

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 March 2024**

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

**Public Redacted Version of the “Yekatom Defence Response to
‘Prosecution’s Seventeenth Application for Submission of Facebook
Evidence from the Bar Table’, ICC-01/14-01/18-2062-Conf”, 28 September
2023, ICC-01/14-01/18-2112-Conf**

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 Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Thomas Hannis
Mr Florent Pages-Granier
Ms Laurence Hortas-Laberge

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

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

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

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

Ms Marie O'Leary

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

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 Seventeenth Application for Submission of Facebook Evidence from the Bar Table' ('Application').¹
2. The Defence does not oppose the submission of 159 of the 177 items. 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.

SUBMISSIONS

3. The Defence does not oppose the submission of 159 of the 177 items. However, within the Annex appended to this filing, the Defence provides its observation

¹ ICC-01/14-01/18-2062-Conf.

on the relevance set forth by the Prosecution with regard to certain items. Submissions are also made on the probative value of certain items.

4. Further, the Defence will briefly provide submissions as to the 18 items whose submission is opposed (A); before addressing the numerous issues affecting the Prosecution's relevance of certain items (B).

A. On the documents whose submission is opposed

5. The Defence opposes the submission of 18 documents² on the basis that they are not *prima facie* relevant for the adjudication of the case, and as such their introduction in the case record should be barred.

i) On the items containing duplicative information

6. The Defence submits that submission of Items 86, 88, 90, 93, 94, 95, 100 and 148³ (collectively the "Eight Items") should be rejected as their content deemed relevant by the Prosecution can be found in multiple other documents included in the Application.
7. Indeed, it is recalled that:

[u]nless immediately apparent from the exhibit itself, it is the responsibility of the party tendering it to explain: (1) the relevance of a specific factual proposition to a material fact of the case; (2) how the item of evidence tendered makes this factual proposition more probable or less probable. If submissions on these points are not sufficiently clear or precise, or if the Chamber cannot ascertain the relevance of an item of evidence with reasonable precision, it may decide to reject it on those grounds".⁴

² CAR-OTP-2103-3408; CAR-OTP-2103-2186; CAR-OTP-2103-2082; CAR-OTP-2103-2164; CAR-OTP-2103-2132; CAR-OTP-2103-2104; CAR-OTP-2103-2156; CAR-OTP-2103-2114; CAR-OTP-2103-2160; CAR-OTP-2099-7897; CAR-OTP-2132-7664; CAR-OTP-2132-6515; CAR-OTP-2132-6648; CAR-OTP-2133-2450; CAR-OTP-2133-1362; CAR-OTP-2131-1303 ; CAR-OTP-2133-7314; CAR-OTP-2131-6546.

³ Respectively documents CAR-OTP-2103-2186; CAR-OTP-2103-2082; CAR-OTP-2103-2164; CAR-OTP-2103-2132; CAR-OTP-2103-2104; CAR-OTP-2103-2156; CAR-OTP-2103-2160; CAR-OTP-2133-1362.

⁴ *Prosecutor v. Katanga & Chui*, Decision on the Prosecution's Bar Table Motions, 17 December 2010, [ICC-01/04-01/07-2635](#), para. 16.

8. The Chamber also found that the short description for the relevance of an item must be “sufficiently clear and applicable to the item”.⁵
9. The Prosecution, as the submitting party, is expected to have clearly provided the attributed relevance of each item for which it seeks submission. In the Annex appended to its Application, Prosecution clearly stated the relevance of a conversation, and noted in the description column the specific messages that supports it. However, it preceded such relevance with the locution “*inter alia*”. Such addition should not be used to expand the relevance artificially to an infinity of other topics. To the contrary, only the relevance that is formally written by the Prosecution should be considered by the Chamber when assessing whether the submission of the item in question is warranted. It is not the role of the Defence, or of the Chamber, to guess whether or not an item has any other relevance for the Prosecution’s case than the one it clearly stated in the Application.
10. As such, the Defence particularly objects the submission of the Eight Items as the relevance identified by the Prosecution is relatively straightforward. This includes the localization of an individual or the attribution of a phone number. This information is however also clearly available in other documents. For instance, Item 90⁶ is used by the Prosecution to attribute two telephone numbers to an individual, however those phone numbers are also attributed to the same individual in Items 73, 80 and 81.
11. The Defence recalls that the Chamber previously rejected the submission of documents on the basis that they constitute duplicates of other documents already formally part of the case record.⁷ While the Eight Items are not

⁵ [ICC-01/14-01/18-1359](#), para. 8.

⁶ CAR-OTP-2103-2164.

⁷ [ICC-01/14-01/18-1359](#), para. 22.

duplicates *per se*, the only relevant information they contain, and that the Prosecution intends to use, is duplicative.

12. The exclusion of items only containing simple information that can be found in other documents is in the interest of justice and of judicial economy. Indeed, given the magnitude of the present case, the case record should be preserved as much as possible from being clogged by a multitude of Facebook conversations, which can each contain several hundred of irrelevant messages, while the only useful information is available in other documents that will be in the Chamber's possession during its deliberation.
13. Consequently, as the information contained in the Eight Items can be found in other documents, the Defence respectfully requests the Chamber to find that they are irrelevant for the adjudication of the case; and reject their submission.

ii) On the items lacking prima facie relevance

14. The Defence argues that the submission of items 19, 97, 110, 138, 141, 146, 147, 163, 173 and 175⁸ should be rejected as their analysis demonstrates a lack of relevance for the adjudication of the case. The Defence detailed its opposition for each item in the Annex.
15. As an example the Defence opposes the submission of Item 97.⁹ The entire conversation contained within this item is mundane and family related, with the targeted account holder inquiring about how the studies of his cousin are going.
16. The Defence also objects to the submission of Item 110¹⁰ which is a conversation that begins in September 2014 and is held almost entirely outside the timeframe

⁸ Respectively documents CAR-OTP-2103-3408; CAR-OTP-2103-2114; CAR-OTP-2099-7897; CAR-OTP-2132-7664; CAR-OTP-2132-6515; CAR-OTP-2132-6648; CAR-OTP-2133-2450; CAR-OTP-2131-1303; CAR-OTP-2133-7314; CAR-OTP-2131-6546.

⁹ CAR-OTP-2103-2214.

¹⁰ CAR-OTP-2099-7897.

of the charges, between two individuals both residing in France, and consequently only in a position to share second hand information. Further, the main topic of the conversation is their discontentment with the presidency of Ms Samba-Panza. Finally, the relevance highlighted by the Prosecution for this document is based on a mischaracterization of the content of the document, as detailed by the Defence in the Annex.

B. On the issues with the Prosecution's attributed relevance and probative value

17. The Defence wishes to make specific submissions on several topics broached by the Prosecution in the annex of its Application, as part of its description of some items as well as its assessment of their relevance.
 - i) *The relevance regarding the organisation of the Anti-Balaka prior to the 5 December attack on Bangui and the anti-Muslim animus is misplaced*
18. It is to be noted that, within the items the Prosecution intends to submit, there are clear indication supporting the fact that different groups with different purposes existed on the 5th of the December. For instance, the Defence notes that within Item 154, [REDACTED] message at 7am on 5 December 2013 indicates that the Anti-Balaka “ont fait une percrée” but that the FACA did not go out to help them.¹¹ It is submitted that this information tends to show the dissociation and lack of coordination during the 5 December 2013 attack between different Anti-Balaka groups and different FACA members.
19. In the Application, the Prosecution also seems to make this distinction between FACAs and Anti-Balaka.¹² This is in line with evidence on the record showing that the term Anti-Balakas designated small self-defence groups of civilian in different localities in CAR,¹³ and that while the term grew in popularity and

¹¹ CAR-OTP-2132-6105, at 6173.

¹² ICC-01/14-01/18-2062-Conf, para. 31.

¹³ P-0876 : ICC-01/14-01/18-T-086-CONF-FRA ET, p. 14.

more people were brought to take arms, they did not organised as a single entity.¹⁴ This is also coherent with the evidence on the record showing that until mid-december 2013, Mr. Yekatom was not identifying himself as part of an Anti-Balakas groups¹⁵ but said to belong to the *Révolution des forces armées centrafricaines pour le peuple* with other FACAs members.¹⁶

20. Another example lies in Item 127. In a message dated 28 January 2014, [REDACTED] identifies [REDACTED] (P-0876) as a faux Anti-balaka.¹⁷ The Defence submits that this corroborates evidence on the record showing the division between Anti-Balaka groups, and the existence of at least two wings of Anti-Balaka. Different attempts were made to try an unify at least some Anti-Balakas groups. Those attempts were unsuccessful and the existence of *at least* two wings of “anti-balakas” with different objectives¹⁸ co-existed until June 2014.¹⁹
21. Also, some messages lack the appropriate context to infer the relevance argued by the Prosecution. For instance, the Prosecution argues that the conversation in Item 26 containing a message of [REDACTED] stating “[REDACTED]” sent in early November 2013 shows the planning of the 5 December attack.²⁰ In another conversation, [REDACTED] says he is still [REDACTED] in late December and “[REDACTED]”²¹ before coming to Bangui. [REDACTED] arrival to Bangui alone or together with others reveals to be unrelated to the attack of the 5 December as a month after the attack he was still awaiting

¹⁴ P-0876 : ICC-01/14-01/18-T-085-CONF-FRA ET, p. 22.

¹⁵ P-0888 : ICC-01/14-01/18-T-121-FRA ET, p. 81, lignes 13-14, [15:38:47].

¹⁶ See CAR-OTP-2065-0396, 00 min 39 secs to 00 min 55 secs; **P-1839** : ICC-01/14-01/18-T-172-CONF-FRA ET, p. 85 [15:37:19], ICC-01/14-01/18-T-173-FRA, ET, p. 12 [10:01:42]

¹⁷ CAR-OTP-2133-3618, at 3637.

¹⁸ **P-1839** : ICC-01/14-01/18-T-172-FRA RT, p. 88 [15:45:54] ; **P-0974** : ICC-01/14-01/18-T-243-CONF-FRA [09:55:09], ICC-01/14-01/18-T-244-CONF-FRA ET, [09:40:27].

¹⁹ **P-0888** : ICC-01/14-01/18-T-120-CONF-FRA ET, p. 81, lignes 1-2, ICC-01/14-01/18-T-123-FRA ET, p. 32, lignes 4-9, [11:37:03]; **P-0876** : ICC-01/14-01/18-T-086-CONF-FRA ET, p. 73 ln. 12, ICC-01/14-01/18-T-086-CONF-FRA ET, p. 77, CAR-OTP-2046-0455-R01, p. 0469;

²⁰ Annex A, Item 26.

²¹ See Item 30, CAR-OTP-2103-3524, p. 3529.

instructions. It is unclear how Item 26 is relevant to the 5 December attack, to the contrary the nexus between the initial message and the 5 December attack is inexistent, contrary to the Prosecution assertion. It is to be noted that for similar messages the Prosecution provided a difference relevance relating only to the general organisation of the Anti-Balaka.²²

22. In this context, the Prosecution's argument that certain items "show" the "organisation of the Anti-Balaka prior to the 5 December 2013 attack on BANGUI" and the "prevalence of anti-Muslim animus within the Anti-Balaka"²³ is overly broad. The Prosecution should at this stage be in a position to explain with a reasonable degree of precision how an item it intends to submit is relevant to its case and to the charges.²⁴

ii) The Prosecution's asserted relevance mischaracterizes the content of the items in some instances

23. The Defence wishes to bring to the Chamber's attention the mischaracterization or misapprehension of the content of some of the Facebook conversation by the Prosecution. The Defence does not purport that this is the result of an intentional strategy from the Prosecution, as this might well be the result of misplaced shortcuts operated by the Prosecution or from the transposition in short English sentences of entire conversations of dozens of messages. Nevertheless, the Defence deems important for the Chamber to be on notice of the deficiencies that can be found in the Annex as their impact on the understanding of certain items is substantive.

24. The Defence made specific detailed submissions for all items in the Annex, to be taken into account by the Chamber's during its eventual assessment of the

²² See Items 14 and 15.

²³ ICC-01/14-01/18-2062-Conf, paras. 16, 36.

²⁴ *Prosecutor v. Katanga & Chui*, Decision on the Prosecution's Bar Table Motions, 17 December 2010, [ICC-01/04-01/07-2635](#), para. 16.

evidence while deliberating. The Defence selected a few telling examples of mischaracterization below.

25. The first example relates to Item 152,²⁵ a conversation between [REDACTED] and [REDACTED] which according to the Prosecution shows “*the Anti-Balaka’s availability/provision of weapons and ammunition prior to and after the 5 December 2013 attacks on BANGUI and BOSSANGO*”. The Defence submits that contrary to the Prosecution’s submission, when the whole conversation is properly analysed, it reveals that it relates in reality to the provision of weapons and ammunitions to the Seleka and not the Anti-Balaka.
26. Indeed, [REDACTED] is a colleague [REDACTED] which is now occupied by the Seleka, [REDACTED] is in contact with the Seleka at the base.²⁶ During the conversation he continues to provide information to [REDACTED] regarding the state of the base and [REDACTED].²⁷
27. On [REDACTED], [REDACTED],²⁸ it is within this context that he mentions that “les gars” were resupplied with ammunitions in [REDACTED] and [REDACTED], he also indicates that [REDACTED].²⁹ A few hours later [REDACTED] indicates that a big resupply was done in weapons and ammunition, through [REDACTED], at the base.³⁰ [REDACTED] being a CAR airline [REDACTED] who only got [REDACTED] as part of their fleet during their history,³¹ such airplane not being able to operate on rudimentary runways as it would surely need to, should it resupply small Anti-Balaka groups.
28. All of the messages and information provided by [REDACTED] indicates that he is talking about the resupplies in weapons of Seleka elements, through the

²⁵ CAR-OTP-2132-6685.

²⁶ See as an example CAR-OTP-2132-6685 at 6689.

²⁷ CAR-OTP-2132-6685 at 6693-6694.

²⁸ CAR-OTP-2132-6685 at 6696.

²⁹ CAR-OTP-2132-6685 at 6697 : « [REDACTED] » and « [REDACTED] ».

³⁰ CAR-OTP-2132-6685 at 6697 : « [REDACTED] ».

³¹ [REDACTED]

[REDACTED], and not at all the provision of ammunitions to the Anti-Balaka as alleged by the Prosecution both in its Annex and the main filing of its Application.³²

29. Another example relates to Item 110³³ containing a conversation occurring after the timeframe of the charges and for which the Prosecution provides a misleading description. Indeed, the Prosecution states that “[REDACTED] reports at least 6 Anti-Balaka checkpoints between PK9 and MBAIKI” and that “BANGUI is asphyxiated from all sides” while keeping silent on the fact that [REDACTED] is merely copying/pasting what appears to be a tweet³⁴ from unknown origin, while totally omitting the last part of the message “*Srcce media France*” which clearly establish that [REDACTED] is not a direct eye witness about such roadblocks and is not the author of the message.³⁵ The absence of any indication by the Prosecution that [REDACTED] is merely copying/pasting information gleaned elsewhere is severely misleading as, as phrased, the description suggests that he has first-hand knowledge of the information.
30. The Prosecution’s alleges that this same item is relevant to show “*the anti-Muslim animus of the Anti-Balaka*”, however the Prosecution does not quote a single message to that effect in its description of the item. This lack of quotation is explained by the fact that not a single message of both interlocutors, among the 147 pages, can be analysed as directly or indirectly anti-Muslim.
31. This document is also an example of the Prosecutions making statement of facts in its relevance column without substantiation, which should lead the Chamber to exercise caution when assessing the relevance of evidence during its deliberation.

³² See ICC-01/14-01/18-2062-Conf, para. 36, fn. 119.

³³ CAR-OTP-2099-7897.

³⁴ Inference done in light of the hashtags (#) present in his message.

³⁵ See CAR-OTP-2099-7897, p. 8043.

CONFIDENTIALITY

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

RELIEF SOUGHT

33. In light of the above, the Defence respectfully requests Trial Chamber V to:

REJECT in part the Request;

DECLARE inadmissible the following evidence: CAR-OTP-2103-3408; CAR-OTP-2103-2186; CAR-OTP-2103-2082; CAR-OTP-2103-2164; CAR-OTP-2103-2132; CAR-OTP-2103-2104; CAR-OTP-2103-2156; CAR-OTP-2103-2114; CAR-OTP-2103-2160; CAR-OTP-2099-7897; CAR-OTP-2132-7664; CAR-OTP-2132-6515; CAR-OTP-2132-6648; CAR-OTP-2133-2450; CAR-OTP-2133-1362; CAR-OTP-2131-1303 ; CAR-OTP-2133-7314; and CAR-OTP-2131-6546.

CONSIDER the observations of the Defence contained in Annex A for each item during its deliberation.

RESPECTFULLY SUBMITTED ON THIS 11th DAY OF MARCH 2024



Me Mylène Dimitri

Lead Counsel for Mr. Yekatom

The Hague, the Netherlands