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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**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 Response to the “Yekatom Defence
Request for the formal submission of Audio/Video and Photographic material”
(ICC-01/14-01/18-2515)”,
ICC-01/14-01/18-2530-Conf, 13 June 2024**

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. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) opposes, in part, the Yekatom Defence’s request for the formal submission of Audio/Video and Photographic material (“Request”).¹ Trial Chamber V (“Chamber”) should reject the formal submission of 17 proposed items, pursuant to reasons set out for each individual opposed item below.

2. The Prosecution defers to the Chamber’s discretion regarding the formal submission of the remaining 110 proposed items, subject to the additional observations provided for each one in Annexes A, B, and C.²

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential”, as it responds to a filing of the same classification. A public redacted version will be submitted as soon as practicable.

III. SUBMISSIONS

A. Photograph-related evidence (Annex A)

4. The Prosecution opposes the formal submission of CAR-D29-0003-0030,³ a satellite image of the Boeing area. The document is not probative of the purpose for which it is tendered. Rather, its probative value is entirely speculative.

5. The Defence’s claim that CAR-D29-0003-0030 is “relevant to locate the Boeing market in relation to the houses of upcoming Defence witnesses D29-P-4013 and D29-

¹ ICC-01/14-01/18-2515-Conf.

² See column “Prosecution’s position”.

³ Annex A, item 1.

P-4011”⁴ is unsubstantiated and premature. Absent a clear indication by witnesses D29-4013 and D29-4011, the submitted image provides no indication of the proximity of the Boeing Market to their respective residences. Even though the satellite image indicates locations in Boeing, it does not reference the residences of D29-4013 and D29-4011. Further, the Defence had the opportunity to obtain this foundational information from D29-4013 during his testimony on 15 April 2024, but failed to do so. As for D29-4011, the Defence recently signalled its intention to take a statement from the witness for the purpose of a rule 68(2)(b) application.⁵ It is therefore premature to submit CAR-D29-0003-0030 at this stage, as the Defence have the opportunity to lay the requisite foundation by having D29-4011 indicate the location of her residence on the image in her prospective statement.

6. The Prosecution does not oppose the formal submission of the remaining 20 photographs, but invites the Chamber to take into consideration its additional observations provided in Annex A for each one.⁶

B. P-1819 video-related evidence (Annex B)

7. The Prosecution opposes the formal submission of 14 metadata documents extracted from the materials provided by P-1819 and listed under items 3, 57, 60, 63, 65, and 68 to 76 in Annex B (“Contested Metadata”) because they are erroneous. Their submission as such would be unduly prejudicial and contrary to the interests of justice. Out of the 14 metadata documents, six relate to videos submitted through the

⁴ Annex A, item 1, column “Relevance”.

⁵ See Email from the Yekatom Defence sent on 29 May 2024, at 12:47.

⁶ See Annex A, column “Prosecution’s position”.

present Request;⁷ while eight relate to videos already deemed formally submitted in this case.⁸

8. The Contested Metadata are highly unreliable given, as noted by the Defence,⁹ the obvious errors on the dates;¹⁰ which are consistent with P-1819's recollection that some of the indicated dates and times in the metadata of her videos are inaccurate.¹¹ The Defence seeks the formal submission of these metadata documents to: (i) establish the order in which the videos were filmed as well as the time elapsed between two or more rushes; and (ii) infer that the videos whose metadata are listed under items 69 to 76 do not depict members of YEKATOM's group.¹² For example, the Defence reference the metadata of videos CAR-OTP-2065-5292 and CAR-OTP-2065-5404 to infer that it took "more than four hours" to go from the location depicted in the first video to the location in the second video.¹³ The Defence's interpretation of the Contested Metadata is wholly speculative and in any case, predicated on assertions that are not substantiated. As such, the Defence does not meet even the minimal threshold to demonstrate that the Contested Metadata is relevant to and probative of the purposes for which they are submitted.

9. *First* it is impossible, based on any of the Contested Metadata, to determine P-1819's whereabouts or the time it took for her to move from one location to another. The Defence's interpretation is misleading as it does not take into consideration myriad possible explanations for the time differences. For instance, P-1819 may have stopped at a particular location to rest before moving to another place that day. The

⁷ See Annex B, items 3, 57, 60, 63, 65, and 68; respectively related to videos submitted as items 1, 55, 58, 61, 64, and 66.

⁸ See Annex B, items 69 to 76, respectively related to videos CAR-OTP-2065-5392, CAR-OTP-2065-5404, CAR-OTP-2065-5412, CAR-OTP-2065-5436, CAR-OTP-2065-5440, CAR-OTP-2065-5444, CAR-OTP-2065-5468, and CAR-OTP-2065-5470.

⁹ Request, paras. 28-29.

¹⁰ The dates indicated in the Contested Metadata are *1 January 2010* for items 3, 65, 68-76; *2 January 2010* for item 57; and *31 January 2010* for items 60 and 63 of Annex B.

¹¹ CAR-OTP-2065-0003 at 0032, para. 166.

¹² See Annex B, items 69-76, column "Relevance".

¹³ Request, para. 29.

time difference simply does not give rise to any inference regarding distance without more.

10. *Second*, a group of videos filmed by P-1819 on 1 January 2010 (as per the metadata)¹⁴ show that she visited several Anti-Balaka bases that day. After she filmed the location depicted in video CAR-OTP-2065-5292, P-1819 followed YEKATOM and his elements, including Rodrigue MOMOKAMA (“MOMOKAMA”) to a different base depicted in videos CAR-OTP-2065-5320 and CAR-OTP-2065-5324. In the video, when P-1819 asked about the location, MOMOKAMA explained that the base was located on the old road of MBAIKI, while YEKATOM claimed that they have control over that area.¹⁵ It is unclear how long P-1819 stayed in this particular location with YEKATOM and his elements that day. The Contested Metadata certainly do not provide such clarification. Before reaching the location depicted in video CAR-OTP-2065-5404, P-1819 undertook a journey by foot in the bush,¹⁶ following the lead of the Anti-Balaka chief depicted in video CAR-OTP-2065-5404. It is apparent from the footage that CAR-OTP-2065-5348 depicts the start of the journey. If one were to adopt the Defence’s interpretation of the Contested Metadata, then it would have taken P-1819 and the group of Anti-Balaka less than 15 minutes to walk from the location depicted in CAR-OTP-2065-5348 to the location depicted in video CAR-OTP-2065-5404.¹⁷ This is far from the four hours plus that the Defence asserts elapsed between

¹⁴ The metadata of the following videos indicate *1 January 2010* as the creation date: CAR-OTP-2065-5292 (depicting YEKATOM in a location where he voiced the possibility to take P-1819 to see the Anti-Balaka at a base), CAR-OTP-2065-5296, CAR-OTP-2065-5300, CAR-OTP-2065-5320, CAR-OTP-2065-5324, CAR-OTP-2065-5348, CAR-OTP-2065-5352, CAR-OTP-2065-5356, CAR-OTP-2065-5360, CAR-OTP-2065-5364, CAR-OTP-2065-5372, CAR-OTP-2065-5376, CAR-OTP-2065-5380, CAR-OTP-2065-5388, CAR-OTP-2065-5392, CAR-OTP-2065-5396, CAR-OTP-2065-5404, CAR-OTP-2065-5412, CAR-OTP-2065-5416, CAR-OTP-2065-5432, CAR-OTP-2065-5436, CAR-OTP-2065-5440, CAR-OTP-2065-5444, CAR-OTP-2065-5460, CAR-OTP-2065-5464, CAR-OTP-2065-5468, and CAR-OTP-2065-5470 (video related to item 76 of Annex B depicting Sylvestre YAGOUZOU who explained that his elements came from GOBERE where they were joined by many FACA and people coming from all corners of the country).

¹⁵ See CAR-OTP-2065-5324 and its transcript and translation CAR-OTP-2107-3128 and CAR-OTP-2118-5698, at 5700, l. 4-22.

¹⁶ See CAR-OTP-2065-5348, CAR-OTP-2065-5352, CAR-OTP-2065-5356, CAR-OTP-2065-5360, CAR-OTP-2065-5364, CAR-OTP-2065-5372, CAR-OTP-2065-5376, CAR-OTP-2065-5380, CAR-OTP-2065-5388, CAR-OTP-2065-5392, and CAR-OTP-2065-5396.

¹⁷ CAR-OTP-2065-7818, the metadata of video CAR-OTP-2065-5348 show *21:02:18* as the creation time while CAR-OTP-2065-7840, the metadata of video CAR-OTP-2065-5404 shows *21:16:47* as the creation time.

YEKATOM's visit to an Anti-Balaka base shown in video CAR-OTP-2065-5292 and P-1819's meeting a group of Anti-Balaka in the bush depicted in video CAR-OTP-2065-5404.

11. *Finally*, the Defence's use of seven metadata documents to infer that the Anti-Balaka members appearing in videos CAR-OTP-2065-5412, CAR-OTP-2065-5436, CAR-OTP-2065-5440, CAR-OTP-2065-5444, CAR-OTP-2065-5468, and CAR-OTP-2065-5470 are not part of YEKATOM's group is also based on mere conjecture and speculation. These videos were taken on the same day as the previous videos discussed above.¹⁸ After video CAR-OTP-2065-5404, P-1819 and the same group of Anti-Balaka arrived at a "*base arrière*",¹⁹ where they met other members of the Anti-Balaka, including those led by Sylvestre YAGOUZOU ("YAGOUZOU").²⁰ By creating a clear separation between the Anti-Balaka featuring in this group of videos and YEKATOM's group, the Defence blatantly ignore the clear proximity between YEKATOM and YAGOUZOU. The latter appears in several other videos filmed by P-1819 in the presence of YEKATOM and members of his group, including MOMOKAMA, Habib BEINA, Jean Nestor NGAIGANAM, BEOROFEL.²¹ In one of the videos, YEKATOM instructs YAGOUZOU to find an element to look for a rocket.²² In another video, YEKATOM interrupted YAGOUZOU who was in the middle of a lengthy speech instructing the elements, angrily shouting:

Dis, ça suffit comme cela ; il faut chercher à les disperser rapidement ...ça ne sert à rien de faire un long discours. (...) ce que nous devons faire ici est de fouiller les téléphones ; nous verrons le reste

¹⁸ Their respective metadata documents indicate that the videos were taken on 1 January 2010. See Annex B, items 71-76.

¹⁹ See video CAR-OTP-2065-5412 and its transcript and translation CAR-OTP-00000814 and CAR-OTP-00000825, at 000003, l. 4-12.

²⁰ See videos CAR-OTP-2065-5464, CAR-OTP-2065-5468, and CAR-OTP-2065-5470 (depicting YAGOUZOU and other Anti-Balaka elements).

²¹ See for example CAR-OTP-2065-2388, CAR-OTP-2065-2392, CAR-OTP-2065-2544, CAR-OTP-2065-2548, CAR-OTP-2065-2837, CAR-OTP-2065-2841, CAR-OTP-2065-2861, CAR-OTP-2065-2865, CAR-OTP-2065-2871, CAR-OTP-2065-2887, CAR-OTP-2065-2895, CAR-OTP-2065-2899, CAR-OTP-2065-3192, CAR-OTP-2065-3208, CAR-OTP-2065-3212, and CAR-OTP-2065-3220.

²² See CAR-OTP-2065-2544 and its transcript and translation CAR-OTP-2127-3741 and CAR-OTP-2127-3649, at 3651, l. 10-15.

des choses plus tard. Au moment du lancement des opérations, il y aura des décisions à prendre ... dis, attends, vous êtes des militaires, si on vous donne des ordres, il ne faut pas laisser les civils vous dominer [referring to YAGOUZOU], je vous dis la franche vérité. D'accord ? [...].je préfère vous mettre au courant car je ne veux pas que quelqu'un foute la merde dans mon travail. C'est ce que je vous dis; nous devons donner ces instructions au moment du départ. Moi, je suis comme ça. Il y a certaines choses qu'on ne peut pas dire devant tout le monde car nous ne connaissons pas ce que tout le monde pense. Il nous faut surtout titre brefs, et confisquer tous les téléphones portables ; ceux qui veulent rester, qu'ils restent ; ceux qui ne veulent pas rester, qu'ils s'en aillent, et c'est tout.²³

12. Considering the above, the submission of the 14 Contested Metadata would be inappropriate, as the documents clearly do not at all tend to show that the Anti-Balaka elements depicted in some of the related videos were not part of YEKATOM's Group.

13. The Prosecution does not oppose the formal submission of the remaining videos provided by P-1819, but invites the Chamber to take into consideration its additional observations provided in Annex B for each one.²⁴

C. Other audio-video related evidence (Annex C)

14. The Prosecution opposes the formal submission of CAR-D29-0008-0018 (a video interview of P-0505) and CAR-D29-0006-1323 (its corresponding transcript), on the basis of incompleteness. These documents comprise only part of an interview given by P-0505 consisting of five consecutive sections. The submitted video is only the first of these.²⁵ Accordingly, should the Chamber grant the Defence request and recognise the first part of P-0505's interview as formally submitted, it should also recognise as formally submitted the remaining four portions of the same interview. These remaining portions, consisting of a total of only an additional one minute and 42

²³ See CAR-OTP-2065-3220 and its transcript and translation CAR-OTP-2127-3752 and CAR-OTP-2127-3668, at 3670, l. 27-40.

²⁴ See Annex B, column "Prosecution's position".

²⁵ See ICC-01/14-01/18-2515-Conf-AnxC, p. 2-3.

seconds, have been downloaded and registered by the Prosecution.²⁶ Submission of the full interview will provide the Chamber with the necessary context and ensure a more holistic assessment of the interview.

15. Notably, the approach of registering all portions of one interview was taken by the Defence itself, in relation to similar footage at CAR-D29-0008-0012 (which also consists of five parts, as explained by the Defence).²⁷

16. In addition, the Prosecution observes that the relevance of the excerpt submitted by the Defence is of a limited nature. The Defence, without foundation, reads into P-0505's comment in the footage, in claiming "[REDACTED] [P-0505], who visited the Yamwara School Base on [REDACTED] December 2013, provides an indication that he did not meet child soldiers there. The youngest being 16 years old per his assessment."²⁸

17. *First*, the footage begins abruptly with P-0505's comment "*Je dirais qu'ils ont entre... entre seize (16) et vingt-cinq (25) ans*".²⁹ From this statement, it is not clear whether P-0505's assessment of age extends beyond the individuals shown in a photograph behind him and to which he appears to refer,³⁰ or to children that he met at the Yamwara School base more generally (as claimed by the Defence). *Second*, P-0505's subjective assessment of the age obviously does not exclude that persons he assessed as 16 years of age may have been under 15 years of age in fact. Thus, the assertion that it "provides an indication that he did not meet child soldiers there" is unfounded, particularly absent any indication of the basis of his assessment. Thus, the

²⁶ See the remainder of P-0505's interview at CAR-OTP-00036518 (part 2, extract of 27 seconds); CAR-OTP-00036521 (part 3, extract of 34 seconds); CAR-OTP-00036524 (part 4, extract of 22 seconds); CAR-OTP-00036527 (part 5, extract of 19 seconds).

²⁷ See ICC-01/14-01/18-2515-Conf-AnxC, p. 1-2, column "Reliability & Authenticity".

²⁸ See ICC-01/14-01/18-2515-Conf-AnxC, p. 2-3.

²⁹ CAR-D29-0006-1323, l. 4-5.

³⁰ Also available at CAR-OTP-2095-5433.

probative value of the excerpt identified by the Defence at CAR-D29-0008-0018, is marginal at best.

18. The Prosecution does not oppose the formal submission of the remaining other audio-video items via the Bar Table, but invites the Chamber to take into consideration its additional observations provided in Annex C for each one.³¹

IV. RELIEF SOUGHT

19. For the above reasons, the Chamber should reject the Request in respect of the 17 proposed items described in paragraphs 4-5, 7-12, and 14-17 above. The Prosecution otherwise defers to the Chamber's discretion regarding the formal submission of the remaining items, but requests that its observations, as set out per item in Annexes A, B, and C, are given due consideration.



Karim A. A. Khan KC, Prosecutor

Dated this 10th day of July 2024
At The Hague, The Netherlands

³¹ See Annex C, column "Prosecution's position".