

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **17 June 2020**

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

**Public redacted version of “Motion For Additional Details”, 15 June 2020,
ICC-01/14-01/18-554-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. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully request that the Chamber obtain and provide additional details as to the identities of the alleged victims so that Mr. Yekatom has adequate notice as to the nature, cause and content of the charges that he must defend against at trial.

RELEVANT PROCEDURAL HISTORY

2. On 19 August 2019, the Prosecution filed its Document Containing the Charges (“DCC”).¹
3. As to Counts 2 and 3 (Boeing/Cattin murders), it was alleged that during the attack on BOEING, YEKATOM’s elements killed “at least six Muslim civilians (including traders at the BOEING Market). Among the victims were [REDACTED], and [REDACTED] and his family members.”² It was further alleged that “during the attack on CATTIN, elements of YEKATOM’s Group killed at least another four Muslims.”³
4. As to Count 29 (Child soldiers), it was alleged that:

From at least December 2013 through August 2014, children under age 15 and were stationed at the YAMWARA School Base and other bases and checkpoints controlled by YEKATOM, including in BOEING, along the PK9 – MBAIKI axis in SEKIA and PISSA, and along the PISSA – MONGOUMBA axis, [REDACTED]. These children carried out a variety of tasks such as manning the checkpoints and participating in hostilities, including the 5 December 2013 Attack.⁴

¹ [ICC-01/14-01/18-282-AnxB1-Conf](#); Public redacted version: [ICC-01/14-01/18-282-AnxB1-Red](#).

² *Id.*, para. 250.

³ *Id.*, para. 251.

⁴ *Id.*, para. 359.

[REDACTED].⁵

5. The hearing on the confirmation of charges took place between 19 September and 11 October 2019. On 23 September, in its oral submissions, the Defence objected to Count 29, contending that the failure to identify the child soldiers allegedly enlisted and used by Mr. Yekatom provided him insufficient notice of the charges and requested that the Pre-Trial Chamber order the Prosecution to specify the names of those alleged child soldiers.⁶
6. The Prosecution filed a written response to the Defence arguments at the confirmation hearing, contending that the “sheer scale” of the crime made it unnecessary for it to provide the identity of the child soldiers.⁷
7. The Defence filed a written reply in which it contended that the “sheer scale” exception was inapplicable under the facts of this case and that notice of the names of the alleged child soldiers was required.⁸
8. On 11 October 2019, at the conclusion of the confirmation hearing, the Defence again requested to be provided with the names of the alleged child soldiers in order to adequately defend against Count 29.⁹
9. On 11 December 2019, Pre-Trial Chamber II issued its Decision on the confirmation of charges (“Confirmation Decision”).¹⁰ It never ruled on the Defence request for the identity of the child soldiers.
10. In the Confirmation Decision, the Chamber confirmed the charges in Counts 2 and 3 as follows:

⁵ *Id.*, para. 360.

⁶ [ICC-01/14-01/18-T-008-Conf](#), 23 September 2019, pp. 59-61; Public redacted version: [ICC-01/14-01/18-T-008-Red2-ENG](#).

⁷ [ICC-01/14-01/18-376-Conf](#), paras. 110-113; Public redacted version: [ICC-01/14-01/18-376-Red](#).

⁸ [ICC-01/14-01/18-383-Conf](#), paras. 48-63; Public redacted version: [ICC-01/14-01/18-383-Red](#).

⁹ [ICC-01/14-01/18-T-011-Conf](#), 11 October 2019, p. 53; Public redacted version: [ICC-01/14-01/18-T-011-Red-ENG](#).

¹⁰ [ICC-01/14-01/18-403-Conf](#), Public redacted version: [ICC-01/14-01/18-403-Red](#).

the killing of between five and 13 persons, including [REDACTED], at the Boeing market, four Muslim persons in Cattin, and [REDACTED] at the Boeing market, in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 250-251 of the DCC and paragraphs 87-89 of the present decision.¹¹

11. For Count 29, the Confirmation Decision confirmed the following charge:

conscription, enlistment and use of children under the age of fifteen years to participate actively in hostilities, pursuant to and prohibited by article 8(2)(e)(vii) of the Statute, for the conscription and/or enlistment of children into his group at various locations, including [REDACTED], and the assignment of a variety of tasks to them, such as, inter alia, participating in hostilities, including the 5 December 2013 Attack, between at least December 2013 and August 2014, as set out in paragraphs 359-360 of the DCC and paragraphs 144-152 of the present decision.¹²

12. On 9 March 2020, the Defence sent a letter to the Prosecution requesting disclosure of the identities of the victims of Counts 2, 3, and 29 and setting forth its understanding of the location of the mosque that Mr. Yekatom is charged with destroying in Count 6 and the location of the murders in Cattin that Mr. Yekatom is charged with committing in Counts 2 and 3.¹³ The Prosecution never responded to the letter.

RELEVANT PROVISIONS

13. **Article 67 – Rights of the accused**

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

¹¹ [ICC-01/14-01/18-403-Conf](#), pp. 104, 106; Public redacted version: [ICC-01/14-01/18-403-Red](#).

¹² *Id.* p. 105.

¹³ See Annex A.

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

ARGUMENT

A. The Accused has a Right to the Requested Details

14. Article 67(1)(a) of the Statute provides the accused with the right to be informed in detail of the nature, cause and content of the charge. Article 67(1)(b) guarantees the right to have adequate time and facilities for the preparation of his defence. The Appeals Chamber has noted that there is a strong link between the right to be informed in detail of the nature, cause and content of the charges and the right to prepare one's defence.¹⁴
15. According to the drafters, "the Statute goes further than the ICCPR and the other human rights models by requiring that this information also include the 'content' of the charge".¹⁵ It was the "desire of the Rome Conference that the Prosecutor ensure that the accused is not taken by surprise during the proceedings, and that he or she benefits from a level of information going well beyond the thresholds set by domestic justice systems and endorsed by international human rights tribunals as being acceptable".¹⁶
16. The Appeals Chamber in the *Lubanga* case held that:

In order to be able to prepare an effective defence, where an accused is not alleged to have directly carried out the incriminated conduct and is charged for crimes committed on the basis of a common plan, the accused must be provided with detailed information regarding: (i) his or her alleged conduct that gives rise to criminal responsibility, including the

¹⁴ *Prosecutor v. Ongwen*, [Judgment on the Appeal of Mr. Dominic Ongwen against Trial Chamber IX's "Decision on Defence Motions alleging Defects in the Confirmation Decision"](#), 17 July 2019, ICC-02/04-01/15-1562, para. 69.

¹⁵ See William A. Schabas & Yvonne McDermott, '[Article 67 – Rights of the accused](#)', in Otto Triffterer & Kai Ambos (eds), *The Rome Statute of the International Criminal Court: A Commentary* (3rd edn, Beck Hart Nomos 2016), p. 1660.

¹⁶ *Id.*

contours of the common plan and its implementation as well as the accused's contribution (ii) the related mental element; and (iii) the identities of any alleged co-perpetrators. With respect to the underlying criminal acts and the victims thereof, the Appeals Chamber considers that the Prosecutor must provide details as to the date and **location** of the underlying acts and **identify the alleged victims** to the greatest degree of specificity possible in the circumstances. In the view of the Appeals Chamber, the underlying criminal acts form an integral part of the charges against the accused, and sufficiently detailed information must be provided in order for the accused person to effectively defend him or herself against them.¹⁷

17. The Confirmation Decision falls short of providing the required detail because it fails to specify the identity of the victims of Counts 2, 3, and 29.

B. Counts 2 and 3

18. The charges as set forth in the Confirmation Decision names two of the 5-13 murder victims during the 5 December 2013 attack at the Boeing Market and Cattin in violation of Article 8(2)(c)(i) and 7(1)(a) of the Statute. It is an element of the offences that the victims were “either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities” (Article 8) or “the conduct was committed as part of a widespread or systematic attack directed against a civilian population” (Article 7).¹⁸
19. There is considerable evidence from the Prosecution's own witnesses that [REDACTED],¹⁹ that other merchants with stalls at the Boeing Market were affiliated with the Seleka,²⁰ and that the merchants possessed and used weapons during the 5 December attack.²¹ In addition, there is evidence that the Seleka were present in Cattin on the morning of 5 December and engaged

¹⁷ *Prosecutor v. Lubanga*, [Public redacted Judgement on the appeal of Mr Lubanga Dyilo against his conviction](#), 1 December 2014, ICC-01/04-01/06-3121-Red, para. 123 (emphasis added).

¹⁸ [Rome Statute](#), Articles 8(2)(c)(i) and 7(1)(a).

¹⁹ CAR-OTP-2082-0299-R02, paras. 45-47, 55; CAR-OTP-2045-0150-R01, para. 79; CAR-OTP-2041-0741-R01, para. 73.

²⁰ CAR-OTP-2041-0741-R01, para. 73; CAR-OTP-2045-0150, paras. 79-80; CAR-OTP-2072-1814, p. 1825-1826, 1829.

²¹ CAR-OTP-2045-0150, paras. 79-80; CAR-OTP-2082-0299, paras. 43-46.

in gunfire against the Anti-Balaka and the civilian population,²² and that some of the victims at the Cattin crossroad may have been affiliated with the Seleka.²³

20. The persons Mr. Yekatom is charged with murdering may well have been combatants and not members of the civilian population. This would constitute a complete defence to the charges in Counts 2 and 3.
21. It is for that reason that it is essential that the identity of the victims be specified. Once the Defence knows their identities, it can investigate the connection between those individuals and the Seleka by interviewing inhabitants of the Boeing market area, former associates as well as Seleka members to establish the connection between the victims and the Seleka and determine if the victims were indeed protected persons under Articles 7 or 8 of the Statute.
22. At the ICTY, there is a long line of jurisprudence that holds that the Defence is entitled to have the identity of the victims specified before the trial commences where the Prosecution is in a position to name the victims.²⁴
23. One of the Prosecution witness on whom the Prosecution is relying upon for Counts 2 and 3 provides the full identity of the Boeing market traders that

²² CAR-OTP-2094-1687-R01, p. 1709; CAR-OTP-2072-0544-R02, p. 0557_16-17; CAR-OTP-2073-0824-R01, paras. 76-78; CAR-OTP-2048-0757-R03, para. 30; CAR-OTP-2041-0741-R01, para. 77; CAR-OTP-2065-0003-R01, para. 104.

²³ CAR-OTP-2041-0741-R01, para. 77.

²⁴ *Prosecutor v. Kupreskic et al*, [Judgement](#), 23 October 2001, No. IT-95-16-A, para. 90; *Prosecutor v. Gotovina et al*, [Decision on Joint Defence Interlocutory Appeal Against Trial Chamber's Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims](#), 26 January 2009, IT-06-90-AR73.3; *Karera v. Prosecutor*, [Judgement](#), 2 February 2009, No. ICTR-01-74-A, para. 365. See also *Prosecutor v. Popovic et al*, [Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules](#), 31 May 2006, No. IT-05-88-PT, paras. 35, 37; *Prosecutor v. Stanisic & Simatovic*, [Decision on the Prosecution Submission on Additional Victims and on Motion to Add some source documents to the Rule 65ter exhibit list and to admit the report of Dr. Ewa Tabeau with the source documents](#), 24 March 2011, No. IT03-69-T, paras. 7, 14; *Prosecutor v. Mladic*, [Decision on Defence Preliminary Motion Objecting to the form of the Indictment](#), 13 October 2011, No. IT-09-92-PT, para. 8; *Prosecutor v. Ntakirutimana*, [Appeal Judgement](#), 13 December 2004, para. 25 (quoting *Kupreskić et al*. Appeal Judgement, para. 90).

would have been killed on the 5 of December 2013.²⁵ While the Prosecution used this same witness to provide the name of [REDACTED] in Counts 2 and 3, there should be no valid justification as to why the Prosecution cannot specify the identities of the remaining victims.

24. Mr. Yekatom is entitled to have adequate time and facilities to prepare his Defence. Given the time required to meaningfully investigate, he shouldn't have to wait until the disclosure deadline or the filing of a Pre-Trial Brief to be provided with the identities of the victims when they are in the Prosecution's possession. The ICTR held that :

The Trial Chamber and the accused should not be required to sift through voluminous disclosures, witness statements, and written or oral submissions in order to determine what facts may form the basis of the accused's alleged crimes, in particular, because some of this material is not made available until the eve of the trial.²⁶

25. Under the circumstances of this case, where there is evidence that calls into question the protected status of the victims of Counts 2 and 3, the Trial Chamber is respectfully requested to obtain the identities of the victims from the Prosecution and incorporate them into Counts 2 and 3.

C. Location Information

26. Counts 2 and 3 charge that the murders took place at the "Boeing market" and "Cattin". The Prosecution has provided in its disclosure, the GPS coordinates of the location in Cattin, known as the "Cattin crossroad" where the murders allegedly occurred.²⁷ The Defence has notified the Prosecution that, unless informed to the contrary, it is proceeding to defend Counts 2 and 3 with the

²⁵ CAR-OTP-2082-0299-R02.

²⁶ *The Prosecutor (Appellant and Respondent) v. André Ntagerura (Respondent), Emmanuel Bagambiki (Respondent), Samuel Imanishimwe (Appellant and Respondent)*, [Judgment](#), 7 July 2006, No. ICTR-99-46-A, para. 64. See also *Niyitegeka v. The Prosecutor*, [Judgment](#), 9 July 2004, ICTR-96-14-A, para. 221: "mere service of witness statements by the Prosecution pursuant to the disclosure requirements" of the Rules does not suffice to inform the Defence of material facts that the Prosecution intends to prove at trial".

²⁷ CAR-OTP-2043-0196-R01.

understanding that the location “Cattin” charged in Counts 2 and 3 is the crossroad whose coordinates they have provided.²⁸ The Prosecution has not informed the Defence to the contrary.

27. Count 6 charges Mr. Yekatom with destruction of “the Boeing mosque”.²⁹ A review of the Prosecution’s disclosure as well as the Defence’s own investigation reveals that there was more than one mosque in Boeing.
28. The Prosecution provided the GPS coordinates of the “Boeing Mosque” in its disclosure.³⁰ The Defence has notified the Prosecution that, unless informed to the contrary, it is proceeding to defend Count 6 with the understanding that “the Boeing mosque” referred to in Count 6 is the mosque whose coordinates they have provided.³¹ The Prosecution has not informed the Defence to the contrary.
29. The Defence at this time simply wishes to make this a matter of record with the Chamber. No action is requested from the Trial Chamber with respect to the location information relevant to Counts 2, 3, and 6.

D. Count 29

30. The Defence needs to know the identity of the children that Mr. Yekatom is accused of enlisting and using to participate in hostilities so that it can investigate their true age, whether they participated in hostilities, and whether Mr. Yekatom was aware of their presence among his elements. Such investigation necessarily involves interviews with close relatives, family members or former associates, as well as others in the Anti-Balaka who were aware of what role, if any, they played in the group.

²⁸ See Annex A.

²⁹ [ICC-01/14-01/18-403-Conf](#), p. 105; Public redacted version: [ICC-01/14-01/18-403-Red](#).

³⁰ CAR-OTP-2043-0196-R01.

³¹ See Annex A.

31. [REDACTED].³² The Prosecution alleged that at least 14 of the children on this list were under age 15.³³ [REDACTED].³⁴ It is therefore unknown and unclear which of the persons on this list the Prosecution contends are the child soldiers referred to in Count 29.
32. The Appeals Chamber, in the *Lubanga* case, has endorsed the formulation of the ICTY in the *Blaskic* case that the requirement to specify, *inter alia*, the identity of the victims, necessarily depends upon the alleged proximity of the accused to those events.
- “When alleging that the accused personally carried out the acts underlying the crime in question, it is necessary for the Prosecution to set out the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed with the greatest precision.”³⁵
33. In our case, Mr. Yekatom is alleged to committed the crime of recruitment and use of child soldiers “jointly with another or through another under article 25(3)(a) of the Statute.”³⁶
34. The Confirmation Decision explicitly mentions this proximity in paragraphs related to Count 29 regarding the child soldiers: “the presence of children, including those under the age of 15, among **Yekatom’s elements**.”³⁷ “[children were] introduced to chiefs, including to **Yekatom**.”³⁸ “Children were also present in several other locations under **Yekatom’s** control or where **Yekatom** was present as well [...].”³⁹ “[...] children were also present in [REDACTED], both at checkpoints and at the Anti-Balaka base, where **Yekatom** was

³² CAR-OTP-2071-0279.

³³ [ICC-01/14-01/18-282-Conf-AnxB1](#), para. 360; Public redacted version: [ICC-01/14-01/18-282-AnxB1-Red](#). [REDACTED] [ICC-01/14-01/18-403-Conf](#), para. 152; Public redacted version: [ICC-01/14-01/18-403-Red](#).

³⁴ CAR-OTP-2110-0556-R03, paras. 199-205.

³⁵ *Prosecutor v. Lubanga*, [Public redacted Judgement on the appeal of Mr Lubanga Dyilo against his conviction](#), ICC-01/04-01/06-3121-Red, 1 December 2014, para. 122.

³⁶ [ICC-01/14-01/18-403-Conf](#), p. 107; Public redacted version: [ICC-01/14-01/18-403-Red](#).

³⁷ [ICC-01/14-01/18-403-Conf](#), para. 145; Public redacted version: [ICC-01/14-01/18-403-Red](#).

³⁸ *Id.*

³⁹ [ICC-01/14-01/18-403-Conf](#), para. 146; Public redacted version: [ICC-01/14-01/18-403-Red](#).

present.⁴⁰ [Children were also] taking part, for instance, in [REDACTED]”⁴¹
 “[...] **Yekatom** [REDACTED].”⁴²

35. Therefore, Mr. Yekatom’s case comes within the class of cases in which the identity of the victims must be set out with great precision.
36. The *Lubanga* case does not require a different result. In *Lubanga*, between “2,451 and 5,938 children [were found to] have served in the UPC’s ranks in the relevant time frame”.⁴³ The recruited children “were brought to one of approximately 20 military training camps”.⁴⁴ The Prosecution alleged that one camp alone held about 2500 recruits,⁴⁵ and that up to 40% of the UPC/FPLC forces were children.⁴⁶ By contrast, the number of child soldiers in this case is small.
37. In addition, Lubanga was a political leader of a large force spread over a wide geographical area alleged to have put in place a policy of enlistment of child soldiers.⁴⁷ To the contrary, it is alleged that Mr. Yekatom [REDACTED].⁴⁸
38. Therefore, in contrast to the situation in *Lubanga*, the proximity of Mr. Yekatom to the alleged enlistment and use of child soldiers is very close.
39. Finally, a significant factor in the Appeals Chamber’s treatment of the lack of specificity of the identities of the children in *Lubanga* was the failure of his defence to object to the lack of specificity in the charging documents or the

⁴⁰ *Id.*

⁴¹ [ICC-01/14-01/18-403-Conf](#), para. 148; Public redacted version: [ICC-01/14-01/18-403-Red](#).

⁴² [ICC-01/14-01/18-403-Conf](#), para. 152; Public redacted version: [ICC-01/14-01/18-403-Red](#).

⁴³ *Prosecutor v. Lubanga*, [Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’](#), 18 July 2019, ICC-01/04-01/06-3466-Red, para. 119; See also, *Prosecutor v. Lubanga*, [Transcripts of hearing](#), 25 August 2011, ICC-01/04-01/06-T-356-ENG, p. 11, lns 10-16. See also *Prosecutor v. Lubanga*, [Transcripts of hearing](#), ICC-01/04-01/06-T-369-ENG, p.10, lns. 10-14.

⁴⁴ *Prosecutor v. Lubanga*, [Prosecution’s Closing Brief](#), 1 June 2011, ICC-01/04-01/06-2748-Red, para. 17.

⁴⁵ *Id.*, para. 156.

⁴⁶ *Id.*, para. 160.

⁴⁷ *Prosecutor v. Lubanga*, [Judgment pursuant to Article 74 of the Statute](#), 14 March 2012, ICC-01/04-01/06-2842, paras. 759-916, 1224-1272.

⁴⁸ [ICC-01/14-01/18-403-Conf](#), paras. 145-46, 148-49, 152; Public redacted version: [ICC-01/14-01/18-403-Red](#).

admission of evidence depicting child soldiers during the trial.⁴⁹ In our case, the Defence has objected at every stage including oral and written submissions during the confirmation hearing and in this motion brought well before the beginning of the trial.

40. For all of these reasons, the Trial Chamber should obtain the information as to the identity of the alleged victims of Count 29 and provide it to the Defence.

CONFIDENTIALITY

41. This Motion is classified as confidential because it quotes and refers to confidential information developed in the Document Containing the Charges and the Decision on the Confirmation of Charges. A public redacted version will be filed in due course.

CONCLUSION

42. The Appeals Chamber holding that the Prosecution must “identify the alleged victims to the greatest degree of specificity possible **in the circumstances**” should require an assessment of what is in the Prosecution’s possession, in the circumstances of each case. Here, where the Prosecution possesses the identity of at least some of the victims,⁵⁰ there should be no impediment to providing those names as part of the confirmed charges.
43. The Trial Chamber is respectfully requested to obtain and provide additional details as to the identities of Mr. Yekatom’s alleged victims so that Mr. Yekatom has adequate notice as to the nature, cause and content of the charges that he must defend against at trial.

⁴⁹ *Prosecutor v. Lubanga*, [Public redacted Judgement on the appeal of Mr Lubanga Dyilo against his conviction](#), 1 December 2014, ICC-01/04-01/06-3121-Red, para. 135.

⁵⁰ CAR-OTP-2082-0299; CAR-OTP-2071-0279.

RESPECTFULLY SUBMITTED ON THIS 17th DAY OF JUNE 2020



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