2083-0279-R01](#), para. 23.

harassing the people” and that “from BIMBO to MBAIKI the Anti-Balaka had established barriers where they stopped and searched cars”.<sup>30</sup> P-1813 allegations regarding Mr. Yekatom’s group harassing people do not stop at the barriers as P-1813 claims that ROMBO’s elements “were armed and they threatened people at their houses”.<sup>31</sup>

22. Moreover, [REDACTED].<sup>32</sup> On this subject, P-1813 even seems to suggest that this event is one the reason why the Muslims in MBAIKI fled the town.<sup>33</sup> P-1813’s recollection of this event is used by Pre-Trial Chamber II, without any other corroborative documents or witnesses, in its factual finding regarding the alleged events that occurred on the PK9-Mbaiki axis;<sup>34</sup> this utilization shows the relative importance that this event, and by extension [REDACTED], had in the Confirmation of Charges Decision.
23. Furthermore, even if P-1813 explains that he does not know “the names of the specific persons responsible for the killings [in BANGUI-BOUCHIA] or who led this specific Anti-Balaka group”, he indicates that afterwards, he heard rumours that the group responsible for the killings “belonged to RAMBO”.<sup>35</sup>

*iii) Allegations regarding the murder of Deputy Mayor SALEH in MBAIKI*

24. P-1813 alleges that Djido SALEH was “killed by the Anti-Balaka” and heard that “ROMBO was in charge of them”.<sup>36</sup> [REDACTED].<sup>37</sup> P-1813’s Statement is not only hearsay since, speculatively, P-1813 further states that “the only thing [he] know[s] is that it was the Anti-Balaka group in MBAIKI that killed Djido”,

<sup>30</sup> [CAR-OTP-2069-0035-R02](#), para. 74.

<sup>31</sup> [CAR-OTP-2069-0035-R02](#), para. 76

<sup>32</sup> [REDACTED].

<sup>33</sup> [CAR-OTP-2069-0035-R02](#), para. 59.

<sup>34</sup> [ICC-01/14-01/18-403-Conf-Corr](#), para. 133, fn. 312.

<sup>35</sup> [CAR-OTP-2069-0035-R02](#), para. 29.

<sup>36</sup> [CAR-OTP-2069-0035-R02](#), paras. 59, 68.

<sup>37</sup> [REDACTED].



adding, that “there were many of them in town”<sup>38</sup> but without providing any new information whatsoever.

25. In addition to that, P-1813 also “heard that after Djido was killed, MISCA reacted and chased the Anti-Balaka away from their base”, continuing with speculation while claiming [REDACTED].<sup>39</sup>
26. In light of the importance of these elements, which are not merely background information or contextualising the events, but go into core issues underlying the PK-9-Mbaiki Axis crime base charges, including acts and conduct of Mr. Yekatom, the Defence strongly militates in favour of ordering that P-1813 provide his testimony fully *viva voce*.
27. In addition, as underlined by the Chamber,<sup>40</sup> given the unprecedented number of witnesses testifying pursuant to 68 (3) in this case, [REDACTED] which represents one third of the case against Mr. Yekatom. Expeditionness of the proceedings must be balanced with other rights and factors and in this case hearing P-1813 *viva voce* in full is warranted. In this respect, the Prosecution’s Request should thus be denied.

### **CONFIDENTIALITY**

28. 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-1813. A public redacted version will be filed simultaneously.

### **RELIEF SOUGHT**

29. In light of the above, the Defence respectfully requests Trial Chamber V to:  
  
**REJECT** the Prosecution’s Request.

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<sup>38</sup> [CAR-OTP-2069-0035-R02](#), para. 63.

<sup>39</sup> [REDACTED].

<sup>40</sup> [ICC-01/14-01/18-685](#), para. 21.

**RESPECTFULLY SUBMITTED ON THIS 23<sup>rd</sup> DAY OF JUNE 2022**



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