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**International
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Date: **21 December 2023**

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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA**

Public with Confidential Annex 1

Public Redacted Version of the ‘Defence Response to the “Prosecution’s Fourteenth Application for Submission of P-1819’s Evidence from the Bar Table” ICC-01/14-01/18-2057-Conf’ (ICC-01/14-01/18-2232), filed on 1 December 2023

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona (‘Defence’) hereby responds to the “Prosecution’s Fourteenth Application for Submission of P-1819’s Evidence from the Bar Table” (‘Application’).¹
2. Further, the Defence provides in confidential Annex 1 to the present response (‘Response’) its item-by-item objections to the 546 items of evidence that the Prosecution seeks to submit into the record of the case (‘P-1819 Items’).
3. The Defence makes these objections pursuant to Rule 64(1) of the Rules of Procedure and Evidence (‘Rules’), which are intended to assist Trial Chamber V (‘Chamber’) in its holistic assessment of the evidence during the deliberation of the judgment.²

II. PROCEDURAL BACKGROUND

4. On 11 November 2022, the Chamber granted the Prosecution’s request to introduce P-1819’s statement under Rule 68(3) of the Rules,³ and the items sought to be submitted *via* the present bar table Application were deemed formally submitted through P-1819, subject to the fulfilment of the legal requirements of Rule 68(3).⁴
5. On 25 May 2023, the Prosecution informed the Chamber, Parties and Participants that P-1819 withdrew [REDACTED] cooperation and was thus unavailable.⁵
6. On 7 July 2023, the Prosecution filed its “Request for the Formal Submission of the Prior Recorded Testimony of P-1819 pursuant to Rule 68(2)(c)”⁶ which was rejected by the Chamber on 11 August 2023.⁷
7. Consequently, on 25 August 2023, the Prosecution sought the submission of P-1819’s items *via* the present Application.⁸ As the Prosecution was unable to secure the Defence’s positions before filing its Application, the Chamber exceptionally authorised the

¹ ICC-01/14-01/18-2057-Conf together with confidential Annexes A and B.

² ICC-01/14-01/18-631, para. 62 (‘Initial Directions’).

³ ICC-01/14-01/18-1414-Conf.

⁴ ICC-01/14-01/18-1661-Conf.

⁵ Email from the Prosecution dated 25 May 2023, at 23:50.

⁶ ICC-01/14-01/18-1968-Conf.

⁷ ICC-01/14-01/18-2021.

⁸ ICC-01/14-01/18-2057-Conf.

Prosecution to file its Application without including the views of the Defence and noted that it would take this circumstance into account should the Defence present any request for extension of time to respond to the Application.⁹

8. On 4 September 2023, the Chamber granted a first extension of time to respond to the Application until 27 October 2023.¹⁰

9. On 12 October 2023,¹¹ the Prosecution requested the Chamber to authorise the submission of 31 audio-visual items, which were already tendered through the present bar table Application, without corresponding translations into a working language of the Court.¹² The Prosecution also informed the Chamber, Parties and Participants that:

- it did not intend to provide the transcripts and/or translations of another 35 items, also submitted through the Application, as they did not contain any spoken words warranting their translation; and
- transcripts and/or translations were pending for another 119 items forming part of the present Application.¹³

10. On 23 October 2023, following the Yekatom Defence Response¹⁴ which the Ngaïssona Defence fully joined,¹⁵ the Chamber:

- set 17 November 2023 as the final deadline for disclosure of any pending transcripts and/or translations in relation to the material underlying the Fourteenth Bar Table Application, formally or in the form of a courtesy copy; and
- granted a second extension of time for the participants to respond to the Application until 1 December 2023.¹⁶

⁹ Email from the Chamber dated 25 August 2023, at 12:43.

¹⁰ Email from the Chamber dated 4 September 2023, at 09:21.

¹¹ The Prosecution first made the request by email on 3 October 2023. *See* email from the Prosecution dated 3 October 2023, at 11:28 (the ‘Email Request’). The Chamber instructed the Prosecution to file this request formally on the record by 12 October 2023. *See* email from the Chamber dated 9 October 2023, at 14:43 (the ‘Email Decision’). *See also* email from the Yekatom Defence dated 8 October 2023, at 22:03.

¹² ICC-01/14-01/18-2141-Conf.

¹³ ICC-01/14-01/18-2141-Conf.

¹⁴ ICC-01/14-01/18-2144-Conf.

¹⁵ Email from the Defence dated 16 October 2023, at 14:20.

¹⁶ ICC-01/14-01/18-2160.

11. On 17 November 2023, the Prosecution eventually disclosed Trial INCRIM package 170 and Trial INCRIM package 171 containing respectively 101 and 92 transcripts and/or translations of P-1819's items.

III. CONFIDENTIALITY

12. In accordance with regulation 23*bis*(1) of the Regulations of the Court, this response and its Annex 1 are filed confidentially as they respond to documents of the same classification and contain confidential information. A public redacted version will be filed in due course.

IV. APPLICABLE LAW

13. The Defence incorporates by reference its previous submissions with respect to the applicable law regarding the adjudication of Bar Table motions.¹⁷

V. SUBMISSIONS

14. The present core submissions merely provide an outline of the major Defence's objections. For a comprehensive overview of the Defence's observations on the Prosecution's Application, the Defence respectfully refers the Chamber to confidential Annex 1 to the Response.

A. Preliminary remarks

15. *First*, in its Application, the Prosecution specifies that "considering the large volume of videos [REDACTED]", it has grouped them into 51 compilations listed in Annex B.¹⁸ However, the Prosecution provides no indication as to the methodology for such a compilation. The Defence is therefore deprived of any possibility to determine whether or not the videos were compiled in a chronological order, nor can it assess whether the subjective compilation by the Prosecution provides an accurate and reliable account of the events depicted in the videos.

¹⁷ ICC-01/14-01/18-1278, paras 6-9.

¹⁸ ICC-01/14-01/18-2057-Conf, para. 7.

16. Additionally, the Defence notes that some of the videos contained in said compilations of Annex B are not included in the 546 items listed in Annex A to the Application.¹⁹ Besides, the relief sought by the Prosecution is limited to the “546 Submitted Items listed in Annex A to [the Application]”²⁰ and the compilations listed in Annex B are only “intended to facilitate the digestion of P-1819’s evidence”.²¹
17. Accordingly, the Defence respectfully requests the Chamber to disregard Annex B while conducting its holistic assessment of P-1819’s items.
18. *Second*, despite the Chamber’s order that the Prosecution disclose any pending transcripts and/or translations in relation to the material underlying the Application by 17 November 2023, the Defence has identified eight items for which no transcript or translation has been disclosed to this day,²² whereas these items had been identified by the Prosecution itself as part of its “List of 119 Audio-visual items pending transcription and/or translation”.²³ All of these eight items contain spoken Sango. The absence of any corresponding translation in one of the working languages of the Court deprives the Defence and the Chamber from the possibility to assess the content of the speech. As such, the submission of these items would be prejudicial to the Defence.
19. Additionally, regarding CAR-OTP-2065-3564, the Defence notes that, although the questions asked by P-1819 are in French, the answers provided by the interviewee are in Sango and the Prosecution failed to provide any transcript and/or translation, depriving the Defence of any possibility to verify the content of the answers. As a consequence, the submission of this item without corresponding transcript and translation is highly prejudicial to the Defence.

B. Lack of relevance and significance of the items sought to be submitted

¹⁹ For instance, compilation CAR-OTP-2135-4041 contains *inter alia* CAR-OTP-2065-5768 and CAR-OTP-2065-5772 which are not included in Annex A; compilation CAR-OTP-2135-4047 contains *inter alia* CAR-OTP-2065-0552 and CAR-OTP-2065-0616 which are not included in Annex A.

²⁰ ICC-01/14-01/18-2057-Conf, para. 16.

²¹ ICC-01/14-01/18-2057-Conf, para. 7.

²² Items CAR-OTP-2065-1925, CAR-OTP-2065-0540, CAR-OTP-2065-0887, CAR-OTP-2065-0508, CAR-OTP-2065-4765, CAR-OTP-2065-5074, CAR-OTP-2065-3684, CAR-OTP-2065-4855.

²³ ICC-01/14-01/18-2141-Conf-AnxC.

a. Items supposedly depicting victims of the 5 December 2013 attack on BANGUI

20. In Annex A, the Prosecution submits that a number of items show victims of the 5 December 2013 attack on BANGUI.²⁴ However, none of these items sufficiently fulfil the standards of relevance or significance for the present case.

21. *First*, the victims cannot be readily identified. For instance, in CAR-OTP-2065-2231, the body is too far from the camera and is mostly hidden by the body's folded arm, a chair and a green barrel. Likewise, in CAR-OTP-2065-2251, the body is facing the ground and the face is covered by numerous flies. It is therefore impossible to know: (1) the religious affiliation of the victims whose bodies are filmed; and (2) their status as either civilians or persons taking part in hostilities. Not to mention that some of the depicted bodies are wearing gris-gris,²⁵ which would seem to be an acknowledgement by the Prosecution that wearing gris-gris was not exclusive to the Anti-Balaka.

22. *Second*, as the perpetrators are not pictured, their identification as Anti-Balaka – or Seleka or another group – cannot be ascertained on the sole basis of the items.

23. Both of these propositions are supported by P-1819's written statement to the Prosecution, where [REDACTED]:

“[REDACTED]”²⁶

24. It follows that, although the items could be, at the very best, relevant to [REDACTED] in general, their relevance to attacks allegedly carried out by the Anti-Balaka specifically is doubtful. Should these items be accorded any relevance whatsoever, the Defence further highlights their limited significance in light of the multiple other documents on this subject already in the case record.

²⁴ Items CAR-OTP-2065-2203, CAR-OTP-2065-2231, CAR-OTP-2065-2207, CAR-OTP-2065-2239, CAR-OTP-2065-2251, CAR-OTP-2065-2259, CAR-OTP-2065-2199, CAR-OTP-2065-2227, CAR-OTP-2065-2267, CAR-OTP-2065-2219, CAR-OTP-2065-2247, CAR-OTP-2065-2255, CAR-OTP-2065-2223, CAR-OTP-2065-2215, CAR-OTP-2065-2243 and CAR-OTP-2065-2211.

²⁵ For instance, in CAR-OTP-2065-2227, a close-up of the body depicted in CAR-OTP-2065-2231 and CAR-OTP-2065-2239 actually shows that the body is wearing a cross body belt with gris-gris.

²⁶[REDACTED].

b. Items allegedly establishing the Anti-Balaka's policy targeting the Muslim civilian population

25. In its Application and related Annex A, the Prosecution argues that several items are relevant to establishing Mr Yekatom's group's alleged adhesion to the policy of targeting the Muslim population.²⁷

26. *First*, on several occasions, the Prosecution mischaracterises the content of the items. For instance, CAR-OTP-2065-0846 contains an interview of a man who describes the acts carried out by the Seleka. This interviewee does not display any mark of aggressiveness, hostility or hatred; he only expresses his own consternation:

*“Euh ... présentement, je suis ici parce que je suis très ... je suis écœuré, énervé, par ce qu’il se passe dans le pays. On n’a jamais connu ce qu’on a vu aujourd’hui avec le président.”*²⁸

But most importantly, this item does not even mention once the Muslim civilian population. Rather, the interviewee refers to President Djotodia and the Seleka in general.

27. In other instances, some items do not contain references to the Muslim civilian population but rather to foreign mercenaries or jihadists.²⁹ In this respect, the Defence recalls that P-0446 testified about the presence of jihadist mercenaries among the Seleka and about the goal of the Anti-Balaka aiming at ousting President Djotodia and the jihadists mercenaries.³⁰ Similarly, a number of witnesses testified before the Chamber about the presence of foreign mercenaries among the Seleka.³¹ In particular, P-0801 explained that:

“Monsieur le Président, nous savons... nous Centrafricains, nous savons que la Séléka est composée des Centrafricains et des mercenaires. Ça, ils ont... c’était bien identifié à l’époque où le Président Bozizé était au pouvoir. Nous savons que la Séléka était constituée des mercenaires venus du Tchad et du Soudan. Et lors de la rencontre de

²⁷ ICC-01/14-01/18-2057-Conf, para. 10.

²⁸ CAR-OTP-2122-9437, at 9438, lns 14-15.

²⁹ For instance, see CAR-OTP-2065-5470; CAR-OTP-2065-5444; CAR-OTP-2065-3556.

³⁰ ICC-01/14-01/18-T-099-FRA, p. 8, lns 14-26 and p. 9, lns 2-16.

³¹ See *inter alia* P-0446: ICC-01/14-01/18-T-099-FRA, p. 8, lns 14-26; P-0801: ICC-01/14-01/18-T-037-CONF-FRA, p. 44, line 28 to p. 45, line 8 and ICC-01/14-01/18-T-038-CONF-FRA, p. 33, lns 1-7; P-0808: ICC-01/14-01/18-T-070-FRA, p. 17, lns 15-25; P-0889: ICC-01/14-01/18-T-108-CONF-FRA, p. 72, lns 16-27.

Libreville, ça a été clairement dit que la Séléka est composée de Centrafricains, mais plus majoritairement des mercenaires venus du Tchad et du Soudan.”³²

28. *Second*, although some items refer to the Muslim population, the Defence notes that they merely contain the isolated opinion of unidentified elements. The Prosecution cannot reasonably argue, without further substantiation, that this was an opinion of any group, or that such group adhered to any policy of targeting the Muslim civilian population.

29. As such, the isolated opinion of unidentified elements of Mr Yekatom’s group cannot, without further substantiation, be attributed to the group as a whole – even less to the alleged Anti-Balaka in general –, and therefore lacks relevance to Mr Yekatom’s group’s alleged adhesion to the policy of targeting the Muslim population.

c. Items purportedly showing the Anti-Balaka’s organised character

30. In its Application and related Annex A, the Prosecution alleges that a series of items are relevant to establishing the organised character of the Anti-Balaka,³³ and to showing that Mr Yekatom’s Group allegedly coordinated with other Anti-Balaka groups or members of the National Coordination such as Mr Sylvain Beorofei, Sylvestre Yagouzou, Sebastien Wenezoui and Charles Ngremangou.³⁴

31. *First*, to support its allegation, the Prosecution refers to document CAR-OTP-2025-0380, entitled “*Déclaration des Combattants Antibalaka relative à la situation sécuritaire en République Centrafricaine*” and dated 14 February 2014, listing Mr Sylvain Beorofei, Sylvestre Yagouzou and Sebastien Wenezoui as members of the Coordination.³⁵ However, not only does this document lack contemporaneity regarding the events depicted in P-1819’s items – end of 2013 –, but P-1521 also explained during his in-court testimony, when asked about this document, that, even in February 2014, there was no such Coordination.³⁶ Consequently, the Prosecution cannot reasonably reconstruct Mr Sylvain Beorofei, Sylvestre Yagouzou and Sebastien Wenezoui’s membership to the National Coordination *a posteriori*.

³² ICC-01/14-01/18-T-038-CONF-FRA, p. 33, lns 1-7.

³³ ICC-01/14-01/18-2057-Conf, para. 10.

³⁴ ICC-01/14-01/18-2057-Conf, para. 11.

³⁵ ICC-01/14-01/18-2057-Conf, fn 23.

³⁶ ICC-01/14-01/18-T-083-CONF-FRA, p. 72, lns 1-18.

32. Besides, CAR-OTP-2025-0380 does not mention Mr Charles Ngremangou as part of the alleged members of the Coordination. As such, the Prosecution's allegation that, at the time P-1819's videos were shot, Mr Charles Ngremangou was a member of the Anti-Balaka National Coordination completely lacks substantiation.
33. Other items contained in Annex A, which are also dated December 2013, are identified by the Prosecution as relevant to showing Mr Yekatom's group alleged coordination with the members of the so-called National Coordination.³⁷ First, none of these items refer to a coordination of the Anti-Balaka in any way, and indeed shows tensions between the very people the Prosecution claims are either leading or are part of the Anti-Balaka coordination.³⁸ Second, the Prosecution cannot, again, reasonably argue that there was a Coordination at the time of the items while Prosecution witnesses explained before the Chamber that there was no functioning coordination even in the first months of 2014, and thus its existence in 2013 was an impossibility.³⁹
34. *Second*, in a number of instances, the Prosecution either misinterprets the content of the item or draws conclusions where none can be inferred from the item without appropriate substantiation. For instance, while the Prosecution submits that CAR-OTP-2065-2837 is relevant to showing Mr Yekatom's ability to coordinate with other Anti-Balaka groups, the Defence notes that the interviewee only refers to "*d'autres révolutionnaires qui sont vers BOY RABE*"⁴⁰ without identifying any of them specifically, nor associating them explicitly to the Anti-Balaka.
35. Likewise, the Prosecution argues that the [REDACTED] depicted in CAR-OTP-2065-2292 speak about [REDACTED] are mentioned in the item. Nevertheless, the corresponding transcript and translation neither contain a reference to the alleged gathering including [REDACTED], nor do they mention [REDACTED].
36. *Third*, P-1819 expanded in her written statement on [REDACTED]. More specifically, she explained that:

³⁷ Items CAR-OTP-2065-4902, CAR-OTP-2065-4882, CAR-OTP-2065-4906.

³⁸ Ibid.

³⁹ See for instance P-1521: ICC-01/14-01/18-T-083-CONF-FRA, p. 72. P-0888: ICC-01/14-01/18-T-123-ENG, p. 17; P-1193: ICC-01/14-01/18-T-124-CONF-ENG, p. 57 ; P-0889: ICC-01/14-01/18-T-109-CONF-ENG ET, p.36, ;[REDACTED].

⁴⁰ CAR-OTP-2122-7501, at 7502, line 3.

“[REDACTED]”⁴¹

and that

“ [REDACTED]”.⁴²

37. It follows that none of the items contained in Annex A to the Prosecution’s Application sufficiently fulfil the standard of relevance for the present case in relation to an alleged coordination between Mr Yekatom’s group and other Anti-Balaka groups – or supposedly with the alleged National Coordination.

C. Lack of sufficient reliability of the items sought to be submitted

38. In its Application, the Prosecution contends that the items sought to be submitted “[REDACTED]”.⁴³

39. Nevertheless, the Prosecution itself explained in Annex A that the [REDACTED]:

“[REDACTED].”⁴⁴

40. Although the Defence does not dispute *per se* the fact that P-1819 [REDACTED], the accuracy of the dates of items allegedly filmed on 30 November, 3 December or 5 December 2013 is essential to determining the relevance and reliability of the Prosecution’s allegations in relation to events prior to 5 December 2013. Without P-1819 testifying in the case to dispel any doubt or provide further explanations, the Defence respectfully requests the Chamber accord no probative value to items allegedly shot on 30 November, 3 December and 5 December.

VI. RELIEF SOUGHT

41. The Defence respectfully requests the Chamber to :

DISREGARD Annex B to the Application when the Chamber conducts its holistic assessment of the evidence during the deliberation of the judgment;

⁴¹[REDACTED].

⁴²[REDACTED].

⁴³ ICC-01/14-01/18-2057-Conf, para. 14.

⁴⁴ ICC-01/14-01/18-2057-Conf-AnxA, fn 1. *See also* CAR-OTP-2065-0003, at 0032, para. 166.

REJECT the submission of the following items:

CAR-OTP-2065-1925

CAR-OTP-2065-5074

CAR-OTP-2065-0540

CAR-OTP-2065-3684

CAR-OTP-2065-0887

CAR-OTP-2065-4855

CAR-OTP-2065-0508

CAR-OTP-2065-3564

CAR-OTP-2065-4765

TAKE INTO ACCOUNT the Defence's objections contained in the Response and its confidential Annex 1 when the Chamber conducts its holistic assessment of the evidence during the deliberation of the judgment.

Respectfully submitted,



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 21 December 2023

At The Hague, the Netherlands.