

**Cour
Pénale
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**International
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Court**

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Date: **31 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
With Confidential Annex A**

**Yekatom Defence Request for the Formal Submission of Open-source
Evidence from the Bar Table**

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 requests the formal submission of 31 items of evidence submitted from the bar table, in accordance with articles 64(9)(a), 69(3) and 69(4) of the Rome Statute, rule 63(2) of the Rules of Procedure and Evidence, and the procedure established in Trial Chamber V’s (“Chamber”) Initial Directions on the Conduct of Proceedings.¹ These 31 items comprise (i) 19 media/press articles; (ii) 7 social media evidence; (iii) 3 reports; and (iv) 2 other items (“Submitted Items”).²
2. The Submitted Items are *prima facie* relevant to and probative of material issues at trial, including but not limited to the security situation in the Central African Republic (“CAR”) when the Seleka took power causing Mr Yekatom to take arms to defend and liberate his country from the Seleka mercenaries, the rising intercommunal violence and tensions, the lack of national and international security forces, and Mr Yekatom’s intention to reestablish peace and security along the PK9 Axis in early 2014 while continuously collaborating with national authorities and international forces.
3. Further, the items are mutually corroborative and bear sufficient indicia of reliability and authenticity to be recognised as formally submitted by the Chamber. Nor are there any procedural bars to the submission of these items. Recognising their formal submission would assist the Chamber’s determination of the truth and would ensure an expeditious trial.

PROCEDURAL HISTORY

4. On 17 November 2023, the Defence filed its List of Evidence.³

¹ ICC-01/14-01/18-631, paras. 53-54, 61-62.

² The items are listed in the Confidential Annex.

³ ICC-01/14-01/18-2212-Conf-AnxD.

5. On 2 February 2024, the Chamber issued its “*Further Directions on the Conduct of the Proceedings (End of Defence Presentation of Evidence and Closure of Evidence)*”.⁴ The Chamber set the deadline for the Defence to submit evidence in writing one week after the testimony of the last witness called by the Defence while strongly encouraging requests to be filed on a rolling basis during its presentation of evidence.⁵
6. On 1 March 2024, the Defence filed its notice of information on prospective bar table applications.⁶ The Defence *inter alia* indicated that it intended to request the submission of 44 open-source items with the caveat that the number could vary “upon further assessment of the materials, the outcome of *inter partes* communications, pending the execution of outstanding requests for assistance, and following the development of the Defence case and its investigations”.⁷
7. On 20 May 2024, the Defence inquired with the Prosecution and the Ngaissona Defence as to their respective positions on the items to be tendered for submission pursuant to paragraph 62 of the Initial Directions on the Conduct of the Proceedings.⁸
8. On 22 May 2024, pursuant to a request made by the Defence, the Chamber authorised the latter to file its annexes to its bar table motions in A3 format.
9. On 28 May 2024, the Prosecution provided its position on the items, indicating its intention to object to the submission of CAR-D29-0002-0046, CAR-D29-0002-0123 and CAR-OTP-2001-0241. For the remaining items, the Prosecution reserved its right to raise further objections regarding authenticity, reliability, and relevance.⁹

⁴ ICC-01/14-01/18-2342.

⁵ ICC-01/14-01/18-2342, para. 6.

⁶ ICC-01/14-01/18-2392.

⁷ ICC-01/14-01/18-2392, paras. 2-3.

⁸ ICC-01/14-01/18-631, para. 62.

⁹ Email sent by the Prosecution to Parties and Participants dated 28 May at 18:15 (available upon request).

10. On 28 May 2024, the Ngaïssona Defence indicated that it did not identify any major procedural bars to the submission of the documents, but reserved its right to provide objections based on the criteria of authenticity, reliability and relevance of the items in the Defence's formal request before the Chamber.¹⁰

SUBMISSIONS

11. With regard to the methodology adopted and a description of the columns utilised in Annex A, the Defence recalls its preliminary remarks set out in the "Yekatom Defence Request for the formal submission of Audio/Video and Photographic material".¹¹
12. The Defence submits that the Submitted Items meet the criteria for the recognition of their formal submission, in accordance with the applicable law.¹² Indeed, they are relevant to material issues at trial, have sufficient probative value and their submission does not unfairly prejudice the fairness of this trial.

A. The Submitted Items are *prima facie* relevant, reliable and authentic

13. The Submitted Items are *prima facie* relevant to material issues at trial and are significant in assisting the Chamber in its determination of the truth.
14. Indeed, they show the violent exactions committed by the Seleka against the civilian population as soon as Djotodia took power. They also show that the fear of becoming victims of the violence provoked the civilian population to flee and seek refuge elsewhere.¹³ The items show that the climate of fear and insecurity was further compounded by the limitations of international forces that lacked capacity and whose movement was restricted to the main roads, or acted contrary to their neutral protection mandate, instead contributing to the

¹⁰ Email sent by the Ngaïssona Defence to Parties and Participants dated 28 May at 20:39.

¹¹ See ICC-01/14-01/18-2515-Conf, paras. 9-15.

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

¹³ See items # 13, 15, 18 and 27.

violence.¹⁴ The situation created rising tensions between Muslim and non-Muslim civilians, culminating in acts of vengeance between communities.¹⁵ In light of the dire security situation heightened by the absence of state security¹⁶ and the limitations of international forces, it was necessary for Mr Yekatom, a *caporal chef*, and his group mainly composed of FACA to take up arms and defend and liberate his country from the Seleka mercenaries. His intention was to restore peace and security in the Lobaye.¹⁷ While the Seleka left the capital *en masse* after Djotodia's resignation, the Seleka stationed along the PK9 axis remained in the Lobaye and at PK9 for some time following his resignation. As soon as President Samba-Panza (P-0952) took power, Mr Yekatom ensured the security of the Lobaye with his men in the absence of any official authorities. Mr Yekatom's group positioned some elements at the same barriers previously occupied by the Seleka on the Axis to prevent the latter from coming back, therefore protecting the access of the PK9-Mbaiki stretch of road. Throughout his efforts, he demonstrated ongoing collaboration with national authorities and international forces.¹⁸

15. The items also exhibit the lack of security forces and the population's need to have operational FACA, especially in light of the embargo and the *mesures de confiance* which contributed to the lack of security in RCA and prevented the country from building effective security forces.¹⁹
16. Further, the items display sufficient indicia of reliability. Indeed, they were downloaded from reliable websites. The majority of items are still publicly available. The Defence has provided verifiable information about where the

¹⁴ See items # 4, 11, 15, and 28. See also items #16 and 21 which show that certain Chadian MISCA elements acted contrary to their mandate of bringing back peace and security, making it difficult for the population to trust international forces.

¹⁵ See items # 4, 7, and 9.

¹⁶ See items # 4, 10, and 28.

¹⁷ *Contra* ICC-01/14-01/18-282-Conf-AnxB1, para. 6; ICC-01/14-01/18-723-Conf, para. 355 *et seq.*

¹⁸ See items # 5 and 12.

¹⁹ See items # 4 and 10.

item was obtained by hyperlinking, when possible, the items to the website or platform from which they were directly downloaded.²⁰ Their authenticity is also corroborated by their appearance, date, and logo of the publisher producing or publishing the items.

17. The Submitted Items were drafted either contemporaneously or close in time to the events to which they pertain. At the time of their publication, the sources of the information had no interest in the present proceedings. None of the documents were created for the specific purpose of these proceedings.
18. Finally, these items are corroborative of other documentary evidence and testimonial evidence and advance the Chamber's inquiries. Where applicable, the Defence has provided reference to other evidence in this case file which corroborates the information therein and has detailed how each item relates to other such material.

B. The Submitted Items cause no prejudice to a fair trial

19. Recognizing the Submitted Items as formally submitted would not cause any prejudice to a fair trial pursuant to article 69(4) of the Statute. Indeed, all items are included in the Defence's List of Evidence and have been so for several months, informing Parties of its intention to rely on them. The Defence also highlights that many of the items were initially disclosed by the Prosecution. As previously mentioned, most items are hyperlinked to their original source, enabling Parties to verify who created and/or published the information. The items are corroborative of other documentary and testimonial evidence that the Defence has already introduced as part of its case so far without being repetitive and burdening the case file. Parties were thus on notice of the Defence's intended reliance and substantive arguments involving the larger themes in the

²⁰ See the "Title" column. The Defence also notes that in the rare case that an item is no longer publicly available, it has been clearly indicated. In any event, their chain of custody indicates the date on which the document was found and sets out the chronological sequence of custody of the item in question.

case which these items relate to. Finally, the Defence has detailed the relevance of the items to the charges as well as their veracity, authenticity and reliability in the present filing and its annex.

CONCLUSION

20. In light of the above, the Submitted Items meet the criteria for the recognition of their formal submission, in accordance with the applicable law. They are relevant to material issues at trial, mutually corroborative of other evidence in the case file, and bear sufficient indicia of reliability and authenticity. Recognising their formal submission will enable the Chamber to better understand and contextualise the Defence's case, ultimately assisting the Chamber in its determination of the truth.

CONFIDENTIALITY

21. The Annex appended to this filing is classified as confidential as it refers to confidential evidence.

RELIEF SOUGHT

22. In light of the above, the Defence respectfully requests Trial Chamber V to:
- RECOGNISE** the Submitted Items listed in the Confidential Annex as formally submitted.

RESPECTFULLY SUBMITTED ON THIS 31st DAY OF MAY 2024



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The Hague, the Netherlands