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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 “Prosecution’s Request for authorisation to submit audio-visual items without translation into a working language of the Court, pursuant to Regulation 39(1); and Update on the pending transcripts and translations”, ICC-01/14-01/18-2141-Conf, 12 October 2023

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. Following the Single Judge's instruction on 9 October 2023,¹ the Prosecution hereby requests Trial Chamber V's ("Chamber") authorisation to submit 31 audio-visual items tendered through its Fourteenth Application for Submission of P-1819's Evidence from the Bar Table ("Fourteenth Bar Table Application"),² without corresponding translations into a working language of the Court, pursuant to Regulation 39(1) of the Regulations of the Court ("Regulations").³ Further, the arguments raised by the YEKATOM Defence's email response are addressed below,⁴ along with an update on the provision of pending transcripts and/or translation of about 120 audio-visual items.

As elaborated below, the provision of transcripts and translations for the 31 audio-visual items concerned here will not advance the proceedings. Nor would their absence cause any prejudice to the Accused, considering the limited relevance of the audio content. As noted in its 3 October 2023 Email Request, the Prosecution does not intend to provide any transcription and/or translation for 34 items also submitted via its Fourteenth Bar Table Application, as they do not contain any spoken words warranting translation. One additional item is also added⁵

2. The Annexes to this Request contain an overview of the audio-visual items included in the Fourteenth Bar Table Application without corresponding transcripts and/or translations. In Annex A, the Prosecution has listed for each of the referenced 31 items their (i) evidence registration number ("ERN"); (ii) main date; (iii) title; (iv) duration; and (v) the reason for not providing translation. Annex B contains similar information in relation to a group of 35 audio-visual items with no spoken words

¹ See Email from the Chamber, 9 October 2023, at 13:22.

² see ICC-01/14-01/18-2057-Conf.

³ Hereinafter, "Request". The Request was initially submitted via email on 3 October 2023, at 11:28 ("Email Request")

⁴ See Email from the YEKATOM Defence, 8 October 2023, at 22:03.

⁵ Note that the Prosecution has added item CAR-OTP-2065-5128 to the group of 34 items, which does not contain audible speech warranting translation.

warranting any transcription or translation. Annex C contains 119 audio-visual items for which transcription and/or translation are pending. As instructed by the Single Judge, this annex includes for each item their (i) ERN, (ii) title, (iii) duration, (iv) the status of the transcription or translation requests, and (v) an estimate date of provision of the transcripts and/translations to the participants.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), this Request and its Annexes are filed as “Confidential”, as they refer to sources and materials of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. The submission of the 31 audio-visual items without transcription and translation is justifiable

4. The provision of transcripts and/or translations for the 31 audio-visual is not necessary to advance the present proceedings. As noted previously, the Prosecution intends to rely on the *visual* content of these items. That certain items may discretely reference names and locations should not warrant a translation when (a) these are easily understood; and (b) the conversation is otherwise irrelevant. Moreover, the Prosecution does not consider that the audio content of these items contains material information.

5. To the extent that items are relied on for their *visual content* — as opposed to their *audio* content — the absence of translations into a working language of the Court is not inconsistent with the policy reasons underlying the language requirements for Regulation 39(1) of the RoC.

6. Out of the 31 audio-visual items concerned, 20 items⁶ contain inaudible or barely audible spoken words that are difficult to decipher and for which translation would not advance the expeditiousness of the proceedings; while 11 items⁷ contain spoken words which, based on the summary translations prepared by the Prosecution's Language Services Unit ("OTP LSU"), are not relevant to the nature, cause and content of the charges, although some may contain relevant names or locations — which, as mentioned, are in easily discernible. In any event, to the extent that spoken words are uttered in limited instances, the Accused are conversant in the indicated language, namely Sango. As such, the Prosecution considers that their translation is not required or otherwise necessary to advance the proceedings.

7. Additionally, the absence of translations for these items will not be in any way prejudicial:

(a) article 67(1)(f) "does not *per se* translate into the right to obtain the translation of any and all documents which are used in the context of proceedings before the Court and are not in a language which the accused 'fully understands and speaks': the only translations the accused is entitled to obtain are 'such translations as are necessary to meet the requirements of fairness';⁸ and

(b) the unavailability of transcripts does not impede an understanding of the nature, cause and content of the charges.

8. In the absence of any material information in the audio content of these items, the non-provision of their translations into a working language of the Court would not affect the fairness of the present proceedings. In these exceptional circumstances, the Prosecution considers that the Chamber's authorisation pursuant to Regulation

⁶ See Annex A, items 1 to 20.

⁷ See Annex A, items 21 to 31.

⁸ see ICC-01/05-01/13-177, para. 6.

39(1) dispensing with the provision of transcripts and translations into a working language is warranted and justifiable, particularly when weighed against the Court's countervailing interests in judicial economy and the time and resource implications, and in view of the absence of any appreciable prejudice.

B. The concerns raised by the Defence are inapplicable

9. Following the Prosecution's indication that it was in the process of preparing the transcription and/or translation of about 120 audio-visual items also submitted via its Fourteenth Bar Table Application, the Defence made submissions regarding (i) the Prosecution's entitlement to provide translations for audio-visual items already included in a Bar Table Application and (ii) the impact the future disclosure of the pending transcripts and/or translations may have on its ability to respond to the Fourteenth Bar Table Application. The Prosecution addresses these arguments below.

(i) *The provision of transcripts and/or translations after the submission of the original audio-visual item is consistent with the Chamber's directions.*

10. Contrary to the Defence's position, the Prosecution is not required to provide transcripts and/or translations *simultaneously* with the original audio-visual items included in its List of Evidence. This approach is consistent with the letter and the spirit of the Chamber's instructions in the Initial Directions on the Conduct of the Proceedings ("Initial Directions") and its subsequent decision. While referencing the Court's jurisprudence on the matter,⁹ the Chamber held that:

"(i)n principle, recognising the formal submission of audio-visual material automatically includes recognising the formal submission of any associated transcripts or translations which were duly disclosed. This would be the case irrespective of whether these transcripts/translations were on the list of

⁹ See ICC-01/14-01/18-631, footnote 50 citing Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on 'Prosecution's Fifth Request for the Admission of Evidence from the Bar Table', 14 December 2015, ICC-01/05-01/13-1524, para. 7; *Ongwen* Directions, ICC-02/04-01/15-497, para. 30.

evidence or formally submitted, though it is clearly preferable to do both so there is no confusion as to their status”.¹⁰

11. During the proceedings, the Chamber has recognised as formally submitted several audio-visual items of evidence before disclosure of their related transcripts and/or translations. In such instances, and as reiterated in its recent “Decision on the Eighth Prosecution Submission Request from the Bar Table (Audio-Visual Material)”, the Chamber held that the submission status of a transcript or translation should *follow* the original audio-visual evidence and be reflected in the case record.¹¹

12. Moreover, the absence of transcripts and/or translations at this stage is not prejudicial to the Defence, as it was on notice of the Prosecution’s intention to rely on the original audio-visual items included in the Prosecution’s List of Evidence and provided a description for each item.

(ii) *The Defence has sufficient information to respond to the Fourteenth Bar Table Application*

13. The Defence’s argument that the Prosecution’s intention to provide the pending transcripts and/or translations renders partially moot work it has already performed on the analysis of the Motion¹² is unavailing.

14. As the Defence is aware, a description of each audio-visual item containing relevant speech content is provided in a column of annex A to the Fourteenth Bar Table Application.¹³ The description of each audio-visual item is based on summary translations prepared by OTP LSU to assist in the Prosecution’s assessment of their relevance. As such, it is likewise of sufficient to enable the Defence to inform its views on the positions regarding the relevance and probative value of the items tendered.

¹⁰ ICC-01/14-01/18-631, para. 64 (*emphasis added*).

¹¹ ICC-01/14-01/18-2092-Conf., para. 38.

¹² See Email from YEKATOM Defence, 8 October 2023, at 22:03.

¹³ See ICC-01/14-01/18-2057-Conf-AnxA, eight column named “Description”.

15. The Defence's preference to be in possession of formal translations to "verify the Prosecution's submissions on relevance"¹⁴ does not negate the fact that it can still meaningfully analyse the submitted items. Nevertheless, the Prosecution has no objection to any related request by the Defence for an extension of time to consider the pending translations, and defers to the Chamber's assessment of their necessity.

C. Update on the status of pending transcripts and/or translations

16. As noted in its Email Request, the Prosecution is in the process of preparing the transcription and/or translation of about 120 audio-visual items also submitted through its Fourteenth Bar Table Application. The Prosecution has indicated in Annex C, (i) the ERNs and respective duration of the 119¹⁵ audio-visual items for which transcripts and/or translations are pending, (ii) the status of the transcription and/or translation requests, and (iii) an estimate per items of when the transcripts and/or translations will be provided to the participants.

17. The Prosecution has requested the transcription and/or translation of 109 items but, due to some technical issues expected to be resolved within 24 hours, has not been able to make the requests for 10 audio-visual items.¹⁶ However, these 10 items have been accounted for in the estimates provided in Annex C and should be completed by 17 November 2023. As indicated in Annex C, the transcription of the items in French has already begun and to date, courtesy copies of transcripts for 10 audio-visual items¹⁷ have already been provided to the Parties and Participants.¹⁸ Transcripts of the remaining 14 audio-visual items in French will be made available by 16 October 2023.

¹⁴ See Email from YEKATOM Defence, 8 October 2023, at 22:03.

¹⁵ CAR-OTP-2065-5128 which does not contain audible speech has been removed from this group and added to Annex B. See above footnote 5.

¹⁶ CAR-OTP-2065-0668; CAR-OTP-2065-3424; CAR-OTP-2065-4697; CAR-OTP-2065-4765; CAR-OTP-2065-4855; CAR-OTP-2065-5030; CAR-OTP-2065-5196; CAR-OTP-2065-5444; CAR-OTP-2065-5652; CAR-OTP-2065-5656.

¹⁷ See CAR-OTP-2065-0452; CAR-OTP-2065-0580; CAR-OTP-2065-0584; CAR-OTP-2065-0708; CAR-OTP-2065-1003; CAR-OTP-2065-1079; CAR-OTP-2065-3288; CAR-OTP-2065-3835; CAR-OTP-2065-4645; and CAR-OTP-2065-5660. The formal disclosure of these items will follow as soon as possible.

¹⁸ See Prosecution email on 11 October 2023, at 18:00.

18. Regarding audio-visual items in Sango, the Prosecution has not yet been able to start their processing due [REDACTED]. Assuming that the Court's [REDACTED] is restored by the week of 16 October, the Prosecution should be able to complete the translation of the remaining audio-visual items containing Sango by 17 November 2023. However, as soon as they become available, the Prosecution will disclose the pending translations on a rolling basis to mitigate the Defence's concerns.

IV. RELIEF SOUGHT

19. For the reasons above, the Prosecution requests the Chamber to authorise the submission of 31 audio visual items without transcription and translation into a working language of the Court.



Karim A. A. Khan KC, Prosecutor

Dated this 25th day of October 2023
At The Hague, The Netherlands