

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23 September 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

**Public Redacted Version of the "Yekatom Defence Request for Leave to Add 7
Items to its List of Evidence", 16 August 2024, ICC-01/14-01/18-2633-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Thomas Hannis

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**
Ms Marie O'Leary

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

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 seven items which it submits are of significant relevance and probative value. It is further submitted that their addition to the Defence’s List of Evidence would not cause any unfair prejudice, nor infringe on the fair and expeditious conduct of the proceedings, due to their limited nature and amount.

PROCEDURAL HISTORY

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)” which set 17 November 2023 as the deadline for the Defence to file its List of Evidence.¹
4. On 17 November 2023, the Defence filed its List of Evidence (“LoE”) in accordance with the Chamber’s directions.²

SUBMISSIONS

5. The Defence recalls that the Chamber previously found that “*a request to add items to a list of evidence does not constitute a request for the variation of a time limit in accordance with Regulation 35 of the Regulations of the Court, but rather a request for leave from the Chamber to add items in accordance with its decision fixing the time limit for filing the initial list of evidence*”.³

¹ ICC-01/14-01/18-1892, para. 21.

² ICC-01/14-01/18-2212-Conf, paras. 18-21, see also ICC-01/14-01/18-2212-Conf-AnxD.

³ ICC-01/14-01/18-989-Conf, para. 5.

6. The Chamber has to determine for each request whether the reliance on the items causes undue prejudice. Several factors are assessed for this determination such as *inter alia* (i) the extent to which the requested addition is opposed, (ii) the time when the addition is sought, (iii) the nature and amount of material concerned, (iv) the intended purpose of the Defence's requested reliance on the material, and (v) the prospective significance in light of the charges and of the rest of the available evidence.⁴
7. In the present instance, the Defence requests leave to add to its LoE seven items, as detailed below (collectively, the "Items"):
 - A press article from Reuters, titled "*Ten dead as Chadian troops open fire on Bangui civilians – officials*", published on 30 March 2014;⁵
 - An Investigation report related to CAR-OTP-P-2583;⁶
 - Two corrected translations;⁷
 - Two baptism certificates issued by [REDACTED] and the associated investigation report.⁸
8. The Defence notes that, although this request contains several items varying by type, date, source identity and chain of custody, it considers that grouping the relevant Items into the present consolidated request would be a more efficient manner in which to proceed.

A. Press Article

9. CAR-OTP-2001-4523 is a Reuters press article published on 30 March 2014 reporting that Chadian troops opened fire on Bangui civilians killing at least 10 people and wounding a dozen others. The press article was disclosed by

⁴ ICC-01/14-01/18-989-Conf, para. 5.

⁵ CAR-OTP-2001-4523.

⁶ CAR-D29-0024-0006.

⁷ CAR-D29-0006-1490; CAR-D29-0006-1491.

⁸ CAR-D29-0013-0281, CAR-D29-0013-0283, CAR-D29-0024-0005.

the Prosecution on 27 October 2023.⁹ The Defence contends that the addition of this document to its LoE is warranted.

10. First, this item bears relevance for the adjudication of the case as the violence used by certain contingents of international forces, notably the Chadians, against civilians contributed to the degradation of the security situation in the country. As stated in the press article, the shooting in March 2014 was reported to be the latest in a string of incidents involving Chadian troops. This illustrates the context in which Mr Yekatom and his group, as FACAs, had to operate during the events and in particular the security vacuum which they sought to fill in furtherance of the protection of civilians.
11. It is also relevant because, while the "*mesures de confiance*" are in place, requiring international forces to act as the security forces in CAR, the behavior of certain international forces makes it difficult for FACA members like Mr Yekatom to trust them and allow them to secure the country independently.
12. This article is corroborative of other documentary evidence in this case,¹⁰ as well as the testimony of witnesses such as former President Samba-Panza (P-0952)¹¹ and former Prime Minister Tiangaye (P-0291).¹²
13. Second, the sought amendment is not unduly delayed in the circumstances as this press article was disclosed by the Prosecution on 27 October 2023,¹³ less than a month before Defence was directed to file its LoE. At the time of filing its LoE, the Defence had explicitly raised the possibility of requesting

⁹ See Metadata on JEM/Nuix.

¹⁰ CAR-OTP-2012-0424, from 01:16 onward; CAR-OTP-2055-1987 at page 2138 "*During that period excessive use of force by MISCA soldiers, notably the Chadian contingent, that caused the death of numerous civilians, was reported*", and page 2140 "*On 30 May 2014, Burundian soldiers of MISCA used excessive force when they opened fire on people protesting against the government and international forces, killing at least two individuals and injuring several others*".

¹¹ **P-0952** : ICC-01/14-01/18- T-252-ENG CT at 11:13:59, 11:16:31.

¹² **P-0291** : ICC01/14-01/18-T-052-ENG ET at 11:47:34.

¹³ See Metadata on JEM/Nuix.

the addition of elements to its LoE¹⁴ given that it had not been in a position to review the large quantities of new items disclosed by the Prosecution.¹⁵ Since this disclosure, the Defence has been fully engaged in the presentation of its witnesses and in the continuation of its own investigations. It is only at this juncture that the Defence has had a meaningful opportunity to review all the items for the purpose of the remaining LoE amendment request and analyse the press article to make a proper determination to rely on the item.

14. Third, and more pertinently, the sought addition to the Defence LoE would not cause undue prejudice to the Prosecution.
15. Indeed, the item is limited in volume. The article only consists of two pages and does not present any significant complexity, therefore, the Prosecution can appraise its content without overburdening its resources.
16. Moreover, the item is known to the Prosecution as it is the disclosing party. It only disclosed the item on 27 October 2023 after being in its possession since April 2014, more than 10 years ago.¹⁶
17. Finally, any prejudice would be limited at this stage due to the fact that the Defence will ultimately tender these items through a bar table application, giving Parties and Participants further time to analyse the item if need be and make corresponding submissions should they so wish.
18. Consequently, in light of the above, the Defence respectfully requests the Chamber to grant its request for leave to add item CAR-OTP-2001-4523 to its LoE.

¹⁴ Including the ones disclosed *inter alia* in Trial Rule 77 package 112 27 October 2023, as is the case of CAR-OTP-2001-4523, see ICC-01/14-01/18-2212-Conf, para. 21, fn 11.

¹⁵ ICC-01/14-01/18-2212-Conf, para. 21.

¹⁶ See Metadata field “Chain of Custody” in JEM/Nuix which indicates that the item was collected by Prosecution’s investigators on 4 April 2014.

B. Investigation Report related to CAR-OTP-P-2583

19. The Defence requests leave to add Investigation Report CAR-D29-0024-0006 to its LoE.
20. This item bears relevance for the adjudication of the case as it relates to the identification of former Prosecution witness, P-2583, an alleged child soldier who has identified himself as [REDACTED] in these proceedings¹⁷ but is also identified as [REDACTED].
21. Specifically, the item is relevant to establish that [REDACTED] and [REDACTED] are one and the same.¹⁸ This assertion is corroborated by D29-P-6036's testimony, who recognized [REDACTED] on a Facebook screenshot extracted from the account of [REDACTED] and specified that the latter [REDACTED].¹⁹
22. In the circumstances, any undue prejudice caused to the Prosecution by addition of the item to the LoE is limited as the Investigation Report is brief (only two pages) which means that its analysis will not be unduly burdensome.
23. Further, this was a former Prosecution witness, and the Prosecution had ample opportunity to explore this issue with their witness at the time, including through their own evidence, such as the ESF list (CAR-OTP-2115-0369).
24. Moreover, the Defence highlights that the present request is limited to the addition of the item to its LoE. The Defence will subsequently tender the item through a bar table application giving Parties and Participants further

¹⁷ **P-2583** : CAR-OTP-2123-0003-R03; ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr-Red, page 2.

¹⁸ See the Investigation Note CAR-D29-0024-0006 at 0007 : "His interlocutor explained that [REDACTED] is a [REDACTED] [...]. He explains that [REDACTED]."

¹⁹ **P-6036** : ICC-01/14-01/18-T-260-CONF-FRA CT, from [12 :33 :40] to [12:37:53]; see also CAR-D29-0016-0172.

time to analyse the item if need be and make corresponding submissions as regard to its formal inclusion in the case file.

25. Consequently, in light of the above, the Defence respectfully requests the Chamber to grant its request for leave to add item CAR-D29-0024-0006 to its LoE.

C. Translations

26. The Defence requests leave to add to its LoE two translations relating to videos CAR-OTP-2065-4484²⁰ and CAR-OTP-2065-3576.²¹
27. The Defence is cognizant that, in principle, *“recognising the formal submission of audio-visual material automatically includes recognising the formal submission of any associated transcripts or translations which were duly disclosed. This is the case irrespective of whether these transcripts/translations were on the list of evidence or formally submitted”*.²² However, in the present instance the two aforementioned items are relied on to contest the validity of the translations carried out and disclosed by the Prosecution. In light of this special circumstance, and in order to avoid any confusion as regards the status of the Defence and Prosecution’s translations, the Defence considers that proceeding with a formal request for leave to add the items to its LoE is warranted.
28. Both items are relevant as they correct mistakes identified in the Prosecution’s own translations which, if left uncorrected, could lead to a misinterpretation of the content of videos.

²⁰ CAR-D29-0006-1490.

²¹ CAR-D29-0006-1491.

²² ICC-01/14-01/18-631, para. 64.

29. CAR-D29-0006-1490 is a translation and transcription created by the Defence of video CAR-OTP-2065-4484, as the Prosecution versions ²³ do not accurately reflect the content of the video. Indeed, the Defence highlights that the Prosecution transcription and translation indicate that the last individual would have said in French : *“Tu vas payer moi ? Pour lui dire [phon.] que moi, je suis ici, le Caporal-Chef...”*. However, as can be heard in video CAR-OTP-2065-4484, and as transcribed in CAR-D29-0006-1490, the individual instead said *“Stop ! Tu peux appeler Rombhot ? Pour lui dire que moi je suis ici...le caporal chef...”*. This difference is of significance as the Prosecution avers that the video shows the identification of members of Yekatom’s group.²⁴ Other than the fact that the Prosecution did not substantiate this assertion, the Defence notes that the fact that the individual asks P-1819 to transmit a message to Mr Yekatom, about the fact that “he is here” would tend to imply that the pictured individuals are not part of Mr Yekatom’s group. As such, the Defence’s translation is relevant for the proper assessment by the Chamber of video CAR-OTP-2065-4484 during its deliberation.
30. CAR-D29-0006-1491 is a translation and transcription created by the Defence of video CAR-OTP-2065-3576 as the Prosecution version ²⁵ incorrectly indicates that in the middle of the video, Mr Yekatom would have said *“Vous êtes très têtus”* while the latter does not appear in the video, nor is his voice heard at any point in the video. As indicated by the Defence in its previous submissions with regard to the Prosecution’s translation: *“this translation indicate that a sentence was pronounced by Mr Yekatom. However it is clearly false as (i) Mr Yekatom does not appear on the video, (ii) his voice is never heard at any point, (iii) Mr Yekatom does not appear in any of the other videos mentioned above*

²³ CAR-OTP-00002060 & CAR-OTP-00002111.

²⁴ See Prosecution’s submission in the OTP column in ICC-01/14-01/18-2233-Conf-AnxA, item 476, page 425.

²⁵ CAR-OTP-00002221.

in which this group appears".²⁶ The addition of CAR-D29-0006-1491 to the Defence's LoE is warranted for the Chamber to have a proper understanding of what is said in video CAR-OTP-2065-3576 and to not risk being misled as to the presence of Mr Yekatom, while the latter is in reality not present nor is his voice heard.

31. In the circumstances, the Defence argues that addition of the two translations to its LoE would not unduly prejudice the Prosecution. Indeed, both items consist of translations of videos submitted by the Prosecution itself. Moreover, the Defence in its answer to the Prosecution's Bar Table Motion indicated that it was contesting the original translations disclosed, with details as regards which parts of the translations were contested.²⁷ The Prosecution was thus put on notice of the Defence's position.
32. Any potential prejudice would in any event be limited at this stage as the Defence intends to include the two translations in its ultimate Bar Table Motion, giving Parties and Participants further time to analyse the items and, if need be, make corresponding submissions.
33. Irrespectively, any prejudice caused to the Prosecution by the late addition of the translations to the Defence's LoE is outweighed by the interests of justice and fairness of the proceedings, which would be irremediably affected should the original incorrect translations remain present on the case record in isolation.
34. Consequently, in light of the above, the Defence respectfully requests the Chamber to grant its request for leave to add items CAR-D29-0006-1490 and CAR-D29-0006-1491 to its LoE.

²⁶ ICC-01/14-01/18-2233-Conf, Anx A, item 451, page 406.

²⁷ See ICC-01/14-01/18-2233-Conf-AnxA, items 451 and 476.

D. Two baptism certificates issued by [REDACTED] and the associated investigation report

35. The Defence requests leave to add the baptism certificate of CAR-D29-P-6049,²⁸ a blank version of the baptism certificate issued at the [REDACTED],²⁹ as well as the associated investigation report of the Defence to its LoE.³⁰
36. These items are relevant to illustrate the standard appearance of official baptism certificates issued by [REDACTED] and how the baptism card of CAR-V45-P-0001³¹ does not conform to the established layout. This comparison is essential as it provides tangible evidence that the baptism card of CAR-V45-P-0001 deviates from the official format and suggests that V45-P-0001's baptism card is not an authentic document issued [REDACTED]. This document is therefore relevant to assess the reliability of CAR-V45-00000012, his identity documents and ultimately, the evidence provided by CAR-V45-P-0001.
37. These documents are corroborated by the statement of CAR-D29-P-6049 who provided that [REDACTED].³² CAR-D29-6049 has been a pastor of [REDACTED] and has been baptising worshippers [REDACTED]. He explains that [REDACTED] is not the baptism card [REDACTED] as the mention of [REDACTED] is irregular and that the usual insignia does not appear.³³ These irregular elements identified by the witness on the baptisms cards are clearly visible in the two cards he provided from [REDACTED].³⁴

²⁸ CAR-D29-0013-0281.

²⁹ CAR-D29-0013-0283.

³⁰ CAR-D29-0024-0005.

³¹ CAR-V45-00000012.

³² **P-6049** : CAR-D29-0009-0759-R01, paras. 28-36.

³³ **P-6049** : CAR-D29-0009-0759-R01, paras. 28-29.

³⁴ CAR-D29-0013-0281, CAR-D29-0013-0283.

38. The Defence acted diligently in disclosing the documents promptly after receiving them from the witness CAR-D29-P-6049.³⁵ The Defence could not have anticipated the existence of these documents at an earlier stage as they were only provided to the Defence by the witness during [REDACTED] as detailed in the Defence Investigation Report.³⁶ The Defence had inquired with the witness if he was in possession of baptism certificates from [REDACTED] during his interview with the Defence. At that time, the witness did not have the documents with him. The witness resides in a remote area and has limited access to the telephone network, which made it challenging for the Defence to contact the witness to obtain the certificates earlier on.
39. The present submission of these three documents by the Defence does not prejudice the Prosecution nor the other participants. Given the brevity and straightforward nature of the documents, they require minimal time for review, thereby minimizing any risk of delay or prejudice in the proceedings. The Defence submissions with regard to the lack of reliability and authenticity of the identity documents of CAR-V45-P-0001, including its baptism card, have been raised by the Defence before the Chamber and all parties and participants. Moreover, these three documents will be included in an upcoming Bar Table motion request, where all parties will have the opportunity to make further submissions if necessary.
40. Consequently, in light of the above, the Defence respectfully requests the Chamber to grant its request for leave to add items CAR-D29-0013-0281, CAR-D29-0013-0283 and CAR-D29-0024-0005 to its LoE.

³⁵ The Defence disclosed these three items to the Parties and Participants on 2 August 2024 at 14:36 as part of the package 'Trial D29 package 105 2 August 2024'.

³⁶ CAR-D29-0024-0005.

CONCLUSION

41. In light of the above, the addition of the Items to the Defence's LoE 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. Moreover, the request does not concern the submission of evidence, but merely the inclusion of the items on its LoE. 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 LoE.

CONFIDENTIALITY

42. The present request is filed on a confidential basis as it contains identifying information of protected individuals. A public redacted version will be filed in due course.

RELIEF SOUGHT

43. In light of the above, the Defence respectfully requests Trial Chamber V to: **GRANT** leave to add items CAR-OTP-2001-4523, CAR-D29-0024-0006, CAR-D29-0006-1490, CAR-D29-0006-1491, CAR-D29-0013-0281, CAR-D29-0013-0283 and CAR-D29-0024-0005 to the Defence List of Evidence.

RESPECTFULLY SUBMITTED ON THIS 23rd DAY OF SEPTEMBER 2024³⁷



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

³⁷ The Defence is grateful for the assistance of legal intern Mr Amaury Mandosse in the drafting of this request.