

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **8 January 2024**

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 “Second Defence Request for the Formal
Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)”, 17
November 2023, ICC-01/14-01/18-2214-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') requests the formal submission of the prior recorded testimony of Two Defence witnesses,¹ pursuant to rule 68(2)(b) of the Rules of Evidence and Procedure ('Rules') and in accordance with the Trial Chamber's Further Directions on the Conduct of Proceedings.² In each instance, the prior record testimony of the Two Defence Witnesses comprises the witness statements and the associated exhibits which form an integral part of their testimony (collectively 'Proposed Rule 68(2)(b) Material').
2. Having been guided by the Trial Chamber's previous decisions concerning rule 68(2)(b) applications submitted by the Prosecution,³ the Defence submits that the Proposed Rule 68(2)(b) Material fulfils the requirements of rule 68(2)(b).
3. The Proposed Rule 68(2)(b) Material does not relate to the charged acts and conduct of the accused and instead concerns the contextual background of the conflict in the western Central African Republic ('CAR') during the charged period. The Proposed Rule 68(2)(b) Material is cumulative and/or corroborative of other oral testimony concerning similar facts and has been prepared in a reliable manner.
4. Further, the formal submission of the Proposed Rule 68(2)(b) Material best serves the interests of justice in that it will obviate the unnecessary appearances of the Two Defence Witnesses. This will undoubtedly expedite these proceedings which is consistent with Mr. Yekatom's rights pursuant to article 67(1)(c) and would not occasion unfair prejudice to the accused.

¹ P-3014 and P-3015 (collectively 'Two Defence Witnesses').

² ICC-01/14-01/18-1892, para. 21(iii).

³ ICC-01/14-01/18-1833-Conf-Corr, ICC-01/14-01/18-1907-Conf.

SUBMISSIONS

A. The Proposed Rule 68(2)(b) Material is correctly identified as ‘prior recorded testimony’ for the purposes of rule 68(2)(b)

5. The Proposed Rule 68(2)(b) Material comprises of written statements collected from the Two Defence Witnesses as well as associated exhibits which were either used or explained by each witness and which therefore constitute an integral part of the testimony itself.⁴ Annex A sets out the relevant date and ERN for each statement as well as the corresponding ERN for each associated exhibit.
6. As reflected in the Proposed Rule 68(2)(b) Material, each of the Two Defence Witnesses understood at the time, that the information they provided may be relied upon in the context of legal proceedings,⁵ and that they may be called upon to provide their testimony in public.

B. The Proposed Rule 68(2)(b) Material does not relate to matters concerning the charged acts and conduct of the accused

7. The Proposed Rule 68(2)(b) Material does not relate to the charged acts and conduct of the accused as described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish the accused’s criminal responsibility for the crimes charged.⁶
8. Instead, the Proposed Rule 68(2) Material is limited to undermining the contextual elements of the crimes as alleged by the Prosecution, specifically in relation to the nature and extent of the attack alleged to have been carried out by the Anti-Balaka against the Muslim population and negates the existence of any criminal organisational policy.

⁴ ICC-01/14-01/18-1833-Conf-Corr, para. 24.

⁵ ICC-01/14-01/18-1833-Conf-Corr, para. 23.

⁶ ICC-01/14-01/18-1833-Conf-Corr, para. 28.

C. The Proposed Rule 68(2)(b) Material has been prepared in a reliable manner

9. The Proposed Rule 68(2)(b) Material has sufficient *indicia* of reliability for the purposes of formal submission pursuant to rule 68(2)(b).⁷
10. For each of the Two Defence Witnesses, the prior record testimony was: (i) taken in the ordinary course of proceedings, (ii) signed by the witness and the investigator(s) conducting the interview, (iii) given voluntarily, (iv) verified by the witness at the time of the statement and, (v) includes information that the witness was given an explanation of the procedure before the ICC and was informed of the significance of providing the statement to the Defence. In this regard, each statement contains an express acknowledgment attesting to the voluntariness and the truth of its contents to the best of the witness' knowledge. Moreover, declarations in accordance with Rule 68(2)(b)(ii) are currently being prepared with the assistance of the Registry and will be submitted in due course.⁸
11. Each statement was obtained in a language understood by each of the Two Defence Witnesses, namely French and/or Sango, and was read back by a qualified interpreter assigned by the Registry. In doing so, each of the Two Defence Witnesses was informed of their right to make corrections and clarifications to their statement.
12. Further, as developed further below, each of the statements are internally consistent and sufficiently corroborated by other evidence in these proceedings.⁹

D. Overview of the Proposed Rule 68(2)(b) Material

13. In order to assist the Trial Chamber's assessment of the Proposed Rule 68(2)(b) Material, the Defence provides a comprehensive overview of the salient issues

⁷ ICC-01/14-01/18-1833-Conf-Corr, para. 42.

⁸ See Email Decision on Yekatom Defence Request Regarding Certification of Witness Statements, 30 October 2023 [08:55].

⁹ Noting that the Trial Chamber is only obliged to conduct a preliminary assessment of these factors at this stage see ICC-01/14-01/18-1833-Conf-Corr, para. 43.

arising within the prior recorded testimony for each of the Two Defence Witnesses, as well as a summary of the relevant cumulative and/or corroborating evidence in this case.¹⁰

14. The Proposed Rule 68(2)(b) Material goes to the contextual background of the conflict in CAR including in BODA and BOUSSANGA. In particular, the evidence sets out the context of on-going peace talks in CAR in early January 2014, demonstrates the context in which the Muslim population left BOUSSANGA, and undermines the Prosecution's evidence concerning: (i) the identity of alleged members of the Anti-Balaka and of Mr. Yekatom's group, (ii) the alleged location(s) and movement(s) of the Anti-Balaka, and (iii) the alleged identity of victims and/or the circumstances in which victims are alleged to have been killed by Anti-Balaka.
15. Whilst the Defence notes that full consideration of the standard evidentiary criteria is to be deferred to the Chamber's eventual deliberation of its judgment,¹¹ it is submitted that the Proposed Rule 68(2)(b) Material meets the requisite relevance and probative value threshold as it relates to the nature and extent of the attack alleged to have been carried out by the Anti-Balaka against the Muslim population as well as the alleged existence of a criminal organisational policy.

a) Production of documentary material

1. CAR-D29-P-3014

16. The Defence tenders for formal submission P-3014's statement collected on 12, 13, and 14 September 2022, totalling approximately 6 pages.¹² There are no agreements as to facts contained in the charges, documents, the expected

¹⁰ Noting the Trial Chamber's prior finding that "the prior recorded testimony does not need to be of cumulative or corroborative nature to oral testimony of the same events or facts, but it is sufficient that the oral testimony concerns similar facts" see ICC-01/14-01/18-1833-Conf-Corr, para. 38.

¹¹ ICC-01/14-01/18-1833-Conf-Corr, para. 15.

¹² CAR-D29-0009-0355.

testimony of witnesses, or other evidence pursuant to article 69 which bear on P-3014's statement.

17. The witness's proposed testimony establishes the following:

- P-3014 [REDACTED]. P-3014 [REDACTED] BODA and BOGANDA for most of his career as a civil servant.
- P-3014 attests that he was previously appointed MP under the mandate of President Patassé between 1998 and 2003.
- P-3014 recounts that, at the request of Monseigneur RINO (P-5015), he participated in the organisation of a meeting held in BODA in 2014 with Monseigneur RINO (P-5015) in order to establish dialogue amongst the communities and calling upon President SAMBA-PANZA (P-0952) for peace to be reinstated.
- P-3014 attests that [REDACTED] (P-1962) was [REDACTED] and that he never worked for P-1962 in the diamond mines, and he did not see P-1962 during the relevant events in 2013 and 2014 including in his house in [REDACTED].
- P-3014 testifies that in early 2014 he was [REDACTED] in BANGUI with his son Habib SOUSSOU and that he was not aware of any meeting in BANGUI or in the FATIMA DISTRICT to organise a departure to BODA. P-3014 is aware that a number of FACA members did return to BODA to assist relatives and that his son, Habib SOUSSOU was one such FACA member.
- P-3014 denies initiating the idea of returning to BODA to defend the population and denies inciting his son, Habib SOUSSOU, to organise FACA members to go and defend BODA.

- P-3014 attests that he does not personally know Mr. Yekatom, did not work with him in the mines and was not a neighbour of Mr. Yekatom. P-3014 also explains that Mr. Yekatom did not grow up with P-3014's son, Habib SOUSSOU in BODA.

18. P-3014's proposed evidence is cumulative and corroborative of the proposed testimony of Defence witness P-5015 and Prosecution witness Catherine SAMBA-PANZA (P-0952) with regard to the meeting they both attended in BODA for the purpose of reconciliation;¹³ of a Prosecution witness P-1647 corroborating that Habib SOUSSOU and Mr. Yekatom did not know each other until sometime in 2014;¹⁴ and of P-0884, who indicated that Habib Soussou was the comzone in BODA and was appointed by a certain Hyppolite, who was a native of BODA.¹⁵
19. There are no associated exhibits in relation to P-3014's testimony.

2. CAR-D29-P-3015

20. The Defence tenders for formal submission P-3015's statement collected on 28 and 30 October 2023, totalling approximately 4 pages.¹⁶ There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-3015's statement.
21. The witness's proposed testimony establishes the following:
- P-3015 has [REDACTED] children and is the biological mother of [REDACTED].

¹³ P-0952: ICC-01/14-01/18-T-249-FRA ET, at [12:13:35].

¹⁴ P-1647: ICC-01/14-01/18-T-196-CONF-FRA ET 27-01-2023 1-28 T, at [10:35:23].

¹⁵ P-0884: ICC-01/14-01/18-T-056-CONF-FRA ET, p.77

¹⁶ CAR-D29-0009-0437.

- P-3015 identifies [REDACTED] in CAR-D29-0010-0063 and confirms that he is still alive.
22. P-3015's proposed evidence is cumulative and corroborative by CAR-D29-0018-0001 corresponding to the metadata of the photograph showing the date is 2019 [REDACTED].
23. The Defence submits two associated exhibits which form an integral part of P-3015's testimony. These comprise: a photograph of [REDACTED] and a montage of that photograph and a screenshot of [REDACTED].¹⁷

E. The fairness requirements are weighed in favour of an accused's right to expeditious proceedings where the calling party is the Defence

24. Rule 68(2)(b) was introduced in order to streamline proceedings so as to identify certain situations where it is not necessary to examine witnesses while at the same time preserving the fair and expeditious conduct of the proceedings.¹⁸ This is a delicate balance which forms the centre of rule 68(2)(b) litigation before this Court.
25. In this regard, the Defence recalls the Appeals Chamber's findings in the *Al Hassan* case, namely that rule 68 must be treated as an "exception to the principle of orality as set out in article 69(2)",¹⁹ and as such it must be interpreted and applied "in a manner that is consistent with internationally recognised human rights norms".²⁰ This includes the internationally recognised right of an accused to confront a witness against him/her, as protected under article 67(1)(e) and

¹⁷ [REDACTED].

¹⁸ ICC-01/14-01/18-1833-Conf-Corr, para. 37.

¹⁹ ICC-01/12-01/18-2222 OA4, para. 1.

²⁰ ICC-01/12-01/18-2222 OA4, para. 79.

article 69(2).²¹ Accordingly, as held by the Appeals Chamber, the criteria set out in rule 68 are “aimed at reducing prejudice to the rights of the accused”.²²

26. The rule 68(2)(b) factors are not therefore aimed at reducing any purported internationally recognised right of the Prosecution,²³ nor of the CLRV1 as participants in these proceedings, to examine the evidence led by the Defence and must be given full effect so as not to defeat the very objective of rule 68.²⁴

F. The formal submission of the Proposed Rule 68(2)(b) Material best serves the interests of justice and would not prejudice or be inconsistent with the rights of the accused

27. Relatedly, given the limited impact upon the accused’s right to confront a witness against him/her in these circumstances, it is submitted that the interests of justice are necessarily best served by the introduction of the Proposed Rule 68(2)(b) Material into evidence pursuant to Rule 68(2)(b).
28. The introduction of the Proposed Rule 68(2)(b) Material would undoubtedly safeguard the expeditiousness of these proceedings which is a right of both the accused and victims in these proceedings.
29. Moreover, it will streamline the presentation of the Defence’s case given that it obviates the unnecessary appearance of two witnesses and minimises cumulative in-court testimony. This undoubtedly would save valuable court time and court resources which would otherwise be used to facilitate the travel of witnesses to the ICC Headquarters.

²¹ ICC-01/12-01/18-2222 PA4, paras 75 -77.

²² ICC-01/12-01/18-2222 OA4, para 79. See also ICC-01/14-01/18-1833-Conf-Corr, para. 27 ‘The purpose of this limitation is to safeguard ‘a fair trial in full equality’, 44 in particular ensuring the accused’s right to confront and examine those persons making direct allegations against them in court’.

²³ See e.g. ICC-01/04-02/12-271-Corr OA, paras 253 to 256 in which the Appeals Chamber, whilst addressing arguments concerning the Prosecutor’s right to a fair trial, determined that the fundamental right to a fair trial “first and foremost, inures to the benefit of the accused” and that further, “specific rights entrenched in article 67 (1) of the Statute are specifically tailored to the needs of the accused person”.

²⁴ See also ICC-01/12-01/18-2222 OA4, paras 3 and 55, further cited in ICC-01/14-01/18-1833-Conf-Corr, para 27.

CLASSIFICATION

30. This request, as well as Annex A, are filed on a confidential basis as it pertains to confidential material. A public redacted version will be filed in due course.

RELIEF SOUGHT

31. For the foregoing reasons, the Defence respectfully requests that the Chamber introduce the prior recorded testimony of P-3014 and P-3015 as set out in Annex A, into evidence pursuant to rule 68(2)(b).

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF JANUARY 2024²⁵



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²⁵ The Defence thanks Legal Intern Narek Chakhalyan for his assistance with this filing.