

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **19 June 2023**

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

**Yekatom Defence Response to the “Prosecution’s Sixth Application for the
Submission of Evidence from the Bar Table”, 15 May 2023, ICC-01/14-
01/18-1868-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. Yekatom (“Defence”) hereby responds to the Prosecution’s submission of 271 items of evidence from the bar table which relate to the origins of the Anti-balaka, and refer to events which occurred between the end of 2012 and early 2014 when the official coordination of the group was set up (“Request”).¹
2. After thoroughly reviewing the material, the Defence provides its position on each item listed in Annex A of the present response. The Defence opposes the submission of 10 items, each for which a specific and detailed reasoning is given in Annex A. The submission of the remaining items is not opposed.

PROCEDURAL HISTORY

3. On 15 May 2023, the Prosecution filed its application asking for the formal submission of 271 items of evidence relating to the origins of the Anti-balaka.² The Prosecution also included 82 items which were already recognised as formally submitted by the Chamber to reinforce the relevance of the other items.³
4. On 17 May 2023, the Defence requested the Chamber to grant an extension of time until 19 June 2023 to respond to the Prosecution’s Request.⁴
5. On 17 May 2023, the Ngaïssona Defence joined the Defence request for an extension of time.⁵

¹ [ICC-01/14-01/18-1868-Conf](#), para. 1.

² [ICC-01/14-01/18-1868-Conf](#).

³ [ICC-01/14-01/18-1868-Conf](#), para. 4.

⁴ Email from Yekatom Defence to Chamber and Parties and Participants dated 17 May 2023 at 10:23.

⁵ Email from Ngaïssona Defence to Chamber and Parties and Participants dated 17 May 2023 at 12:35.

6. On 19 May 2023, the Chamber considered that good cause has been shown and granted the request to extend the deadline until 19 June 2023.⁶

APPLICABLE LAW

7. Article 64 (9) (a) – Rome Statute

The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:

- (a) Rule on the admissibility or relevance of evidence;

8. Article 69 (4) – Rome Statute

The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

9. Rule 64 – Rules of Procedure and Evidence

1. An issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber. Exceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known. The Chamber may request that the issue be raised in writing. The written motion shall be communicated by the Court to all those who participate in the proceedings, unless otherwise decided by the Court.

2. A Chamber shall give reasons for any rulings it makes on evidentiary matters. These reasons shall be placed in the record of the proceedings if they have not already been incorporated into the record during the course of the proceedings in accordance with article 64, paragraph 10, and rule 137, sub-rule 1.

3. Evidence ruled irrelevant or inadmissible shall not be considered by the Chamber.

SUBMISSIONS

10. Firstly, the Defence opposes the admission of Central African print press articles, which are insufficiently reliable. In this regard, the Defence notes the findings set out in the USAID/Observatoire des Médias Centrafricains May 2014 report on CAR media, with regard to the Central African print press.⁷

⁶ Email from Trial Chamber V to Parties and Participants dated 19 May 2023 at 17:04.

⁷ [CAR-OTP-2001-3068](#).

Specifically, the report notes the “presence of unsubstantiated statements, notably in the print press, due to the lack of credible sources and cross-check of information”⁸; finds that underpinning the lack of credibility of print press media is “the use of unchecked second-hand sources” and “non-identified sources”⁹; and finds that “[p]rint press journalists often use unsubstantiated assertions and elements to demonstrate their argument”.¹⁰ In such circumstances, allowing the admission of Central African print press articles, especially those citing anonymous sources, would be contrary to fairness and manifestly unsafe.

11. The Defence recalls that misquotation on crucial aspects of a media interview has already occurred in this case. P-0808 was shown a press article¹¹ in which he was quoted as justifying attacks against the Muslim population.¹² It is only after P-0808 vividly denied making those comments¹³ that the Prosecution revealed to have in its possession a video of the same written interview,¹⁴ prompting the Presiding Judge to insist that it be shown to P-0808.¹⁵ The video¹⁶ revealed that P-0808 never justified the commission of attacks against Muslim civilians, but to the contrary indicated that the target of the Anti-Balaka movement was the Seleka and their associates.¹⁷ The difference between the written article and the original video of the interview prompted the Presiding Judge to note that *“it’s indeed something different if you have the original, so to speak, and if you have it seen through the lens of a journalist”*.¹⁸ This example further shows the caution that needs to be taken when assessing any press articles, even more

⁸ [CAR-OTP-2001-3068](#), para. 31.

⁹ [CAR-OTP-2001-3068](#), para. 32.

¹⁰ [CAR-OTP-2001-3068](#), para. 33.

¹¹ [CAR-OTP-2072-1204](#).

¹² P-0808 : ICC-01/14-01/18-T-069-CONF-ENG ET, from [14:18:30] to [14:20:38].

¹³ P-0808 : ICC-01/14-01/18-T-069-CONF-ENG ET, from [14:20:38].

¹⁴ P-0808 : ICC-01/14-01/18-T-069-CONF-ENG ET, from [14:24:22] regarding [CAR-OTP-2118-4151](#).

¹⁵ P-0808 : ICC-01/14-01/18-T-069-CONF-ENG ET, from [14:24:50].

¹⁶ [CAR-OTP-2118-4151](#) and its transcription [CAR-OTP-2135-0915](#).

¹⁷ [CAR-OTP-2135-0915](#), lines 26-38.

¹⁸ P-0808 : ICC-01/14-01/18-T-069-CONF-ENG ET, at [15:31:58].

so when they appear to be originating from a dubious source that does not have the same verifying process and deontology as an established and reputable press organ.

12. Secondly, the Defence remarks that the Prosecution requested the submission of numerous press releases, speeches, and interviews concerning individuals that were not called as witnesses by the Prosecution. Although the Defence has addressed each of these instances individually in Annex A, it nevertheless wishes to draw the attention of the Chamber on the danger of the Prosecution interpreting comments made by individuals that were not called as witnesses and asks the Chamber to take this into consideration during its assessment of these items.

CONFIDENTIALITY

13. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, Annex A appended to this filing is filed on a confidential basis as it relates to evidence with the same designation.

RELIEF SOUGHT

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

REJECT in part the Request;

DECLARE inadmissible the following evidence: CAR-OTP-2104-1137; CAR-OTP-2088-0020; CAR-OTP-2088-1836; CAR-OTP-2008-2036; CAR-OTP-2113-0664; CAR-OTP-2123-0437; CAR-OTP-2088-1574; CAR-OTP-2079-0540; CAR-OTP-2079-0574; and CAR-OTP-2059-0577.

CONSIDER the Defence's observations included in Annex A.

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF JUNE 2023



Me Mylène Dimitri
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