

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **30 August 2024**

**TRIAL CHAMBER V**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung  
Judge Beti Hohler, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF *THE PROSECUTOR v.*  
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

**Public with Confidential Annexes A-B**

**Public Redacted Version of 'Yekatom Defence Request for leave to amend  
its List of Evidence to add CAR-OTP-2115-0285', 6 August 2024, ICC-01/14-  
01/18-2617-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') hereby respectfully requests leave to amend its list of evidence,<sup>1</sup> to add handwritten notes<sup>2</sup> of dropped Prosecution witness [REDACTED] (respectively, 'Notes' and 'Dropped Witness').
2. The sought amendment should be granted.
3. The intended purpose of the Defence's reliance on the Notes, or its significance in light of the charges or the rest of the available evidence – both of which primarily relate to the Prosecution's attempts to impugn the credibility of Defence witness Fidel SOUSSOU (D29-P-3014) – give rise to undue procedural prejudice. Nor can the timing of this request cause any undue prejudice to the Prosecution, as it is a direct result of the Prosecution's own compound failure to meet its disclosure obligations.
4. Lastly, granting the sought amendment would be in the interests of justice and would assist the Chamber in determining the truth with respect to the credibility of Mr SOUSSOU and by extension, the credibility of Prosecution insider witness [REDACTED] (P-1962).

## **PROCEDURAL HISTORY**

5. On 26-30 January 2018 and 21-23 February 2018, the Prosecution interviewed [REDACTED] (P-1962).<sup>3</sup>
6. On 7-8 August 2019, the Prosecution interviewed the Dropped Witness.<sup>4</sup> During his interview, he provided investigators with the Notes, which

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<sup>1</sup> ICC-01/14-01/18-2212-Conf-AnxD.

<sup>2</sup> CAR-OTP-2118-9860, see Annex A.

<sup>3</sup> See, witness statements, at CAR-OTP-2068-0037 and CAR-OTP-2071-0003.

<sup>4</sup> See, witness statement, at CAR-OTP-2118-9860.

comprised rewritten notes that he had taken ‘of events at the time’; as referenced in the draft witness statement (‘Draft Statement’), the Notes were annexed thereto.<sup>5</sup>

7. On 19 August 2019, the Prosecution filed its Document Containing the Charges, in which P-1962 was cited on 58 occasions.<sup>6</sup>
8. On 10 November 2020, the Prosecution filed its list of witnesses and evidence, which featured P-1962 and did not include the Dropped Witness.<sup>7</sup>
9. On 24 December 2021, the Prosecution disclosed the Draft Statement pursuant to rule 77, however without including the annexed Notes.<sup>8</sup>
10. On 17 November 2023, the Defence filed its lists of witnesses and evidence, which included Fidel SOUSSOU and his witness statement,<sup>9</sup> and it disclosed Mr SOUSSOU’s witness statement<sup>10</sup> and moved for its admission under rule 68(2) (‘Rule 68(2) Request’).<sup>11</sup>
11. On 22 November 2023, the Defence sent an *inter partes* disclosure request to the Prosecution, seeking *inter alia* disclosure of ‘material in its possession (i) relating to the witnesses included in the Final List’ (‘November 2023 Disclosure Request’).<sup>12</sup>
12. On 27 November 2023, the Prosecution responded *inter partes*, stating that it had ‘finalised the disclosure of any Rule 77 materials associated with the remaining witnesses on your Final Witness List’ and added that, ‘[i]n the event that new undisclosed items pertinent to your witness statements surface during their

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<sup>5</sup> *Ibid.*, paras 100-103.

<sup>6</sup> ICC-01/14-01/18-282-Conf-AnxB1.

<sup>7</sup> ICC-01/14-01/18-724-Conf-AnxA.

<sup>8</sup> ICC-01/14-01/18-1231.

<sup>9</sup> ICC-01/14-01/18-2212-Conf-AnxA, p. 10.

<sup>10</sup> CAR-D29-0009-0355.

<sup>11</sup> ICC-01/14-01/18-2214-Conf.

<sup>12</sup> Email from Defence to Prosecution attaching Disclosure Request ‘ARY-2023-0290’, 22 November 2023 at 10:10 (available on request).

examination or otherwise, to the extent they are “material” as outlined in Ongwen, Al Hassan, and Lubanga, they will be disclosed on a rolling basis.’<sup>13</sup>

13. On 7 December 2023, the Prosecution filed submissions opposing the Rule 68(2) Request, on the basis of *inter alia* Mr SOUSSOU’s purported ‘potential bias’ arising from the fact that he is the father of Habib SOUSSOU’.<sup>14</sup>
14. On 18 December 2023, the Chamber denied the Rule 68(2) Request, noting that Mr SOUSSOU’s testimony contradicted that of P-1962, and instead *proprio motu* introduced his prior recorded testimony under rule 68(3).
15. On 30-31 January and 11 March 2024, Mr SOUSSOU appeared before the Chamber.<sup>15</sup> The Prosecution cross-examined Mr SOUSSOU *inter alia* on his ‘potential bias’, as well as on anti-Muslim sentiment that he purportedly expressed and/or harboured.<sup>16</sup>
16. On 12 July 2024, the Defence requested *inter partes* disclosure of the Notes pursuant to rule 77 and article 67(2), *inter alia* on the basis of the fact that in the Draft Statement to which the Notes were annexed, the Dropped Witness stated that Habib SOUSSOU never in fact served as BODA Anti-Balaka Coordinator, and that [REDACTED]; and that he thus provided an account of the establishment of the BODA Anti-Balaka Coordination that contradicted that of P-1962.<sup>17</sup>
17. On 16 July 2024, the Prosecution formally disclosed the Notes.<sup>18</sup>

## **SUBMISSIONS**

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<sup>13</sup> Email from Prosecution to Defence, 27 November 2023 at 16:12 (available on request).

<sup>14</sup> ICC-01/14-01/18-2248-Conf, para. 7.

<sup>15</sup> See, transcripts T-265, T-266 and T-274.

<sup>16</sup> See *infra*, paras 24-30.

<sup>17</sup> See, Annex B, Email from Defence to Prosecution, 12 July 2024 at 11:37 (available on request).

<sup>18</sup> ICC-01/14-01/18-2594.

**A. The sought amendment would cause no undue procedural prejudice.**

18. Allowing the sought amendment would not cause undue procedural prejudice, in accordance with the relevant factors to be considered.<sup>19</sup>
19. At the outset, the Defence notes that no undue prejudice can arise from the nature or amount of the Notes: they comprise a single document of six pages and their contents do not require complex or time-consuming analysis. In any event, the Prosecution has been in possession of the Notes since August 2019 and has therefore been aware of its content and nature for five years.
  - i) The intended purpose of the requested reliance on the Notes and its prospective significance in light of the charges and the rest of the available evidence weigh in favour of granting the sought amendment.
20. By way of background: [REDACTED], the Dropped Witness, was a Muslim resident and native of BODA, [REDACTED].<sup>20</sup> He was present in BODA when the Seleka arrived in 2013, and when violence broke out between BODA's Muslim and Christian communities around 29 January 2014;<sup>21</sup> he evacuated to [REDACTED].<sup>22</sup> In April 2014, he was appointed as an [REDACTED]; in November 2014, he was appointed as [REDACTED].<sup>23</sup>
21. The Defence intends to rely on the Notes to establish the following:
  - that on or around 28-29 January 2014, hostilities broke out between the Muslim and non-Muslim communities in BODA; and that prior to the outbreak of violence, the Seleka had distributed automatic firearms to the Muslim communities in mosques in BODA;<sup>24</sup>

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<sup>19</sup> Namely: *inter alia*, the extent to which the requested addition is opposed, the time when the addition was sought, the nature and amount of the material concerned, the intended purpose of the requested reliance on such material, and its prospective significance in light of the charges brought against the accused and the rest of the available evidence; see, ICC-01/14-01/18-2506, para. 5, citing ICC-01/14-01/18-1118-Conf, paras 8-9.

<sup>20</sup> CAR-OTP-2118-9860, para. 11.

<sup>21</sup> Ibid., paras 17-56.

<sup>22</sup> Ibid., paras 57-60.

<sup>23</sup> Ibid., paras 67.

<sup>24</sup> See, CAR-OTP-2115-0285, at 0286-0287.

- that on or around 13 September 2014, a ministerial delegation that had come to BODA from BANGUI for the purposes of holding a meeting regarding peace and inter-religious co-habitation was rejected by the BODA Christian community;<sup>25</sup> and,
- that Fidel SOUSSOU travelled to BODA on or around 17 September 2014 and, along with along with Maxime MBONDJO, called a meeting at the BODA Catholic Church to 'sensitise' the Christian population as to the underlying causes of the BODA conflict and the 'art' of inter-religious cohabitation.<sup>26</sup>

22. The Notes are significant in light of the rest of the available evidence.
23. First, they indirectly corroborate Mr SOUSSOU's testimonial evidence regarding his concrete efforts to promote and further inter-community reconciliation and cohabitation in BODA following the crisis there.<sup>27</sup>
24. They are also significant in that they demonstrate the unfounded and unmeritorious nature of the Prosecution's attempts to impugn Mr SOUSSOU's credibility on this matter.
25. As the Chamber will recall, during Mr SOUSSOU's cross-examination, the Prosecution implicitly accused Mr SOUSSOU of having harboured a desire for the BODA Muslim population to be forcibly removed from the town.<sup>28</sup> The broader implication of this line of cross-examination is that it was this anti-Muslim sentiment that underpinned Mr SOUSSOU's supposed decision to encourage his son Habib and other BODA FACA to go to BODA and to participate in the inter-religious violence that had broken out there; and that to

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<sup>25</sup> See, *ibid.*, at 0289.

<sup>26</sup> See, *ibid.*, at 0289.

<sup>27</sup> See, CAR-D29-0009-0355, para. 18; ICC-01/14-01/18-T-265-CONF-FRA ET, 14:2-15:13; and ICC-01/14-01/18-T-274-CONF-FRA ET, 17:6-19:8.

<sup>28</sup> See, ICC-01/14-01/18-T-274-CONF-ENG ET, 12:19-23; 44:19-23; 46:16-21.

that end, Mr SOUSSOU did in fact call a meeting at his home in FATIMA, [REDACTED].<sup>29</sup>

26. This impeachment attempt was based primarily on minutes of a 30 August 2014 meeting held in BANGUI of BANGUI-based BODA '*ressortissants*' ('BANGUI Meeting Minutes'), wherein it is stated that during this meeting, Mr SOUSSOU 'transmitted the message of the non-Muslim population of BODA that "the delocalisation of all Muslims in BODA is non-negotiable"'.<sup>30</sup>
27. The Notes, which establish that Mr SOUSSOU had travelled to BODA in mid-September 2014 (i.e. within weeks of the BANGUI meeting) and had called a meeting there specifically with the aim of promoting inter-religious co-habitation, thus undercut this Prosecution impeachment attempt. They corroborate Mr SOUSSOU's explanation as regards his intervention in the BANGUI meeting, i.e. that he transmitted 'what the [BODA Christian] population was saying' to the transitional government authorities present at the meeting, 'so that a solution could be found and for peace to return to BODA'; and the Notes corroborate his express denial that he himself shared the BODA Christian population's wish for the departure of the BODA Muslim community.<sup>31</sup> By extension, the Notes are thus likewise significant and relevant for the Chamber's assessment of the Prosecution's (mis-)interpretation and instrumentalization of the BANGUI Meeting Minutes.
28. As set out above, the Notes also evidence the BODA Christian community's rejection of the transitional government delegation that visited BODA in early September 2014 for the purposes of promoting interreligious co-habitation.<sup>32</sup> In

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<sup>29</sup> See also, *infra*, paras 42-43.

<sup>30</sup> CAR-D29-0013-0121; and ICC-01/14-01/18-T-274-CONF-FRA ET, 11:22-13:8. The Defence notes that, in adopting this attack, the Prosecution appears to have wilfully ignored the meaning of '*transmettre*' (defined in the *Larousse* French-English dictionary as 'to pass on', 'to convey', or 'to send on'), which evidently does not entail the 'conveyor' of information personally agreeing with the information being 'conveyed' (whence the phrase, 'don't shoot the messenger').

<sup>31</sup> See, ICC-01/14-01/18-T-274-CONF-FRA ET, 12:10-14 and 13:4-5.

<sup>32</sup> *Supra*, para 21.

this respect, the Notes thus go to the credit of Mr SOUSSOU, in that they dovetail with his testimony on the BANGUI Meeting – specifically, with his explanation as to why it was important for the transitional government authorities to be aware of the continuing hostility on the part of BODA’s Christian community towards the Muslim population. The Notes and Mr SOUSSOU’s testimony in this regard, are in turn mutually corroborative of other evidence on the trial record establishing that the BODA Christian community harboured a particularly marked hostility towards their Muslim counterparts following the explosion of inter-community violence there.<sup>33</sup>

29. Second, the Chamber will recall that the Prosecution cross-examined Mr SOUSSOU on his telephone contacts with BODA parliamentarian Maxime MBONDJO, the suggestion being that this contact was somehow nefarious, or was otherwise directed at supporting or encouraging the BODA Anti-Balaka.<sup>34</sup>
30. However, the Notes establish that MBONDJO was involved along with Mr SOUSSOU in the promotion of inter-religious co-habitation, in the September 2014 BODA meeting; and thus indicate that MBONDJO appears to have shared Mr SOUSSOU’s pro-peace and pro-reconciliation stance. In this regard, the Notes also indirectly corroborate Mr SOUSSOU’s evidence establishing Mr MBONDJO’s involvement in the BODA peace and reconciliation process that led to President SAMBA-PANZA’s first post-conflict visit to BODA.<sup>35</sup>
31. In sum, the Prosecution cannot reasonably oppose the sought amendment on the basis of the above. The Prosecution has attempted to impugn Mr SOUSSOU’s credibility through lines of cross-examination that, as it turns

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<sup>33</sup> See e.g., CAR-OTP-2042-3464 (transcript at CAR-D29-0006-0053); CAR-OTP-2127-6298, 6301 l. 80-81; CAR-OTP2107-1526, 1527, l. 4-7; CAR-D29-0005-0392, at 0393; and **(D29-P-5015)** ICC-01/14-01/18-T-294-CONF-FRA ET, 27:18-29:7.

<sup>34</sup> ICC-01/14-01/18-T-274-CONF-FRA ET, 14:11-15:25, 32:14-22. See also, ICC-01/14-01/18-T-274-CONF-ENG ET, 20:5-6 (‘Aside from Mr Mbondjo in Boda, you were in contact with other members of the Anti-Balaka coordination in that town; isn’t that right?’)

<sup>35</sup> See *infrq*, para. 42.

out, are substantially undermined by material in its own evidentiary holdings. The fact that the Defence, having belatedly come into possession of the Notes at this stage in the proceedings as a result of Prosecution failings, seeks to rely on this material to counter the Prosecution case in this regard, does not constitute undue procedural prejudice.

ii) The sought amendment is not untimely in the circumstances.

32. Notwithstanding the late stage of the proceedings, the sought amendment causes no undue procedural prejudice, as the timing of this request is attributable to the Prosecution's compound violation of its disclosure obligations.

a. *The Notes ought to have been disclosed along with the Draft Statement.*

33. The Defence submits that the Notes comprised an integral part of the Draft Statement, given the manner in which they had been provided, discussed and explained by the Dropped Witness in the latter (and annexed by the Prosecution thereto),<sup>36</sup> consistent with the Chamber's position on 'associated items' within the meaning of the legal framework of rule 68.<sup>37</sup> Differing context notwithstanding, there is no convincing reason why the Chamber's position as regards the definition of a witness's prior recorded testimony should not also apply for the purposes of the assessment of rule 77 'materiality'. This is especially so in light of settled jurisprudence of the Court holding that once the rule 77 materiality of a given document is established, the Prosecution's

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<sup>36</sup> See, CAR-OTP-2118-9860, paras 100-103. See also, albeit in the context of rule 76 disclosure, ICC-01/14-01/18-341-Conf, para. 24 (where PTC II ordered the Prosecution to disclose photographs that had been 'shown to, or provided by' witnesses during their interviews and about which witnesses had provided 'detailed information', on the basis that their disclosure 'may be necessary in order for the Defence to understand the line of questioning surrounding them' – and by extension, the Defence submits, to better understand the materiality of the disclosed statement itself).

<sup>37</sup> See, ICC-01/14-01/18-1833-Conf-Corr, para. 54 ('The Chamber observes that, in some instances, the Prosecution seeks to introduce only certain associated items, while witnesses in fact also discuss other annexes attached to the prior recorded testimony or even items that are not annexed. The Chamber is of the view that all items which have been discussed by a witness form an integral part of the prior recorded testimony and should thus be introduced under Rule 68(2)(b) of the Rules, regardless of whether a request was made in this regard.')

obligation to disclose ‘extends to the entire document and not only to the “relevant” portions of information contained within such a document’.<sup>38</sup>

34. In the circumstances at hand, the Prosecution’s obligation to disclose the Dropped Witness’s prior recorded testimony in its entirety (i.e. the Draft Statement and the Notes) was especially heightened given that the information in the Draft Statement was exculpatory in nature, in that it potentially affected the credibility of Prosecution ‘insider’ witness P-1962.<sup>39</sup>
35. Specifically, information in the Draft Statement regarding the establishment and composition of the BODA Anti-Balaka Coordination directly contradicted P-1962’s claims that Habib SOUSSOU remained in BODA after the 4 February 2014 fighting there; that Habib SOUSSOU ‘immediately’ became the Coordinator of BODA and asked [REDACTED]; or that before the end of February 2014, Habib SOUSSOU had ‘put in place’ the structure of the ComZones in BODA.<sup>40</sup> To the contrary, the Dropped Witness stated:
  - that it was in fact Prosecution witness [REDACTED] (P-1962) who was [REDACTED];<sup>41</sup>
  - that although Habib SOUSSOU had been ‘chosen by the Anti-Balaka Coordination in BANGUI’, upon his return to BODA, the members of the BODA Anti-Balaka did not accept him as their Coordinator, and [REDACTED];<sup>42</sup>

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<sup>38</sup> See e.g., *Prosecutor v Onwgen*, Decision on Defence Request in Light of Prosecution Meeting and Interview with D-100, [ICC-02/04-01/15-1335](#), 12 September 2018, paras 5-7, esp. fn. 7 and references cited therein.

<sup>39</sup> See, article 67(2).

<sup>40</sup> See, (P-1962) CAR-OTP-2068-0037, paras 48 ([REDACTED]), 80 (‘Habib SOUSSOU naturally became the Coordinator of BODA. He was the highest ranking FACA, his family was well respected in BODA, and he was also well respected himself. [REDACTED]. This happened immediately after the attack of 04 February 2014 in BODA.’), and 90 (‘Habib SOUSSOU put in place the structure of the Comzones in BODA about 2-3 weeks after 5 February 2014.’)

<sup>41</sup> See, CAR-OTP-2118-9860, para. 69.

<sup>42</sup> See, *ibid.*, paras 70-71.

- that while the Dropped Witness did not know why the BODA Anti-Balaka did not want Habib SOUSSOU as their Coordinator, he noted that Habib SOUSSOU ‘had not been involved in the fighting in BODA and then wanted to be leader – it was not fair’;<sup>43</sup> and,
- that Habib SOUSSOU ‘was rejected immediately and never served as the Coordinator in BODA’; that he did not become involved with BODA until April onwards; and that he only remained in BODA ‘a little while’ before leaving the town, after being involved in a shooting incident with MINUSCA.<sup>44</sup>

36. An additional factor in this regard was the fact that P-1962 was himself an ‘insider witness’, formally interviewed by the Prosecution as a suspect under article 55(2), and therefore potentially harboured ‘a motive to assign responsibility for [his] actions to others’ ([REDACTED]), as expressly envisaged in this Court’s jurisprudence.<sup>45</sup> In this regard, the Defence notes that as a result of his cooperation with the Prosecution, P-1962 was granted relocation via the Court’s protection programme.<sup>46</sup>

37. Lastly, when the Prosecution made the decision to sever the Notes from the Draft Statement when disclosing it, it would have been aware of the fact that the above exculpatory information regarding [REDACTED] and Habib SOUSSOU’s respective roles within the BODA Anti-Balaka (and indeed, the role(s) of [REDACTED]) was corroborated by contemporary documents relied

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<sup>43</sup> See, *ibid.*, para. 70.

<sup>44</sup> See, *ibid.*, para. 72 (‘[Habib SOUSSOU] stayed on a little while before leaving BODA because SOUSSOU, Bienvenue LNU, SARAWI (an alias) and three others got in a fight and were shot by MINUSCA at 17 km from BODA while they were looking to loot.’)

<sup>45</sup> See, in the context of rule 68(2), *Prosecutor v Abd-al-Rahman*, Decision on the Prosecution’s second application to introduce a prior recorded testimony under Rule 68(2)(c), [ICC-02/05-01/20-680-Red](#), 2 May 2022, para. 14 (‘Moreover it is self-evident that greater caution is mandated when considering the admission - under the relevant rules - of statements made by “insider” witnesses who may well have a motive to assign responsibility for their actions to others.’). More broadly, as the Chamber is aware, it is the Defence’s position that the various fabrications that P-1962 has provided further to his cooperation with the Prosecution, notably those in relation to Mr Yekatom and Coeur de Lion, are a symptom of this motive; see e.g., ICC-01/14-01/18-T-253-ENG ET WT, 21:24-24:10.

<sup>46</sup> See, ICC-01/14-01/18-757-Conf-Anx-Red, p. 6.

on by the Prosecution as evidence in this case, including P-1962's own contemporary notes;<sup>47</sup> documents containing information sourced from Sangaris;<sup>48</sup> and call data records indicating that Mr SOUSSOU was present in BANGUI (or at least not in BODA) from approximately early/mid-February 2014 until the end of April 2014, and again from mid-September 2014.<sup>49</sup>

*b. The Prosecution compounded its disclosure violation in failing to provide the Notes in response to the Defence's November 2023 Disclosure Request.*

38. The express primary legal basis for the November 2023 Disclosure Request was the 'materiality' standard as set out in *Lubanga*: i.e. that information that supports the evidence or credibility of proposed Defence witnesses falls within the scope of rule 77.<sup>50</sup>
39. In the Prosecution's response, in which it stated that 'disclosure of any Rule 77 materials associated with' Defence witnesses was 'finalised', the Prosecution did not express disagreement with this standard;<sup>51</sup> on the contrary, the Prosecution expressly further undertook to disclose 'any new undisclosed material pertinent to [Defence] witness statements' on the basis of rule 77 materiality 'as outlined in *Ongwen, Al Hassan, and Lubanga* [emphasis added]'.<sup>52</sup>
40. The Prosecution should have disclosed the Notes upon receiving the November 2023 Disclosure Request.

<sup>47</sup> See, CAR-OTP-2071-0023, at 0033, 0035 ([REDACTED]). See also, CAR-OTP-2068-0075 ([REDACTED])

<sup>48</sup> See, CAR-OTP-2053-0546, at 0546-0548 (document compiled on the basis of information provided by Sangaris commander in BODA on 11 September 2014, listing Habib SOUSSOU as the first-in-command of the 'official' BODA Anti-Balaka structure but [REDACTED]).

<sup>49</sup> See, CAR-D29-0004-3926 (CST of Habib SOUSSOU's call data); and see submissions on relevance in ICC-01/14-01/18-2562-Conf-AnxA, p. 12.

<sup>50</sup> *Prosecutor v. Lubanga*, Decision on the scope of the prosecution's disclosure obligations as regards defence witnesses, 12 November 2010, [ICC-01-04-01/06-2624](#), paras 15-18. The Defence had also cited: *Prosecutor v. Ruto & Sang*, Decision on Defence request for disclosure relating to Defence witnesses, 6 August 2013, [ICC-01/09-01/11-840-Red](#), para. 11 (finding that 'previous statements and any other material related to' two defence witnesses in that case were subject to disclosure under rule 77).

<sup>51</sup> See *supra*, para. 12.

<sup>52</sup> *Ibid.*

41. As noted above, the Notes refer *inter alia* to a 17 September 2014 meeting held at the Catholic church in BODA, which had been called by Fidel SOUSSOU and Maxime MBONDJO for the purpose of ‘sensitising’ the Christian population as to the causes of the BODA conflict and the ‘art’ of inter-religious community cohabitation.<sup>53</sup>
42. The Notes therefore supported Mr SOUSSOU’s evidence, as set out in his statement, regarding his involvement in peace-building efforts in BODA: specifically, regarding the work that he, Maxime MBONDJO, and other BODA ‘ressortissants’, along with Bishop Guerrino (‘Rino’) PERIN (P-5015), undertook to involve President SAMBA-PANZA (P-0952) in the BODA peace process.<sup>54</sup>
43. In addition, in his statement, Mr SOUSSOU denied P-1962’s uncorroborated claims that i) the idea for BODA’s BANGUI-based FACA to return to BODA when the violence broke out originated with Mr SOUSSOU; that ii) Mr SOUSSOU told his son Habib to ‘convey a message to all the FACA from BODA to go defend BODA’; and that iii) [REDACTED].<sup>55</sup>
44. By way of underlying reasons for these denials, Mr SOUSSOU cited the fact that he had relatives in both the Christian and Muslim communities of BODA, and that as such he ‘could not accept’ fighting there, nor could he have ‘sent’ or ‘encouraged’ his son to go and kill his cousins.<sup>56</sup>
45. The Prosecution would therefore have been aware that the Notes, which evidence Mr SOUSSOU’s pro-interreligious-cohabitation stance, and his concrete efforts to encourage and promote peace between the communities, supported Mr SOUSSOU’s evidence with respect to the reasons underlying his

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<sup>53</sup> See, CAR-OTP-2115-0285, at 0289.

<sup>54</sup> See, CAR-D29-0009-0355, para. 18.

<sup>55</sup> See, CAR-OTP-2068-0037, paras 10-11; see also, ICC-01/14-01/18-T-141-CONF-FRA ET, 12:11-13:18; and see, *contra*, CAR-D29-0009-0355, paras 32-33. As set out above, Mr SOUSSOU’s statement was disclosed to the Prosecution on 17 November 2023; see *supra*, para. 10.

<sup>56</sup> See, CAR-D29-0009-0355, paras 32-33.

denial of P-1962's claims – and therefore by extension, supported the credibility of his denials.

46. Lastly, the Notes ought to have been disclosed while the Prosecution formed the intention to cross-examine Mr SOUSSOU along the lines of the above-noted strategy of impeachment. In this regard, the Defence notes that the BANGUI Meeting Notes and Mr SOUSSOU's call data records were included in the Prosecution's list of documents for cross-examination for Mr SOUSSOU, circulated on 29 January 2024.<sup>57</sup>
47. To sum up: the Prosecution thus violated its disclosure obligations on multiple occasions. The Notes should have been provided to the Defence since the Draft Statement was disclosed, on 24 December 2021; by 27 November 2023, when the Prosecution informed the Defence that disclosure of material relevant to Defence witnesses had been 'finalised';<sup>58</sup> or at latest, by 29 January 2024, by which point its strategy to impeach Mr SOUSSOU's credibility had been decided upon. No undue prejudice arising from the timing of this request can therefore be claimed on the part of the Prosecution; and any Prosecution opposition on this basis should carry no weight in the Chamber's consideration of this request.

**B. Granting sought amendment would be in the interests of justice and is necessary for the Chamber's determination of the truth.**

48. The Defence submits that it would be unreasonable and inconsistent with the Chamber's truth-seeking function to disallow the Defence from relying on the Notes.<sup>59</sup>
49. First, the Defence submits that the sought amendment comprises a necessary and reasonable remedy for the prejudice occasioned by the Prosecution's

<sup>57</sup> See, Email from Prosecution to Chamber and Parties of 29 January 2024, at 16:11 (available on request).

<sup>58</sup> See *supra*, paras 9, 12.

<sup>59</sup> ICC-01/14-01/18-989-Conf, para. 6.

compound disclosure violations in respect of the Notes, as set out above. Conversely, denial of the sought amendment would effectively reward the Prosecution for its failure to meet its disclosure obligations.<sup>60</sup> The interests of justice therefore favour granting the request.

50. Second, the sought amendment is necessary for the Chamber's determination of the truth.
51. As explained above, the Notes evidence Defence witness Fidel SOUSSOU's concrete efforts to promote peace, reconciliation, and inter-religious co-habitation among the Christian and Muslim communities in the aftermath of the violence that erupted in BODA. They thus comprise a probative and objective counterweight to the Prosecution's instrumentalization of the BANGUI Meeting Minutes and Mr SOUSSOU's call data records, which was aimed at misleadingly portraying Mr SOUSSOU as an individual who had positioned himself against the Muslim population of BODA, and who had actively sought the departure of the BODA Muslims. Unfounded as this portrayal may be, the Prosecution's attempts to impeach Mr SOUSSOU's credibility nonetheless form part of the trial record in these proceedings. The sought amendment is therefore necessary for the determination of the truth as to Mr SOUSSOU's demonstrable pro-reconciliation stance; and to expose as unfounded the Prosecution's attempts to impugn his credibility on this matter.
52. By extension, the sought amendment is necessary for the Chamber's determination of the truth with respect to the claims of Prosecution insider

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<sup>60</sup> See for instance at the ICTR where the Trial Chamber II introduced into evidence the transcripts of a witness with particular regard to the fair trial rights of the Accused in light of the Prosecution's violation of its disclosure obligations (*Prosecutor v. Bizimungu et al*, Decision on Justin Mugenzi's motion to admit transcript extracts of General Romeo Dallaire's evidence in the Ndindiliyama Proceedings, [ICTR-99-50-T-29482](#), 4 November 2008). See also *Prosecutor V. Bizimungu et al*, Judgement and Sentence, [ICTR-99-50-T-36633](#), 30 September 2011, at para. 171 where the Chamber recalls the various occasions where it admitted into evidence potentially exculpatory transcripts that the Prosecution failed to disclose in a timely manner. See also para. 174 of the judgment where the Chamber drew an inference in favour of the Accused in light of the Prosecution late disclosure of exculpatory material.

witness [REDACTED] (P-1962). As noted above, the Notes serve to demonstrate that P-1962's claims that Mr SOUSSOU encouraged others to participate in violence in BODA, [REDACTED], are false, because they demonstrate the falsity of the premise of this [REDACTED], i.e. a supposed desire on Mr SOUSSOU's part to encourage or to further the conflict in BODA.

53. Granting the sought amendment is thus necessary to ensure that the Chamber can include the Notes in its holistic assessment of the extensive evidence and indicia that P-1962 has testified falsely in these proceedings with the aim of assigning responsibility for his actions – [REDACTED].

### **CONFIDENTIALITY**

54. This Request is filed on a confidential basis as it makes reference to evidence of a protected witness. A public redacted version will be filed forthwith.

### **RELIEF SOUGHT**

55. In light of the above, the Defence respectfully requests that Trial Chamber V:
- FIND** that the Prosecution has violated its disclosure obligations, as set out in paragraphs 33-47 of this request; and
- GRANT** the Defence leave to amend its List of Evidence to add the Notes.

**RESPECTFULLY SUBMITTED ON THIS 30<sup>th</sup> DAY OF AUGUST 2024**



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