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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***

Public with confidential Annex A

**Yekatom Defence Response to 'Prosecution's Twelfth Application for
Submission of Photographic Evidence from the Bar Table', ICC-01/14-
01/18-2032-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 Twelfth Application for Submission of Photographic Evidence from the Bar Table' ('Application').¹
2. The Defence does not oppose the submission of the 65 items, noting that 33 items will be formally submitted through Rule 68 (2)(b)² pending the certification process. Specific submissions on the relevance and/or probative value of the Items are included in the Annex to this response.

APPLICABLE LAW

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[.]

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.

Rule 64(1) – 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.

SUBMISSIONS

¹ ICC-01/14-01/18-2032-Conf.

² See ICC-01/14-01/18-1833-Conf-Corr.

3. The Defence does not oppose the submission of the 65 items. However, the Defence takes issue with the relevance set forth by the Prosecution with regard to the different categories of items.

A. Items in Table I “Crimes committed by the Anti-Balaka in BANGUI in the aftermath of the 5 December 2013 attack”

4. In Table I of the Annex, both items³ consist of photographs taken on the 5th of December 2013 at the Ali Babolo mosque. The pictures notably depict “dead bodies lying on the ground”.⁴ In the Annex, the Prosecution stated relevance for both items 1 & 2 refers to Muslim “victims” while in its submissions, the Prosecution states that these items are relevant as they “show that the Anti-Balaka targeted Muslim *civilians* during, and after the 5 December 2013 attack on BANGUI.”⁵
5. Firstly, the Defence notes that the photographs are in themselves insufficient to further the Prosecution’s relevance.⁶ Indeed, both pictures do not allow to properly identify the dead individuals or their civilian or combatant status, nor do they provide information on where the bodies were found, or the cause of their death, and let alone the identity of the persons responsible for their death. The photographs are not accompanied by a legend that could provide context, and their author is not a witness called to testify in this case regarding his recollection of this event. The Defence respectfully submits that the content of the photographs is not sufficient to establish even the foundation of the Prosecution’s relevance, and as such cannot be considered as having probative value as agued in the Application.

³ Items 1 & 2 with ERN CAR-OTP-2117-1190 and CAR-OTP-2117-1198.

⁴ ICC-01/14-01/18-2032-Conf-Anx1.

⁵ ICC-01/14-01/18-2032-Conf, para. 12 [emphasis added].

⁶ Despite the absence of clear mentions by the Prosecution that the individuals are civilians, the wording “Muslims victims of the Anti-Balaka’s” tends to imply that they are not combatants or legitimate targets.

6. In the same vein, the Defence notes that the investigation report mentioned by the Prosecution⁷ relates the handover of the photographs by their author to the Prosecution and the chronology of the photographer's trips in CAR. It does not provide the context of the photographs susceptible of furthering the Prosecution's alleged relevance. This also applies to the certificate of acknowledgement⁸ which merely authenticates their origins.⁹
7. Secondly, there is evidence in the case supporting the fact that Muslims civilians or not could have been victims of other entities than the Anti-Balakas on the 5 December 2013. Indeed, there is evidence in the case showing that Séléka fighters were shooting indiscriminately on the day of the 5 December attack.¹⁰ In addition, the Prosecution is seeking the submission of a NGO report¹¹ in another bar table application.¹² Notwithstanding the low probative value of certain accounts found in the report, as already argued by the Defence,¹³ the report specifically refers to the involvement of "local youth associated with the Anti-Balaka forces" in the deaths of the Muslims brought to the Ali Babolo mosque on the 5th of December 2013.¹⁴ The page number containing this information regarding the Ali Babolo Mosque was specifically not included in the stated relevance given by the Prosecution for this item.¹⁵
8. However, the Prosecution should not be allowed to pick and choose the evidence that is most favorable to its case, while overlooking other elements. By omitting to mention this important nuance, the Prosecution lacks transparency when arguing that the photographs show the Muslim victims of the Anti-Balaka

⁷ CAR-OTP-2119-0033

⁸ CAR-OTP-2117-0727

⁹ The Defence also notes that neither documents appear to be submitted in the case record, nor their submission sought in the current Bar Table motion.

¹⁰ See **P-1839** : ICC-01/14-01/18-T-172-CONF-FRA ET, p. 23 [10:53:05] discussing CAR-OTP-2065-1568;

¹¹ CAR-OTP-2001-2139.

¹² ICC-01/14-01/18-2010-Conf.

¹³ ICC-01/14-01/18-2037-Conf-AnxA, p. 1-3, item 1.

¹⁴ CAR-OTP-2001-2139, at 2141.

¹⁵ ICC-01/14-01/18-2010-Conf-Anx, p. 1, item 1.

attack. Therefore, it appears that the Prosecution mischaracterised the relevance of CAR-OTP-2117-1190, thus the photographs have no probative value in the context of the present case.

9. Because the items are not evidencing who is responsible for the death of the subjects of the photographs and considering that there is evidence which directly contradicts the proposed relevance of the Prosecution, the relevance of the Prosecution in its submission is entirely misplaced.

B. Items in Table II “Organisation of YEKATOM’s Group at the YAMWARA School Base”

10. The Defence also takes issues with the relevance advanced in the Prosecution’s submission that the items in Table II “show the organisation of the Anti-Balaka group led by YEKATOM and based at the YAMWARA School, including the identity of his elements, the training they received, as well as the type of weapons they used.”

i) On the identification of the photographed individuals allegedly part of Mr Yekatom’s group

11. Firstly, it is part of the evidence that elements of other groups, *i.e.* not elements of Mr. Yekatom’s group came to “visit” the YAMWARA base.¹⁶ While this or these visit(s) took place in the month of December, the date(s) have not been established with precision. Therefore, it is not to be discarded that on the 15 December 2013 (date appearing in the metadata of the Prosecution in relation to the items), elements of other groups were present at the base.
12. As regards to the individuals present in the submitted photographs, the Defence notes that the Prosecution used in its relevance column a generic sentence to the effect that the items show “*the identity of the elements*”. However, in practice, the Prosecution rarely provided the identity of the photographed

¹⁶ See **P-1839** : ICC-01/14-01/18-T-173-CONF-FRA CT from [10:03:28] to [10:08:19].

individuals; only Messrs Freddy Ouandjo, Habib Beina, and Rodrigue Momokama are specifically named. Moreover, the Prosecution is not consistent in cross referencing its identification of some individuals for each item.

13. The Defence thus submits that caution should be exercised by the Chamber when assessing those items during its final deliberation as it has not been shown nor proven that the individuals photographed belong to Mr Yekatom's group.

ii) On the presence of member of the population at the Yamwara School base

14. The above-mentioned uncertainty as regards to the belonging to Mr Yekatom's group of individuals appearing in the submitted photographs is compounded by the presence of member of the civilian population on the grounds of the Yamwara School base.
15. The Defence recalls that a number of witnesses such as P-1839,¹⁷ P-1786,¹⁸ or P-1647¹⁹ confirmed that members of the population would come to the Yamwara School base in order to draw water from the fountain that is present on the grounds of the school. Items 17 and 20, as well as 18 to a lesser extent,²⁰ depicts those members of the population.
16. The photographs show that among those members of the population, women, children and babies were present. The Defence highlights that the children appearing on those photographs carry jerricans in order to collect the water.
17. While the Prosecution does not include in its relevance any argument to the fact that the children would be part of Mr Yekatom's group, the Defence

¹⁷ **P-1839** : ICC-01/14-01/18-T-172-CONF-FRA ET, at [14:31:42] and [14:32:57].

¹⁸ **P-1786** : ICC-01/14-01/18-T-197-CONF-FRA ET, at [11:47:09].

¹⁹ **P-1647** : ICC-01/14-01/18-T-194-FRA ET WT, at [10:33:58].

²⁰ As indicated in the annex, the member of the population at the fountain are visible in the background of the photograph. They are not the main subject of the photograph and a zoom is needed to discern them properly.

nevertheless wishes to make it clear that those children are members of the population, as established by P-0487,²¹ P-1647,²² P-1786²³ when shown similar images, e.g. CAR-OTP-2095-5570. This is also a reasonable inference when looking at the composition of the pictures. Indeed, it can be derived from (i) the fact that they carry jerricans,²⁴ and (ii) their presence on the fountain,²⁵ that the purpose of the presence of the children is to draw water from the fountain. As such those photographs cannot be relied upon by the Prosecution in support of Count 29.

iii) On the limited weaponry at the group's disposal

18. The Defence submits that the Items in Table II tend to show that the weapons at the group's disposal was limited.
19. With regards to automatic weapons, the Defence notes that among all the photographs submitted by the Prosecution in this Bar Table Motion, some pictures show the same armed individuals multiple times;²⁶ while some FACAs member are seen without a weapon in their possession such as Messrs Freddy Ouandjo and Habib Beina²⁷ or Mr Rodrigue Momokama.²⁸ The Defence submits that an holistic assessment of the photographs demonstrate that automatic military weapons were not readily available to elements, to the contrary such weapons appear to be a scarce resource.
20. The Defence also submits that the rudimentary weapons visible in the hands of individuals present at the Yamwara School base is demonstrative of how rudimentary the weaponry at the group's disposal was. For instance, CAR-

²¹ **P-0487** : ICC-01/14-01/18-T-201-CONF-FRA ET, at [12:44:23] and [12:47:54].

²² **P-1647** : ICC-01/14-01/18-T-T-194-FRA ET WT, at [10:33:58].

²³ **P-1786** : ICC-01/14-01/18-T-197-CONF-FRA ET, at [11:47:09].

²⁴ Item 17 CAR-OTP-2117-1168.

²⁵ Item 20 CAR-OTP-2117-1179.

²⁶ See as example the same individual in CAR-OTP-2117-1149 and CAR-OTP-2117-1157 ; or a second one in CAR-OTP-2117-1191, CAR-OTP-2117-1195 and CAR-OTP-2117-1199.

²⁷ CAR-OTP-2117-1149.

²⁸ CAR-OTP-2117-1195.

OTP-2117-1160 shows that those weapons mainly consisted of machetes and wooden sticks, while CAR-OTP-2117-1154 depicts an artisanal bow.

21. The Defence submits that the photographs corroborate other evidence in the case showing a general lack of weapons available to Mr Yekatom's group. P-1839 indicated during her testimony that it was mainly chiefs of section who possessed firearms.²⁹ Also, video evidence such as CAR-OTP-2065-4849³⁰ shows elements present at the Yamwara School base complaining about the lack of weapons.³¹
22. The Defence notes that the weaponry in the hands of individuals present at the Yamwara School base during the photographer's visit differs greatly from the one in possession of groups described as Anti-Balaka in the Bossemptele region. As an example, photographs CAR-OTP-2083-1469 & CAR-OTP-2083-1581 depicts individuals who are almost all armed with artisanal or hunting rifles.
23. This stark contrast between the type and number of weapons available between the people present at the Yamwara School base and individuals described as Anti-Balaka from Bossemptele is another indication that, during the conflict in CAR, various groups, not associated with each other, with different objectives and means, were operational. As detailed below, those differences also extended to the type of attire worn by the member of those different groups.

²⁹ **P-1839** : ICC-01/14-01/18-T-173-CONF-ENG CT from [11:50:50] to [11:51:45].

³⁰ Recognised as formally submitted via Decision ICC-01/14-01/18-1226 Rule 68(3) of 21 December 2021.

³¹ See translation CAR-OTP-2118-5685, lines 51-56 : « INI : Mais je dis ... nous, tels que nous sommes, nous n'avons pas les moyens ... ni d'armes ; eux là-bas n'ont aussi pas d'armes, pour attaquer quelque zone que ce soit, et nous non plus, nous n'avons pas d'armes pour prétendre attaquer aussi une zone. Ils n'ont pas les moyens de se battre, nous non plus, nous n'avons pas les moyens de nous battre. Donc c'est mieux qu'ils se joignent à nous afin que nous puissions nous organiser et cibler un seul objectif, comme ce colonel ... ce colonel français nous a conseillés. »

iv) On the quasi absence of gris-gris in the photographs taken at the Yamwara School base

24. While the Prosecution often submits in its Annex that individuals photographed at the Yamwara School base are wearing gris-gris, the Defence notes that, to the contrary, the pictures are evidencing their quasi absence.
25. On a photograph³² where the subject of the picture is not wearing any gris-gris, the Prosecution still included such mention in its description. More generally, as indicated in the Annex, the Defence highlights that the photographs depict individuals wearing very few gris-gris or none at all.³³
26. It is submitted that the limited presence of gris-gris in the attire of the individuals present at the Yamwara School base is in striking contrast with their omnipresence and abundance in other groups. The Defence refers in particular to a photograph of Anti-Balaka elements taken by P-1576 on 4 December 2013, CAR-OTP-2061-4172,³⁴ which depicts almost every individual with multiple gris-gris. Another example can be seen in the Prosecution's Application, with photograph CAR-OTP-2083-1581. This is also consistent with the evidence on the record, and noticed by journalists present at the time of the conflict.³⁵
27. The Defence, again, notes that this set apart the elements present at the Yamwara School base and potentially member of Mr Yekatom's group, with individuals' member of other distinctive et dissociated groups.

CONFIDENTIALITY

28. The annex appended to this filing is classified as confidential as it relates to evidence disclosed that should not be released to the public.

³² CAR-OTP-2117-1154.

³³ See as an example photograph CAR-OTP-2117-1153.

³⁴ Recognised as formally submitted via email Decision on Submitted Materials for P-0446 (12 October 2022).

³⁵ See CAR-OTP-2076-0815 from 00:05:44 to 00:06:10, and its corresponding transcription CAR-D29-0006-0721 at 0724, lines 12 to 17, both recognized as formally submitted via email Decision on Submitted Materials for P-0954 (22 May 2023).

RELIEF SOUGHT

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

CONSIDER the observations of the Defence contained in this response and Annex A for each item during its deliberation.

RESPECTFULLY SUBMITTED ON THIS 6th DAY OF OCTOBER 2023



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