

**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

**Public Redacted Version of the “Yekatom Defence Response to
‘Prosecution’s Tenth Application for Submission of Facebook Evidence
from the Bar Table’”, 25 July 2023, ICC-01/14-01/18-2005-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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INTRODUCTION

1. The Defence for Mr. Yekatom ('Defence') hereby responds to the 'Prosecution's Tenth Application for Submission of Facebook Evidence from the Bar Table' ('Request').¹
2. The Defence do not oppose the submission of the six items ('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.

SUBMISSIONS

4. The Defence does not oppose the submission of Items 1-3 and 5-6, to the extent that they are formally submitted only for the relevance and probative value as indicated in the Request.

¹ ICC-01/14-01/18-1956-Conf.

5. With regard to Item 4 (CAR-OTP-2066-2466), the Defence defers to the position of the Ngaiissona Defence.
6. In the interests of judicial economy, the Defence reiterates *mutatis mutandis* its submissions as set out in its response to the Prosecution's seventh bar table motion,² with regard to the Prosecution's interpretation of Facebook messages, and their relevance and probative value, as set out in the Request.³
7. More specifically, it is submitted that, as set out in the annex to this response, the Prosecution mischaracterises a multitude of Facebook messages that purportedly show 'the motivation of the Anti-Balaka after DJOTODIA's resignation [...] and the anti-Muslim animus of the Anti-Balaka'.
8. For instance, the Prosecution summarises an exchange of messages within CAR-OTP-2066-1601, stating: '[P-0889] explains that [REDACTED] where he got Peuhls out of 'their hideouts',⁴ implying that violence was done to the Peuhls. An examination of other messages within the same document indicates however that P-0889 appears to be referencing an incident where Peuhl were evacuated to BANGUI for medical help with the assistance of Anti-Balaka.⁵
9. In this respect, the Defence notes that P-0889 was not asked by the Prosecution to elaborate on this incident when he appeared before the Chamber; and that instead, the Prosecution appears content to unilaterally and one-sidedly mischaracterise these messages in a manner that suits its case.
10. The Defence thus respectfully reiterates that when assessing the weight of items 1 and 2, attributed by the Prosecution to P-0888 and P-0889 respectively, the Chamber should keep in mind the Prosecution's failure to take these witnesses

² ICC-01/14-01/18-1874-Conf.

³ ICC-01/14-01/18-1996-Conf, paras 7-12.

⁴ ICC-01/14-01/18-1956-Conf-Anx, p. 6.

⁵ See, Annex, p. 5; and CAR-OTP-2066-1601, at 1622 and 1754.

to the messages contained therein when they testified, in light of the Prosecution's statutory obligation to assist the Chamber to establish the truth.

11. In the same vein, the Defence submits that the Prosecution fails to bring to the attention of the Chamber various exculpatory messages that counter-evidence the Prosecution claims about purported 'anti-Muslim animus' exhibited in the Items.
12. For instance, in the Facebook account of '[REDACTED]' (CAR-OTP-2066-1601), a Facebook post from [REDACTED] calls for all Central Africans to stop committing crimes against 'our Muslim brothers'; states that 'our fights is against the Chadian and Sudanese mercenaries'; and urges an end to pillaging, killing, and destruction of homes and mosques of 'our Muslim brothers', stating that 'this is not our vision'.⁶
13. Further, in a [REDACTED] Facebook conversation, the '[REDACTED]' account corrects an interlocutor who had stated that [REDACTED], stating that it is not all foreigners but the Chadian and Sudanese mercenaries; and that the rest are 'our brothers'.⁷

CONFIDENTIALITY

14. This response and annex are filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed forthwith.

RESPECTFULLY SUBMITTED ON THIS 11th DAY OF MARCH 2024⁸

⁶ See CAR-OTP-2066-1601, at 1634, and Annex pp 5-6.

⁷ See CAR-OTP-2066-1601, at 1621, and Annex p. 6.

⁸ The Defence is grateful to Legal Intern Ms Cassandra Oboussier for her assistance with these submissions.

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

Me Mylène Dimitri

Lead Counsel for Mr. Yekatom

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