

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 20 November 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of "Prosecution's Request to present Additional Evidence
for potential Sentencing", ICC-01/14-01/18-2679-Conf, 6 September 2024**

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

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INTRODUCTION

1. Pursuant to the “Decision on the Sentencing Procedure and Amended Directions on the conduct of the proceedings”¹ and article 76(2), the Prosecution requests the submission of (i) a news broadcast reporting on YEKATOM shooting his gun in the CAR National Assembly;² and (ii) the written statements of [REDACTED];³ for potential sentencing⁴.

2. *First*, the video recording of the National Assembly incident shows that YEKATOM is a violent individual, contrary to the character evidence put forth by the Defence suggesting that he is a tolerant man, or one of peace. The footage of the broadcast depicts in vivid detail , YEKATOM firing a gun repeatedly in a room of civilians, demonstrating his callous disregard for human life. Moreover, his conduct is consistent with a longstanding history of violence permeating the pattern of behaviour underlying the crimes with which he is charged, as described in the trial record.

3. *Second*, the statements of [REDACTED] provide direct *prima facie* evidence relevant to the Chamber’s determination of the gravity of Count 29 and/or the manner of its commission, and the extent of the damage caused, in particular the harm caused to the child victims. These are expressly relevant factors for the Chamber’s consideration determining the appropriate sentence for YEKATOM pursuant to article 76 and Rule 145 of the Rules of Procedure and Evidence (“Rules”).

4. *Third*, there exists no procedural bar to the submission of the Additional Evidence. As set out in the Court’s long-standing jurisprudence:

¹ ICC-01/14-01/18-2600, para. 5.

² CAR-OTP-2093-0830.

³ CAR-OTP-2075-1751, CAR-OTP-2123-0536, CAR-OTP-2075-1743(hereinafter, “Written Statements”). See also, Annex B.

⁴ Additional Evidence.

“The Chamber does not consider it necessary for the parties to meet the procedural pre-requisites of Rule 68 in order to submit post-conviction witness statements in writing for sentencing”.⁵

5. Although article 74 and article 76 proceedings are consolidated in this case, this does not change the calculus. Evidence submitted for the purposes of sentencing will *only* be considered in relation to and after a finding. Thus the consolidated proceedings here do not transform the status of the Additional Evidence. It retains its ‘post-conviction’ status, whether characterized as evidence or as ‘submissions’ within the meaning of article 76(1).

I. CONFIDENTIALITY

6. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), this response is filed as “Confidential” with Annexes A and B, as they contain information that should not be made public at this time. A public redacted version will be filed as soon as practicable.

II. SUBMISSIONS

A. The Additional Evidence is relevant to determine the appropriate sentence

7. In relevant part, Rule 145(1) requires the Court to:

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime; and

(c) [...] give consideration, inter alia, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of

⁵ ICC-01/05-01/13-2025, para. 6. *See also*, ICC-01/12-01/15-T-4-Red-ENG, page 3 line 20 to page 4 line 15 and ICC-01/04-01/07-3463-Conf-tENG, para. 8.

participation of the convicted person; the degree of intent; the circumstances of manner, time and location ...”

8. The Written Statements are unique. They are not subsumed by the existing trial record, nor are they unduly cumulative. While the Chamber has previously heard evidence regarding the presence of child soldiers in YEKATOM’s group, the statements of [REDACTED] provide insight into activities of child soldiers within the group during the relevant period. The Written Statements are necessary to the Chamber’s assessment of the gravity of the crimes and the extent of harm inflicted on the recruited children – as victims, required under the regulatory framework.

9. [REDACTED]. Their evidence provides a first-hand account of several relevant facts: (i) the number of child soldiers in the group, and their ubiquity therein; (ii) the treatment of the children within the group by Anti-Balaka elements; (iii) their training, activities, punishment; (iv) the related nature and degree of harm to which they were exposed either as expressly related or inferable from the circumstances described; and (v) their presence in areas wherein they were exposed to harm as combatants, such as Anti-Balaka bases.

10. As such, the Written Statements are *prima facie* relevant to the appropriate determination of YEKATOM’s sentence, should he be convicted.

a. [REDACTED] statements⁶

11. As noted, the Prosecution tenders [REDACTED] provided to the Prosecution and his statement of [REDACTED].⁷

12. [REDACTED] statements establish *inter alia*, the following:

⁶ CAR-OTP-2075-1751, and CAR-OTP-2123-0536.

⁷ See Annex B.

- Approximately[REDACTED] children ranging in age between 14 and 17 years old were at [REDACTED] bases, where YEKATOM observed them.⁸
- Many of the children came from the provinces and while some were orphans, others had been separated from their parents by the Seleka and they decided to join the Anti-Balaka.⁹
- The child soldiers lived among the elements.¹⁰
- Some of the children were at the barricades.¹¹

13. [REDACTED] Statements, are reliable¹² and probative of key sentencing factors requiring the Chamber's consideration. In addition to demonstrating YEKATOM's degree of intent and participation in the crime, they show how children were recruited into his Anti-Balaka group,¹³ their extreme vulnerability, and the actual and potential risk of harm to which they were exposed. Specifically, the Statements address the activities they undertook at the bases, their separation from their families, the absence of medical treatment, the disruption of their education, and the potential lasting damage of being recruited into YEKATOM's group.¹⁴

b. [REDACTED] statement¹⁵

14. As noted, the Prosecution tenders [REDACTED].¹⁶

15. [REDACTED] statement establishes, *inter alia*, the following:

⁸ CAR-OTP-2075-1751 at para. 34-35, CAR-OTP-2123-0536, para 91.

⁹ CAR-OTP-2075-1751 at para. 35.

¹⁰ CAR-OTP-2075-1751, para. 37.

¹¹ CAR-OTP-2075-1751, para. 37.

¹² See ICC-01/09-01/11-1938-Red-Corr, para. 66.

¹³ See CAR-OTP-2122-9082 at 9140-9141 ([REDACTED] that one of the modes of enlistment used by the Anti-Balaka included providing protection for children and accepting children with a desire for revenge).

¹⁴ Rule 145(1)(c) of the Rules.

¹⁵ CAR-OTP-2075-1743.

¹⁶ See Annex B.

- There were children within the Anti-Balaka movement, in particular at the YAMWARA School base and in SEKIA,¹⁷ including five boys under the age of 15 at the YAMWARA School.¹⁸ YEKATOM was aware of their presence in the Group, as he inspected his elements section by section in military style.¹⁹
- The children at YAMWARA had the same duties as everyone else: two days manning the barrier and two days cooking. [REDACTED].²⁰
- If the YAMWARA School base was attacked, everyone, including the child soldiers were expected to take part in the defence. The children did not have automatic weapons but had hunting guns and machetes.²¹
- YEKATOM ordered the children transferred from the YAMWARA School base to the SEKIA base. At the SEKIA base, the children were trained by the ComZones and FACA elements on how to strip and assemble automatic rifles like AK47s, maintain the weapons and were taught what to do if the weapons jammed.²²
- The children in YEKATOM's Group were treated as adults and like any other Anti-Balaka element. They were trained and subjected to the same disciplinary measures like any other Anti-Balaka element.²³ At times, their duties included manning road barriers and collecting money from the drivers as a fee to pass through.²⁴

16. [REDACTED] statement is reliable and is highly probative to key issues relevant for sentencing, namely YEKATOM's degree of intent and participation in the

¹⁷ CAR-OTP-2075-1743 at para. 8.

¹⁸ CAR-OTP-2075-1743 at para. 11.

¹⁹ CAR-OTP-2075-1743 at para. 11.

²⁰ CAR-OTP-2075-1743 at paras. 13-14.

²¹ CAR-OTP-2075-1743 at para. 12.

²² CAR-OTP-2075-1743 at para. 16.

²³ CAR-OTP-2075-1743 at para. 18.

²⁴ CAR-OTP-2075-1743 at para. 19.

commission of the crime. The evidence similarly highlights the children's vulnerability and the harm to which they were exposed. It further describes their exposure to violence both at the bases and during operations in the bush, the acts they were required to perform, and the punishment they endured. Additionally, it demonstrates their separation from families, lack of medical care, interruption of their education, and the potential long-lasting harm caused by their association with an armed group.²⁵

c. Expeditionousness and Absence of prejudice

17. The Written Statements are limited. The Prosecution does not seek to call either [REDACTED], thereby expediting and streamlining any prospective sentencing proceeding. Moreover, the Defence will not be unfairly prejudiced by this evidence. The Defence is fully aware of the evidence, indeed [REDACTED]. Moreover, the Chamber's consideration of this material only arises as and when a conviction to which it is relevant is found. Thus, the material does not unduly prejudice any determination of the Accused's guilt or innocence in respect of the charges. By contrast, this material is necessary to the determination of an appropriate sentence should YEKATOM be convicted.

18. The Chamber's consideration of the Written Statements would not undermine the fairness of the trial in any way, would advance the substantial countervailing interest of judicial economy and the expeditious conduct of the proceedings, and moreover ensure that *in the event of a conviction*, a sentence reflecting the gravity of the crime is imposed in accordance with article 78(1).

B. There exists no procedural bar for the submission of the Additional Evidence

19. Unlike a Trial Judgment which may only be based on "[..]evidence submitted and discussed before [the Chamber] at the trial"²⁶, the sentencing Decision may be based

²⁵ Rule 145(1)(c) of the Rules.

²⁶ Article 74(2).

on “evidence or *submissions* relevant to the sentence [..]”.²⁷ The Chamber in *Bemba et al* has interpreted article 76(1) – which similarly requires the Chamber to take into account “the evidence and submissions presented and submissions made during the trial that are relevant to the sentence” – as a provision empowering it to dispense with the evidentiary pre-requisites of Rule 68 of the Rules at the sentencing stage.²⁸

20. Likewise, in the *Katanga* case, the Chamber admitted the written statements of four witnesses and held that “[..] the Chamber considers that these evidentiary items satisfy the relevancy requirement stipulated in article 76(2) of the Statute and sees no obstacle to their being admitted into the record [..]”.²⁹

21. Therefore, there exists no procedural bar for the submission of the Additional Evidence. It is relevant to the Chamber’s determination of the Accused’s sentence, is probative, and bears sufficient *indicia* of reliability. Accordingly, the Chamber should appropriately consider it in determining the proper sentence upon conviction in this case.

²⁷ Article 76(2) [emphasis added].

²⁸ ICC-01/05-01/13-2025, paras. 6-7.

²⁹ ICC-01/04-01/07-3463-Conf-tENG, para. 8. *See also*, ICC-01/12-01/15-T-4-Red-ENG, page 3 line 20 to page 4 line 15.

III. REQUESTED RELIEF

22. For the above reasons, the Prosecution respectfully requests that the Chamber recognises video CAR-OTP-2093-0830 and the written statements identified at Annex B as formally submitted for the purposes of sentencing.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 20th day of November 2024
At The Hague, The Netherlands