

Pursuant to Single Judge's instruction, dated 13 December 2023, this document is reclassified as "Public"

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **22 November 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***

Confidential

First defence request for leave to add an item to its List of Evidence

Source: Defence for Mr. Alfred Rombhot Yekatom

Pursuant to Single Judge's instruction, dated 13 December 2023, this document is reclassified as "Public"

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

The Office of the Prosecutor

Mr Karim Asad Ahmad Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard 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)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Victims and Witnesses Unit

Mr Nigel Verrill

Counsel Support Section

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. The Defence for Mr. Alfred Rombhot Yekatom ('Defence') requests leave of the Chamber to add one item to its List of Evidence, namely CAR-D29-0008-0019 ('Request').

PROCEDURAL HISTORY

2. On 9 March 2023, the Defence filed its Yekatom Defence Request to issue a Judicial Order for the Registry to disclose information in relation to Count 29 ('March Submissions').¹
3. On 29 March 2023, Trial Chamber V issued the Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence) ('Further Directions').²
4. On 11 September 2023, the Prosecution filed the Prosecution's Notice of the Close of its Case-in-Chief.³
5. On 17 November 2023, the Defence filed the Yekatom Defence's List of Witnesses and Evidence.⁴

SUBMISSIONS

6. Since the closing of the presentation of evidence by the Prosecution, the Defence has been conducting an extensive final review of all the material disclosed in the case and which it collected through its investigations in order to list all the material it intends to rely on during its presentation of evidence. Solely with regard to the evidence which relates to Count 29, this included the review of all Facebook

¹ ICC-01/14-01/18-1790-Conf-Exp.

² ICC-01/14-01/18-1892.

³ ICC-01/14-01/18-2089.

⁴ ICC-01/14-01/18-2212-Conf.

material it received through its cooperation request,⁵ along with an important number of items collected through its investigations.

7. Such review was conducted as diligently as possible, yet, in the course of the preparation of its opening statement, the Defence discovered that one item which had already been brought to the attention of the Chamber, the Parties and the Participants through its March Submissions,⁶ is missing from the Defence's List of Evidence.
8. This is due to the fact that this specific item, as opposed to the others contained in the March Submissions, had provisionally been stamped and uploaded unto the disclosure software 'Nuix' in anticipation of a formal disclosure. As the disclosure became moot, this item bore an ERN which was not sequential with the other items used in the March Submission and could not be located during the final review and was thus not included in the Defence LoE.
9. As submitted in the Yekatom Defence's List of Witnesses and Evidence, the Defence conducted such review while its work was impacted by the cyber security incident,⁷ with limited internet access at the Court's Headquarters and limited remote access to the applications of the Court for most of the period preceding the deadline of 17 November 2023 set by the Further Directions. It is unquestionable that this incident was outside the control of the Defence and has impacted its ability to conduct as many cross-checks as was initially intended by the Defence so as to avoid the present Request.
10. The Defence confirms that this is the only item relating to the March Submissions for which the Defence is requesting leave of the Chamber to add an item to its List of Evidence.

⁵ See ICC-01/14-01/18-1531-Conf-Red.

⁶ See ICC-01/14-01/18-1790-Conf-Exp, para. 52 and ICC-01/14-01/18-1790-Conf-Exp-AnxI.

⁷ ICC-01/14-01/18-2212-Conf, para. 8.

Pursuant to Single Judge's instruction, dated 13 December 2023, this document is reclassified as "Public"

11. Furthermore, the Defence submits that the present Request causes no prejudice to the Parties and Participants.
12. Firstly, the Request arises shortly, i.e. less than a week, after the 17 November 2023 deadline and the item consist of a single video, which lasts 14 seconds and thus requires very limited analysis.
13. Secondly, and more importantly, the Prosecution and the CLRV1 has had access to this item since March 2023,⁸ indeed the item is an open source material for which the hyperlink was included in the annex to the March Submissions.
14. Moreover, the Parties were on notice of not only the reliance of the Defence on this item, but also on notice of the substantive arguments that it uses this item for, i.e. that 'in the period during which P-2475 retained possession of his witness statement (per his request) and was reading and rereading it in his hotel room, on account of his being too unwell to attend the Court premises for the familiarisation and statement-reading procedure (and immediately thereafter), P-2475 was posting videos of himself lip-syncing to music.'⁹
15. Finally, the item was formally disclosed today, 22 November 2023, to the Parties and Participants.

CLASSIFICATION

16. This request is filed on a confidential basis as it pertains to confidential material. A public redacted version will be filed in due course.

RELIEF SOUGHT

17. For the above reasons, the Defence seeks the Chamber's leave to add item CAR-D29-0008-0019 to the Defence's List of Evidence.

⁸ ICC-01/14-01/18-1790-Conf-AnXI-Red.

⁹ ICC-01/14-01/18-1790-Conf-Red, para. 52.

Pursuant to Single Judge's instruction, dated 13 December 2023, this document is reclassified as "Public"

RESPECTFULLY SUBMITTED ON THIS 22nd DAY OF NOVEMBER 2023



Me Mylène Dimitri

Lead Counsel for Mr. Yekatom

The Hague, the Netherlands