

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **13 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 the “Yekatom Defence Response to the  
‘Prosecution’s Request for the Formal Submission of the Prior Recorded  
Testimony of P-2620 pursuant to Rule 68(3)’ (ICC-01/14-01/18-1361-Conf)”,  
ICC-01/14-01/18-1393-Conf-Exp, 6 May 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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**Victims Participation and Reparations  
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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-2620 pursuant to Rule 68(3)'<sup>1</sup> ('Request').
2. The evidence of P-2620 is materially in dispute, central to core issues in the case, contains numerous inconsistencies and is un corroborative of other evidence. The request should be denied.

## 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-01/14-01/18-1361-Conf](#). Public redacted version: [ICC-01/14-01/18-1361-Red](#).

On 25 April 2022 the Chamber granted an extension of the deadline to respond to the Request until to 6 May 2022; See email from Trial Chamber V to Parties and Participants dated 25 April 2022 at 12:02.

<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 ('Gbagbo & Blé Goudé Judgment'), 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**

### **I. Witness P-2620's statement contains materially disputed issues and is central to core issues in the case**

#### **A. Allegations concerning Count 29**

6. P-2620 claims to be a former child soldier within Mr Yekatom's group. As such, she is expected to testify about the circumstances under which she joined the Anti-Balaka [REDACTED], her role within the group, and [REDACTED], an individual identified as Mr Yekatom's deputy.<sup>4</sup>
7. P-2620 describes how she was allegedly threatened by [REDACTED], to join the Anti-balaka group and had no other choice but to become herself an Anti-Balaka.<sup>5</sup>
8. She explained that she received military training and that [REDACTED] taught her how to use a Kalashnikov.<sup>6</sup> According to her allegations, part of her training was supposed to consist of beating a man so she could become as strong as [REDACTED], a woman she describes having seen on films who 'used to beat and kill men'.<sup>7</sup> As she was too scared to kill they forced her to witness the killing of [REDACTED], 'to get the fear away'.<sup>8</sup>

<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-01/14-01/18-724-Conf-AnxA](#), page 33, #54.

<sup>5</sup> [CAR-OTP-2123-0057-R03](#), paras. 17, 29; [CAR-OTP-2121-2567-R06](#), para. 19.

<sup>6</sup> [CAR-OTP-2123-0057-R03](#), paras. 38; [CAR-OTP-2121-2567-R06](#), para. 23.

<sup>7</sup> [CAR-OTP-2121-2567-R06](#), para. 43; [CAR-OTP-2121-2567-R06](#), para. 41.

<sup>8</sup> [CAR-OTP-2123-0057-R03](#), para. 43.

9. P-2620 also describes her tasks at the base and mentions that they were sent to the barricades to collect tolls from the travellers.<sup>9</sup> According to P-2620, Mr Yekatom told [REDACTED], in front of her, that she was supposed to work like any member of the group.<sup>10</sup>
  10. She further alleges that she was provided with drugs to attenuate her fears.<sup>11</sup>
  11. A large part of her statement is dedicated to the description of [REDACTED].<sup>12</sup> She identifies [REDACTED], Mr Yekatom's deputy, as the perpetrator of [REDACTED].<sup>13</sup> She alleges that she was forced to do her chores [REDACTED].<sup>14</sup>
  12. P-2620 also describes the presence of other girls in the group, including one girl named [REDACTED],<sup>15</sup> and mentions [REDACTED].<sup>16</sup>
  13. The Prosecution specifically relies on her statements in its Trial Brief to support its claims that children, including those under 15, joined Yekatom's Group both through forcible conscription and voluntary enlistment; that children in Mr Yekatom's group were forced to participate in military-style training, taught how to use weapons and how to behave in combat; and that [REDACTED].<sup>17</sup>
- B. Allegations in relation to the charged crimes allegedly committed on the PK9-Mbaiki axis
14. P-2620 specifies that when she was part of the group at [REDACTED] base, there were no Muslim civilians in [REDACTED].<sup>18</sup>

<sup>9</sup> [CAR-OTP-2123-0057-R03](#), paras. 55-59; [CAR-OTP-2121-2567-R06](#), para.22.

<sup>10</sup> [CAR-OTP-2121-2567-R06](#), paras. 25-26.

<sup>11</sup> [CAR-OTP-2123-0057-R03](#), paras. 60-63; [CAR-OTP-2121-2567-R06](#), para. 42

<sup>12</sup> [CAR-OTP-2123-0057-R03](#), paras. 28-32; [CAR-OTP-2121-2567-R06](#), para. 21

<sup>13</sup> [CAR-OTP-2123-0057-R03](#), paras. 66-77.

<sup>14</sup> [CAR-OTP-2123-0057-R03](#), paras. 27-28.

<sup>15</sup> [CAR-OTP-2123-0057-R03](#), paras. 27, 34; [CAR-OTP-2121-2567-R06](#), para. 24.

<sup>16</sup> [CAR-OTP-2123-0057-R03](#), paras. 34 and 36.

<sup>17</sup> [REDACTED].

<sup>18</sup> [CAR-OTP-2123-0057-R03](#), para. 22.

15. She describes the setting-up of barricades on the road in [REDACTED] to collect tolls and goods. She specifies that those who did not pay were jailed at the base, but the Muslims civilians would be killed.<sup>19</sup>
16. P-2620's allegations are relied on by the Prosecution in its Trial Brief to support its claims that Mr Yekatom's group established checkpoints on the PK9-Mbaiki Axis; that elements of armed groups regulated the movement and targeted Muslims, preventing their circulation; and that they confiscated cattle and goods and exacted illegal tolls, part of which Mr Yekatom personally collected.<sup>20</sup>

C. Allegations regarding Mr Yekatom's acts and conduct including his *men rea*, on his essential contributions to the crimes and on contextual elements

17. P-2620 is expected to testify about the structure and the activities of the group, as well as Mr Yekatom's authority. She provides evidence about Mr Yekatom's alleged contributions to the charged crimes, i.e. on Mr Yekatom's alleged command and the structure of his group.<sup>21</sup> She specifies that rules were implemented at [REDACTED] base, including for instance that the enemy was anyone against the Anti-Balaka and that the elements were not allowed to 'hang out with civilians' outside of the base, including family members.<sup>22</sup> She explains that if an element was not complying with the rules, they would be punished.<sup>23</sup>
18. Extensive parts of her statements also go to Mr Yekatom's essential contribution as alleged by the Prosecution such<sup>24</sup> as the provision of weapons<sup>25</sup> and the training of the elements.<sup>26</sup>

<sup>19</sup> [CAR-OTP-2123-0057-R03](#), paras. 55-59.

<sup>20</sup> [ICC-01/14-01/18-723-Conf](#), para. 470, fns 1194-1197.

<sup>21</sup> [CAR-OTP-2123-0057-R03](#), paras. 18-23, 26-27, 40.

<sup>22</sup> [CAR-OTP-2123-0057-R03](#), paras. 48-49; [CAR-OTP-2121-2567-R06](#), para. 29.

<sup>23</sup> [CAR-OTP-2123-0057-R03](#), para. 50.

<sup>24</sup> [ICC-01/14-01/18-723-Conf](#), paras. 356-364.

<sup>25</sup> [CAR-OTP-2123-0057-R03](#), para. 33.

<sup>26</sup> [CAR-OTP-2123-0057-R03](#), paras. 38, 40; [CAR-OTP-2121-2567-R06](#), para 23.

19. Portions of P-2620's statement also relate to the acts and conduct of Mr Yekatom. The witness explains that Mr Yekatom forced her to witness the killing of [REDACTED] by an element named [REDACTED] at the base of [REDACTED], so her fears would disappear.<sup>27</sup> P-2620 also alleges that Mr Yekatom ordered that she was not to be provided food for two days as a punishment, after she talked to [REDACTED] outside of the base.<sup>28</sup> The witness also describes an incident that occurred at the [REDACTED] market during which Mr Yekatom shot in the air and stole goods from the merchants.<sup>29</sup>
20. More broadly, P-2620 depicts brutal behaviour of the elements whom she places under the command of Mr Yekatom alleging *inter alia* that they incited her to kill or to witness a killing so her fears will disappear.
21. P-2620 specifies that she told [REDACTED], Mr Yekatom's deputy, that she was [REDACTED].<sup>30</sup> Further, P-2620's evidence goes to Mr Yekatom's awareness of the presence of children in his group,<sup>31</sup> not least given that she claims to have been directly introduced to Mr Yekatom, and that [REDACTED].<sup>32</sup>

## **II. Witness P-2620 gives uncorroborated and/ or insufficiently reliable evidence**

22. An analysis of P-2620's statements and associated exhibits illustrates a number of inconsistencies between the information she provided, across the different records of meetings and/or interviews she participated in, which demonstrate the unreliability of her evidence. Coupled with the lack of corroboration by other material disclosed in the case, this strongly militates against the formal submission of her prior recorded testimony pursuant to Rule 68(3).

<sup>27</sup> [CAR-OTP-2123-0057-R03](#), para. 43.

<sup>28</sup> [CAR-OTP-2121-2567-R06](#), para. 29.

<sup>29</sup> [CAR-OTP-2123-0057-R03](#), paras. 64-65.

<sup>30</sup> [CAR-OTP-2123-0057-R03](#), para. 39; [CAR-OTP-2121-2567-R06](#), para. 20.

<sup>31</sup> This is particularly illustrated in Annex A of the Prosecution's request through its references of specific paragraphs of the Confirmation Decision referring to Mr Yekatom's individual criminal responsibility for the enlistment and use of children under the age of 15 years. [ICC-01/14-01/18-1361-Conf-AnxA](#), page 1 referring to ICC-01/14-01/18-403-Conf-Corr, para.154.

<sup>32</sup> [CAR-OTP-2121-2567-R06](#), paras. 25-26.

A. Identifying information

Name of the witness

23. In April 2019, P-2620 is [REDACTED].<sup>33</sup> [REDACTED]<sup>34</sup> [REDACTED]<sup>35</sup> [REDACTED].<sup>36</sup>

P-2620's date and place of birth

24. The evidence about P-2620's [REDACTED]<sup>37</sup> [REDACTED].<sup>38</sup> [REDACTED].<sup>39</sup> [REDACTED],<sup>40</sup> [REDACTED].<sup>41</sup>

Identification of P-2620's parents

25. In the [REDACTED] dated [REDACTED], [REDACTED] stated that P-2620's parents are [REDACTED] (mother) and [REDACTED] (father).<sup>42</sup> This is consistent with the information P-2620 provided in the supplementary information annexed to [REDACTED].<sup>43</sup> However, three months later, P-2620 indicated that [REDACTED].<sup>44</sup>

26. Further, P-2620 mentions in her first statement that [REDACTED]<sup>45</sup> [REDACTED].<sup>46</sup> [REDACTED].<sup>47</sup>

[REDACTED]

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<sup>33</sup> [REDACTED].

<sup>34</sup> [REDACTED].

<sup>35</sup> [REDACTED].

<sup>36</sup> [REDACTED].

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

<sup>38</sup> [REDACTED].

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

<sup>40</sup> [REDACTED].

<sup>41</sup> [REDACTED].

<sup>42</sup> [CAR-OTP-2135-2412](#) at 2416.

<sup>43</sup> [CAR-OTP-2135-2412](#) at 2419.

<sup>44</sup> [CAR-OTP-2123-0057-R03](#) at 0057.

<sup>45</sup> [REDACTED].

<sup>46</sup> [REDACTED].

<sup>47</sup> [REDACTED].



27. In her [REDACTED].<sup>48</sup>

B. [REDACTED]

28. P-2620 initially mentioned in [REDACTED].<sup>49</sup>

29. However, P-2620 later drastically changed her allegations, not only suggesting that it [REDACTED],<sup>50</sup> [REDACTED].<sup>51</sup>

30. As the Chamber is aware, it is the Prosecution's case that [REDACTED].<sup>52</sup> Recently, [REDACTED].<sup>53</sup> [REDACTED].<sup>54</sup> Similarly, [REDACTED].<sup>55</sup> No other Prosecution witness refers [REDACTED].

31. As noted above, in her statements, P-2620 identifies an individual named [REDACTED], as the one responsible for [REDACTED]. She explains that [REDACTED].<sup>56</sup> The Prosecution investigators than sought to attempt to have her identify [REDACTED] on a photograph as he was the only individual according to the Prosecution's case who was (i) [REDACTED], (ii) [REDACTED], (iii) [REDACTED]. However, when P-2620 was shown a photograph of [REDACTED] she did not recognize him.<sup>57</sup>

32. While the Defence notes that the Prosecution appears to have taken the position that the individual identified as [REDACTED] by P-2620 in her statements was not in fact [REDACTED],<sup>58</sup> the description provided by P-2620 clearly does not support such a position.

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<sup>48</sup> [REDACTED].

<sup>49</sup> [REDACTED].

<sup>50</sup> [REDACTED].

<sup>51</sup> [REDACTED].

<sup>52</sup> [REDACTED].

<sup>53</sup> [REDACTED].

<sup>54</sup> [REDACTED].

<sup>55</sup> [REDACTED].

<sup>56</sup> [CAR-OTP-2123-0057-R03](#), para. 67; [CAR-OTP-2121-2567-R06](#), para. 36.

<sup>57</sup> [CAR-OTP-2123-0057-R03](#), para. 81.

<sup>58</sup> [REDACTED].

33. Lastly, [REDACTED].<sup>59</sup> [REDACTED].

C. Time spent in the Anti-balaka

34. While in her statements, P-2620 explains that [REDACTED].<sup>60</sup> [REDACTED].<sup>61</sup>

35. In the [REDACTED]<sup>62</sup> however, during her subsequent interview with the Prosecution, [REDACTED].<sup>63</sup>

36. Further, [REDACTED].<sup>64</sup> However, during her meeting with the Prosecution, she stated that [REDACTED].<sup>65</sup> [REDACTED].<sup>66</sup>

37. In her statement she claims that she decided [REDACTED]"<sup>67</sup> [REDACTED];<sup>68</sup> [REDACTED].<sup>69</sup> [REDACTED].<sup>70</sup>

38. The Defence also notes that while P-2620 mentions meeting with the UNICEF and the NGO [REDACTED],<sup>71</sup> [REDACTED].<sup>72</sup>

39. P-2620 originally claimed [REDACTED].<sup>73</sup> [REDACTED],<sup>74</sup> [REDACTED].<sup>75</sup>

40. It should also be emphasized that P-2620 states that she [REDACTED].<sup>76</sup>

41. [REDACTED],<sup>77</sup> [REDACTED].<sup>78</sup>

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<sup>59</sup> [REDACTED].

<sup>60</sup> [REDACTED].

<sup>61</sup> [REDACTED].

<sup>62</sup> [REDACTED].

<sup>63</sup> [REDACTED].

<sup>64</sup> [REDACTED].

<sup>65</sup> [REDACTED].

<sup>66</sup> [REDACTED].

<sup>67</sup> [REDACTED].

<sup>68</sup> [REDACTED].

<sup>69</sup> [REDACTED].

<sup>70</sup> [REDACTED].

<sup>71</sup> [CAR-OTP-2123-0057-R03](#), para. 72; [CAR-OTP-2121-2567-R06](#), para. 37.

<sup>72</sup> [REDACTED].

<sup>73</sup> [REDACTED].

<sup>74</sup> [REDACTED].

<sup>75</sup> [REDACTED].

<sup>76</sup> [REDACTED].

<sup>77</sup> [REDACTED].

<sup>78</sup> [REDACTED].

42. P-2620 is the only witness in this case referring to a base named [REDACTED] in [REDACTED] under the command of [REDACTED]. The question was put to P-1839 who had no knowledge of such a base.<sup>79</sup>
43. [REDACTED].<sup>80</sup> Recently, P-0888 testified that [REDACTED] was never a Comzone based [REDACTED] and never lived there.<sup>81</sup> He further specified that [REDACTED] as it is a locality forming part of the commune of [REDACTED].<sup>82</sup> [REDACTED].<sup>83</sup>

## CONCLUSION

44. The Defence respectfully submits that considering the extent of prejudicial allegations contained in P-2620's statement, and the significance of the discrepancies and the uncorroborated evidence the witness provides, it should not be formal submitted pursuant to Rule 68(3).
45. The Defence submits that the prospective reduction of Prosecution examination time does not outweigh the substantial prejudice that Mr Yekatom would suffer should the statement be admitted under Rule 68(3).

## CONFIDENTIALITY

46. Pursuant to Regulation 23 *bis* (1) and (2) of the Regulations of the Court, this response is filed *ex parte* available only to the Defence of Mr Yekatom and the Defence of Mr Ngaïssona as it refers to significant and substantive parts of the Defence's strategy, as developed in the second part of this response.
47. Further, considering the dual status of P-2620, and in light of the spirit underlying the Decision on Protocols at Trial, including the aim of preventing the risk that a party might contaminate the witness's recollection by indirectly

<sup>79</sup> [CAR-OTP-2122-6998](#) at 6999; [CAR-OTP-2122-7002](#) at 7004.

<sup>80</sup> [REDACTED].

<sup>81</sup> [REDACTED].

<sup>82</sup> [REDACTED].

<sup>83</sup> [REDACTED].

conveying its expectations of the witness's evidence, it is the Defence's position that a restricted notification of this response would fully guarantee the ability of the Parties to hear the witness' recollection of the events for the first time in Court without the risk of potential influence on the witness' testimony by a participant. A confidential redacted version of the response is filed simultaneously.

**RELIEF SOUGHT**

48. For the above reasons, the Defence respectfully requests that the Chamber:

**DENY** the Request.

**RESPECTFULLY SUBMITTED ON THIS 13<sup>TH</sup> DAY OF MAY 2022**



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