

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23 May 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-2354 pursuant to Rule 68(3)", 10 May 2022, ICC-01/14-01/18-
1400-Conf', 23 May 2022, ICC-01/14-01/18-1421-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-2354 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-2354’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-2354 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”.⁴
5. On 10 May 2022, the Request was notified.⁵ A public redacted version of the Request was notified the same day.⁶

¹ [ICC-01/14-01/18-1400-Conf](#). A public redacted version is also available: [ICC-01/14-01/18-1400-Red](#).

² [ICC-01/14-01/18-685](#), para. 25.

³ *Ibid*, para. 31.

⁴ [ICC-01/14-01/18-724-Conf-AnxA](#), pages 38, witness #68.

⁵ [ICC-01/14-01/18-1400-Conf](#).

⁶ [ICC-01/14-01/18-1400-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-2354 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. Despite the importance of this crime base, and as previously noted by the Defence,¹⁰ only one witness of the PK9-Mbaïki axis, P-1666, is currently scheduled to provide his testimony fully *viva voce*.
11. The Defence objects to the submission of P-2354's prior recorded testimony pursuant to Rule 68(3) as its content extensively relates to core issues of the case, and is uncorroborated and unreliable.
 - I. **On the content of P-2354's statement which is central to core issues of the case and is materially disputed**
12. The statement of P-2354 provides information regarding the alleged zone of control of Mr. Yekatom, i.e. "the chief of the Anti-Balaka from PK9 to MBAIKI, in the entire LOBAYE",¹¹ and includes the claim that Mr. Yekatom had "united all Anti-Balaka in the region of LOBAYE".¹²
13. P-2354 alleges that there "were many killings by RAMBO's elements",¹³ including the killing of Abdoulaye and Aba ZAKARIA in BANGUI-BOUCHIA¹⁴ and Djido SALEH.¹⁵ In addition, P-2354 also describe the attitude and demeanour of the Anti-Balaka in MBAIKI, stating that they "looked like they wanted to cause trouble"; that they would clearly issue threats to P-2354,

¹⁰ [ICC-01/14-01/18-1272-Conf](#), para. 9. A public redacted version is also available: [ICC-01/14-01/18-1272-Red](#); [ICC-01/14-01/18-1376-Conf](#), para. 25. A public redacted version is also available: [ICC-01/14-01/18-1376-Red2](#). 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.

¹¹ [CAR-OTP-2105-0991-R03](#), para. 33.

¹² [CAR-OTP-2105-0991-R03](#), para. 39.

¹³ [CAR-OTP-2105-0991-R03](#), para. 33.

¹⁴ [CAR-OTP-2105-0991-R03](#), para. 39.

¹⁵ [CAR-OTP-2105-0991-R03](#), para. 66.

stating “you Muslims, wait, you will see”;¹⁶ and that they said such things as “we will kill you Muslims, we will cut your throats, and we will eat you”.¹⁷ Further, P-2354 describes how Mr. Yekatom allegedly sent his deputy COEUR DE LION to BODA ‘to kill Muslims’.¹⁸

14. P-2354 also states that “all our belongings which remained in MBAIKI were taken by the Anti-Balaka”, who also “emptied our shops”. P-2354 indicates that “this started already while we were leaving the town, we could see it happen ourselves”.¹⁹
15. In light of the importance of these elements, which are not merely background information or contextualising the events, but goes into core issues underlying the PK-9-Mbaiki Axis crime base charges, including the alleged *mens rea* and other acts and conduct of Mr. Yekatom, 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-2354’s evidence

16. In his statement, P-2354 systematically denies local Muslims’ collaboration with the Seleka and their engagement in armed combat with the Anti-Balaka during the crisis, including his own role and participation therein.
17. P-2354 stated that he had not “seen or heard anything about the Seleka giving weapons to traders or Muslims”.²⁰ P-2354 is insistent on this matter: he stated that “in MBAIKI this was certainly not the case”, and that “if the Muslims in MBAIKI had been armed, they would not have left MBAIKI”; he further claimed that the French did not find a single weapon during the evacuation of MBAIKI, despite having “installed a machine which would signal if there was

¹⁶ [CAR-OTP-2105-0991-R03](#), para. 53.

¹⁷ [CAR-OTP-2105-0991-R03](#), para. 57.

¹⁸ [CAR-OTP-2105-0991-R03](#), para. 61.

¹⁹ [CAR-OTP-2105-0991-R03](#), para. 66.

²⁰ [CAR-OTP-2105-0991-R03](#), para. 27.

a weapon in a vehicle when it passed”; and added, “I want to reiterate, there was no fighting between Muslims and Christians in MBAIKI.”²¹

18. However, at least two Prosecution witnesses contradict P-2354 on these claims, including the Imam of MBAIKI, Diakité ABOUBACAR (P-1595) who confirmed during his testimony that “everybody was talking about it in the town of Mbaïki that the Seleka were distributing guns”.²² Mr. ABOUBACAR even mentioned a public meeting with the mayor of MBAIKI, organised to deal with this issue, during which the mayor publicly accused certain individuals in the Muslim community of having received weapons from the Seleka.²³ In the same vein, [REDACTED] (P-1838) stated that when the Seleka entered the town, they selected certain influential traders they trusted and gave or sold automatic combat weapons, including AK-47s.²⁴ Critically, [REDACTED] specifically identifies P-2354 as one such influential trader,²⁵ using his full name and alias.²⁶
19. More importantly, P-2354 claims to have never heard that “a group of Seleka or local Muslims had taken revenge or reprisal for the killings in BANGUI-BOUCHIA”.²⁷ Yet no less than four PK9-MBAIKI Axis Prosecution witnesses discuss Seleka reprisal attacks in BANGUI-BOUCHIA,²⁸ as do a number of NGO reports.²⁹ Moreover, [REDACTED] expressly states that P-2354 was himself part of the group that went to BANGUI-BOUCHIA to take revenge.³⁰
20. P-2354 thus seems to have a far closer link with the Seleka than his statement suggests. This link explains the bias against the Anti-Balaka and Mr. Yekatom

²¹ [CAR-OTP-2105-0991-R03](#), para. 27.

²² P-1595: ICC-01/14-01/18-T-106-CONF-ENG ET, p. 25.

²³ P-1595: ICC-01/14-01/18-T-106-CONF-ENG ET, p. 25.

²⁴ P-1838: [CAR-OTP-2100-0252-R04](#), para. 33.

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [CAR-OTP-2105-0991-R03](#), para. 40.

²⁸ P-1595: ICC-01/14-01/18-T-107-ENG ET, p. 3-4; P-1813: [CAR-OTP-2069-0035-R02](#), para. 29; P-2353: [CAR-OTP-2100-0226-R03](#), para. 29; P-2084: [CAR-OTP-2094-0968-R02](#), para. 41.

²⁹ See for example [CAR-D29-0016-0056](#) at 0056.

³⁰ [REDACTED].

that he appears to harbour, which is notably reflected in blunt and grave assertions like “the Anti-Balaka, were not sparing any Muslims, men, women, nor children”³¹, or “all our belongings which remained in MBAIKI were taken by the AntiBalaka”.³² P-2354’s grave, blanket accusations as regards the Anti-Balaka’s conduct in MBAIKI are notably in opposition with the evidence of the Imam of MBAIKI, who stated that after Mr. Yekatom arrived in MBAIKI, there was calm and peace.³³

21. It is therefore clear that greater caution should be exercised when assessing the testimony of P-2354, given his attempt to hide his apparent link with the Seleka.³⁴ In sum, the fact that P-2354 (i) claims not to have heard about the Seleka distributing weapons, while others [REDACTED], and (ii) claims not to have heard about local Muslims or Seleka reprisals, while others highlights his personal involvement with the Seleka and such reprisals, strongly militates to ask P-2354 to provide his testimony fully *viva voce*.
22. In light of the above, the Defence argues that the two hours of in-court time that would be saved during the Prosecution examination by the submission of P-2354’s statement pursuant to Rule 68(3) does not outweigh the undue prejudice that would result from it, nor does it outweigh the advantages of hearing P-2354 fully *viva voce*.³⁵ The Prosecution’s Request should thus be denied.

CONFIDENTIALITY

23. 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-2354. A public redacted version is being filed simultaneously.

³¹ [CAR-OTP-2105-0991-R03](#), para. 45.

³² [CAR-OTP-2105-0991-R03](#), para. 66.

³³ ICC-01/14-01/18-T-106-CONF-ENG, p. 8.

³⁴ [ICC-02/05-01/20-680-Red](#), para. 14

³⁵ [ICC-01/14-01/18-685](#), para. 32.

RELIEF SOUGHT

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

REJECT the Prosecution's Request.

RESPECTFULLY SUBMITTED ON THIS 23rd DAY OF MAY 2022



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