

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **02 June 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 'Yekatom Defence Observations pursuant to the
"Decision on the Fourth Prosecution Submission Request from the Bar
Table (Recruitment and Use of Children)", 24 May 2022, ICC-01/14-01/18-
1428', 31 May 2022, ICC-01/14-01/18-1442-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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**Unrepresented Applicants
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INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom (“Defence”) hereby submits its views on the addition of CAR-OTP-2121-2593 and CAR-OTP-2126-0385 to the Prosecution’s List of Evidence and their formal submission before the Chamber in accordance with the *Decision on the Fourth Prosecution Submission Request from the Bar Table (Recruitment and Use of Children)* (“Decision”).¹

PROCEDURAL HISTORY

2. On 23 February 2022, the Prosecution provided the Defence with a list of 49 items that it sought to submit through a bar table motion dedicated to the issue of child soldiers.²
3. On 24 March 2022, the Defence provided the Prosecution *inter partes* its position on the 49 items.³
4. On 1 April 2022, the Office of the Prosecutor filed its *Request for the Submission of Evidence from the Bar Table regarding the recruitment and use of child soldiers* (“Request”).⁴
5. On 25 April 2022, the Defence filed its response on the 49 items included in the Prosecution’s Request (“Response”).⁵
6. On 24 May 2022, the Chamber issued the Decision in which it *inter alia* instructed the Parties to provide their views on the addition of CAR-OTP-2121-2593 and CAR-OTP-2126-0385 to the Prosecution’s List of Evidence and their formal submission before the Chamber.

¹ [ICC-01/14-01/18-1428](#).

² Email from the Prosecution to the Defence dated 23 February 2022 at 16:53.

³ Letter ARY-2022-0205 dated 24 March 2022.

⁴ [ICC-01/14-01/18-1346](#).

⁵ [ICC-01/14-01/18-1379-Red](#).

SUBMISSIONS

7. Items CAR-OTP-2126-0385 and CAR-OTP-2121-2593 are Investigative Reports (respectively, “First Report” and “Second Report”; collectively, “Reports”) providing information on the manner in which the Prosecution obtained items CAR-OTP-2121-2595 and items CAR-OTP-2126-0413, CAR-OTP-2126-0414, CAR-OTP-2126-0415, CAR-OTP-2126-0416 (‘Four Certificates’).
8. The Defence would respectfully oppose the formal submission of the First Report, on the basis that this would be procedurally highly unsafe, and would set a problematic precedent.
9. The Defence recalls that evidence is testimonial in nature where the person providing the statement understands that ‘he or she is providing information which may be relied upon in the context of legal proceedings’, and when that person is ‘questioned in the capacity as [a] witness[] in the context of or in anticipation of legal proceedings.’⁶
10. That being said, the First Report comprises a unsworn account, as told to and recorded by an anonymous Prosecution employee, regarding the circumstances in which highly prejudicial birth certificates were allegedly produced and obtained. The individual in question is [REDACTED] and Prosecution witness P-2582, and these birth certificates were produced and obtained after P-2582’s interview with Prosecution investigators in the context of these proceedings.⁷ As the Chamber is aware, the reliability of P-2582’s birth certificate is highly contested. The First Report also contains a “Background” section that sets out highly prejudicial claims that go to the heart of the Prosecution’s case underlying Count 29.

⁶ The Prosecutor V. Dominic 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.

⁷ See, CAR-OTP-2117-0605-R05.

11. Furthermore, and in addition to this procedural bar, the Defence contends that the fact that the prejudicial effect of the admission of the First Report outweigh the low probative value, as demonstrated by the circumstances and nature of the First Report as set out above, further militates in favour of the rejection of the admission of the latter.
12. Compounding the prejudicial nature of the report is the fact that, as the Defence has previously submitted, and as the ongoing testimony of P-2475 has made clear, the alleged child soldier demobilisation programme in which P-2084 (who according to the First Report, [REDACTED]) and the administration of [REDACTED] was partly implicated, was a 'scam',⁸ in which participants fabricated their ages, and of which the administrators were 'using [participants] to take money'.⁹
13. Furthermore, the Defence notes that the chain of custody within the metadata of the First Report indicates that it was provided to the Prosecution by [REDACTED], and does not mention [REDACTED]; likewise, the four certificates mentioned in the First Report. Thus, the First Report, as opposed to shedding light on the source and provenance of the documents, in fact appears to be contradicted by the chain of custody information provided by the Prosecution thus far.
14. Moreover, formal introduction of the First Report is simply unnecessary at this stage. Information as to the circumstances in which [REDACTED] can be elicited from P-2084; [REDACTED], the information in the "Background" section can be elicited from P-2582.
15. In the alternative, the Defence does not oppose the submission of portions of the First Report which go specifically to establishing how the Prosecution, as

⁸ ICC-01/14-01/18-T-131-FRA RT, p. 62.

⁹ ICC-01/14-01/18-T-131-ENG RT, p. 46.

opposed to [REDACTED], obtained the Four Certificates. The Defence recalls that the Chamber has previously affirmed its inherent power to allow the admission into evidence of a portion(s) of a document, holding that 'it cannot be excluded that there may be circumstances warranting that only part(s) of a single item be submitted into evidence.'¹⁰

16. This would entail with regard to the First Report that solely the following information: '[REDACTED], OTP investigators [A.4] and [A.4] met with the [REDACTED]'; '[REDACTED]' and; 'Investigators took photographs of the four duplicate birth certificates and returned the originals [REDACTED].'
17. While the above arguments apply *mutatis mutandis* to the Second Report, the Defence concedes that the prejudice that would be occasioned by its formal submission is minimal, especially in comparison with the First Report, given its highly concise nature. As such, the Defence would not oppose its formal submission, on an exceptional basis and without prejudice to its position on the formal submission of Investigators Notes in such circumstances.

CONCLUSION

18. In sum, the Defence opposes the formal submission and addition to the List of Evidence of the First Report. Alternatively, it does not oppose its addition to the List of Evidence and its partial submission as set out above. The Defence does not make any opposition with regard to the Second Report.

CONFIDENTIALITY

¹⁰ See e.g., Trial Chamber V's Email Decision on Submitted Materials for P-2841, 2 July 2021.

19. The Observations is filed on a confidential basis as it refers to confidential information contained in material disclosed by the Prosecution. A public redacted version will be filed forthwith.

RESPECTFULLY SUBMITTED ON THIS 2ND DAY OF MAY 2022



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