

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 November 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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of the “Yekatom Defence Response to the
Prosecution’s “Request for leave to add 22 items to the List of Evidence”,
ICC-01/14-01/18-1653-Conf, 4 November 2022”, ICC-01/14-01/18-1665-Conf,
17 November 2022**

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
Mr Thomas Hannis
Mr Florent Pages-Granier

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamaï
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**

Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom (“Defence”) hereby responds to the Prosecution’s “Request for leave to add 22 items to the List of Evidence”¹ (“Request”).
2. The Defence contends that the Request should be rejected in regard to 15 items² as no good cause has been shown for their late addition to the Prosecution’s List of Evidence; and further, their addition would infringe on the fairness of the proceedings and be prejudicial to the rights of Mr Yekatom.
3. Moreover, in light of the similarity between the “13 Anti-Balaka badges seized [REDACTED]”³ and other items for which addition to the List of Evidence has been sought, or submission as evidence requested, the Defence wishes to address important points on their probative value and reliability that should be taken into account by the Chamber during its judgement deliberation.

PROCEDURAL HISTORY

4. On 16 July 2020, the Chamber ordered the Prosecution to file its List of Evidence by 9 November 2020.⁴
5. On 10 November 2020, the Prosecution’s List of Witnesses and Evidence was notified to the parties.⁵

¹ [ICC-01/14-01/18-1653-Conf](#).

² The Defence objects to the addition of two of the videos (CAR-OTP-2065-1969 and CAR-OTP-2065-2300), as well as the addition of all 13 Anti-Balaka badges (CAR-OTP-2136-0255, CAR-OTP-2136-0253, CAR-OTP-2136-0251, CAR-OTP-2136-0247, CAR-OTP-2136-0245, CAR-OTP-2136-0243, CAR-OTP-2136-0235, CAR-OTP-2136-0233, CAR-OTP-2136-0231, CAR-OTP-2136-0229, CAR-OTP-2136-0225, CAR-OTP-2136-0223, CAR-OTP-2136-0217)

³ [ICC-01/14-01/18-1653-Conf](#), paras 17-18.

⁴ [ICC-01/14-01/18-589](#), para. 14.

⁵ [ICC-01/14-01/18-724](#), and more specifically Annex C for the List of Evidence [ICC-01/14-01/18-724-Conf-AnxC-Corr.](#)

6. On 29 September 2021, the Single Judge instructed the Prosecution to thoroughly review its List of Evidence for completeness and indicated that any additions to this list should be “sought on an exceptional basis”.⁶
7. On 14 December 2021, the Prosecution filed its “Updated List of Evidence”⁷ pursuant to a Chamber order.⁸
8. On 6 May 2022, the Prosecution filed its “Request for leave to add 9 items to the List of Evidence collected from [REDACTED]”; among the nine items, six were Anti-Balaka badges allegedly found during a search and seizure (“First Request”).⁹ On 19 May 2022, the Defence provided its response, in particular opposing the addition of the six Anti-Balaka badges.¹⁰ On 14 September 2022, the Single Judge granted the Prosecution request in relation to the six Anti-Balaka badges.¹¹
9. On 6 October 2022, in his “Decision on the Prosecution Request to Add 103 Items to its List of Evidence” the Single Judge indicated that “bearing in mind that investigations should largely be completed at the stage of the confirmation of charges hearing, the Single Judge trusts that the Prosecution has fully completed its investigations in this case and that no further requests will be filed”.¹²
10. On 4 November 2022, the Prosecution filed its Request for leave to add 22 items to the List of Evidence”.¹³

⁶ See Chamber’s email dated 29 September 2021; also quoted in Chamber’s decisions such as [ICC-01/14-01/18-1206](#) para. 8 or [ICC-01/14-01/18-1301-Conf](#) para 13.

⁷ [ICC-01/14-01/18-1211](#) and its annex A [ICC-01/14-01/18-1211-Conf-AnxA](#).

⁸ [ICC-01/14-01/18-1206](#), para. 16.

⁹ [ICC-01/14-01/18-1394-Conf](#), para. 8. Public Redacted Version available : [ICC-01/14-01/18-1394-Red2](#).

¹⁰ [ICC-01/14-01/18-1415-Conf](#), paras 19-28, 36-43. Public Redacted Version available : [ICC-01/14-01/18-1415-Red](#).

¹¹ [ICC-01/14-01/18-1573-Conf](#).

¹² [ICC-01/14-01/18-1597-Conf](#), para. 23.

¹³ [ICC-01/14-01/18-1653-Conf](#).

APPLICABLE LAW

11. According to the jurisprudence of the Court, a request to add documents to the List of Evidence is not a request for extension of time under regulation 35 of the Regulations.¹⁴ The Chamber must “determine in the concrete circumstances whether reliance by the Prosecution on items additional to those included in the initial list of evidence causes undue prejudice to the procedural rights of the Defence”.¹⁵ In making this decision the Chamber considers factors including “the extent to which the requested addition is opposed by the Defence, the time when the addition is sought, the nature and amount of the material concerned, the intended purpose for the Prosecution’s requested reliance on such material as well as its prospective significance in light of the charges brought against the accused and the rest of the available evidence”.¹⁶

SUBMISSIONS

12. The Defence defers to the Ngaissona Defence’s position in relation to the addition of the press article¹⁷ and of the two email chains from Mr Ngaissona’s account¹⁸ to the Prosecution’s List of Evidence. The Defence will address the Request in relation to the five rushes filmed by P-1819 (A) and the 13 Anti-Balaka badges (B) below.

I. On the Request in relation to the five videos provided by P-1819

A. On the three unopposed videos

13. As a preliminary matter, the Defence contends that the Request in relation to videos CAR-OTP-2065-0850 and CAR-OTP-2065-2857 is moot as both items were recognised as formally submitted in evidence by the Chamber on 25

¹⁴ [ICC-01/14-01/18-989-Conf](#), para. 5 and references cited therein.

¹⁵ [ICC-01/14-01/18-989-Conf](#), para. 5.

¹⁶ [ICC-01/14-01/18-989-Conf](#), para. 5.

¹⁷ [ICC-01/14-01/18-1653-Conf](#), paras 5-8, Item CAR-OTP-2001-4122.

¹⁸ [ICC-01/14-01/18-1653-Conf](#), paras 9-12, Items CAR-OTP-2130-3615 and CAR-OTP-2130-3641.

November 2021, following their use by the Prosecution during its re-examination of Witness P-2462.¹⁹

14. Despite its unfortunate absence of objection at the time, the Defence finds regrettable that the Prosecution used items that were not on its List of Evidence during re-examination of a witness. While this fact was overlooked by the Defence, for which it takes full responsibility, the Defence nevertheless expects the Prosecution to only use items on its List of Evidence in the future, in particular when using during its re-examination items that are absent from the List of Material of a witness.
15. Similarly, the Defence does not intend to respond to the Request in relation to the addition of video CAR-OTP-2065-2903, given that the Defence used this video during its examination of P-1839 and subsequently requested its submission in evidence.²⁰

B. On the two opposed videos

16. The Defence objects to the Request in relation to the remaining two videos ("Two Videos").²¹
17. The Defence notes that neither of the Two Videos currently has an official French translation, which is necessary in order to properly assess their significance and the potential prejudice to the Defence that their late addition to the List of Evidence would occasion. The Defence consulted with its Linguistic Assistant, who indicated that while the summary made by the Prosecution appears to match what is said in both videos, some portions were inaudible. The Defence thus contends that the Prosecution should be ordered to produce official translations of the Two Videos before any adjudication of the

¹⁹ Email from the Chamber "Decision on submitted materials for P-2462" dated 25 November 2021 at 15:08.

²⁰ Email from the Defence to the Chamber titled "Yekatom Defence submission of evidence following the examination of P-1839", dated 4 November 2022 at 15:28.

²¹ CAR-OTP-2065-1969 and CAR-OTP-2065-2300.

present Request by the Chamber; and should new information arise from the translation the Defence reserves its right to file supplementary submissions on the matter.

i) On the timing of the Request and relevance of the Anti-Balaka badges

18. The Defence emphasizes that both videos were obtained from P-1819 on 10 November 2017. P-1819 provided 1405 videos to the Prosecution;²² following a review of this material the Prosecution disclosed, over the course of these proceedings to date, 880 of those videos to the Defence as either INCRIM, PEXO or Rule 77 material. After the Prosecution completed its analysis of the videos, more than three years ago, CAR-OTP-2065-1969 and CAR-OTP-2065-2300 were disclosed as Rule 77 material on 19 July 2019.²³ The Prosecution therefore made a strategic choice not to use those videos in the course of the trial.
19. Bearing in mind that the Chamber must take into account, among other factors, the time when the addition on the list of material is sought, in this case the Prosecution does not provide any explanation as to why the Request is made two years after the set deadline for the provision of the List of Evidence, at such an advanced stage of the proceedings, despite these videos having been in its possession for five years.

ii) On the intended purpose for the Prosecution's requested reliance on such material

20. The Prosecution indicates that they intend to use the Two Videos to further their theory of a "connection between YEKATOM's Group and other Anti-Balaka figure and groups, including Maxime MOKOM".²⁴ The Defence therefore understands that the intended purpose for the Prosecution's requested reliance on such material is to attempt to prove this so called connection. In other words,

²² P-1819 : CAR-OTP-2065-0003-R01, para. 165.

²³ Pre-Confirmation Rule 77 package 02.

²⁴ [ICC-01/14-01/18-1653-Conf](#), para. 15.

the Prosecution is impermissibly moulding its case as the evidence is unfolding. The evidence so far consistently shows that there was disagreement between YEKATOM's Group and other Anti-Balaka figures and groups, including Maxime MOKOM. In the spirit of judicial economy the Defence refers to its previous submissions on the contested nature of alleged links [REDACTED], or between Mr Yekatom and any "General Coordination", as well as its prejudicial nature.²⁵

21. The Defence further notes that the first video (CAR-OTP-2065-1969) relates to a conversation between Mr Yekatom and an "unidentified collocutor" about a conversation that this collocutor allegedly had with an individual that the Prosecution identifies as "presumably" [REDACTED].²⁶ The second video (CAR-OTP-2065-2300) relates to a phone conversation which is being filmed between [REDACTED]²⁷ and an individual identified by the Prosecution as [REDACTED], about "[REDACTED]"²⁸; Mr Yekatom does not appear in the video, nor is there any indication that he is aware of the phone call [REDACTED] was about to make, there is also no information about whether the call between Messrs [REDACTED] and [REDACTED] ever occurred.²⁹

iii) On the undue prejudice to the procedural rights of the Defence

22. Given the relative vagueness of the videos as they stand, the fact that multiple witnesses close to [REDACTED] have already testified,³⁰ and the fact that none of the subjects of the videos are scheduled to testify, it is argued that it would be prejudicial to the Defence of Mr Yekatom to allow the Prosecution to now use those videos in order to further its theory about connections between Mr Yekatom and "other figures and groups, including [REDACTED]". Indeed,

²⁵ [ICC-01/14-01/18-1415-Conf](#), paras 30-33.

²⁶ [ICC-01/14-01/18-1653-Conf](#), para. 15 i) regarding video CAR-OTP-2065-1969.

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [ICC-01/14-01/18-1653-Conf](#), para. 15 ii) regarding video CAR-OTP-2065-2300.

³⁰ See [ICC-01/14-01/18-1415-Conf](#), para. 33.

due to the advancement of the trial the Defence would have limited opportunities to examine witnesses on those alleged links.³¹

23. In addition, the resources available to the Defence for its own investigation are limited, even more so in light of the advancement of the Prosecution's case, diverting some of those limited resources to investigate new evidence that was not included on the List of Evidence due to the Prosecution's own strategic choice, at a time when the Prosecution should have fully completed its investigation in this case,³² would be prejudicial to the Defence.
24. Moreover, several witnesses testified to the effect that Mr Yekatom was part of "Anti-Balaka du Sud", in opposition with the "Anti-Balaka du Nord" and a general coordination.
 - [REDACTED] clearly explained that Messrs [REDACTED]-Yekatom-[REDACTED] were part of the Anti-Balaka du Sud which he describes as being "pacifist Anti-Balaka"³³ and that [REDACTED] was only leading the other group ([REDACTED]);³⁴
 - [REDACTED] also confirmed that they were part of the Anti-Balaka Sud³⁵ from December 2013 as opposed to [REDACTED]³⁶ and that he had no information regarding contacts between Mr Yekatom and people from the Anti-Balaka du Nord such as [REDACTED] or [REDACTED].³⁷
 - [REDACTED] also indicated that the Anti-Balaka du Sud did not want to join with the Anti-Balaka du Nord of Ngaissona.³⁸

³¹ See as an example the Defence's examination of P-1839 where specific questions were put to the witness to show the limited nature and brevity of visits of other Anti-Balaka groups, ICC-01/14-01/18-T-173-FRA [10:03:28] to [10:08:19].

³² ICC-01/14-01/18-1597-Conf, para. 23.

³³ [REDACTED]

³⁴ [REDACTED]

³⁵ [REDACTED]

³⁶ [REDACTED]

³⁷ [REDACTED]

³⁸ [REDACTED]

- P-0888 further added that since the beginning of the movement a separation existed with the group led by Mr Yekatom,³⁹ and that there were no significant interactions between the Anti-Balaka du Sud and Anti-Balaka du Nord.⁴⁰
- [REDACTED], part of the Anti-Balaka North, said that he does not have any information on Mr Yekatom;⁴¹
- [REDACTED] said that he did not attend the Anti-Balaka South meeting in May 2014, where Mr Wenezoui “joined the group of Mr Yekatom and Kokaté”, as P-0446 “could not accept division”.⁴²
- P-0808 also confirmed that he barely knew Mr Yekatom, and that he only saw him once, because up until June 2014 they were not in the same branch of the Anti-Balaka, meaning that Mr Yekatom was not in the “Ngaissona wing” and was not interested in the coordination.⁴³

25. Although the Prosecution initially claimed that [REDACTED], relying *inter alia* on a notebook which contained, among others, a phone number supposedly attributed to Mr Yekatom,⁴⁴ the unfolded evidence later showed that the attribution was incorrect.⁴⁵

³⁹ P-0888 : ICC-01/14-01/18-T-123-FRA ET at [09:59:11] : « Maître, vous m'avez posé la question de clarifier la situation des Anti-balaka, le lien avec Bozizé et les Séléka, mais je... je vous dis que j'ai beaucoup plus d'informations concernant les Anti-balaka du Sud, les Anti-balaka commandés... commandés par Alfred Yekatom. Il y avait... Déjà dès le début du mouvement, il y avait une séparation. Et c'est lorsque nous avons mis la Coordination en place que nous nous sommes rendu compte réellement qu'il y avait une séparation dans les objectifs.”

⁴⁰ P-0888 : ICC-01/14-01/18-T-123-FRA ET from [11:36:31] to [11:37:03].

⁴¹ [REDACTED]

⁴² [REDACTED]

⁴³ P-0808 : ICC-01/14-01/18-T-072-FRA-ET from [12:01:50] to [12:08:00].

⁴⁴ [REDACTED]

⁴⁵ [REDACTED]

26. The Defence underlines that “[t]he Prosecution is expected to know its case before proceeding to trial and cannot mould the case against the accused in the course of the trial depending on how the evidence unfolds”.⁴⁶
27. It however appears that faced with the lack of testimonial evidence of links between Yekatom and other Anti-Balaka groups, contrary to what the Prosecution alleged in its DCC, PTB and Opening Statement more specifically through the strategic common plan and operation common plan, as well as the mounting evidence regarding the absence of links between Mr Yekatom [REDACTED],⁴⁷ the Prosecution now is attempting to add videos, that were not previously considered as incriminatory, to its List of Evidence on the apparent premise that the mere presence of individuals in the videos, or in physical proximity of Mr Yekatom, without further context, is “probative of the connection” between Mr Yekatom and other groups.
28. The Prosecution’s reactive attempt to counterbalance the weakness of the testimony of its own witnesses on this topic by adding to its List of Evidence items that were in its possession for years should be prevented.
29. In light of the above, the Defence contends that the prospective significance of the Two Videos is outweighed by the prejudice their addition to the List of Evidence would cause to the Defence. Consequently, the Chamber should reject the Prosecution’s Request in relation to items CAR-OTP-2065-1969 and CAR-OTP-2065-2300.

⁴⁶ *Prosecutor v. Rukundo*, [Judgement](#), 27 February 2009, para. 15 ; *Prosecutor v. Ntagerura et al.*, [Appeals Chamber Judgement](#), 7 July 2006, para. 27 ; *Prosecutor v. Kvočka et al.*, [Appeals Chamber Judgement](#), 28 February 2005, para. 30.

⁴⁷ See para 20 above, referring to [ICC-01/14-01/18-1415-Conf](#), paras 30-33.

II. On the Request in relation to the 13 Anti-Balaka badges seized [REDACTED]

A. On the timing of the Request and relevance of the Anti-Balaka badges

30. The Defence contends that the Prosecution's Request in relation to the 13 Anti-Balaka badges for which addition to the List of Evidence is sought should be rejected in light of its untimeliness and of the lack of relevance of the Anti-Balaka badges.
31. It is recalled that on 6 May 2022, the Prosecution introduced its First Request in which it sought the addition to its List of Evidence of six Anti-Balaka badges seized [REDACTED].⁴⁸ In this First Request the Prosecution specifically indicated that "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 recovered from [REDACTED] to form the basis of the present request".⁴⁹ The Single Judge granted the Prosecution's First Request, noting *inter alia* "the Prosecution's submission that it 'was careful to seek the addition of only the most relevant and probative materials' from the totality of the items collected following the Operation. Moreover, the Single Judge in this context observes that the Items are limited both in number and content".⁵⁰
32. The Prosecution appears to argue that the new Request in relation to the 13 Anti-Balaka badges is justified in light of the Defence's use of two other badges during its examination of P-1839.⁵¹ P-1839 confirmed the Defence assertions in its response to the First Request, i.e. that some pictures did not correspond to the associated name on some badges.⁵² The Defence stresses that its use of the two Anti-Balaka badges with P-1839 was prompted by the Prosecution's attempt to submit into evidence the alleged badges of Messrs Yekatom and

⁴⁸ [ICC-01/14-01/18-1394-Conf](#), para. 11.

⁴⁹ [ICC-01/14-01/18-1394-Conf](#), para. 17.

⁵⁰ [ICC-01/14-01/18-1573-Conf](#), para. 21.

⁵¹ [ICC-01/14-01/18-1653-Conf](#), para. 18.

⁵² [ICC-01/14-01/18-1415-Conf](#), para. 38.

Habib Beina⁵³ (after merely reading out two ERNs during its re-examination of P-1042).⁵⁴ As the decision of the Chamber on the submission into evidence of those two badges is pending, the Defence had no choice but to use itself some of those badges, so as to have confirmation that they are unreliable.

33. The Defence contends that the confirmation of the lack of reliability of the Anti-Balaka badges seized does not justify the Prosecution's Request regarding the addition of 13 other badges, from the same origin, and thus affected from the same reliability issues. Those badges were in the possession of the Prosecution at the time of the First Request, and were strategically not included in the First Request due to their lack of relevance in comparison to the other badges for which addition to the List of Evidence was sought.
34. As the Anti-Balaka badges were already the subject of the First Request, the Defence argues that the present Request in relation to the other 13 badges should be rejected due to its untimeliness.

B. On the intended purpose for the Prosecution's requested reliance on such material

35. Moreover, the Defence argues that the Prosecution fails to demonstrate the significance for their case of 12 of the 13 badges for which they are seeking addition to their List of Evidence. Indeed, the Prosecution merely avers that the badges "in fact correspond to admitted members of YEKATOM's Group, such as [REDACTED]".⁵⁵ The Prosecution fails to indicate the relevance of the individuals appearing on the 12 badges, nor if they relate to individuals that are "admitted members of Mr Yekatom's group" or high profile individuals of other groups. The Prosecution has failed to explain why they were not included

⁵³ See Prosecution's email titled "Correction - RE: Prosecution Submission of evidence following the examination of P-1042", dated 23 September 2022 17:29, seeking submission of CAR-OTP-2136-0221 and CAR-OTP-2136-0257

⁵⁴ P-1042 : ICC-01/14-01/18-T-164-CONF-ENG RT a [12:53:41].

⁵⁵ [ICC-01/14-01/18-1653-Conf](#), para. 18.

in the First Request, likewise their prospective significance for the purposes of their later addition. For this reason, the Defence has not been in a position to effectively verify if those badges are also defective in relation to the concordance between the name and photograph of the depicted individuals, such as those shown to P-1839.

36. Consequently, the Defence also argues that the Chamber should find, at the very least for 12 of the 13 Anti-Balaka badges,⁵⁶ that their significance and relevance to the case has not been demonstrated by the Prosecution in its Request.

C. On the undue prejudice to the procedural rights of the Defence

37. The Defence further argues that the integrity of the proceedings would be comprised by the addition of the Anti-Balaka badges due to the irregularities that occurred during their collection and to their inherent unreliability.
38. The Defence recalls its previous submissions on the irregularities surrounding the collection of the Anti-Balaka badges during the search and seizure [REDACTED], more particularly the fact the Anti-Balaka badges were missing from the official *Procès-Verbal de Perquisition* drawn up after the completion of the search and seizure.⁵⁷
39. Since those previous submissions, filed on 19 May 2022, additional information has come to the attention of the Defence, which reinforces its position that addition of the Anti-Balaka to the Prosecution's List of Evidence negatively impacts the integrity of the proceedings due to irregularities during their collection.⁵⁸

⁵⁶ CAR-OTP-2136-0255, CAR-OTP-2136-0253, CAR-OTP-2136-0251, CAR-OTP-2136-0247, CAR-OTP-2136-0245, CAR-OTP-2136-0243, CAR-OTP-2136-0235, CAR-OTP-2136-0231, CAR-OTP-2136-0229, CAR-OTP-2136-0225, CAR-OTP-2136-0223, CAR-OTP-2136-0217.

⁵⁷ [ICC-01/14-01/18-1415-Conf](#), paras 19-28.

⁵⁸ See also the Yekatom Defence emails titled "RE: Correction - RE: Prosecution Submission of evidence following the examination of P-1042" dated 27 September 2022 16:00 and 27 September 2022 19:28.

40. Indeed, on 20 May 2022 the Prosecution disclosed to the Defence an amended version of the *Procès-Verbal de Perquisition*.⁵⁹ The Prosecution indicated to the Defence, in relation to this amended *Procès-Verbal de Perquisition* that : “Upon inquiry with the [REDACTED] authorities following your email, the Prosecution has received an amended/corrected procès-verbal request noting among the seized items, the 21 badges collected and photographed during the search and seizure.”⁶⁰
41. This amended *Procès-Verbal de Perquisition* newly states that “Ving et un (21) badges Anti-Balaka” were collected during the search and seizure;⁶¹ in addition, a second date is mentioned in the text of the first page.⁶² However, despite its apparent different creation date from the original *Procès-Verbal de Perquisition*, the amended *Procès-Verbal de Perquisition* continues to show the date of the search and seizure as the date of its creation;⁶³ and the reference number of the two *Procès-Verbal de Perquisition* are also identical despite the fact that they are two different documents.⁶⁴
42. The Defence argues that this amended *Procès-Verbal de Perquisition* could be considered as a falsification of public document for the following reasons : i) it added the Anti-Balaka badges to the list of the documents found during the search and seizure after an inquiry from the Prosecution ; ii) no explanation is provided for this addition and the modification of the original *Procès-Verbal de Perquisition*, and iii) the amended document continues to bear the [REDACTED] as its creation date, insinuating that it was drafted contemporaneously of the search and seizure.

⁵⁹ CAR-OTP-2136-0556 disclosed in Trial Rule 77 package 77 on 20 May 2022.

⁶⁰ Email from the Prosecution to the Defence dated 19 May 2022 at 15:43 (available upon request)

⁶¹ CAR-OTP-2136-0556 at 0557.

⁶² CAR-OTP-2136-0556 at 0556 : [REDACTED].

⁶³ CAR-OTP-2136-0556 at 0556 and 0559 which both mention the [REDACTED].

⁶⁴ CAR-OTP-2136-0556 at 0556 and CAR-OTP-2136-0181 at 0181 both mention [REDACTED]»

43. The Defence also notes that the *post facto* modification of this document in this manner would appear to contravene [REDACTED] domestic law on "*faux en écritures publiques*" [REDACTED].⁶⁵
44. In addition to the irregularities surrounding the collection of the Anti-Balaka badges, it is submitted that their inherent unreliability should prevent their addition to the List of Evidence.
45. Indeed, it is recalled that [REDACTED] stated that fake Anti-Balaka badges were produced "[REDACTED]", in particular by Messrs [REDACTED] and [REDACTED].⁶⁶
46. P-1839 also confirmed that two Anti-Balaka badges, originating from the same search and seizure as those the subject of the Request, had names that did not correspond to the photographs.⁶⁷
47. Despite these clear indicia that the reliability of the Anti-Balaka badges is seriously comprised, it can only be noted that the Prosecution refrained from putting to P-1839 the badge in her name,⁶⁸ despite this item being part of the granted First Request. The Prosecution's own lack of confidence in the reliability of these badges should militate in favor of the rejection of the Request to add the 13 Anti-Balaka badges to the List of Evidence.
48. In light of the above, the Defence argues that the reliability of the Anti-Balaka badges is irremediably compromised; and this reliability issue is supplemented by the irregularities during the collection of those items. In such circumstances, addition of these badges to the List of Evidence would compromise the integrity

⁶⁵ [REDACTED]

⁶⁶ [REDACTED]

⁶⁷ P-1839 : ICC-01/14-01/18-T-174-CONF-FRA RT from [12:20:40] to [12:28:56].

⁶⁸ CAR-OTP-2136-0227

of the proceedings, the Prosecution's Request in relation to the 13 Anti-Balaka badges should consequently be rejected.

49. Alternatively, should the Chamber find that the Anti-Balaka badges can be added to the List of Evidence, the Defence respectfully requests that the above mentioned arguments be taken into consideration by the Chamber during its judgment deliberation for all the Anti-Balaka badges found during the search and seizure [REDACTED] that will be submitted into evidence during the course of the case.

CONFIDENTIALITY

50. The present response is filed on a confidential basis corresponding to the classification of the Prosecution's Request. A public redacted version is being filed simultaneously.

RELIEF SOUGHT

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

REJECT the addition to the Prosecution's List of Evidence of items CAR-OTP-2065-1969, CAR-OTP-2065-2300, CAR-OTP-2136-0217, CAR-OTP-2136-0223, CAR-OTP-2136-0225, CAR-OTP-2136-0229, CAR-OTP-2136-0231, CAR-OTP-2136-0233, CAR-OTP-2136-0235, CAR-OTP-2136-0243, CAR-OTP-2136-0245, CAR-OTP-2136-0247, CAR-OTP-2136-0251, CAR-OTP-2136-0253 and CAR-OTP-2136-0255;

or, in the alternative,

ORDER the Prosecution to disclose translation of videos CAR-OTP-2065-1969 and CAR-OTP-2065-2300;

DEFER its judgement on the addition of items CAR-OTP-2065-1969 and CAR-OTP-2065-2300 until provision of their translation, and;

REJECT the addition to the Prosecution's List of Evidence of items CAR-OTP-2136-0217, CAR-OTP-2136-0223, CAR-OTP-2136-0225, CAR-OTP-2136-0229, CAR-OTP-2136-0231, CAR-OTP-2136-0233, CAR-OTP-2136-0235, CAR-OTP-2136-0243, CAR-OTP-2136-0245, CAR-OTP-2136-0247, CAR-OTP-2136-0251, CAR-OTP-2136-0253 and CAR-OTP-2136-0255.

RESPECTFULLY SUBMITTED ON THIS 18th DAY OF NOVEMBER 2022



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands