

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **3 August 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-2082 pursuant to Rule 68(3)", 20 July 2022, ICC-01/14-01/18-  
1520-Conf', 1 August 2022, ICC-01/14-01/18-1535-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-2082 pursuant to Rule 68(3)” (“Request”).<sup>1</sup>
2. The Defence respectfully submits that the Request should be denied as the prior recorded statement of P-2082 contains allegations central to core issues in the case that are materially disputed, and that it would be in the interests of justice to hear this witness’ testimony fully *viva voce*.

## APPLICABLE LAW

3. 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.

4. 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>2</sup>

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<sup>1</sup> [ICC-01/14-01/18-1520-Conf](#).

<sup>2</sup> [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\(3\)”, ICC-02/11-01/15-744, 1 November 2016, para. 71.](#)

5. 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>3</sup>

## **SUBMISSIONS**

### **A. Content of P-2082's statement is unsuitable for a Rule 68(3) submission**

#### *i) On P-2082's unique position in relation to Count 29*

6. The Defence submits that P-2082's unique position in relation to Count 29 militates in favour of her testimony being heard fully *viva voce*.
7. [REDACTED].<sup>4</sup> [REDACTED].<sup>5</sup> [REDACTED].<sup>6</sup>
8. [REDACTED].<sup>7</sup> [REDACTED].
9. In the interest of judicial economy, the Defence respectfully refers the Chamber to its previous submissions regarding the evidence currently on the trial record, as set out in detail in its recent response to the Prosecution's Rule 68(3) request in relation to [REDACTED] witness P-2018, which serve to bear out the Defence's position in this regard.<sup>8</sup>
10. [REDACTED] ESF [REDACTED] participants were not in fact child soldiers, were not part of Mr Yekatom's group and/or were not under the age of 15 during the events. The Defence's position is corroborated by P-2082 who indicated that she met an individual who lied about his age, claiming to be 17

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<sup>3</sup> *Prosecutor v. 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"](#), 3 May 2011, ICC-01/05-01/08-1386, para 78.

<sup>4</sup> [ICC-01/14-01/18-1520-Conf](#), para. 2.

<sup>5</sup> CAR-OTP-2109-0452, paras 36 and 40.

<sup>6</sup> [ICC-01/14-01/18-403-Conf-Corr](#), para. 152.

<sup>7</sup> CAR-OTP-2109-0452, paras 37, 42 and 45.

<sup>8</sup> [ICC-01/14-01/18-1456-Conf](#), paras 10-22.

while he was “24/25 years old”, a fact that was known to ESF which let this individual stay in the demobilisation program.<sup>9</sup> [REDACTED]<sup>10</sup> [REDACTED]<sup>11</sup> [REDACTED].

11. [REDACTED].<sup>12</sup> [REDACTED].
12. The Defence submits that P-2082 [REDACTED] are of particular importance as it places her in a unique position to provide to the Chamber and parties crucial information on this topic. In light of her importance the Defence is of the view that it would be preferable to hear P-2082’s testimony fully *viva voce*.

*ii) On the content of P-2082’s statement*

13. The Defence submits that the prior recorded statement of P-2082 should not be introduced under Rule 68(3) of the Rules as it contains allegations on core issues in the case that are materially in dispute, including prejudicial allegations on the acts and conducts of Mr Yekatom as charged, notably on Count 29.
14. The Prosecution relies, *inter alia*, on P-2082’s statement no less than eleven times to support its allegations that children under age 15 were enlisted in Mr Yekatom’s group.<sup>13</sup>
15. Indeed, P-2082’s prior recorded testimony is almost entirely dedicated to Count 29. The witness notably provides information on the alleged recruitment of child soldiers inside Mr Yekatom’s group, [REDACTED].<sup>14</sup> Once in the group, P-2082 alleges that the children that did not join voluntarily were the subject of violence.<sup>15</sup>

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<sup>9</sup> CAR-OTP-2109-0452, para. 45.

<sup>10</sup> CAR-OTP-2109-0452, para. 80.

<sup>11</sup> CAR-OTP-2109-0452, para. 58-61.

<sup>12</sup> CAR-OTP-2109-0452, para. 37.

<sup>13</sup> [ICC-01/14-01/18-723-Conf](#), fns 981, 987, 1216, 1218, 1225, 1231, 1232, 1235, 1236, 1239 and 1240.

<sup>14</sup> CAR-OTP-2109-0452, para. 47.

<sup>15</sup> CAR-OTP-2109-0452, para. 48.

16. The witness also alleges that children in Mr Yekatom's group got military-like training as they were "taught to handle guns using sticks by the leader of their groups".<sup>16</sup> P-2082 also provides evidence regarding the tasks of the alleged child soldiers who had to carry loads or spy;<sup>17</sup> but were also tasked with committing crimes on the population as they also performed car hijacking, armed robbery, stealing crops, raiding villages, stealing goats and chicken and spying jobs.<sup>18</sup> According to her, those illegal activities were being made for the profit of the leaders.<sup>19</sup>
17. P-2082 also provides information regarding the age of the children [REDACTED]<sup>20</sup> [REDACTED].<sup>21</sup>
18. The prejudicial allegations within P-2082's statement also extend to Mr Yekatom control over the Anti-Balaka. She claims that he took control of the Lobaye region and became very powerful in the jurisdiction,<sup>22</sup> she also states that he "was in charge of all the Anti-Balaka groups in Lobaye".<sup>23</sup> Moreover, P-2082 indicates that Mr Yekatom "was the supreme leader of the Anti-Balaka within his area of command and under him were some other leaders and under these leaders were the children".<sup>24</sup> Her allegations, if believed, go directly to Mr Yekatom's knowledge of presence of children in his group as she even claims that some of them would directly complain to him about their situation.<sup>25</sup>
19. [REDACTED].<sup>26</sup>

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<sup>16</sup> CAR-OTP-2109-0452, para. 52.

<sup>17</sup> CAR-OTP-2109-0452, para. 50.

<sup>18</sup> CAR-OTP-2109-0452, para. 50.

<sup>19</sup> CAR-OTP-2109-0452, para. 51.

<sup>20</sup> CAR-OTP-2109-0452, para. 44.

<sup>21</sup> CAR-OTP-2109-0452, paras. 45, 50.

<sup>22</sup> CAR-OTP-2109-0452, para. 30.

<sup>23</sup> CAR-OTP-2109-0452, para. 49.

<sup>24</sup> CAR-OTP-2109-0452, para. 30.

<sup>25</sup> CAR-OTP-2109-0452, para. 53.

<sup>26</sup> CAR-OTP-2109-0452, para. 42.

20. In light of the above, the Defence contends that the importance of P-2082 to Count 29 militate in favour of her testimony being heard fully *viva voce*. Consequently, the Defence respectfully submits that the Chamber should reject the Request.

**B. Formal submission of P-2082's prior recorded testimony pursuant to Rule 68(3) would not be in the interest of justice**

21. *First*, the Defence recalls its previous submissions regarding the inherent defects of formal submission of prior recorded statement pursuant to Rule 68(3) and of the prejudice that may arise.<sup>27</sup> As noted above, P-2082's statement goes extensively over Count 29 and appears to play an important part of the Prosecution's case on this charge.<sup>28</sup> The Defence is of the view that those characteristics warrants a cautious approach by the Chamber when assessing the appropriateness of the Prosecution's Request.

22. *Second*, the Defence is concerned by intrinsic issues arising from the statement itself. Indeed, in the English statement paragraph 47 reads as follow: "*They were not willingly recruited. I can tell whether the children who were forcibly recruited were under 15 or above*";<sup>29</sup> while the French translation reads "*Ils ne se sont pas enrôlés de leur plein gré. Je [ne] peux dire si les enfants qui ont été recrutés de force avaient moins de 15 ans ou plus*".<sup>30</sup> It is submitted that the difference between the English and French version of the statement is substantial and of particular importance in light of the fact that this particular paragraph is used twice in the Prosecution's Trial Brief to assert that Mr Yekatom "*was fully aware that children under age 15 were enlisted in his Group, and that some were even forcibly recruited*".<sup>31</sup> The Defence is of the view that this confusion in the wording of the statement between its French and English version is a prime example of the potential

<sup>27</sup> [ICC-01/14-01/18-1518-Conf](#), paras 10-35.

<sup>28</sup> See [ICC-01/14-01/18-723-Conf](#) where P-2082's is used eleven times to support the Prosecution's case.

<sup>29</sup> CAR-OTP-2109-0452, para. 47.

<sup>30</sup> CAR-OTP-2122-4558, para. 47.

<sup>31</sup> [ICC-01/14-01/18-723-Conf](#), para. 377 fn. 981 and para. 484 fn. 1216.

prejudice that can arise from a formal submission into evidence of statement if such issues are not noticed and addressed with the witness. As P-2082 would only have read the French statement as she does not read or speak English,<sup>32</sup> and in light of the pattern of errors not being corrected by witnesses,<sup>33</sup> this confusion could be part of the case record.

23. *Third*, the Prosecution asserts that submission of P-2082's statement pursuant to Rule 68(3) would reduce its examination-in-chief from approximately four hours down to two hours.<sup>34</sup> The Defence submits that a prospective economy of two hours, which represents an extended session, is minimal. As previously demonstrated, the testimony of P-1962 illustrated that the promised promotion of expeditiousness, *i.e.* the sole benefit of Rule 68(3), is in reality a highly variable factor, of which the real beneficial effect is uncertain.<sup>35</sup> The balance of interests between this meager economy of time, and the possibility to hear fully *viva voce* the testimony of a witness with a very specific position in relation to Count 29, tips in favor of the latter.
24. In the circumstances therefore, and the mounting evidence on the trial record of the fraud perpetuated [REDACTED], allowing the introduction of P-2082's statement and exhibits via Rule 68(3) would gravely prejudice the fairness of these proceedings. In addition, in light of the inherent defects of the "safeguard" put in place when submitting into evidence prior recorded testimony pursuant to Rule 68(3), of the established confusion on the wording of an important paragraph of P-2082's statement, and of the limited time that would be saved by not having this witness provide her testimony fully *viva voce*, the Defence

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<sup>32</sup> CAR-OTP-2109-0452, page 0452.

<sup>33</sup> See as another recent example [ICC-01/14-01/18-T-148-CONF-ENG ET](#) at [09:51:37] where P-1716 did not correct the bad spelling of his name in his statement.

<sup>34</sup> [ICC-01/14-01/18-1520-Conf](#), paras 1 and 18.

<sup>35</sup> [ICC-01/14-01/18-1518-Conf](#), paras 30 and following.



submits that the interests of justice would best be served by a rejection of the Prosecution's Request.

**CONFIDENTIALITY**

25. The Response is filed on a confidential basis corresponding to the classification of the Request and due to references to confidential material of the Prosecution. A public redacted version will be filed forthwith.

**RELIEF SOUGHT**

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

**RESPECTFULLY SUBMITTED ON THIS 3<sup>RD</sup> DAY OF AUGUST 2022**



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