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**International
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Date: **27 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-2476 pursuant to Rule 68(3)”, 15 June 2022, ICC-01/14-01/18-
1461-Conf’, 27 June 2022**

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-2476 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 made in P-2476'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-2476 to its Final List of Witnesses, indicating that he is expected to testify on the issues of the "Child soldiers", "Incident PK9-Mbaiki axis" and "Yekatom's contributions".⁴
5. On 15 June 2022, the Request was notified.⁵ A public redacted version of the Request was notified on 17 June 2022.⁶

¹ [ICC-01/14-01/18-1461-Conf.](#)

² [ICC-01/14-01/18-685](#), para. 25.

³ *Ibid*, para. 31.

⁴ [ICC-01/14-01/18-724-Conf-AnxA](#), page 33, witness #53.

⁵ [ICC-01/14-01/18-1461-Conf.](#)

⁶ [ICC-01/14-01/18-1461-Red.](#)

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.⁷
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).⁸
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.⁹

⁷ *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.

⁸ *Ibid.*, para. 71.

⁹ *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-2476 relates entirely to Count 29, conscription, enlistment and use of children under 15 to participate actively in hostilities; in that regard, P-2475 is himself an alleged child soldiers.¹⁰
11. The evidence of P-2476 also 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 i.e. Counts 24 to 28. Despite the importance of this crime base, and as previously noted by the Defence,¹¹ only one witness of the PK9-Mbaïki axis, P-1666, is currently scheduled to provide his testimony fully *viva voce*.
12. In this respect, the Defence objects to the submission of P-2476's prior recorded testimony pursuant to Rule 68(3) as P-2476's Statement and associated exhibit relate to core issues of the case, including Mr. Yekatom's acts and conducts. P-2476's Statement also contains elements that are unreliable and not corroborated by other Prosecutions witnesses.

I. On the content of P-2476's statement which is central to core issues of the case

13. As implicitly conceded in the Request,¹² the content of P-2476's statement relates to core issues materially in dispute. 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).

¹⁰ [CAR-OTP-2114-0149-R04](#).

¹¹ [ICC-01/14-01/18-1475-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-01/14-01/18-1475-Red](#).

¹² [ICC-01/14-01/18-1461-Conf](#), para. 11.

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

14. P-2476 is an alleged child soldier who claims [REDACTED];¹³ He provided to the Prosecution a birth certificate in support.¹⁴ He asserts to have joined Mr. Yekatom's group in MBAIKI before the Muslims were evacuated from MBAIKI,¹⁵ which means during the period of the charges. He explains that [REDACTED] told him that he "had to stay with other children to guard the base".¹⁶ To fulfill this task P-2476 claims to have [REDACTED].¹⁷ P-2476 also states that [REDACTED].¹⁸
15. In addition to that, P-2476 alleges that Mr. Yekatom "treated [the children] badly", "would threaten [them]," "would shout at [them] and insult [them]" and "did not beat [them] himself but would order his elements to punish [them]".¹⁹ As such, P-2476, gives details regarding what the children were carrying as weapons, what activities they were engaged with, as well as the behaviour of Mr. Yekatom towards the children of the group. All those elements are core issue of the case and materially disputed.
16. Moreover, P-2476 claims to have joined [REDACTED] and gives explanation on his experience, indicating that "there were many children", that "they were all Anti-Balaka and came from SEKIA."²⁰ The Defence has previously set out its position as regards to the [REDACTED]²¹ and demonstrated that the

¹³ [CAR-OTP-2114-0149-R04](#) at. 0149.

¹⁴ [CAR-OTP-2114-0162](#).

¹⁵ [CAR-OTP-2114-0149-R04](#) para. 33.

¹⁶ [CAR-OTP-2114-0149-R04](#) para. 34.

¹⁷ [CAR-OTP-2114-0149-R04](#) para. 35.

¹⁸ [CAR-OTP-2114-0149-R04](#) para. 36.

¹⁹ [CAR-OTP-2114-0149-R04](#) para. 43.

²⁰ [CAR-OTP-2114-0149-R04](#) para. 59.

²¹ [ICC-01/14-01/18-1237-Conf](#), paras. 12-22; A public redacted version is also available: [ICC-01/14-01/18-1237-Red](#). See also ICC-01/14-01/18-T-072-FRA, 62:3-69:8.

[REDACTED] was fraudulent.²² It is then self-explanatory that this part of P-2476's statement is a core issue of the case and materially disputed.²³

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

17. The statement of P-2476 contains strong claims regarding Mr. Yekatom's alleged specific aim of targeting Muslims in MBAIKI. Indeed, P-2476 states that Mr. Yekatom "told his elements not to misbehave and not to steal from Christians and if they wanted to steal they should take what belonged to the Muslims".²⁴ He also asserts that the "property left behind at the Muslim houses [after the evacuation] was looted by the Anti-Balaka".²⁵

18. P-2476 also declares that Mr. Yekatom "came to MBAIKI and tried to enter but he was initially stopped by Bishop RINO"²⁶ which seems to suggest that if he would have not been stopped, he would have attacked the town. He also affirms that COEUR DE LION went to attack the Muslims in BODA.²⁷ P-2476's statement clearly shows that Mr. Yekatom and his group allegedly targeted Muslims in MBAIKI which is one core issue of the case and materially in dispute.

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

19. In his Statement, P-2476 [REDACTED] the murder of Deputy Mayor SALEH. In this respect, P-2476 explains [REDACTED].²⁸

²² [ICC-01/14-01/18-1456-Conf.](#)

²³ [CAR-OTP-2114-0149-R04](#) para. 59.

²⁴ [CAR-OTP-2114-0149-R04](#) para. 56.

²⁵ [CAR-OTP-2114-0149-R04](#) para. 30.

²⁶ [CAR-OTP-2114-0149-R04](#) para. 26.

²⁷ [CAR-OTP-2114-0149-R04](#) para. 37.

²⁸ [CAR-OTP-2114-0149-R04](#) para. 54.

20. 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 PK9-MBAIKI Axis crime base charges, as well as the child soldiers charge, 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-2476's evidence

21. Relatively to the alleged attack of MBAIKI, P-2476 asserts that Mr. Yekatom "came to MBAIKI and tried to enter but he was initially stopped by Bishop RINO" and "met with Bishop RINO and the Muslims".²⁹ Here P-2476 seems to refer to the St. Jeanne d'Arc Church meeting in MBAIKI. Contrary to P-2476, [REDACTED] says that Mr. Yekatom wanted to make contact with the Seleka to tell them to leave MBAIKI, instead of attacking MBAIKI.³⁰ In the same vein, ABOUBACAR Diakité (P-1595), the imam of MBAIKI testified that Mr. Yekatom was the one "who called the meeting".³¹
22. P-2476 also states that "the mayor of MBAIKI, who was a Muslim, accompanied by other Muslim leaders met with RAMBO and pleaded with him not to attack the Muslims and cause disorder".³² [REDACTED].³³
23. [REDACTED].³⁴ [REDACTED].³⁵
24. 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-2476

²⁹ [CAR-OTP-2114-0149-R04](#) paras. 26-29.

³⁰ [CAR-OTP-2069-0035](#), paras. 42-48.

³¹ [CAR-OTP-2104-0274](#), paras. 75-76.

³² [CAR-OTP-2100-0252-R04](#).

³³ See [ICC-01/14-01/18-1447-Conf](#). A public redacted version is also available: [ICC-01/14-01/18-1447-Red](#).

³⁴ [CAR-OTP-2114-0149-R04](#) para. 69. The photograph is [CAR-OTP-2068-0558](#), at 0581.

³⁵ P-2475: ICC-01/14-01/18-T-131-CONF-FRA ET à [10 :42 :02].

provide his testimony fully *viva voce*. In this respect, the Prosecution's Request should thus be denied.

CONFIDENTIALITY

25. 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-2476. A public redacted version will be filed simultaneously.

RELIEF SOUGHT

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

REJECT the Prosecution's Request.

RESPECTFULLY SUBMITTED ON THIS 27rd DAY OF JUNE 2022



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