

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**
Date: **15 December 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Request for leave to add one item to the List of
Evidence”, 15 December 2022**

Source: Office of the Prosecutor

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

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I. SUBMISSIONS

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber V (“Chamber”) to authorise the addition of one item of evidence (“Item”)¹ to its Updated List of Evidence (“LoE”)² in accordance with the Decision Setting the Commencement Date of the Trial³ and subsequent decisions.⁴

2. The single Item is a contact list extracted from a phone [REDACTED]. The Registry received the seized material shortly thereafter [REDACTED].⁵ The Registry provided the Prosecution with access to the relevant phone on 11 November 2022, following which the contact list was extracted on 15 November 2022, and the Item registered in Ringtail disclosed to the Defence on 2 December 2022.⁶ While the Prosecution’s full analysis of the contact list – which contains more than [REDACTED] entries – is ongoing, it is already apparent that the Item contains highly relevant attribution information that tends to establish previously unknown contacts between Anti-Balaka leaders.

3. As discussed more fully below, the Item is relevant to material issues at trial and bears sufficient indicia of reliability on which the Chamber may properly base its article 74 decision. The addition of the Item to the LoE causes no prejudice to a fair trial. To the contrary, it would assist in the Chamber’s determination of the truth, and would contribute to an expeditious trial.

II. CONFIDENTIALITY

4. Pursuant to regulation 23bis(1) of the Regulations of the Court (“RoC”), the Prosecution files this request as “*Confidential*” because it contains confidential

¹ CAR-OTP-00000637.

² ICC-01/14-01/18-1211-Conf-AnxA(“LoE”).

³ ICC-01/14-01/18-589, para. 10, 14 and 16 (“Decision”).

⁴ ICC-01/14-01/18-989-Conf, para. 5-6; ICC-01/14-01/18-1080-Conf, para. 7; ICC-01/14-01/18-T-073-ENG ET, p. 3, l. 16-17; ICC-01/14-01/18-1206, para. 5; ICC-01/14-01/18-1301-Conf, para. 10; ICC-01/14-01/18-1597-Conf, p. 10.

⁵ See [REDACTED].

⁶ See Trial Rule 77 package 93 of 2 December 2022.

information regarding Prosecution evidence. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. The Item is relevant and has significant probative value

5. The Item contains, *inter alia*, the following telephone attribution information previously unknown to the Prosecution:

- [REDACTED];⁷
- [REDACTED];⁸
- [REDACTED];⁹
- [REDACTED];¹⁰
- [REDACTED];¹¹
- [REDACTED];¹²
- [REDACTED];¹³
- [REDACTED];¹⁴
- [REDACTED];¹⁵ [REDACTED].¹⁶

⁷ CAR-OTP-00000637, rows 473 [REDACTED] and 2690 [REDACTED].

⁸ CAR-OTP-00000637, row 2658 [REDACTED].

⁹ CAR-OTP-00000637, row 2917 [REDACTED].

¹⁰ CAR-OTP-00000637, row 4068 [REDACTED].

¹¹ CAR-OTP-00000637, row 2877 [REDACTED].

¹² CAR-OTP-00000637, row 2099 [REDACTED].

¹³ CAR-OTP-00000637, rows 3769 and 3768. For the use of [REDACTED], see P-2843: T-074-CONF, p. 70, l. 11-13, 19-25; T-085-CONF, p. 44, l. 12-16.

¹⁴ CAR-OTP-00000637, row 3320.

¹⁵ CAR-OTP-00000637, row 830 [REDACTED].

¹⁶ CAR-OTP-00000637, row 1165 [REDACTED].

6. This information has allowed the Prosecution to identify new contacts between key individuals and participants in the Anti-Balaka leadership during the period at issue in this case. While a full analysis is still to be completed, the following significant information is already discernible:

- [REDACTED];¹⁷
- [REDACTED];¹⁸
- [REDACTED],¹⁹ [REDACTED],²⁰ [REDACTED],²¹ [REDACTED],²²
[REDACTED],²³ [REDACTED].²⁴

7. Additionally, the Item contains an entry pairing the name [REDACTED] to the email address [REDACTED].²⁵ In another entry, the email address [REDACTED] is listed for the name [REDACTED].²⁶ Read with existing evidence from Yahoo!, this implicates [REDACTED]– in the early January 2014 provision and/or attempted provision of military supplies to the Anti-Balaka in coordination with NGAISSONA.²⁷

8. The Prosecution emphasises that this relevant attribution information is the result only of a time-sensitive preliminary analysis. A more detailed analysis currently being conducted is expected to reveal further attribution information and important connections previously unknown to the Prosecution. The Prosecution therefore

¹⁷ CAR-OTP-2054-1480, rows 162687, 246455, 37032, 204504, 78833, 246379, 204458, 246297, 330145, 120579, 120578, 162495, 162494, 288041, 162459, 204117, 204521, 204515, 37029, 330274, 246414, 204501, 288226, 246348, 246296, 162550, 204382, 78713, 120563, 288061, 162469, 36816, 78603, 120446, 330011, 78557, 78556, 78457, 36599, 329854, 204094.

¹⁸ CAR-OTP-2054-1479, rows 27942, 47206, 66719, 66720, 85876, 85882, 85883, 85884, 105143, 105149, 124349, 143815, 143831.

¹⁹ CAR-OTP-2054-1478, rows 63066 and 82063.

²⁰ CAR-OTP-2054-1480, rows 38176, 120736, 163396, 205840, 247564, 247724, 287747, 289170, 289404, 289629 and 330326.

²¹ CAR-OTP-2054-1480, row 60941.

²² CAR-OTP-2054-1480, rows 33608, 117371 and 285012.

²³ CAR-OTP-2054-1480, rows 83085, 90411, 90412 and 90421.

²⁴ CAR-OTP-2054-1478, rows 1050, 132833 and 76259.

²⁵ CAR-OTP-00000637, row 1402.

²⁶ CAR-OTP-00000637, row 613.

²⁷ See CAR-OTP-2124-0489, with attachment CAR-OTP-2124-0490.

expects to be in a position to fully substantiate its submission of the Item from the bar table shortly.

B. Adding the Item to the LoE causes no unfair prejudice to the Defence

9. The addition of the Item to the LoE during the presentation of the Prosecution's case does not cause unfair prejudice to the Accused. As the Prosecution foreshadowed in its communication to the Chamber of 25 October 2022,²⁸ the Registry has had certain devices acquired [REDACTED] in its custody and control, expected to yield items prospectively to be added to the Prosecution's LoE. The Prosecution could not have been aware of the existence of this material, did not possess or control it, nor had the means to locate and secure it. The Item was duly disclosed to the Defence some two weeks after receiving it, and following an expedited initial analysis, timely brings the current request. Finally, nothing impedes the Defence's fair opportunity to address the Item during the remainder of the proceedings if necessary, subject to the Chamber's appropriate exercise of discretion.

²⁸ Email of 25 October 2022 17:46.

IV. CONCLUSION

10. For the above reasons, the Prosecution requests the Chamber's leave to add the Item to its LoE. The fair and expeditious conduct of the proceedings is not infringed by permitting the addition of the Item to the LoE at this stage. Rather, it is facilitated. The Item is of significant probative value, its addition causes no unfair prejudice, and importantly, its introduction will advance the Chamber's mandate to search for the truth.

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

Karim A. A. Khan KC, Prosecutor

Dated this 15th day of December 2022

At The Hague, The Netherlands