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Date: **15 July 2024**

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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

With Confidential Annexes A, B and C

Public Redacted Version of the “Yekatom Defence Request for the formal submission of Audio/Video and Photographic material”, 31 May 2024, ICC-01/14-01/18-2515-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom (“Defence”) hereby requests the formal recognition of a total of 127 audio/video and photographic material submitted with from the bar table (“Submitted Items”) in accordance articles 64(9)(a), 69(3) and 69(4) of the Rome Statute and rule 63(2) of the Rules of Procedure and Evidence (“Request”). The Submitted Items comprise 21 photographs listed in Annex A; 25 videos, 18 transcriptions and 33 metadata-files related to P-1819 listed in Annex B; and finally, 16 additional audios/videos as well as 14 transcriptions listed in Annex C.
2. As detailed in the present Request and the Annexes, the Defence argues that the items for which submission into evidence is sought are *prima facie* relevant, reliable and meet the authenticity criteria. It is also argued that no procedural bars or obstacles affect the Submitted Items, and that the preconditions set out by the Chamber are fulfilled.¹ The Defence furthermore has detailed its position as to the relevance of the items, and has provided information as regard to which other items present in the case record those items are related to.

PROCEDURAL HISTORY

3. On 17 November 2023, the Defence filed its List of Evidence.²
4. On 2 February 2024, the Chamber issued its “*Further Directions on the Conduct of the Proceedings (End of Defence Presentation of Evidence and Closure of Evidence)*”.³ The Chamber set the deadline for the Defence to submit evidence in writing at one week after the testimony of the last witness called by the Defence; but

¹ ICC-01/14-01/18-631, para. 62.

² ICC-01/14-01/18-2212-Conf-AnxD.

³ ICC-01/14-01/18-2342.

encouraged requests to be filed on a rolling basis during the presentation of evidence.⁴

5. On 1 March 2024, the Defence filed its notice of information on prospective Bar Table Applications. The Defence *inter alia* indicated that it anticipated to submit 54 audio/video items, their corresponding translations, transcriptions and metadata; as well as 129 photographs.⁵ The Defence added that the “*number of aforementioned items may be subject to change upon further assessment of the materials*”.⁶
6. Between 20 March and 15 May 2024,⁷ the Defence provided the Prosecution and the Ngaissona Defence with the three annexes of the present Request in order to obtain their positions pursuant to paragraph 62 of the Initial Directions on the Conduct of the Proceedings.⁸
7. On 22 May 2024, pursuant to request by the Defence, the Chamber authorised the latter to file its annexes to prospective bar table motions in A3 format containing additional reference to the chain of custody of the items as well as related submitted items in support of its submissions concerning the relevance and probative value of each item.⁹

SUBMISSIONS

8. The Defence will first provide preliminary remarks on the methodology used in the annexes of the present and future bar table applications (A). Secondly the Defence will briefly address, in turn, its request for formal recognition as

⁴ ICC-01/14-01/18-2342, para. 6.

⁵ ICC-01/14-01/18-2392, para 2, page 1.

⁶ ICC-01/14-01/18-2392, para. 3.

⁷ Annex A was provided on 20 March 2024 ; Annex B was provided on 5 April 2024 ; Annex C was provided on 15 May 2024.

⁸ ICC-01/14-01/18-631, para. 62.

⁹ Email from the Trial Chamber V dated 22 May 2024 at 16:14.

submitted into evidence of photographs (B); of video material related to P-1819 (C); and of other audio/video related material (D).

A. Preliminary remarks on the Defence's Bar Table Motions

9. In its *Initial Directions on the Conduct of the Proceedings*, the Chamber adopted the so called "Submission Approach" as the evidence regime in the present case. This approach means that "*the Chamber will assess the standard evidentiary criteria (namely the relevance, probative value and potential prejudice) of each item as part of its holistic assessment when deliberating its judgment pursuant to Article 74(2) of the Statute*".¹⁰
10. One of the methods accepted by the Chamber to submit before it evidence that will be assessed during its deliberation consists of the use of bar table applications. The Chamber directed for all bar tables to contain " (i) a short description of the item (and/or relevant portions therein); and (ii) a short description of the asserted relevance and probative value pursuant to Rule 64(1) of the Rules" ¹¹ and that said short description should be "*sufficiently clear and applicable to the item*".¹² This information "*should be provided to assist the Chamber later in its holistic assessment of the evidence during the deliberation of the judgment*".¹³
11. In order to streamline and facilitate the assessment of each individual item, the Defence has consistently provided detailed arguments on each of the items for which the Prosecution has sought submission through its bar table motions. Those arguments were not limited to the presence of procedural bars, obstacles or preconditions that prevented the submission of an item. Rather the arguments also extended to the relevance and reliability of individual items, as well as submissions concerning the corroboration, or lack thereof, of each item.

¹⁰ ICC-01/14-01/18-631, para. 53.

¹¹ ICC-01/14-01/18-631, para. 62.

¹² ICC-01/14-01/18-1359, para. 8.

¹³ ICC-01/14-01/18-631, para. 62.

While those arguments were not specifically addressed by the Chamber for the purpose of formal recognition of the submission of the items proposed by the Prosecution via its bar table motions, it nonetheless assured that *“the Chamber notes the participants’ arguments on the relevance and probative value of the items subject to the Request, and defers its consideration until its deliberation of the judgment pursuant to Article 74(2) of the Statute”*.¹⁴

12. With this assurance in mind, the Defence has adopted a similar comprehensive approach with the present Bar table application, as well as all forthcoming motions. In addition to the preconditions mentioned by the Chamber, namely a short description of (i) the item and (ii) its intended relevance, the Defence has additionally included in its Bar table applications the following information :

- Column “Description”: This column provides a detailed description of the content of the item, with pinpointed time or line references when applicable. This column allows the Chamber and Parties to have a proper overview of the item and, in the case of protracted documents, an indication of the sections as relied upon by the Defence most important sections;
- Column “Chain of Custody”: This column sets out the chronological sequence of custody or analysis of the item in question. This detail either supplements or reflects the metadata located in Nuix and is included to supplement submissions concerning the reliability and/or authenticity of the contents therein;¹⁵
- Column “Relevance”: This column provides detailed submissions concerning the relevance of the item to the charges concerning Mr. Yekatom and more pertinently, how the Defence intends to use the item, as part of its

¹⁴ ICC-01/14-01/18-1359, para. 11.

¹⁵ In light of the standardised metadata concerning audio/video and photographic material, this column is not included in the appended Annexes A – C but is included in forthcoming bar table motions.

case theory, to demonstrate that the existence of a particular fact is either more or less probable. This column further provides information as to whether the item corroborates the testimony of witnesses;

- Column “Related Submitted Items”: The column provides an extensive, albeit non-exhaustive list of items that are either already recognized as submitted evidence or that are part of a pending Defence application for their submission. Each item in this column is described in a manner that facilitates the Chamber’s understanding as to how each item relates to other such material and how it fits in the Defence case theory. This column is consequently instrumental to the Chamber’s holistic assessment of the relevance, reliability and probative value of the evidence;
- Column “Reliability and Authenticity”: This column provides detailed submissions which set out the various *indicia* of authenticity and reliability for each item. To assist with this evaluation, the Defence has addressed, *inter alia*, the source of the item, the nature and characteristics of the item, the contemporaneous nature of the item and the context in which the item was created. Additionally, where applicable, the Defence has provided reference to other evidence or direct links to the original source in order to allow proper verification of the authenticity of a document.

13. The approach advanced by the Defence is suitably applicable for the submission of evidence regime adopted in these proceedings, whereby the standard evidentiary criteria of items is to be assessed holistically during the deliberation phase as upheld by the Appeals Chamber,¹⁶ and consistent with a Trial

¹⁶ *Prosecutor v. Ongwen*, [Appeals Judgment](#), ICC-02/04-01/15-2022-Red, para. 503 (‘ “[r]ather, what a trial chamber must do in any case is to consider the relevance, probative value and potential prejudice of the evidence submitted and the issues raised by the parties in this respect ’). See also ICC-01/05-01/08-1386 OA 5/OA 6, para. 37.

Chamber's duty to provide a reasoned statement of findings on the evidence and conclusions as arising from article 74(5) of the Statute.¹⁷

14. The information provided by the Defence in the present Request, with cross-reference to witness' testimonies and other submitted documents, as well as its clear presentation in various columns dedicated to one type of information, allows the Chamber to have at its disposition a practical tool to fulfill its obligation to consider the Defence arguments on the submitted evidence diligently.
15. The combination of its Bar table applications, as well as its written and closing arguments, will allow the Chamber to have a proper and detailed understanding of the Defence case theory during its deliberation, which will facilitate the issuance of a full and reasoned decision pursuant to Article 74(5) of the Statute.

B. On the photograph related evidence (Annex A)

16. The Defence seeks submission in evidence of 21 photographs listed in Annex A. While neither the Prosecution nor the Ngaïssona Defence objected to the submission of the photographs, both reserved their rights to make further submissions in response to the present request.¹⁸
17. All 21 photographs are relevant to different topics, central to the case, as detailed in Annex A. As an example, several items relate to key locations of the case in order for the Chamber to have a better understanding of their layout: items 9 to 21 consist of drone pictures of the Yamwara School base and its surroundings, item 8 consists of satellite pictures of the Boeing Mosque, while

¹⁷ *Ibid*, paras 506- 509.

¹⁸ Email from the Ngaïssona Defence to the Yekatom Defence dated 3 April 2024 at 21:04 ; Email from the Prosecution to the Yekatom Defence dated 12 April 2024 at 13:18.

item 1 comprises of satellite images of the Boeing/Cattin neighbourhood with markers on key locations.

18. All items display sufficient indicia of reliability and authenticity. Specific, detailed and individualised submissions are made on those two aspects in Annex A, for each of the 21 photographs. The Defence particularly notes that most of the items contained in Annex A were disclosed by the Prosecution and that their origin are not contested; when items were disclosed by the Defence, the metadata on Nuix clearly set out their provenance and the chain of custody.
19. Further, no prejudice to a fair trial pursuant to Article 69(4) of the Statute would arise from recognizing the 21 photographs as formally submitted. Indeed, all items, including the ones disclosed by the Prosecution, were included in the Defence's List of Evidence which informed all Parties of the Defence's intention to rely on them. Moreover, the detailed submissions provided by the Defence in Annex A provides information as to how each document fits in the Defence case theory and how it is corroborative of other evidence; the Parties are put in a situation to easily assess the evidence for which submission is sought and provide their position to the Chamber. Finally, the Defence also carefully selected the material included in Annex A in order to prevent unnecessary duplicative documents which would burden the case file.
20. As no procedural bars or obstacles affect the 21 photographs, and that the preconditions set out by the Chamber are fulfilled,¹⁹ the Defence hereby requests the Chamber to recognize as submitted the items listed in Annex A.

C. On the P-1819 video related evidence (Annex B)

21. The Defence seeks submission in evidence of 76 items listed in Annex B, those items comprise of 25 videos provided by former Prosecution witness P-1819, as

¹⁹ ICC-01/14-01/18-631, para. 62.

well as their accompanying metadata (for a total of 33 items), transcriptions and translations (for a total of 18 items).

22. The Ngaïssona Defence does not object to the submission of the items, but reserve its right to present “*objections based on the criteria of authenticity, reliability, and relevance*” in response to the present application.²⁰
23. The Prosecution objects to the submission of 14 items,²¹ all metadata documents, on the basis that “[REDACTED] *The above mentioned metadata documents indicate that the videos were filmed on 1, 2, and 31 January 2010 (at various times). As such, these metadata documents cannot be used to draw any conclusions as to the date and time of a videos concerned and the Prosecution opposes their submission*”.²² The Prosecution does not object to the submission of the remaining items but reserves its right to make further submissions and/or objections in its response to the present application.
24. All 25 videos are relevant to different topics, central to the case, as detailed in Annex B for each one of them. As an example, out of those 25 videos, 19 were filmed on 5 December 2013 [REDACTED] in the Cattin neighbourhood [REDACTED]. Those videos provide relevant information as to the advance and behaviour of the Seleka in Cattin on the day of the 5th of December 2013 attack, *inter alia* showing Seleka firing indiscriminately in the neighbourhood, which is relevant as regard to the decision of its inhabitants to flee. These items are also relevant and corroborative of other evidence, which when taken together, display how the Seleka were *intentionally directing an attack against the civilian population on 5 December 2013*. As a result of the Seleka reprisals on that

²⁰ Email from the Ngaïssona Defence to the Yekatom Defence dated 26 April 2024 at 18:13.

²¹ Items 3, 57, 60, 63, 65, 68 to 76; corresponding respectively to CAR-OTP-2065-6796, CAR-OTP-2065-6976, CAR-OTP-2065-7478, CAR-OTP-2065-7494, CAR-OTP-2065-7758, CAR-OTP-2065-7808, CAR-OTP-2065-7836, CAR-OTP-2065-7840, CAR-OTP-2065-7842, CAR-OTP-2065-7848, CAR-OTP-2065-7850, CAR-OTP-2065-7852, CAR-OTP-2065-7858, CAR-OTP-2065-7860.

²² Email from the Prosecution to the Yekatom Defence dated 25 April 2024 at 13:19.

day, which included their door-to-door killings, hundreds of civilians lost their lives that day.²³

25. The Defence emphasizes that the metadata files linked to the videos filmed on 5 December 2013 are highly relevant to the case. These files provide a crucial timeline of the Seleka's advance in the Cattin neighbourhood, highlighting the retreat of all FACA and Anti-Balaka groups by 10:30 am, and consequently, establishing the Seleka's control of the city by that time.²⁴
26. The Defence submits that all items display sufficient indicia of reliability and authenticity. Specific, detailed and individualized submissions are made on those two aspects in Annex B, for each of the 76 items. The Defence highlights that all the videos and metadata were provided to the Prosecution by former witness P-1819, their origin and authenticity are not contested. As regard to the transcriptions and/or translations, the Defence notes that the original videos are fully available to all Parties that would wish to test their accuracy and reliability.
27. The Defence is cognizant of the Prosecution's arguments as regard to the reliability of 14 items, corresponding to metadata files of some videos. However, the Defence submits that the issue of the reliability of the date mentioned in those 14 specific metadata files do not deprive the items in their entirety of any reliability or relevance. The Defence also notes that the Metadata of videos filmed on 5 December 2013 are not affected by the issue highlighted by the Prosecution
28. Indeed, as indicated for those items in Annex B, the Defence is not seeking to rely on them for the specific date and hours that is mentioned in the metadata.

²³ See as an example P-1839 : ICC-01/14-01/18-T-172-CONF-FRA CT from 10:52:06 to 10:53:07, see also P-0291 : ICC-01/14-01/18-T-052-FRA ET at 09:52:15.

²⁴ See Metadata item 33, CAR-OTP-2065-6370, for an arrival of the Seleka at Mpoko-Bac at 10:29.

Those are obviously wrong as they sometimes refer to the year 2010 as the date of when a video would have been filmed. However, the Defence relies on the time that elapsed between the date/hours of two metadata files in order to have a better comprehension of whether two videos were filmed in quick succession, one after another, or if a significant amount of time elapsed between their filming. Such information being relevant for some Defence case theory as it objectively supports the Defence's position that two videos were not filmed at the same place, and do not depict the same group of people.

29. As an example: the metadata of video CAR-OTP-2065-5292²⁵ indicates that it was filmed on 1 January 2010 at 17:04:33; the metadata of CAR-OTP-2065-5392²⁶ indicates that it was filmed on 1 January 2010 at 21:12:29; the metadata of CAR-OTP-2065-5404 indicates that it was filmed on 1 January 2010 at 21:16:47.²⁷ While the specific date and hours are not to be relied upon, it is reasonable to argue from the documents that a significant gap of time, more than four hours, elapsed between the first and second video, while the second and third videos were filmed in quick succession, only four minutes one after another. Such information is particularly important because, in the first video, Mr Yekatom [REDACTED] to visit a group of Anti-Balaka located at a considerable distance, [REDACTED];²⁸ while the second and third video were previously submitted by the Prosecution to aver an alleged anti-Muslim policy of Mr Yekatom's group.²⁹ The videos and accompanying metadata submitted by the Defence are highly relevant. They objectively demonstrate that the Prosecution has wrongly identified individuals as part of Mr. Yekatom's group, leading to the incorrect attribution of an anti-Muslim policy to his group.

²⁵ Metadata as item 68, CAR-OTP-2065-7808, Annex B.

²⁶ Metadata as item 69, CAR-OTP-2065-7836, Annex B.

²⁷ Metadata as item 70, CAR-OTP-2065-5404, Annex B.

²⁸ Video as item 66, CAR-OTP-2065-5292, Annex B.

²⁹ See ICC-01/14-01/18-2233-Conf-AnxA, items 303 & 319.

30. Therefore, the information provided by the metadata of those three videos are particularly relevant as it supports the Defence's argument that the second and third videos depict a different group, and not that of Mr Yekatom, and that as a consequence the speeches made by individuals in those videos should not be attributed to Mr. Yekatom's group.
31. In light of the existence of the reliability and relevance specifically linked to the duration that elapsed between the shooting of two videos, the Defence contends that nothing prevent the Chamber from recognizing as submitted into evidence the 14 metadata documents which are opposed by the Prosecution at this stage. The opposition of the Prosecution appears to relate to the weight that can be given to those items, an exercise that is ultimately the Chamber's responsibility during its deliberation, and not to the existence of a specific procedural bar *per se*.
32. As regard to the absence of prejudice that would arise from items being recognized as formally submitted, the Defence respectfully refers to its submissions made in paragraph 19 above.
33. Consequently, in light of the above, and of the fact that no procedural bars or obstacles affect the 76 items, and that the preconditions set out by the Chamber are fulfilled,³⁰ the Defence hereby requests the Chamber to recognize as submitted the items listed in Annex B.

D. On the other audio-video related evidence (Annex C)

34. The Defence seeks submission of 30 items listed in Annex C, those items comprise of audio/video material, from various of sources (16 items), and their accompanying transcriptions and translations (14 items).

³⁰ ICC-01/14-01/18-631, para. 62.

35. The Ngaïssona Defence does not object to the submission of the items, but reserves its right to present “*objections based on the criteria of authenticity, reliability, and relevance*” in response to the present application.³¹
36. The Prosecution objects to the submission of two items;³² and while it does not object to the submission of the remaining items it disagrees with the Defence assessment of their relevance and/or probative value, and reserves its right to make submissions regarding the conclusions that can be drawn from these items.³³
37. All 16 videos are relevant to different topics, central to the case, as detailed in Annex C for each one of them. As an example, items 3, 7, 9 and 25 provide information as to the tensions and violence that occurred between some Christian or non-Muslim civilians and some Muslims civilians, which is relevant as regards the charge of displacement / forcible transfer (Counts 4 and 5). The uncontrolled civilian anger against the Muslim population forced many to flee their homes and their country *en masse*.
38. Another example includes videos 15, 17 and 23 which relate to the limitations of the international forces as regards their objective of providing security for the population and the wish of the latter for its own armed forces to fulfill this mission; which videos are relevant as regards the context in which Mr. Yekatom and his group operated and his intention to continue to fulfill his role as a FACA and protect the population. The lack of means, and the limited intervention of international forces failed to reduce the insecurity and chaos engulfing the country. As some witnesses noted, the country was in dire need of its own army.³⁴

³¹ Email from the Ngaïssona Defence to the Yekatom Defence dated 27 May 2024 at 21:48.

³² CAR-D29-0008-0018 and its transcription CAR-D29-0006-1323.

³³ Email from the Prosecution to the Yekatom Defence dated 28 May 2024 at 12:54.

³⁴ See as an example D29-P-5014 : ICC-01/14-01/18-T-257-CONF-ENG CT at 12:18:34 ; see also President Samba-Panza interviews on this point : CAR-OTP-2042-1871 from 04:05 to 05:13, or CAR-OTP-2023-1863 from 30:35 to 32:13.

39. All items display sufficient indicia of reliability and authenticity. Specific, detailed and individualised submissions are made on those two aspects in Annex C, for each of the 30 items. The Defence notes that most of the items contained in Annex A were disclosed by the Prosecution after being obtained from non-contested sources such as Radio Centrafrique or TV Centrafrique. When items were disclosed by the Defence, the metadata on Nuix clearly set out their provenance and the chain of custody; the Defence also provided hyperlinks in Annex C to the original version of the items which can still be found online.
40. As regards the absence of prejudice that would arise from items being recognized as formally submitted, the Defence respectfully refers to its submissions made in paragraph 19 above.
41. As no procedural bars or obstacles affect the 30 items, including as regard to the two items opposed by the Prosecution for unspecified reasons, and that the preconditions set out by the Chamber are fulfilled, the Defence hereby requests the Chamber to recognize as submitted the items listed in Annex C.

CONCLUSION

42. In light of the above, the items listed in Annexes A, B and C meet the criteria for the recognition of their formal submission, in accordance with the applicable law. They are relevant to material issues at trial, mutually corroborative of other evidence in the case file, and bear sufficient indicia of reliability and authenticity. Recognising their formal submission will enable the Chamber to better understand and contextualise the Defence's case, ultimately assisting the Chamber in its determination of the truth.

CONFIDENTIALITY

43. This application is filed on a confidential basis as it contains information [REDACTED]. Annexes A, B and C are filed as confidential as they refer to confidential material and testimonies of witnesses who testified with protective measures. A public redacted version will be filed in due course.

RELIEF SOUGHT

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

RECOGNIZE as formally submitted into evidence the items listed in Annexes A, B and C.

RESPECTFULLY SUBMITTED ON THIS 15th DAY OF JULY 2024



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