

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **3 February 2021**

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

**Public Redacted Version of the “Motion Seeking Leave of Rights of Audience”, 1
February 2021, ICC-01/14-01/18-867-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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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

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Victims**

**The Office of Public Counsel for the
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REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. Counsel representing Mr. Alfred Rombhot Yekatom (the ‘Defence’) respectfully request leave of rights of audience before the Trial Chamber for Legal Assistants, Legal Consultants and the Electronic Evidence Specialist for the purpose of conducting examination of witnesses.

SUBMISSIONS

2. To date, the instant proceedings have involved an extraordinary amount of evidence. The Prosecution List of Witnesses currently amounts to 151 witnesses, of whom 96 are anticipated to testify *viva voce*.¹ In addition, the Prosecution has also disclosed more than [REDACTED] pieces of evidence and stated that the “CAR II evidence collection is one of the largest of any Situation at the Court”.²
3. Review and analysis of this amount of evidence has demanded substantial working hours and inevitably has required division of this work among multiple Defence team members, including those who might not normally be expected to be automatically accorded rights of audience – namely, the Legal Consultants and Electronic Evidence Specialist.³
4. Consequently, certain Defence team members have acquired a keen familiarity and knowledge of specific issues, witnesses, types and bodies of evidence, as a result of the significant time and work devoted to the review and analysis thereof. It is the Defence’s submission that these team members are currently best placed to conduct cross-examination of certain witnesses.
5. It is in this context that the Defence respectfully seeks leave of rights of audience

¹ [ICC-01/14-01/18-724-Conf-AnxA](#).

² [ICC-01/14-01/18-474-Conf](#), para. 23.

³ In addition, as the Trial Chamber is aware, Associate Counsel was only recently appointed; see, [ICC-01/14-01/18-675](#).

for Yekatom Defence team Legal Assistants, Legal Consultants, and the Electronic Evidence Specialist. Granting the instant request would not only be in the interests of Mr. Yekatom's defence; it would also facilitate the efficient and expeditious conduct of these proceedings.

6. Should leave be granted, Counsel or Associate Counsel would be present in court and supervising at all relevant times.
7. Mr. Yekatom has been informed and fully agrees with this proposal.
8. In a trial that may well last over a year, the Trial Chamber may appreciate hearing a different voice now and then.

A. Legal Assistants

9. The Defence respectfully requests that Legal Assistants in the Defence Team for Mr. Yekatom be granted rights of audience before the Trial Chamber.
10. It is the Defence's understanding that this would be consistent with established prior ICC practice.
11. Granting rights of audience to Legal Assistants would be consistent with the statutory framework of the Court. Rule 22(1) of the Rules of Procedure and Evidence ('Rules'), which states that Defence Counsel 'may be assisted by other persons [...] with relevant experience'. Regulation 68 of the Regulations of the Court states that 'persons assisting counsel' pursuant to Rule 22(1) 'may include persons who can assist counsel in the presentation of the case before a Chamber, the wording of which implies in-court assistance of the kind necessitating rights of audience.

B. Electronic Evidence Specialist

12. The Electronic Evidence Specialist, [REDACTED], is a qualified lawyer admitted to the State Bar of Georgia in July 2016. He is included on the List of Assistants to

Counsel. In addition to international criminal law experience acquired at the ICTY and the Special Tribunal for Lebanon, the Electronic Evidence Specialist has specialised experience with, and knowledge of, highly technical evidence, such as telecommunications evidence and electronic mapping evidence from his work at these tribunals and in the United Kingdom. He has been responsible for review and analysis of technical electronic evidence, including but not limited to call data records, call mapping information, satellite imagery, and extracted records of seized handsets disclosed by the Prosecution. He also works closely with the Defence Expert on digital investigations, including in preparation for examination of witnesses.

13. The Defence requests that the Electronic Evidence Specialist be granted leave of rights of audience to conduct cross-examinations of witnesses notably for: P-2193, P-1932, P-2973, and P-2698. The evidence of these witnesses will relate to, or their cross-examinations will involve, technical information and material, such as telecommunications and/or geo-localisation evidence.
14. In light of the above, the Electronic Evidence Specialist is best-suited to cross-examine P-2193, P-1932, P-2973; and P-2698 and witnesses who would testify on similar issues.

C. Legal Consultants

15. [REDACTED] has obtained the *Certificat d'Aptitude à la Profession d'Avocat* in France and has worked since April 2019 in the Defence of Mr. Yekatom.
16. The Defence requests that [REDACTED] be granted leave of rights of audience for some witnesses notably, P-1819, P-1558 and P-0287. [REDACTED] has been responsible for the extensive review and analysis of the evidence of these witnesses and is therefore best-suited to conduct their cross-examination.
17. The Prosecution has disclosed [REDACTED] audio-video files in relation to

Witness P-1819. Mr. Pages-Granier was responsible for reviewing and analyzing this material. Much of this work, which has amounted to hundreds of hours, was performed alongside Mr. Yekatom since June 2019.⁴ Further, [REDACTED]'s work in this regard is relevant to the evidence of P-1558, [REDACTED].⁵ [REDACTED]. As regards P-0287, [REDACTED] was responsible for [REDACTED].⁶

18. [REDACTED] is a member in good standing of the Bar of Québec (*Barreau du Québec*). She is bound by her legal professional obligations and code of ethics.
19. [REDACTED] was responsible for the review and analysis of [REDACTED] pieces of evidence disclosed in relation to P-1577, much of which comprised analysis of photographs, which the Defence anticipates will be relied on for the cross-examination of P-1577. Similarly, [REDACTED] has been responsible for the review and analysis of the evidence of P-1077 and P-1042, amounting to [REDACTED] pages.
20. Witnesses P-1819, P-1558, P-0287, P-1577, P-1077 and P-1042 are not insider witnesses of Mr. Yekatom's group; nor do their testimony directly relate to part of the Charges against Mr. Yekatom". Although their evidence is extensive and requires hours of analysis in comparison to other evidence, it can nevertheless be properly characterized as peripheral against Mr. Yekatom.
21. Lead Counsel, Associate Counsel and/or Mr. Yekatom have worked closely with all of the above-named team members for some time and are confident that they are ready and prepared to conduct cross-examinations including and not limited to the aforementioned witnesses. Should any concerns arise about this proposal or should Mr. Yekatom withdraw his informed consent, Counsel will immediately inform the Chamber and the other Parties.

⁴ [REDACTED].

⁵ [ICC-01/14-01/18-724-Conf-AnxA](#), page 44, Witness n°89.

⁶ See, [ICC-01/14-01/18-569-Conf](#), para. 6; see also [CAR-OTP-2126-2786](#).

22. To the extent that the Prosecution and the CLRV have more staff to draw on in terms of personal with rights of audience, the issue of granting such rights of audience to Defence staff also goes directly to the equality of arms and the fairness of the proceedings.
23. Delegating witnesses for cross-examination especially those requiring analysis of a high volume of evidence allows Counsel to focus on those witnesses who's evidence is anticipated to be the most directly prejudicial to Mr. Yekatom.

CONFIDENTIALITY

24. This motion is filed confidentially due to the references to Prosecution's witnesses and the content of their statements, and to defence team members. A public redacted version will be filed forthwith.

CONCLUSION

25. For the above, reasons, the Defence respectfully requests the Trial Chamber to:

GRANT rights of audience to Legal Assistants;

GRANT right of audience to the Electronic Evidence Specialist for the purpose of examination of Witnesses; and

GRANT rights of audience to the Legal Consultants for the purpose of examination of Witnesses.

RESPECTFULLY SUBMITTED ON THIS 3RD DAY OF FEBRUARY 2021



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom



Mr. Thomas Hannis
Associate Counsel for Mr. Yekatom

The Hague, the Netherlands