

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **11 January 2022**

**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 'Corrected version of 'Yekatom Defence Response to "Prosecution's Request for leave to add Six Items to the List of Evidence" (ICC-01/14-01/18-1212-Conf)', 10 January 2022, ICC-01/14-01/18-1238-Conf', 10 January 2022, ICC-01/14-01/18-1238-Conf-Corr**

**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. James Stewart  
Mr. Kweku Vanderpuye

**Counsel for Mr. Yekatom**

Me Mylène Dimitri  
Mr. Thomas Hannis  
Me Anta Guissé

**Counsel for Mr. Ngaïssona**

Mr. Geert-Jan Alexander Knoops  
Me Richard Omissé-Namkeamaï  
Me Marie-Hélène Proulx

**Legal Representatives of Victims**

Mr. Dmytro Suprun

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

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation / Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

Me Xavier-Jean Keïta

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr. Peter Lewis

**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') hereby respectfully responds to the 'Prosecution's Request for leave to add Six Items to its List of Evidence'<sup>1</sup> ('Request').
2. The Defence opposes the Request, on the basis that the late addition of the six documents in question ('Items') would cause undue, multi-faceted prejudice to the procedural rights of Mr Yekatom.

## **PROCEDURAL BACKGROUND**

3. On 16 July 2020, Trial Chamber V issued its 'Decision Setting the Commencement Date of the Trial', in which it *inter alia* ordered the Prosecution to file its final List of Witnesses and List of Evidence by 9 November 2020.<sup>2</sup>
4. On 9 November 2020, the 'Prosecution's List of Witnesses and Evidence' was filed.<sup>3</sup>
5. On 14 December 2021, the Prosecution filed the Request, seeking leave for the late addition of the Items to its List of Evidence.<sup>4</sup>

## **APPLICABLE LAW**

6. 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

---

<sup>1</sup> [ICC-01/14-01/18-1212-Conf](#). A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>2</sup> [ICC-01/14-01/18-589](#), para. 14.

<sup>3</sup> [ICC-01/14-01/18-724](#).

<sup>4</sup> [ICC-01/14-01/18-1212-Conf](#). A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

add items in accordance with its decision fixing the time limit for filing the initial list of evidence.<sup>5</sup>

7. It must be determined in the concrete circumstances whether reliance by the Prosecution on items additional to those included in the initial list of evidence causes undue prejudice to the procedural rights of the Defence. Factors to be considered in this determination include, *inter alia*, the extent to which the requested addition is opposed by the Defence, the time when the addition was sought, the nature and amount of the material concerned, the intended purpose of the Prosecution's 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.<sup>6</sup>

## **SUBMISSIONS**

### **I. The Prosecution has not shown good cause for late addition of the Items.**

8. The Prosecution has failed to demonstrate good cause justifying the lateness of the sought additions in the Request, which comes 13 months after the deadline for the final List of Evidence imposed by the Chamber has passed.
9. While the Request contains information regarding the Prosecution's efforts to interview [REDACTED], details regarding the Prosecution's prior efforts to obtain evidence from [REDACTED] are notably absent.<sup>7</sup> The Prosecution vaguely asserts that 'previous efforts to locate [REDACTED] were unsuccessful', but does not specify the nature or timing of these 'efforts'.<sup>8</sup> Similarly, reference is made to unspecified requests for assistance to the [REDACTED] made 'prior' to [REDACTED]; however no details regarding the

<sup>5</sup> [ICC-01/14-01/18-989-Conf](#), para. 5.

<sup>6</sup> [ICC-01/14-01/18-989-Conf](#), para. 5.

<sup>7</sup> [ICC-01/14-01/18-1212-Conf](#), paras 5-6. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>8</sup> [ICC-01/14-01/18-1212-Conf](#), para. 6. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

timing of these requests are provided, nor are any such requests annexed to the Request in support.<sup>9</sup>

10. These missing details would be highly relevant to the question of whether the Prosecution duly sought to obtain evidence from [REDACTED] in a timely manner. On the contrary, given that [REDACTED] took place in September 2020, the Prosecution's [REDACTED] investigative efforts are of secondary relevance; in other words, it cannot be argued that commencing efforts to collect evidence from a potential witness a mere two months prior to the List of Witnesses and Evidence filing deadlines comprises due diligence in this regard.<sup>10</sup> In this respect, the Prosecution's emphasis on its [REDACTED] investigative efforts in the Request is misplaced.
11. Further, the Prosecution fails to explain the apparent delay in obtaining and disclosing documents extracted from [REDACTED]'s computer hard drive by the [REDACTED] (attached as Annexes D and E to the Request).<sup>11</sup> These documents appear to have been in the possession of the [REDACTED] since 12 January 2021 at the latest;<sup>12</sup> however, the Prosecution did not collect these documents until 14 June 2021.<sup>13</sup> The collection of these documents would presumably be subject to a parallel cooperation procedure, independent of the Prosecution's efforts to obtain a [REDACTED] interview with [REDACTED];<sup>14</sup> nor has the Prosecution argued that the delaying circumstances set out in the Request apply to the delay in collecting and disclosing these documents.<sup>15</sup>

<sup>9</sup> [ICC-01/14-01/18-1212-Conf](#), para. 6. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>10</sup> By way of illustration, the Prosecution was only able to secure an interview with [REDACTED] in October 2021 – over one year after [REDACTED].

<sup>11</sup> See, Annexes D ([CAR-OTP-2134-0449](#)) and E ([CAR-OTP-2134-0441](#)) to the Request, and corresponding investigative report at Annex F ([CAR-OTP-2134-0407](#)).

<sup>12</sup> See, Annex F ([CAR-OTP-2134-0407](#)), p. 0407.

<sup>13</sup> [ICC-01/14-01/18-1212-Conf](#), para. 10. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>14</sup> The [REDACTED] provided the record of its September 2020 interview with [REDACTED] to the Prosecution in December 2020, i.e. 10 months prior to the Prosecution's interview with him; see ICC-01/14-01/18-1212-Conf, fn. 34.

<sup>15</sup> [ICC-01/14-01/18-1212-Conf](#), para. 6. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

12. Further, given the Prosecution's suggestion that its cooperation efforts with the [REDACTED] preceded [REDACTED], it can be reasonably expected that the Prosecution would have been (or would have sought to have been) notified of the seizure and extraction of such potentially relevant material in a timely manner, not least given that the Prosecution received the record of [REDACTED]'s interview with the [REDACTED] within two months of it having taken place.
13. Again, no details of its efforts to collect the seized and extracted material is provided in the Request; nor are any such cooperation requests, or relevant communications, provided in attachment.
14. Nor has the Prosecution justified the seven-week delay between the collection of these documents and their disclosure to the Defence on 4 August 2021.<sup>16</sup>
15. In the absence of such information, it cannot simply be assumed that the Prosecution duly sought to obtain and disclose evidence from [REDACTED] in a timely and diligent manner. The unexplained and unjustified nature of these delays thus militate against the granting of the Request, especially as they have resulted in concrete prejudice to the Defence, as set out below.

## **II. The late addition of the Items would unduly prejudice the Defence.**

16. The Prosecution's claim that the Items are of 'significant probative value' with respect to the alleged planning and coordination of military operations by the 'Cameroon Group' to regain power is without merit.<sup>17</sup> Moreover, whatever probative value the Items may have would be substantially outweighed by the prejudicial effect of their late addition to the List of Evidence.

---

<sup>16</sup> See [ICC-01/14-01/18-1212-Conf](#), fn. 9-11. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>17</sup> *Contra* [ICC-01/14-01/18-1212-Conf](#), para. 8. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

A. Annexes A and B

17. At the outset, the Defence notes that whereas Annexes A and B to the Request (respectively '18 October Interview'<sup>18</sup> and '24 November Interview'<sup>19</sup> ; collectively, 'Interviews') appear to comprise testimonial evidence of [REDACTED], the latter is not included in the Prosecution's List of Witnesses.
18. As noted above, to justify the lateness of the sought additions, the Prosecution seeks to rely on its 'efforts' to secure evidence from [REDACTED] prior to and 'in the weeks following' his [REDACTED].<sup>20</sup> In the circumstances therefore, it cannot be reasonably argued that the Prosecution was not in a position to include [REDACTED] in its final List of Witnesses, filed on 9 November 2020.
19. Indeed, as the Chamber will recall, P-2843 was included in the Prosecution's List of Witnesses despite the Prosecution's inability to secure an interview with him prior to the filing deadline.<sup>21</sup> Notably, against Defence objections to P-2843's inclusion, the Prosecution argued that it was 'under no general obligation to obtain a statement from each witness it intends to call at trial'.<sup>22</sup>
20. In this respect, the Prosecution's failure to include [REDACTED] in its List of Witnesses further calls into question the Prosecution's diligence as regards obtaining and disclosing evidence from [REDACTED] in a timely manner.
21. While [REDACTED]'s non-inclusion in the List of Witnesses does not of itself preclude the late addition of the Interviews to the List of Evidence, the Defence nonetheless notes that, in accordance with established jurisprudence, the Prosecution would be procedurally barred from tendering the Interviews

---

<sup>18</sup> [CAR-OTP-2134-1599-R01](#).

<sup>19</sup> [CAR-OTP-2134-1852-R01](#).

<sup>20</sup> [ICC-01/14-01/18-1212-Conf](#), para. 6. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>21</sup> [ICC-01/14-01/18-883-Red](#).

<sup>22</sup> [ICC-01/14-01/18-831-Conf-Red](#), para. 5. A public redacted version is also available [ICC-01/14-01/18-831-Red2](#).

from the bar table.<sup>23</sup> Nor would it be proper for the Prosecution to seek to rely on testimonial evidence of a non-witness during any future examination of its own witnesses, with the aim of circumventing the applicable law on this matter.

22. In the circumstances therefore, the sought late addition of the Interviews would inject a prejudicial degree of procedural confusion into these proceedings, which further militates against the granting of the Request. In a similar vein, the dismissal of the Request would allow the Parties and Chamber to avoid spending unnecessary time and resources litigating the Prosecution's ability to rely on the Interviews going forward, not least given that the case law on the matter can be considered settled.
23. As for the substance of the Interviews, the Defence submits that their prospective significance in light of the charges and the rest of the available evidence is minimal.
24. On the Prosecution's own submission, its intended reliance on the Interviews is limited to [REDACTED]'s use of the email address '[REDACTED]'; his acknowledgment as regards receiving the [REDACTED] email; and his speculative comments regarding what the sender of that email 'knew'.<sup>24</sup>
25. [REDACTED] denies providing a [REDACTED] as indicated in his email of [REDACTED];<sup>25</sup> more importantly, he denies involvement in the coordination of military supplies.<sup>26</sup> The manifest contradiction between the Prosecution's

---

<sup>23</sup> See, *Prosecutor v. Ongwen*, Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, [ICC-02/04-01/15-596-Red](#), para. 9 and references cited therein; and *Prosecutor v. Ongwen*, Decision on Defence Request to Submit 470 Items of Evidence, [ICC-02/04-01/15-1670](#), 14 November 2019, paras 9-11; and [ICC-01/14-01/18-631](#), para. 56.

<sup>24</sup> See [ICC-01/14-01/18-1212-Conf](#), para. 9. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#); see also, where [REDACTED] qualifies his speculative comments, ('*En tout cas c'est ce que je pense*'), Annex B ([CAR-OTP-2134-1852-R01](#)), p. 1865.

<sup>25</sup> [ICC-01/14-01/18-1212-Conf](#), para. 9; see also, para. 12. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>26</sup> Annex B ([CAR-OTP-2134-1852-R01](#)), p. 1865-1867.

interpretation of the Items and the account of [REDACTED] as set out in the Interviews gives rise to an impasse of sorts, that itself highlights the prejudicial nature of the Request, as well as the Prosecution's failure to have diligently added [REDACTED] to its final List of Witnesses. Specifically: through the Request, the Prosecution seeks to present the Items to the Chamber, with their meaning and significance interpreted through its own, necessarily one-sided narrative of the events; and in so doing, it implicitly invites the Chamber to ignore [REDACTED]'s account of the Items; all while failing to call [REDACTED] to testify, thereby depriving the Chamber and Parties to hear and test his account (as well as the Prosecution's interpretation of the Items).

26. Indeed, in the circumstances, the Prosecution's claim that the Request is made 'in the interests of justice' and that the addition of the Items would 'advance the Chamber's mandate to search for the truth' is of highly dubious merit.<sup>27</sup>

#### B. Annex C

27. As conceded in the Request, pages 1868-1869<sup>28</sup> and 1874-1879<sup>29</sup> of Annex C are subsumed in the documents comprising Annex D (bearing original CAR-OTP-2134-0449) and Annex F (bearing original CAR-OTP-2134-0441) to the Request (substantively addressed below); while pages 1870-1871<sup>30</sup> (bearing original CAR-OTP-2124-0902) are already included on the Prosecution's List of Evidence and formally submitted.

<sup>27</sup> [ICC-01/14-01/18-1212-Conf](#), paras 1, 16. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>28</sup> [ICC-01/14-01/18-1212-Conf](#), para. 7(iii)(a). A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>29</sup> [ICC-01/14-01/18-1212-Conf](#), para. 7(iii)(d). A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>30</sup> [ICC-01/14-01/18-1212-Conf](#), para. 7(iii)(b). A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

28. Their addition (and re-addition) to the List of Evidence would therefore be entirely superfluous and would only serve to clutter and needlessly confuse the trial record.
29. As regards the remainder of Annex C, i.e. the document at page 1871<sup>31</sup>: the Prosecution has failed to even address, let alone sufficiently demonstrate, the prospective significance of the document or the intended purpose of the Prosecution's requested reliance thereon. It therefore remains unclear as to how this apparently 'personal exchange' has any probative value as regards the alleged planning and coordination of military operations by the 'Cameroon Group'.<sup>32</sup>

### C. Annexes D and E

30. At the outset, the Prosecution claim that these documents are 'indicative of [[REDACTED]'s] role in coordinating military supplies for the Anti-Balaka' is of very little merit.<sup>33</sup>
31. Again, through the Request, the Prosecution invites the Chamber to simply dismiss [REDACTED]'s account of these documents, and to adopt that of the Prosecution.
32. As noted above, in the Interviews, [REDACTED] denies involvement in any such coordination; he further denies knowing the provenance of these documents, or how the documents came to be found on his computer.<sup>34</sup> In a

<sup>31</sup> [ICC-01/14-01/18-1212-Conf](#), para. 7(iii)(c). A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>32</sup> *Contra* [ICC-01/14-01/18-1212-Conf](#), para. 8. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#); see Annex B ([CAR-OTP-2134-1852-R01](#)), p. 1867.

<sup>33</sup> *Contra* [ICC-01/14-01/18-1212-Conf](#), para. 10. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>34</sup> *Supra*, para. 25; see Annex B ([CAR-OTP-2134-1852-R01](#)), p. 1866-1867.

similar vein, [REDACTED] consistently denies any link with the Anti-Balaka.<sup>35</sup> Notably, nowhere on these documents is reference made to the Anti-Balaka.

33. Further, the suggestion that the military supplies listed in these documents were sought on behalf of, or for the purposes of, the Anti-Balaka, would appear to fly in the face of the evidence that the Chamber has heard to date regarding the nature of the Anti-Balaka. In other words, the suggestion that Anti-Balaka fighters were anywhere near being capable of utilising [REDACTED];<sup>36</sup> or that the Anti-Balaka were in a position to make use of landing and [REDACTED];<sup>37</sup> is utterly removed from the evidence heard to date as regards the sophistication of the Anti-Balaka as a fighting force.<sup>38</sup>
34. This manifest incongruency between the Prosecution's interpretation of these documents and the evidence heard to date regarding the nature of the Anti-Balaka further serves to highlight the prejudicial nature of the relief sought in the Request, and especially in terms of its lateness. Since the commencement of the trial, the Prosecution has called a number of Anti-Balaka insiders who have given evidence regarding the origin and nature of the Anti-Balaka, and their composition and membership during the Seleka regime.<sup>39</sup> These individuals would have been well-placed to address the merits of the Prosecution's claims as regards the [REDACTED] that were supposedly to be procured for the Anti-Balaka.<sup>40</sup>

<sup>35</sup> See e.g., Annex A ([CAR-OTP-2134-1599-R01](#)), p. 1601-1615; and Annex B ([CAR-OTP-2134-1852-R01](#)), p. 1860.

<sup>36</sup> See, Annex D ([CAR-OTP-2134-0449](#)), p. 0449; and Annex E ([CAR-OTP-2134-0441](#)), p. 0442-0443.

<sup>37</sup> See, Annex E ([CAR-OTP-2134-0449](#)), p. 0450.

<sup>38</sup> Most recently, see e.g. (P-1521) T-081, 18:18-19:1; T-082, 60:14-61:6; 72:18-73:16; T-083, 47:6-18; T-084, 39:14-41:6.

<sup>39</sup> For instance, P-2027, P-2251, P-0884, P-0306, P-2232, P-1521.

<sup>40</sup> It cannot be reasonably argued that the Defence was in a position to utilise these documents in cross-examination upon their disclosure on 4 August 2021; the Defence should not be forced to pre-emptively second-guess the manner and purpose for which these documents were intended to be relied upon, prior to having been provided notice in this regard by the Prosecution (i.e. through the Request).

#### D. Annex F

35. The investigative extraction report comprising Annex F contains screenshots of the documents comprising Annexes D and E; as such, the Defence objects to the late addition of this document on the same basis, as set out above.<sup>41</sup>

#### III. **The Request should be denied in light of the intended purpose of the Items.**

36. In seeking to justify the addition of the Items, the Prosecution submits that they 'corroborate the evidence already heard that [...] BOZIZE along with [REDACTED] and others had taken steps to [REDACTED]'.<sup>42</sup>
37. At the outset, the Defence submits that it has not been provided sufficient notice of the Prosecution case in this regard: nowhere in the Document Containing the Charges or the Prosecution's Trial Brief does the Prosecution allege attempts to [REDACTED];<sup>43</sup> nor was this argued at the Confirmation of Charges hearings or the Prosecution's Opening Statement.<sup>44</sup>
38. In making the above-cited submission, the Prosecution relies on evidence of dubious probative value: specifically, on untested, unverified claims made by [REDACTED] (not called by the Prosecution) in Facebook conversations; and some comments made thereon by P-2841.<sup>45</sup> Notably, when P-2841 was shown these Facebook conversations during his October 2020 interview he stated, 'I do not really know much about [REDACTED]'.<sup>46</sup> During his testimony, P-2841 further clarified his evidence, saying, 'In my statement, I was asked the question, but I don't really know what happened [REDACTED]'; and

<sup>41</sup> See Annex F ([CAR-OTP-2134-0407](#)), p. 0419-0420.

<sup>42</sup> [ICC-01/14-01/18-1212-Conf](#), para. 14. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>43</sup> See [ICC-01/14-01/18-282-Conf-AnxB](#). A public redacted version is also available [ICC-01/14-01/18-282-AnxB1-Red](#); and [ICC-01/14-01/18-723-Conf](#). A public redacted version is also available [ICC-01/14-01/18-723-Red](#).

<sup>44</sup> See T-004 to T-011; and T-014 to T-016.

<sup>45</sup> See [ICC-01/14-01/18-1212-Conf](#), fn. 33. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#).

<sup>46</sup> [CAR-OTP-2127-4238-R01](#), para. 53.

subsequently, he repeatedly conceded that he did not have specific information or details on the matter.<sup>47</sup>

39. The issue of [REDACTED] appears to have previously arisen in the Prosecution's September 2017 interview with P-1847, who informed Prosecution investigators that François Bozize had [REDACTED], along with [REDACTED], with the objective of [REDACTED].<sup>48</sup> No mention was made by P-1847 of seeking [REDACTED], or of launching military operations there.
40. The specific issue of Bozize's objective as regards P-1847's [REDACTED] was not pursued by Prosecution Counsel during P-1847's subsequent testimony, which took place on 26-30 March 2021.<sup>49</sup> The Prosecution's decision not to elicit this evidence is notable, given that the Prosecution case regarding [REDACTED] appears to have been formulated at the very latest by October 2020, when Prosecution investigators pursued the [REDACTED]-related Facebook messages with P-2841, and potentially as early as January 2019, when the relevant Facebook conversations were provided to the Prosecution.<sup>50</sup>
41. Furthermore, the evidence of P-1847 on this matter – i.e. that during his exile, Bozize was facing pressure from the Cameroonian authorities and consequently, that he was seeking permission to [REDACTED] – was independently corroborated by [REDACTED] in his September 2020 interview with [REDACTED].<sup>51</sup> The Prosecution would have been aware of this at the time of P-1847's testimony, as it had been in possession of this interview record since December 2020; more importantly however, the interview record

<sup>47</sup> See, T-029, 39:20-21; 78:11-79:21.

<sup>48</sup> See, [CAR-OTP-2061-1534-R01](#), paras 88-93; see also, 95-96.

<sup>49</sup> [REDACTED].

<sup>50</sup> According to Ringtail metadata, [CAR-OTP-2101-9735](#) and [CAR-OTP-2101-9451](#), both cited at footnote 33 of the Request, were received from the Irish authorities on 28 January 2019. In addition, the fact that the Prosecution case regarding [REDACTED] appears to have been formulated as early as January 2019, and in event prior to October 2020, would preclude any argument that the relevance of the Items, and the potential relevance of [REDACTED]'s evidence, only became relevant 'with the development of the trial proceedings which are necessarily dynamic in nature', cf. [ICC-01/14-01/18-989-Conf](#), para. 6.

<sup>51</sup> See, [CAR-OTP-2131-0384-R01](#), p. 0385.

was withheld from the Defence for over three months, and was only disclosed on 1 April 2021 – the day after the conclusion of P-1847’s testimony.<sup>52</sup>

42. Whether the timing of this disclosure is the result of a strategic decision on the part of the Prosecution, or simply a remarkable coincidence, the fact remains that owing to the Prosecution’s failure to provide sufficient notice of its case regarding [REDACTED], and its failure to timely disclose contradictory evidence prior to the testimony of P-1847, the Defence was deprived of the opportunity to address the Prosecution’s claim regarding alleged military operations and coordination of [REDACTED].
43. In the circumstances therefore, in light of the intended purpose of these documents, their belated addition to the Prosecution List of Evidence would occasion undue prejudice to the fairness of these proceedings.

### **CONFIDENTIALITY**

44. This response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed forthwith.

### **RELIEF SOUGHT**

45. For the above reasons, the Defence respectfully requests that the Chamber:  
  
**DENY** the Request.

---

<sup>52</sup> See [ICC-01/14-01/18-1212-Conf](#), fn. 34. A public redacted version is also available [ICC-01/14-01/18-1212-Red](#); P-1847 testified from 26-30 March 2021.

**RESPECTFULLY SUBMITTED ON THIS 11<sup>TH</sup> DAY OF JANUARY 2022**

A handwritten signature in blue ink, appearing to read 'Mylène Dimitri'.

Me Mylène Dimitri  
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands