

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

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

Date: **17 May 2024**

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

**Public Redacted Version of “Yekatom Defence Request for Leave to Add 3
Items to its List of Evidence”, 24 April 2024, ICC-01/04-01/18-2462-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. Alfred Rombhot Yekatom ("Defence") respectfully requests Trial Chamber V's ("Chamber") leave to amend its List of Evidence.
2. Specifically, the Defence requests the addition of three items to its List of Evidence, which it submits are of significant relevance and probative value and would not cause any unfair prejudice to any party nor infringe on the fair and expeditious conduct of the proceedings, due to their nature and limited amount.

PROCEDURAL HISTORY

3. On 17 November 2023, the Defence filed the Yekatom Defence's List of Witnesses, including *inter alia* [REDACTED] (D29-P-5013).¹ On the same date, the Defence filed its List of Evidence ("LoE").²
4. On 22 November 2023, the Defence requested from the Prosecution material in its possession related to Defence witnesses and/or items that would be used during the examination of Defence witnesses pursuant to Article 67 of the Statute and Rule 77 of the Rules.³
5. On 27 November 2023, the Office of the Prosecutor indicated that the disclosure of any Rule 77 materials associated with remaining witnesses on the Defence's List of Witnesses was finalised and that "new undisclosed items" considered material would be disclosed on a rolling basis.⁴
6. On 16 February 2024, the Defence requested the Chamber to order the Prosecution to disclose all CSTs in its possession in relation to the remaining Yekatom Defence witnesses, *inter alia* P-5013, as well as their underlying Call Data Records ("CDR").⁵

¹ ICC-01/14-01/18-2212-Conf-AnxB, #6.

² ICC-01/14-01/18-2212-Conf-AnxD.

³ Letter ARY-2023-0290 sent on 22 November 2023 by email from the Defence to the Prosecution at 10:10.

⁴ Email from the Prosecution to the Defence on 27 November 2023 at 16:12.

⁵ ICC-01/14-01/18-2367, para. 12.

7. On 22 February 2024, Trial Chamber V issued its “Decision on the Yekatom Defence Urgent Request for Disclosure of Telecommunication Material related to Defence Witness” and ordered the Prosecution to provide the Defence with, *inter alia*, the CSTs that were intended to be used with P-5013.⁶
8. On 23 February 2024, the Office of the Prosecutor provided courtesy copies of two CSTs relating to witness P-5013 (CAR-OTP-00036113 and CAR-OTP-00036114) and a document on which the Office of the Prosecutor intends to rely on for the attribution of P-5013’s phone number (CAR-OTP-2130-8563).⁷
9. On 8 March 2024, the Office of the Prosecutor formally disclosed the three documents in Trial Rule 77 Package 123.⁸
10. On 8 April 2024, the Defence notified the Chamber that it intended to call P-5013 to testify as a *viva voce* witness during the second week of the 32nd evidentiary block.⁹
11. On 18 April 2024, the Defence disclosed through “Trial D29 package 96” the three items for which addition to the LoE is sought in the present request.¹⁰

SUBMISSIONS

12. The Defence wishes to add to its List of Evidence the following items (collectively, ‘Items’) :
 - A press article from the BBC News Afrique, titled *RCA : au moins un mort pour un convoi*, published on 18 February 2014 (CAR-D29-0002-0696);
 - [REDACTED] (CAR-D29-0013-0276-R01); and

⁶ ICC-01/14-01/18-2375, paras 11 and 13.

⁷ Email from the Prosecution to the Chamber, Parties and Participants sent on 23 February 2024 at 15:40.

⁸ ICC-01/14-01/18-2399 and ICC-01/14-01/18-2399-Conf-Anx, #1, #8 and #9.

⁹ Email from the Defence to the Chamber, Parties and Participants sent on 8 April 2024 at 15:36.

¹⁰ ICC-01/14-01/18-2357 and ICC-01/14-01/18-2357-Conf-Anx.

- [REDACTED] (CAR-D29-0005-1099).

13. The Defence considers these Items relevant to analyse the alleged attribution of P-5013's phone number in relation to the phone calls that occurred on [REDACTED] and on [REDACTED] with Mr Alfred Yekatom.¹¹ In addition to corroborating material issues at trial, these Items bear sufficient indicia of reliability, justifying their addition to the Defence's LoE.
14. For this purpose, the Defence requests the addition of CAR-D29-0002-0696, which is a publicly available media article from the BBC News Afrique, published on 18 February 2014, reporting that Chadian soldiers opened fire on civilians near Bangui's airport. P-5013's expected testimony will corroborate the incident relayed in the article. Moreover, while the witness does not remember the exact date of her departure from Bangui, she nevertheless describes that [REDACTED], there were shootings exchanged between a Chadian convoy and armed men next to the airport. The document is consequently relevant to assess [REDACTED].
15. The Defence also requests the addition of P-5013's [REDACTED] (CAR-D29-0013-0276-R01), which was obtained from the witness on 15 April 2024 following a request sent in February 2024. This item is relevant to material issues at trial since it demonstrates that P-5013 had indeed left Central Africa [REDACTED].
16. Finally, the Defence recalls that the Office of the Prosecutor relied on [REDACTED] (CAR-OTP-2130-8563 at 8622), [REDACTED], to attribute phone number [REDACTED] to P-5013 in one of its CST.¹² However, a similar [REDACTED] (CAR-D29-0005-1099 at 1113), [REDACTED], attributes the same phone number to another [REDACTED]. The document is consequently relevant as to the attribution of the alleged phone number of witness P-5013 to another individual.

¹¹ CAR-OTP-00036114.

¹² CAR-OTP-00036114 titled "[REDACTED]".

17. The three documents for which addition to the LoE is sought are consequently relevant as to (i) the timeframe of P-5013's presence in Central Africa and the date of her departure, and (ii) the attribution of P-5013's phone number to another individual. The combination of these two pieces of information is, in turn, relevant to appreciate the Prosecution's apparent contention (through its CSTs) that Mr Yekatom and P-5013 were in contact via telephone on specific dates relevant to the charged crimes.
18. The Defence also notes that it is only following the Chamber's order, issued on 22 February 2024,¹³ that the Prosecution provided on 23 February 2024¹⁴ two CSTs relating to witness P-5013 and a document on which the Office of the Prosecutor intends to rely on for the attribution of P-5013's phone number. It was only at this point that the Defence was put on notice that a previously unknown phone number, [REDACTED], was attributed by the Prosecution to Defence witness P-5013 and that this number was in contact with numbers allegedly belonging to Mr Yekatom.
19. Therefore the Defence could not have, prior to this date, anticipated to use documents related to P-5013's phone attribution. The Defence diligently investigated this new phone number by conducting Open Source research, as well as requesting documents from the witness [REDACTED]. The Defence exercised reasonable diligence in reviewing the material and disclosing it in a timely manner.
20. Defence submits that any prejudice that would arise from the addition of those three items to the LoE is very limited as (i) the Defence narrowed down to only three items the evidentiary documents necessary to answer the Prosecution's new position as regards the contacts between P-5013 and Mr Yekatom; and (ii) the Defence already disclosed the three items to the Parties and Participants.

¹³ ICC-01/14-01/18-2375, para. 13.

¹⁴ Email from the Prosecution to the Chamber, Parties and Participants sent on 23 February 2024 at 15:40.

21. All three items are brief and factually straightforward, and the material issue to which they go to prove is of narrow scope. Further, Parties and Participants will have sufficient time to review the material ahead of P-5013's testimony and be afforded the possibility to test their content during cross-examination. Therefore, the addition of these items to the Defence's LoE does not cause unfair prejudice to Parties and Participants.

CONCLUSION

22. In light of the above, the addition of the Items to the Defence's List of Evidence is warranted and appropriate in the circumstances. The Items are relevant and of significant probative value, their prospective significance to the proceedings outweighs the potential prejudice caused to Parties and Participants, and their introduction will advance the Chamber's mandate of determination of the truth. The fair and expeditious conduct of the proceedings is not infringed by permitting the Defence to add the Items.
23. Moreover, the request does not concern the submission of evidence, but merely the inclusion of the items on its List of Evidence. Nothing prevents the Parties and Participants from raising additional arguments concerning the submission of these items at a later and more relevant stage in the proceedings. The Defence therefore respectfully requests the Chamber's leave to add the Items to its List of Evidence.

CONFIDENTIALITY

24. The Request is filed on a confidential basis as it pertains to confidential material. A public redacted version will be filed forthwith.

RELIEF SOUGHT

25. In light of the above, the Defence respectfully requests Trial Chamber V to: **GRANT** leave to add the Items to the Defence List of Evidence.

RESPECTFULLY SUBMITTED ON THIS 17th DAY OF MAY 2024¹⁵



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¹⁵ The Defence is grateful for Legal Intern Ms Charlotte Floquet's assistance in the drafting of this filing.