

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 20 September 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**

**Public Redacted Version of “Yekatom Defence Response to the
‘Prosecution’s Eight Application for Submission of Audio/Videos
Evidence from the Bar Table’, 26 June 2023, ICC-01/14-01/18-1945-Conf”, 5
July 2023, ICC-01/14-01/18-1963-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 Eight Application for Submission of Audio/Videos Evidence from the Bar Table* ("Eighth Application")¹ in which it requests the submission of 328 items, including 117 videos, 186 transcripts and 25 documents (collectively the "Material").²
2. After thoroughly reviewing of the Material, the Defence provides its position on each item listed in Annex A of the present response. The Defence opposes the submission of four videos, each for which a specific and detailed reasoning is given in Annex A. The submission of the remaining items is not opposed.

APPLICABLE LAW

3. 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.

4. 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.

5. 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.

¹ ICC-01/14-01/18-1945-Conf.

² ICC-01/14-01/18-1945-Conf, para 1.

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

6. The Defence opposes the submission of the item CAR-OTP-2118-0415, its transcription CAR-OTP-2127-4357 and its translation CAR-OTP-2127-4410.
7. The Defence opposes the submission of the item CAR-OTP-2050-0648, its transcription CAR-OTP-2130-1216 and its translation CAR-OTP-2130-1347.
8. The Defence opposes the submission of the item CAR-OTP-2093-0830.
9. The Defence opposes the submission of the item CAR-OTP-2092-0989.
10. The reasons why the Defence objects to these items are listed in Annex A.
11. As for item CAR-OTP-2005-0129, the Defence strongly opposes the Prosecution's description that "It also contains footage of interviews with various Anti-Balaka members, including YEKATOM, [REDACTED], a young Anti- Balaka fighter (possibly less than 15 years old)".³
12. *First*, in the documentary itself, the individual states he is 15 years old.⁴
13. *Second*, the assessment of the journalist or his opinion should not be given any weight, especially in light of the fact that poor living conditions and malnutrition in Central Africa affect human appearance and morphology, and consequently the age assessment by a foreigner.⁵

³ ICC-01/14-01/18-1945-Conf-Anx, p. 40.

⁴ CAR-OTP-2005-0129. See transcription CAR-OTP-2130-1184, p. 1194, ln. 343-345.

⁵ See P-2082 : ICC-01/14-01/18-T-218-CONF-FRA ET, from [12:28:11] to [12:28:38] and P-1990 : ICC-01/14-01/18-T-237-CONF-FRA ET, from [09:43:37] to [09:44:55].

14. *Third*, after disclosure by the Prosecution of [REDACTED], the Defence requested the Prosecution to meet and interview [REDACTED] pursuant to the *Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of The Opposing Party or of a Participant* ("Protocol").⁶
15. On 10 January 2020, [REDACTED] met with the Defence and confirmed that the individual identified as "[REDACTED]" [REDACTED].⁷ [REDACTED] also indicated to the Defence that: "[REDACTED]".⁸
16. The Defence also showed [REDACTED] "[REDACTED]" [REDACTED] that the latter was 15 years old.⁹ [REDACTED] no mention of "[REDACTED]" being 13 years old.¹⁰
17. This Defence recorded interview [REDACTED] was provided to the Prosecution following the Protocol.¹¹
18. Eventually, the Prosecution withdrew [REDACTED] from its list of witnesses it intended to call or submit in evidence through Rule 68 (2).¹²
19. Therefore, the Defence strongly opposes and disagrees with the Prosecution's characterisation of "[REDACTED]" being a young Anti-Balaka fighter (possibly less than 15 years old).
20. As a final remark, the Defence also notes that several items contained in the Eighth Application are described as showing Anti-balaka targeting Muslim

⁶ ICC-01/14-01/18-677-Anx5.

⁷ CAR-OTP-2122-2183.

⁸ CAR-OTP-2122-2183.

⁹ CAR-OTP-2122-2183.

¹⁰ CAR-OTP-2122-2183.

¹¹ CAR-OTP-2122-2183.

¹² Email from the Prosecution to the Trial Chamber V and the Parties and Participants on 28 July 2021 at 16:05.

civilians. The Defence notes that in many instances, the images depicted appear to show local civilians expressing hatred and engaging in violence against Muslim civilians, although they are described by the media as being the Christian militia or Anti-balaka.

21. In this regard, the Defence has referred to a certain number of videos in Annex A which support its position that, during the conflict, local civilians were often automatically and indiscriminately labelled as Anti-balaka.

CONFIDENTIALITY

22. The response is filed on a confidential basis corresponding to the classification of the Request. The Defence does not oppose the reclassification as public.

RELIEF SOUGHT

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

REJECT in part the Eighth Application;

DECLARE inadmissible the items identified in paragraphs 6 to 9 of this Response; and

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

RESPECTFULLY SUBMITTED ON THIS 20th DAY OF SEPTEMBER 2023



Me Mylène Dimitri
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The Hague, the Netherlands