

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **14 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

Public Redacted Version of "Request for leave to add 9 items to the List of Evidence collected from [REDACTED]", 6 May 2022, ICC-01/14-01/18-1394-Conf

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 9 items of evidence (“Items”) to its Updated List of Evidence (“LoE”)¹ in accordance with the Decision Setting the Commencement Date of the Trial² and subsequent decisions.³

2. [REDACTED]. As discussed below, the Items are relevant to material issues at trial, mutually corroborative, and bear sufficient indicia of reliability on which the Chamber may properly base its article 74 decision.

3. The addition of the Items to the LoE is warranted and appropriate in the circumstances. [REDACTED], and provided them to an OTP Investigator, who brought them to The Hague, where they were photographed, registered in the Prosecution’s evidence collection, reviewed by attorneys for disclosure purposes, redacted, and then disclosed to the parties on 22 April 2022 in Trial INCRIM package 125.⁴ The Prosecution was selective in requesting the addition of only 9 items of evidence obtained from this operation to the LoE. The majority of the evidence collected was disclosed under rule 77 of the Rules of Procedure and Evidence (“Rules”) on the same date.⁵

4. The addition of the Items 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.

¹ ICC-01/14-01/18-1211-Conf-AnxA(“LoE”).

² ICC-01/14-01/18-589, para. 10, 14 and 16 (“Decision”).

³ 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 (“T-073”), p. 3, l. 16-17; ICC-01/14-01/18-1206, para. 5; ICC-01/14-01/18-1301-Conf, para. 10 . Note that the English edited case transcripts will be referred to hereinafter as “T-”.

⁴ See Trial INCRIM package 125.

⁵ See Trial Rule 77 Package 75.

II. CONFIDENTIALITY

5. Pursuant to regulation 23bis(1) of the Regulations of the Court (“RoC”), the Prosecution files this request as “*Confidential*” because it contains confidential information regarding Prosecution evidence. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. Background

6. MOKOM was transferred to ICC custody on 14 March 2022, after his arrest by Chadian authorities. [REDACTED].

7. [REDACTED], the Prosecution promptly organised its transfer to The Hague, where it was itemised and registered with the Information and Evidence Unit (“IEU”), reviewed by attorneys to classify it legally, prepared for disclosure, and redacted where necessary. The Items were formally disclosed to the Defence on 22 April 2022,⁶ less than three weeks after [REDACTED].

8. The material responsive to [REDACTED] which the Prosecution classified as incriminatory (“INCRIM”) consists of 9 items: (i) Anti-Balaka badges of [REDACTED], Alfred YEKATOM, Habib BEINA, Aristide BEINA, [REDACTED], and [REDACTED];⁷ (ii) [REDACTED]’s Anti-Balaka business card;⁸ (iii) François BOZIZE’s driver’s license;⁹ (iv) and a 2014 newspaper interview with [REDACTED] discussing NGAISSONA’s role in the Anti-Balaka.¹⁰ These items are discussed below.

⁶ See Trial INCRIM package 125; Trial Rule 77 Package 75.

⁷ CAR-OTP-2136-0219; CAR-OTP-2136-0221; CAR-OTP-2136-0227; CAR-OTP-2136-0239, CAR-OTP-2136-0249; CAR-OTP-2136-0257.

⁸ CAR-OTP-2136-0310.

⁹ CAR-OTP-2136-0318.

¹⁰ CAR-OTP-2136-0341.

9. A significantly larger portion of the material [REDACTED] – which is not the subject of the present request - was disclosed under rule 77 on 22 April 2022: handwritten lists of “adherents” from various villages and local leadership structure, Anti-Balaka badges belonging to various elements, pictures of [REDACTED], news articles mentioning [REDACTED], a 23 December 2014 Anti-Balaka National Coordination document signed and stamped by [REDACTED] that listed participants in upcoming peace talks in NAIROBI, and many handwritten lists of elements.¹¹ As such, the Prosecution was careful to seek the addition of only the most relevant and probative materials from [REDACTED] to its LoE.

B. The Items are relevant and have significant probative value

10. The 9 Items [REDACTED] are relevant to material issues at trial and have significant probative value. As a threshold matter, the fact that these Items were all collected from [REDACTED] tends to show their authenticity, in that they were all [REDACTED], a key leader of the Anti-Balaka with a direct connection to, and shared interests with, both NGAISSONA and YEKATOM during the Relevant Period.¹² The relevance and probative value of the Items is discussed below.

11. The first six items are Anti-Balaka badges [REDACTED] that show a direct connection between [REDACTED] and YEKATOM’s Group, as well as other key members of the Anti-Balaka leadership. The badges belong to [REDACTED], Alfred YEKATOM, Habib BEINA, Aristide BEINA, [REDACTED], and [REDACTED].¹³ In particular, the presence of the badges in [REDACTED] tends to show his direct link with YEKATOM’s Group and that it fell formally and politically under the umbrella of the National Coordination and formed part of the broader Anti-Balaka group.¹⁴

¹¹ See Trial Rule 77 Package 75.

¹² As defined in the Prosecution’s Trial Brief, from September 2013 through December 2014: ICC-01/14-01/18-723-Red para. 5.

¹³ CAR-OTP-2136-0219; CAR-OTP-2136-0221; CAR-OTP-2136-0227; CAR-OTP-2136-0239, CAR-OTP-2136-0249; CAR-OTP-2136-0257.

¹⁴ See *e.g.*, ICC-01/14-01/18-403-Red-Corr, para. 164.

Further, these badges bear sufficient indicia of reliability, including stamps and signatures that are similar to other Anti-Balaka badges submitted as evidence in this case.

12. The seventh item is [REDACTED] business card.¹⁵ It confirms his position of authority in the organisation as [REDACTED], as well as his contact information such as his Yahoo email address, and corroborates one of his phone numbers [REDACTED] submitted through the Prosecution's Bar Table Motion.¹⁶ The business card bears sufficient indicia of reliability, including the Anti-Balaka emblem similar to other Anti-Balaka documents submitted as evidence.

13. The eighth item is BOZIZE's driver's license, reflecting a 30 March 2012 expiration date.¹⁷ It was found in [REDACTED]. [REDACTED]'s possession of the document alone reflects a direct connection between him and BOZIZE, potentially well before the creation of the Anti-Balaka. BOZIZE's license includes the stamp "SPECIMEN" on the rear side, and bears sufficient indicia of reliability, including government insignia, flag, and holographic marks.

14. The ninth item is an 8 December 2014 issue of *LIKONGO* newspaper which includes an interview with [REDACTED] about his role in the Anti-Balaka.¹⁸ The journalist describes the period between 5 December 2013 and 5 December 2014 as one of historic significance, noting how the entry of the Anti-Balaka into BANGUI changed the course of the political transition, and how the Anti-Balaka's image has been tarnished by exactions – specifically, murders and thefts. [REDACTED] mentions how the Anti-Balaka started as a response to violence and oppression, and that they celebrated SAMBA PANZA's election, but she turned her back on them. He calls upon the transitional government to recognise the Anti-

¹⁵ CAR-OTP-2136-0310.

¹⁶ See ICC-01/14-01/18-1296-Conf-AnxC at page 10.

¹⁷ CAR-OTP-2136-0318.

¹⁸ CAR-OTP-2136-0341 at 0343.

Balaka's bravery. [REDACTED] also mentions NGAISSONA as running the Anti-Balaka's political wing. He states that NGAISSONA thought it was necessary that the Anti-Balaka create a political party to engage in debates and negotiate a Disarmament, Demobilisation, and Reintegration ("DDR") program according to the ceasefire agreements. [REDACTED] discusses the resources needed to accomplish the DDR, and confirms that he is not [REDACTED].¹⁹ The article corroborates the relative roles of NGAISSONA and [REDACTED] within the leadership of the Anti-Balaka and its Coordination, their attitude towards the transitional government, and the Anti-Balaka leadership's knowledge of the group's commission of serious, crimes including murder. This newspaper has sufficient indicia of reliability including the date and issue number, *LIKONGO* logo, and contact information, and a picture of [REDACTED].

15. In sum, the Items are sufficiently relevant and probative to be added to the LoE. The badges reflect links between [REDACTED] and YEKATOM's Group; [REDACTED]'s business card corroborates his position in the Anti-Balaka; BOZIZE driver's license demonstrates his close ties with [REDACTED]; and [REDACTED]'s 2014 interview illustrates his contemporaneous views on the transitional government and NGAISSONA's involvement with and role within the Anti-Balaka.

C. Adding the Items to the LoE causes no unfair prejudice to the Defence

16. The addition of 9 Items to the LoE during the presentation of the Prosecution's case does not cause unfair prejudice to the Accused.

17. *First*, rather than inundating the Parties with a request to add dozens of items to the LoE, the Prosecution chose only 9 of the most relevant items [REDACTED] to form the basis of the present request.

¹⁹ Id.

18. *Second*, the Prosecution exercised reasonable diligence in reviewing and analysing the received material, and disclosing them electronically within a mere 17 days of [REDACTED]. The timely disclosure of the Items demonstrates that the Prosecution acted quickly and efficiently in providing the Defence access to the material.

19. *Third*, in contrast with the *Popović* decision,²⁰ where the ICTY Chamber concluded that the Prosecution was found to have exercised reasonable diligence in identifying indirect evidence already partly in its possession after the Prosecution's presentation of evidence had finished - this case is nowhere near such an advanced stage.²¹ Moreover, the Items provide *direct* evidence that is consistent with the theory of the case and the basis of the confirmed charges.

²⁰ *Prosecutor v. Popović et al*, Case No. IT-05-88-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 8 May 2008, available at: [Decision on motion to reopen the prosecution case \(icty.org\)](https://www.icty.org/judgments/view/IT-05-88-T-8) [accessed 6 May 2022], in particular paras.23-39.

²¹ To date, the Prosecution has called only 35 of its 96 anticipated live witnesses.

IV. CONCLUSION

20. The fair and expeditious conduct of the proceedings is not infringed by permitting the Prosecution to add the Items to the LoE at this stage. The Items are of significant probative value, their addition causes no unfair prejudice, and their introduction will advance the Chamber's mandate to search for the truth.

21. For the above reasons, the Prosecution requests the Chamber's leave to add the Items to its LoE.

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

Karim A. A. Khan QC, Prosecutor

Dated this 14th day of June 2022
At The Hague, The Netherlands