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**International
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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***

**Confidential
And Confidential Annex A**

**Yekatom Response to "Prosecution's Seventh Application for Submission of
Facebook Evidence from the Bar Table", 17 May 2023, ICC-01/14-01/18-1874**

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 Seventh Application for Submission of Facebook Evidence from the Bar Table" ('Application').¹
2. After thoroughly reviewing the material, the Defence opposes the submission of 94 items of evidence and provides its submissions on the relevance and probative value of each item in Annex A of the present response.

PROCEDURAL HISTORY

3. On 17 March 2023, in accordance with the Initial Directions on the Conduct of the Proceedings, the Prosecution provided the Bar Table Annex to the Defence. This document included 684 items of evidence obtained from Facebook accounts² which amount to 24, 484 pages.³ Despite the Defence's claim that it was not in a position to provide its position within the allocated time-frame, the Prosecution asked the Defence to provide its comments on the 684 items by 11 May 2023.⁴
4. In spite of the Defence's best efforts, it was not able to meet the deadline. The Prosecution filed the Application on 17 May 2023.⁵ This Application did not contain the Defence's position on any of the 682 items included in the Bar Table Annex.
5. On 23 May 2023, the Ngaissona Defence requested that the Prosecution's Seventh Application be rejected *in limine* due to the fact that the Prosecution

¹ [ICC-01/14-01/18-1874-Conf.](#)

² [ICC-01/14-01/18-1874-Conf.](#)

³ [ICC-01/14-01/18-1882](#), para. 14

⁴ Email sent from the Prosecution to the Defence dated 5 May 2023 at 14:11.

⁵ [ICC-01/14-01/18-1874-Conf.](#)

failed to meet the procedural requirement established at paragraph 62 of the Initial Directions.⁶ The Defence supported the Ngaissona Defence's request.⁷

6. On 25 May 2023, the Single Judge rejected the Defence's request. However, the Single Judge extended the deadline for responses to the Application to 21 July 2023 in view of the fact that good cause has been demonstrated.⁸

SUBMISSIONS

7. The Defence has provided its submissions on the probative value and relevance of each individual item in Annex A of this response. The Defence's positions on the submission of the items are based on the Prosecution's argued relevance and probative value set out in the Application. Out of fairness, while considering the Defence's submissions on the items, conversations that are to be admitted should be considered for the limited extracts and relevance identified by the Prosecution as fitting into the case or for extracts required to "contextualising the document and assessing its reliability".⁹
8. In this regard, the Defense underlines that its position deferring to the Chamber's discretion in regards to the submission of many items should not be understood as concurring to the characterization made by the Prosecution on these items.
9. The Prosecution's proposed relevance of the items as submitted in the Application are not based on a complete and objective characterization of the content of the exchanges, as the Prosecution repeatedly fails to bring to the attention of the Chamber exculpatory messages. For example, in regards to an item the Prosecution claims as showing "the Anti-Balaka's awareness and

⁶ [ICC-01/14-01/18-1875](#)

⁷ [ICC-01/14-01/18-1882](#).

⁸ [ICC-01/14-01/18-1884](#), para. 19.

⁹ *The Prosecutor v. Ntaganda*, Decision on Prosecution's request for admission of documentary evidence, [ICC-01/04-02/06-1838](#), para. 10.

acceptance of the population's anti-Muslim animus in 2013 / 2014", the Prosecution fails to put forward extracts from the same conversation where the interlocutor, who appears to be Muslim by his name and his localisation in KM5, expresses his intent to leave Bangui because he is scared due to the events and the account's response telling him he should not leave the country.¹⁰ The Defence noted that while the Prosecution, in various Facebook discussions, interpreted messages as showing that Anti-Balaka have an anti-Muslim animus, messages that showed consideration for the security of the Muslim population were omitted.¹¹

10. The Defence further submits that the Prosecution fails to limit its relevance assessment of the items to factual elements as it provides its own interpretation of some messages and the intent of their authors to substantiate its submissions on the relevance of the items it seeks to submit. Per example, the Prosecution describes the relevance of items as showing "the planning of the Anti-Balaka attack on BANGUI on 5 December 2013" where it is not apparent from the exchange which contains no mention of the Anti-balaka or BANGUI, and is deducted from evasive message from interlocutors such as "*what is happening that day is not a dream, but a reality*".¹² Similarly, the Prosecution argues an item shows "the Anti-Balaka's awareness and acceptance of the population's anti-Muslim animus in 2013 / 2014" while at no point during the conversation religion is mentioned.¹³ In occurrences where such descriptions on the content of the item cannot be understood directly or indirectly from the exchange due to insufficient or unprecise information, the Defence submits that further interpretation by the Prosecution on interlocutors' intent amounts to

¹⁰ Annex A, item 274, CAR-OTP-2101-8061, p. 8069-8070.

¹¹ See for example Annex A, item 591, CAR-OTP-2102-4653.

¹² Annex A, item 86, CAR-OTP-2100-7272.

¹³ Annex A, item 527, CAR-OTP-2102-9751.

conjectures and should not be considered to evaluate the relevance or probative value of the items for their submission into evidence.

11. In those instances, the Defence argues that only the testimony of the author of the messages allows the Chamber and Parties to have a meaningful and unequivocal understanding of their content and true meaning. Importance of first hand explanation of messages is reinforced in the specific context of the Central African crisis during which vocabulary shortcuts were routinely used to describe various groups,¹⁴ such as the use of the word "*musulman*" or "*arabe/arabou*" to designate Seleka members, the latter being even used by the Seleka themselves.¹⁵
12. The Defence also submits that the Prosecution's assessment of many items as showing "the organisation of the Anti-Balaka" or the "anti-Muslim animus of the Anti-Balaka" is based on a overgeneralization of the content of these Facebook exchanges. Indeed, these assessments are based on private messages between unidentified individuals, with often no context on any affiliation or connection to Anti-Balaka groups. The personal position of these individuals cannot be broadly interpreted as adopted by all Anti-Balaka groups as a single entity.
13. Moreover, several Facebook conversations seem to refer to attacks, incidents or presence of groups in Mongoumba, Batalimo, Ndangala and Mbata in September to November 2013. In this regard, the Yekatom Defence would like to highlight that nothing in the evidence so far indicates that M. Yekatom and/or individuals associated with his group was ever in Mongoumba, Batalimo and Mbata before the resignation of Djotodia. The Prosecution did not ask any

¹⁴ Item 614 of Annex A – CAR-OTP-2102-6552 being a prime example of the necessity to adopt a cautious approach.

¹⁵ See as an example P-1990 : ICC-01/14-01/18-T-237-CONF-FRA ET from [10:56:32] à [11:00:29] with the use of video CAR-OTP-2065-1348.

questions to any witnesses, including members of M. Yekatom's group, on this specific incident not to mention that M. Yekatom was never cited in any Facebook conversation on this topic. In addition, despite the low probative value of information shared in Facebook conversations without sources, the messages exchanged on Mongoumba prove that there were other groups in the LOBAYE prior to Mr. Yekatom's arrival in the region.¹⁶ It is the same for other localities such as Boyali, Mbaïki,¹⁷ Batalimo, Mbata¹⁸ or Ndangala¹⁹. The Facebook conversations mentioning "nos gars" or "on" do not have any link whatsoever with M. Yekatom. It cannot be conclude that they are referring to him, especially while specific names of people who would have come in this area during this relevant period are mentioned.²⁰

CONFIDENTIALITY

14. The Response is filed on a confidential basis corresponding to the classification of the Application. The Defence does not oppose the reclassification of the present response as public.

RELIEF SOUGHT

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

REJECT the submission of following items:

CAR-OTP-2100-4347; CAR-OTP-2100-4558 ; CAR-OTP-2100-4795 ; CAR-OTP-2100-6921 ; CAR-OTP-2100-6927 ; CAR-OTP-2100-7111 ; CAR-OTP-2100-7272 ; CAR-OTP-2100-7603 ; CAR-OTP-2100-7713 ; CAR-OTP-2100-8322 ; CAR-OTP-2100-8673 ; CAR-OTP-2100-8985 ; CAR-OTP-2100-9413 ; CAR-OTP-2101-7435 ;

¹⁶ See for example CAR-OTP-2102-8338, at. 8342-8345. See also CAR-OTP-2103-7505, at 7551-7552, and CAR-OTP-2102-3799, at 3858.

¹⁷ See CAR-OTP-2102-8009, at 8071.

¹⁸ See for example CAR-OTP-2101-9402, at 9415. See also CAR-OTP-2101-8391, at 8396 and CAR-OTP-2101-8987, at 8989.

¹⁹ CAR-OTP-2102-4269, at. 4361.

²⁰ See for example CAR-OTP-2102-2520, at 2687.

CAR-OTP-2101-6147 ; CAR-OTP-2101-6216 ; CAR-OTP-2101-6281 ; CAR-OTP-2101-6573 ; CAR-OTP-2101-6583 ; CAR-OTP-2101-6591 ; CAR-OTP-2101-6739 ; CAR-OTP-2101-6743 ; CAR-OTP-2101-6768 ; CAR-OTP-2101-6783 ; CAR-OTP-2101-7015 ; CAR-OTP-2101-7058 ; CAR-OTP-2101-8008 ; CAR-OTP-2101-8328 ; CAR-OTP-2101-8337 ; CAR-OTP-2101-8380 ; CAR-OTP-2101-9009 ; CAR-OTP-2101-9033 ; CAR-OTP-2101-9368 ; CAR-OTP-2101-9402 ; CAR-OTP-2101-9627 ; CAR-OTP-2101-9915 ; CAR-OTP-2101-9929 ; CAR-OTP-2101-9941 ; CAR-OTP-2102-3764 ; CAR-OTP-2099-8600 ; CAR-OTP-2099-8756 ; CAR-OTP-2099-9195 ; CAR-OTP-2099-9468 ; CAR-OTP-2099-9511 ; CAR-OTP-2099-9653 ; CAR-OTP-2099-9807 ; CAR-OTP-2100-2717 ; CAR-OTP-2100-2885 ; CAR-OTP-2100-2906 ; CAR-OTP-2100-2909 ; CAR-OTP-2100-2915 ; CAR-OTP-2100-2916 ; CAR-OTP-2100-2918 ; CAR-OTP-2100-2937 ; CAR-OTP-2100-2942 ; CAR-OTP-2100-2944 ; CAR-OTP-2100-2948 ; CAR-OTP-2102-9526 ; CAR-OTP-2102-9529 ; CAR-OTP-2102-9583 ; CAR-OTP-2102-9657 ; CAR-OTP-2102-9670 ; CAR-OTP-2102-9749 ; CAR-OTP-2102-9782 ; CAR-OTP-2102-9875 ; CAR-OTP-2103-1653 ; CAR-OTP-2103-1716 ; CAR-OTP-2103-1876 ; CAR-OTP-2103-1890 ; CAR-OTP-2103-1932 ; CAR-OTP-2103-2068 ; CAR-OTP-2102-9024 ; CAR-OTP-2102-9032 ; CAR-OTP-2102-9329 ; CAR-OTP-2102-9354 ; CAR-OTP-2102-9363 ; CAR-OTP-2102-5423 ; CAR-OTP-2102-7947 ; CAR-OTP-2102-8137 ; CAR-OTP-2102-8490 ; CAR-OTP-2102-8499 ; CAR-OTP-2102-8509 ; CAR-OTP-2102-8651 ; CAR-OTP-2102-8656 ; CAR-OTP-2102-8658 ; CAR-OTP-2102-8661 ; CAR-OTP-2102-8708 ; CAR-OTP-2102-8737 ; CAR-OTP-2102-8835 ; CAR-OTP-2103-4828 ; CAR-OTP-2103-4832 ; CAR-OTP-2103-4834 ; CAR-OTP-2103-4836 ; CAR-OTP-2103-4839 ; and

CONSIDER the Defence's observations included in Annex A on all other items.

RESPECTFULLY SUBMITTED ON THIS 21st DAY OF JULY 2023



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