

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **31 July 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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

**Public
with Confidential Annex**

**Public redacted version of “Prosecution’s Eleventh Application for the Submission
of Open-source Evidence from the Bar Table”**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Landry Omissé-Namkeamaï
Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber V (“Chamber”) to recognise as formally submitted 42 items of open-source evidence from the bar table in accordance with articles 64(9)(a), 69(3) and 69(4) of the Statute, rule 63(2) of the Rules of Procedure and Evidence (“Rules”), and the Initial Directions on the Conduct of Proceedings (“Initial Directions”).¹ These 42 items comprise media articles and reports from humanitarian agencies (“Submitted Items”).

2. The Submitted Items are *prima facie* relevant to material issues at trial, are corroborative of other Prosecution evidence, and bear sufficient indicia of reliability and authenticity to be recognised as formally submitted by the Chamber. Recognising their formal submission causes no prejudice to the Defence. To the contrary, it would assist in the Chamber’s determination of the truth, and would ensure an expeditious trial.

3. In accordance with paragraph 62 of the Initial Directions, the Confidential Annex contains the following information with respect to each of the Submitted Items: (i) evidence registration number (“ERN”); (ii) main date; (iii) title; (iv) source identity; (v) a short description of the item; (vi) date of disclosure; (vii) *prima facie* relevance and probative value, including authenticity; and (viii) the Defences’ positions.

II. CONFIDENTIALITY

4. Pursuant to regulation 23bis(1) of the Regulations of the Court (“RoC”), this filing and its Annex are filed as “Confidential”, because they refer to sources and materials of the same classification. A public redacted version will be filed contemporaneously.

¹ ICC-01/14-01/18-631, paras. 61-62.

III. SUBMISSIONS

5. The Submitted Items meet the criteria for recognition as formally submitted, in accordance with the Chamber's Decision on the First Prosecution Submission Request from the Bar Table.² They are relevant to the issues at trial, have sufficient probative value, and do not unfairly prejudice the Accused.

A. The Submitted Items are *prima facie* relevant to the issues at trial

6. The Submitted Items are *prima facie* relevant to material issues at trial, including to determine the contextual elements of the charged war crimes and crimes against humanity; the deliberate and targeted violence on the Muslim civilian population by the Anti-Balaka in the western part of the Central African Republic ("CAR") prior to, or during the Relevant Period;³ the organisation of the Anti-Balaka; the hate speeches by the BOZIZE regime vis-à-vis the Muslim population as a tool to gain support and reclaim power; and NGAISSONA's individual criminal responsibility.

7. In addition to identifying the general standard categories, the Prosecution provides more detailed submissions on the relevance of each individual item submitted in the "Relevance/Probative value" column of the Confidential Annex.

B. The Submitted Items are probative, reliable and authentic

8. The Submitted Items are from: (i) reliable humanitarian agencies, namely [REDACTED]; or (ii) reputable national and international media outlets with particular knowledge of the conflict, namely *Afrik*, *TV5Monde Afrique*, Reuters, *Le Monde*, The Guardian, Al Jazeera, or BBC News. They were collected by the

² ICC-01/14-01/18-1359, paras. 10-12, referring to the Initial Directions ICC-01/14-01/18-631, paras. 53-54, 62.

³ As defined in the Prosecution's Trial Brief, from September 2013 through December 2014: ICC-01/14-01/18-723-Red, para. 5.

Prosecution either: (i) directly from the source (the agency);⁴ (ii) from interviewed individuals;⁵ or (iii) downloaded directly from the relevant sources' websites. The majority of the items are publicly available.⁶

9. The Submitted Items were drafted either contemporaneously, or close in time to the events, before the present proceedings were even contemplated, and before any arrest warrant had been issued in this case. They were prepared in the ordinary course of the activities of the humanitarian agencies or media outlets that published them. They were provided by reliable sources who - at the time of their publication, had no interest in the present proceedings.

10. The *prima facie* reliability and authenticity of these documents is further clear from *inter alia*, their content, general appearance, date, and/or the apparent logo/letterhead of the publisher generating the documents. Finally, these items are mutually corroborative, as well as corroborative of other documentary and testimonial evidence.

C. There is no prejudicial effect

11. Recognising these items as formally submitted would not prejudice the Defence. Any prejudice would be marginal and far outweighed by the documents' probative value. The items: (i) are relevant to the charges and will assist the Chamber in the determination of the truth as explained in detail in the present filing and its Confidential Annex; (ii) bear sufficient indicia of reliability as to the matters that they purport to show; (iii) were often directly collected/downloaded from the source who created, generated and/or published the items; and (iv) have been included in the

⁴ I.e., in respect of CAR-OTP-2005-0197.

⁵ I.e., in respect of CAR-OTP-2069-3540.

⁶ ICC-01/04-01/07-2635, para. 24 (noting that, "material which is publicly available from an open source (e.g. internet or public libraries) will only require the tendering party to provide verifiable information about where the item can be obtained").

Prosecution's List of Evidence, informing the Defence as such of the Prosecution's intention to rely on these items. Furthermore, their reliability, veracity, and weight are independently corroborated by each other, and by other evidence that the Prosecution has or will introduce in the case.

IV. RELIEF SOUGHT

12. The Prosecution respectfully requests the Chamber to recognise the 42 Submitted Items listed in the Confidential Annex as formally submitted.



Karim A. A. Khan KC, Prosecutor

Dated this 31st day of July 2023
At The Hague, The Netherlands