

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **21 August 2023**

**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**

**Yekatom Defence Response to 'Prosecution's Eleventh Application for the  
Submission of Open-source Evidence from the Bar Table'**

**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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**REGISTRY**

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**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

## INTRODUCTION

1. The Defence for Mr. Yekatom ('Defence') hereby responds to the 'Prosecution's Eleventh Application for the Submission of Open-source Evidence from the Bar Table' ('Application').<sup>1</sup>
2. The Defence opposes the submission of four items<sup>2</sup> ('Four Items') and provide its submission regarding the other items, deferring either to the Defence for Mr. Ngaiissona or to the discretion of the Chamber ('Other Items').
3. Specific submissions on relevance and/or probative value of the Items are included in the Annex to this response.

## APPLICABLE LAW

### **Article 64(9)(a) – Rome Statute**

The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:

- (a) Rule on the admissibility or relevance of evidence[.]

### **Article 69(4) – Rome Statute**

The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

### **Rule 64(1) – Rules of Procedure and Evidence**

1. An issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber. Exceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known. The Chamber may request that the issue be raised in writing. The written motion shall be communicated by the Court to all those who participate in the proceedings, unless otherwise decided by the Court.

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<sup>1</sup> [ICC-01/14-01/18-2010-Conf](#)

<sup>2</sup> Annex A, items 2 (CAR-OTP-2001-2203), 8 (CAR-OTP-2001-3319), 10 (CAR-OTP-2001-4422), 24 (CAR-OTP-2042-5124).

## SUBMISSIONS

4. The Defence opposes the submission of the Four Items. It does not oppose the submission of the Other Items, to the extent that they are formally submitted only for the relevance indicated in the Application.
5. The Prosecution's proposed relevance of the items as submitted in the Application are not based on a complete and objective characterization of the content of the exchanges, as the Prosecution repeatedly fails to bring to the attention of the Chamber exculpatory messages. The Defence notes that on multiple occasions, the Prosecution provided a relevance which is either incomplete or mischaracterises the evidence.<sup>3</sup> For instance, although the evidence suggests that crimes were being committed by Selekas and/or members of the population, the Prosecution brushes aside this aspect of the evidence to use it solely to attributes crimes to Anti-Balaka groups.<sup>4</sup>
6. Further, and in the interests of judicial economy, the Defence reiterates *mutatis mutandis* its submissions as set out in its response to the Prosecution's Request for the Submission of Evidence from the Bar Table regarding the Prevalence of Sexual and Gender Based Violence,<sup>5</sup> with regard to the Prosecution's submission on the relevance, reliability and probative value of open-source documents coming from NGOs or media.<sup>6</sup>
7. More specifically, it is submitted that the Prosecution limited its submissions regarding reliability and probative value to identifying where the item was downloaded from and indicating whether they are contemporaneous to the event. However, it has not made submissions regarding the methodology used

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<sup>3</sup> Annex A, items 1 (CAR-OTP-2001-2139), 4 (CAR-OTP-2001-2880), 5 (CAR-OTP-2001-2883), 7 (CAR-OTP-2001-3302), 13 (CAR-OTP-2001-4472), 18 (CAR-OTP-2001-6998), 25 (CAR-OTP-2042-5196), 26 (CAR-OTP-2042-5290), 27 (CAR-OTP-2057-0966), 30 (CAR-OTP-2075-0670), 39 (CAR-OTP-2091-0433).

<sup>4</sup> See for example Annex A, items 1 (CAR-OTP-2001-2139), 4 (CAR-OTP-2001-2880).

<sup>5</sup> [ICC-01/14-01/18-1233](#).

<sup>6</sup> [ICC-01/14-01/18-2010-Conf](#), paras 8-10, and para. 59

for the different reports it seeks to submit by the NGOs or the required neutrality of the outlets or authors of the publications.

**CONFIDENTIALITY**

8. The annex appended to this filing is classified as confidential as it relates to evidence disclosed that should not be released to the public.

**RESPECTFULLY SUBMITTED ON THIS 21<sup>st</sup> DAY OF AUGUST 2023**



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