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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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

Decision on the Yekatom Defence Motion for Additional Details

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67(1)(a), (b) and 74(2) of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Yekatom Defence Motion for Additional Details’.

I. Procedural history and submissions

1. On 19 August 2019, the Office of the Prosecutor (the ‘Prosecution’) filed its Document Containing the Charges (the ‘DCC’).¹
2. From 19 to 25 September 2019 and 11 October 2019, Pre-Trial Chamber II (the ‘PTC II’) held the hearing on the confirmation of the charges against Mr Yekatom and Mr Ngaïssona (the ‘Confirmation Hearing’).²
3. On 23 September 2019, during the Confirmation Hearing, the Yekatom Defence (the ‘Defence’) objected to Count 29 on the grounds that the Prosecution had not identified the ‘at least 14 children’ who Mr Yekatom was charged with enlisting and deploying in his own group, and requested PTC II to ‘only confirm the charge in relation to those who can be specifically identified through the information contained in the evidence relied upon by the Prosecution’.³
4. On 3 October 2019, the Prosecution responded to the Defence’s submissions, contending that ‘[t]he DCC sufficiently pleads the enlistment and use of child soldiers in hostilities’ given that ‘the scale of the charge is large’.⁴

¹ Document Containing the Charges, Annex B1 to the Prosecution’s Notification of Filing of the Document Containing the Charges and List of Evidence, ICC-01/14-01/18-282-Conf-AnxB1 (public redacted version notified on 18 September 2019, ICC-01/14-01/18-282-AnxB1-Red).

² See transcript of hearing, 19 September 2019, ICC-01/14-01/18-T-004-Red2-ENG; transcript of hearing, 20 September 2019, ICC-01/14-01/18-T-005-Red-ENG; transcript of hearing, 20 September 2019, ICC-01/14-01/18-T-007-Red-ENG; transcript of hearing, 23 September 2019, ICC-01/14-01/18-T-008-Red2-ENG; transcript of hearing, 24 September 2019, ICC-01/14-01/18-T-009-Red-ENG; transcript of hearing, 25 September 2019, ICC-01/14-01/18-T-010-ENG; transcript of hearing, 11 October 2019, ICC-01/14-01/18-T-011-Red-ENG.

³ Transcript of hearing, ICC-01/14-01/18-T-008-Red2-ENG, p. 58, line 4 to p. 61, line 15.

⁴ Corrected version of “Prosecution Response to the Defence’s Confirmation Submissions”, 3 October 2019, ICC-01/14-01/18-376-Conf, 7 October 2019, ICC-01/14-01/18-376-Conf-Corr (with confidential Annex A) (public redacted version notified on 8 October 2019, ICC-01/14-01/18-376-Corr-Red), paras 110-113.

5. On 10 October 2019, the Defence replied to the Prosecution, contending, *inter alia*, that ‘the “sheer scale” exception to the notice requirement is inapplicable’ to the matter at hand.⁵
6. On 11 October 2019, during the last day of the Confirmation Hearing, the Defence reiterated its arguments regarding Count 29.⁶
7. On 11 December 2019, PTC II partially confirmed the charges against both accused (the ‘Confirmation Decision’), including Counts 2, 3 and 29 against Mr Yekatom.⁷ The Defence did not request leave to appeal the Confirmation Decision.
8. On 9 March 2020, the Defence sent a letter to the Prosecution with the purpose of providing it with ‘an opportunity to furnish [*inter alia*, the names of the alleged victims of Counts 2, 3 and 29] voluntarily and avoid burdening the Chamber with litigation’.⁸ According to the Defence, the Prosecution never responded to the letter.⁹
9. On 15 June 2020, the Defence filed a motion in which it, *inter alia*, requests the Chamber to ‘obtain and provide additional details as to the identities of Mr Yekatom’s alleged victims so that Mr. Yekatom has adequate notice as to the nature, cause and content of the charges that he must defend against at trial’ under Article 67(1)(a) and (b) of the Statute (the ‘Motion’).¹⁰ According to the Defence, the Confirmation Decision falls short of providing the details required in line with the Appeals Chamber’s jurisprudence in *The Prosecutor v. Thomas*

⁵ Yekatom Defence Reply to Prosecution Response to Defence Confirmation Submissions, ICC-01/14-01/18-383-Conf (public redacted version notified on 11 October 2019, ICC-01/14-01/18-383-Red), para. 48. *See also* paras 49-58.

⁶ Transcript of hearing, ICC-01/14-01/18-T-011-Red-ENG, p. 53, lines 6-24.

⁷ Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, 14 May 2020, ICC-01/14-01/18-403-Conf-Corr (with one annex) (corrected public redacted version notified the same day, ICC-01/14-01/18-403-Red-Corr).

⁸ Letter addressed to the Prosecution [ARY-2020-0112], Annex A to the Motion for Additional Details, ICC-01/14-01/18-554-Conf-AnxA, p. 2.

⁹ Motion For Additional Details, 15 June 2020, ICC-01/14-01/18-554-Conf (with confidential Annex A, ICC-01/14-01/18-554-Conf-AnxA) (public redacted version notified on 17 June 2020, ICC-01/14-01/18-554-Red), para. 12.

¹⁰ Motion For Additional Details, ICC-01/14-01/18-554-Conf (with confidential Annex A, ICC-01/14-01/18-554-Conf-AnxA) (public redacted version notified on 17 June 2020, ICC-01/14-01/18-554-Red), paras 1, 13-14, 43.

Lubanga Dyilo, which includes the identity of victims to the greatest degree of specificity possible in the circumstances.¹¹

10. With respect to Counts 2 and 3, the Defence submits that there is evidence in the Prosecution's possession that could prove that the persons Mr Yekatom is charged of murdering may have been combatants and not members of the civilian population.¹² The Defence submits that this would constitute 'a complete defence to the charges in Counts 2 and 3',¹³ and that it is thus 'essential that the identity of the victims be specified' to investigate their connection with the Seleka.¹⁴ The Defence further submits that it should not have to wait for this information until the disclosure deadline or the filing of the Trial Brief.¹⁵
11. Regarding Count 29, the Defence submits that it needs to know the identity of the 'at least 14 children' under the age of 15 years old that Mr Yekatom is accused of enlisting and using to participate in hostilities to investigate their true age, whether they participated in hostilities, and whether Mr Yekatom was aware of their presence among his elements.¹⁶ The Defence contends that the 'very close' alleged proximity of Mr Yekatom to the alleged events requires that the Prosecution specifies the identities of the victims, as established by the Appeals Chamber.¹⁷
12. On 26 June 2020, the Common Legal Representative of Victims of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly, the 'CLR') responded to the Motion.¹⁸ The CLR request the Chamber (i) to dismiss the Motion *in limine*, considering that, as the

¹¹ Motion, ICC-01/14-01/18-554-Red, paras 16-17, *referring to* the public redacted version of Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red (the '*Lubanga Appeals Judgment*'), para. 123.

¹² Motion, ICC-01/14-01/18-554-Red, paras 19-20.

¹³ Motion, ICC-01/14-01/18-554-Red, para. 20.

¹⁴ Motion, ICC-01/14-01/18-554-Red, para. 21.

¹⁵ Motion, ICC-01/14-01/18-554-Red, para. 24.

¹⁶ Motion, ICC-01/14-01/18-554-Red, paras 30-31.

¹⁷ Motion, ICC-01/14-01/18-554-Red, paras 32-38, *referring to* the *Lubanga Appeals Judgment*, ICC-01/04-01/06-3121-Red, para. 122.

¹⁸ Common Legal Representatives' Joint Response to the "Motion For Additional Details", ICC-01/14-01/18-570-Conf (public redacted version notified the same day, ICC-01/14-01/18-570-Red) (the 'CLR Response').

Confirmation Decision became final (since the Defence failed to request leave to appeal), ‘so did any discussion in terms of clarity and specificity of the charges’;¹⁹ or, alternatively, (ii) to dismiss it because it is ‘unfounded’.²⁰ In support of the latter, the CLRV submit, *inter alia*, that the ‘sheer scale’ exception is applicable;²¹ and that disclosure of all identities would endanger the concerned victims as well as their families, and be in breach of the Court’s duty to ensure their safety and well-being in accordance with Article 68(1) of the Statute.²²

13. On 26 June 2020, the Prosecution responded to the Motion, requesting the Chamber to consider it moot or, in the alternative, to dismiss it (the ‘Prosecution Response’).²³ The Prosecution further requests the Chamber to ‘confirm that the charges are sufficiently specific in accordance with regulation 52(b) of the Regulations and for the purposes of article 74(2) of the Statute’.²⁴
14. First, the Prosecution submits that the Defence failed to substantiate the requested relief and to particularise any deficiencies in the notice as to the nature, cause and content of the charges.²⁵ Second, the Prosecution submits that the Defence failed to challenge the specificity of the charges in accordance with Rule 122(3) of the Rules of Procedure and Evidence (the ‘Rules’) ‘[b]efore hearing the matter on the merits’ at the Confirmation Hearing, and thus should be precluded from challenging the form or specificity of the charge in Counts 2 and 3, ‘at a minimum’.²⁶

¹⁹ CLRV Response, ICC-01/14-01/18-570-Red, paras 2, 15, 41. *See also* paras 12-14, 16.

²⁰ CLRV Response, ICC-01/14-01/18-570-Red, para. 41.

²¹ *See* CLRV Response, ICC-01/14-01/18-570-Red, paras 3, 17-21. *See also* para. 39.

²² CLRV Response, ICC-01/14-01/18-570-Red, paras 3, 36.

²³ Prosecution’s Response to Yekatom’s Motion for Additional Details, ICC-01/14-01/18-554-Conf, ICC-01/14-01/18-572-Conf (public redacted version notified on 3 July 2020, ICC-01/14-01/18-572-Red), paras 1, 23.

²⁴ Prosecution Response, ICC-01/14-01/18-572-Red, para. 23.

²⁵ Prosecution Response, ICC-01/14-01/18-572-Red, paras 3-4.

²⁶ Prosecution Response, ICC-01/14-01/18-572-Red, paras 6-7. In particular, the Prosecution acknowledges that the Defence raised concerns on the specificity of the charges in Count 29, but that it did so ‘during the Confirmation Hearing’, not raising any concerns with respect to the charges in Counts 2 and 3.

15. Third, the Prosecution argues that the charges contained in Counts 2, 3 and 29 are sufficiently specific ‘in light of the circumstances of this case’,²⁷ and that the accused has received adequate notice to enable the preparation of his defence, a notice which can be further detailed through ‘other auxiliary documents’, such as the Trial Brief.²⁸ Particularly regarding Counts 2 and 3, the Prosecution submits, *inter alia*, that in addition to providing time and place details, it has provided ‘all available information’ on the victims, including the identities of some of them,²⁹ as corroborated in witness statements cited in the Confirmation Decision or disclosed afterwards.³⁰ It further argues that ‘charges may be sufficiently specific even if the identity of the victims is not known’,³¹ and that the Defence’s argument that victims may have been combatants is a matter of evidence to be litigated at trial.³²
16. In relation to Count 29, the Prosecution submits, *inter alia*, that despite the fact that neither the DCC nor the Confirmation Decision identify child soldiers by name, the evidence specifically referenced in support clearly does.³³ The Prosecution further submits that, after the Confirmation Decision, it disclosed additional statements of child soldiers, and that it intends to disclose more statements once all necessary measures are in place.³⁴ It also submits that, in any event, it would not be required to provide such names because ‘[t]he characteristics of this crime, which is a continuous crime that is also systemic by nature, permit less specificity’.³⁵

II. Analysis

17. At the outset, the Chamber recalls that the right of the accused to be informed of the charges is grounded in Articles 67(1)(a), (b) and 61(3)(a) of the Statute, as

²⁷ Prosecution Response, ICC-01/14-01/18-572-Red, para. 9.

²⁸ Prosecution Response, ICC-01/14-01/18-572-Red, paras 8, 10.

²⁹ Prosecution Response, ICC-01/14-01/18-572-Red, paras 11-12.

³⁰ Prosecution Response, ICC-01/14-01/18-572-Red, para. 12.

³¹ Prosecution Response, ICC-01/14-01/18-572-Red, para. 12.

³² Prosecution Response, ICC-01/14-01/18-572-Red, para. 13.

³³ Prosecution Response, ICC-01/14-01/18-572-Red, paras 16-17.

³⁴ Prosecution Response, ICC-01/14-01/18-572-Conf, para. 18.

³⁵ Prosecution Response, ICC-01/14-01/18-572-Red, para. 15.

well as Rule 121(3) of the Rules and Regulation 52(b) of the Regulations of the Court.

18. Regarding the right of the accused ‘[t]o be informed promptly and in detail of the nature, cause and content of the charge’ under Article 67(1)(a) of the Statute, the Appeals Chamber has established that, in order to meet the standard in said provision, the facts, which are ‘the factual allegations which support each of the legal elements of the crime charged’, must be identified ‘with sufficient clarity and detail’.³⁶
19. As to the level of detail of the charges required by Article 67(1)(a) of the Statute, it is the Court’s established jurisprudence that this may not be determined in the abstract, but on a case-by-case basis, taking into account, *inter alia*, the nature of the crime charged, the circumstances of the case and the form of individual criminal responsibility charged.³⁷
20. In this regard, the Appeals Chamber established that, ‘where an accused is not alleged to have directly carried out the incriminated conduct and is charged for crimes committed on the basis of a common plan’, the Prosecution must, in addition to providing details regarding the alleged conduct giving rise to criminal responsibility, the related mental element, the identities of any alleged co-perpetrators and the date and location of the underlying acts, ‘identify the alleged victims to the greatest degree of specificity possible in the circumstances’.³⁸ The Appeals Chamber further established that ‘where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, then the Prosecution is required to identify the “particular acts” or “the particular course of conduct” on the part of the accused which forms the basis for the charges in question’, as

³⁶ *Lubanga Appeals Judgment*, ICC-01/04-01/06-3121-Red, para.121, *referring to Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled “Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court”*, 8 December 2009, ICC-01/04-01/06-2205, para. 90, n. 163.

³⁷ See *e.g. Lubanga Appeals Judgment*, ICC-01/04-01/06-3121-Red, paras 122-123; *The Prosecutor v. Bosco Ntaganda*, Trial Chamber VI, Judgment, 8 July 2019, ICC-01/04-02/06-2359 (the ‘*Ntaganda TC Judgment*’), para. 38.

³⁸ *Lubanga Appeals Judgment*, ICC-01/04-01/06-3121-Red, para. 123.

opposed to situations where it is alleged that the accused personally carried out the criminal acts, which require the Prosecution to set out, *inter alia*, ‘the identity of the victim’.³⁹

21. Therefore, the Chamber will assess whether the charges of Counts 2, 3 and 29, as confirmed in the Confirmation Decision, provide sufficient notice to the Defence under Article 67(1)(a) of the Statute and identify the facts ‘with sufficient clarity and detail’.
22. That being said, the Chamber also stresses that the Confirmation Decision defines the parameters of the charges at trial. The Chamber further recalls its findings that the Court’s statutory framework does not provide for the possibility of a review of confirmation decisions by trial chambers and that it affords distinct powers to pre-trial chambers to determine the factual scope of the charges.⁴⁰ In this regard, the Chamber also notes that the Defence did not seek leave to appeal the Confirmation Decision.

A. Counts 2 and 3

23. The Chamber notes that the operative part of the Confirmation Decision establishes that Mr Yekatom is criminally responsible for, *inter alia*, the crimes against humanity and war crimes of murder pursuant to Articles 7(1)(a) and 8(2)(c)(i) of the Statute under Counts 2 and 3, respectively, for

the killing of between five and 13 persons, including [PERSON 1], at the Boeing market, four Muslim persons in Cattin, and [PERSON 2] at the Boeing market, in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 250-251 of the DCC and paragraphs 87-89 of the [Confirmation] [D]ecision[.]⁴¹

24. The Chamber observes that Counts 2 and 3 above detail the specific date and locations of the murders, narrow the number of victims and identify some of those victims. Furthermore, additional details are provided in the factual

³⁹ *Lubanga Appeals Judgment*, ICC-01/04-01/06-3121-Red, para. 122, *referring to* ICTY Appeals Chamber, *Prosecutor v. Tihomir Blaškić*, Judgment, 29 July 2004, Case No. IT-95-14-A, para. 213.

⁴⁰ See Decision on the Prosecution’s Application for Notice to be given pursuant to Regulation 55(2) on Mr Yekatom’s Individual Criminal Responsibility, 2 June 2020, ICC-01/14-01/18-542, para. 15. See also transcript of hearing, 9 July 2020, ICC-01/14-01/18-T-012-ENG, p. 63, lines 7-12.

⁴¹ Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, pp. 100, 102.

findings of the Confirmation Decision underlying these counts as well as the evidence in support of those findings (including several witness statements).

25. In addition, the Chamber notes that, as indicated in the Prosecution Response, one of the witness statements cited in the Confirmation Decision lists ‘four additional names of traders killed by the Anti-Balaka during the attack’ at the Boeing Market;⁴² and that, on the day of filing its Response, the Prosecution disclosed one more witness statement providing the identities of some of the victims of the said attack.⁴³ The Chamber further notes the Prosecution’s submission that it has provided the Defence with ‘all available information on th[e] matter’.⁴⁴
26. In view of the above, considering the confirmed modes of liability and in line with the established jurisprudence,⁴⁵ the Chamber considers that the charges of murder under Counts 2 and 3 are framed with sufficient specificity in the circumstances of this case so as to guarantee the accused’s right ‘[t]o be informed promptly and in detail of the nature, cause and content of th[ose] charge[s]’ under Article 67(1)(a) of the Statute, even if the Defence does not know each victim’s name.
27. Furthermore, with respect to the Defence’s allegations that there is ‘considerable evidence from the Prosecution’s own witnesses’ that the victims under Counts 2 and 3 may have been combatants and not members of the civilian population,⁴⁶ the Chamber considers such question to be a matter of evidence to be determined at trial and, at this point, a matter of disclosure. Therefore, the Chamber will not, at this stage of the proceedings, address the

⁴² Prosecution Response, ICC-01/14-01/18-572-Red, para. 12, n. 28, *referring to* witness statement CAR-OTP-2082-0299.

⁴³ Prosecution Response, ICC-01/14-01/18-572-Red, para. 12, n. 29, *referring to* witness statement CAR-OTP-2126-0205.

⁴⁴ Prosecution Response, ICC-01/14-01/18-572-Red, para. 12.

⁴⁵ See paragraphs 18-20 above. See also *e.g. The Prosecutor v. Jean-Pierre Bemba Gombo*, Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, paras 133-134; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Pre-Trial Chamber I, Decision on the Three Defences’ Requests Regarding the Prosecution’s Amended Charging Document, 25 June 2008, ICC-01/04-01/07-648, para. 28.

⁴⁶ Motion, ICC-01/14-01/18-554-Red, paras 19-20.

content of evidence to be submitted and discussed before it at trial pursuant to Articles 69 and 74(2) of the Statute.

28. The Chamber recalls that, should the Prosecution have further information concerning the protected status of the victims of the crimes under these counts, this information is subject to disclosure pursuant to Rule 77 of the Rules, or potentially Article 67(2) of the Statute. If the Defence has reason to believe that the Prosecution is violating its disclosure obligations, it should make a specific request showing, *prima facie*, how the Prosecution has fallen short of its disclosure obligations.⁴⁷
29. Finally, the Chamber recalls that it is the Prosecution's onus 'to prove the guilt of the accused' under Article 66(2) of the Statute and that the accused is thus entitled to '[n]ot to have imposed on him [...] any reversal of the burden of proof or any onus of rebuttal' under Article 67(1)(i) of the Statute. Consequently, the question of whether or not a specific victim is a civilian must in any case be proven by the Prosecution during trial.

B. Count 29

30. The Chamber notes that the operative part of the Confirmation Decision establishes that Mr Yekatom is criminally responsible for the war crime of conscription, enlistment and use of children under the age of fifteen years to participate actively in hostilities, pursuant to Article 8(2)(e)(vii) of the Statute, under Count 29, for

the conscription and/or enlistment of children in to his group at various locations, including [LOCATIONS], and the assignment of a variety of tasks to them, such as, *inter alia*, participating in hostilities, including the 5 December 2013 Attack, between at least December 2013 and August 2014, as set out in paragraphs 359-360 of the DCC and paragraphs 144-152 of the [Confirmation] [D]ecision[.]⁴⁸

31. The Chamber observes that Count 29 has a relatively narrow period and details a number of locations where the enlistment and use of child soldiers took place,

⁴⁷ See Decision on the Yekatom Defence Motion for Disclosure of Draft Witness Statements, 1 June 2020, ICC-01/14-01/18-539, para. 26.

⁴⁸ Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, p. 101.

including the specific example of the ‘5 December 2013 Attack’. The Chamber also observes that the factual findings of the Confirmation Decision underlying this count provide additional details and the evidence in support of these findings, including multiple witness statements and reports by several organisations.⁴⁹ The Chamber further notes the Prosecution’s submissions that it has disclosed statements of former child soldiers after the Confirmation Decision, and that it intends to disclose additional statements.⁵⁰

32. In light of the above, considering the confirmed modes of liability and that the crime charged under Count 29 is of a continuous nature and involves a high number of victims, the Chamber is of the view that the said charge is framed with sufficient specificity in the circumstances of this case, so as to guarantee the accused’s right ‘[t]o be informed promptly and in detail of the nature, cause and content of th[ose] charge[s]’ under Article 67(1)(a) of the Statute. The Chamber finds this to be consistent with the established jurisprudence.⁵¹
33. Regarding the Defence’s submission that it needs to know the identity of the children in order to investigate, *inter alia*, their ‘true age’, the Chamber recalls that age is one of the elements of crime pursuant to Article 8(2)(e)(vii) of the Statute. Consequently, the burden of proof to show that certain individuals were below the age of 15 years lies with the Prosecution, pursuant to Articles 66(2) and 67(1)(i) of the Statute.
34. In light of all the above, the Chamber finds that the charges in relation to the matters raised in the Motion provide the accused with adequate notice under Article 67(1)(a) of the Statute. Further details underlying the charges may,

⁴⁹ See Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, paras 144-152.

⁵⁰ See Prosecution Response, ICC-01/14-01/18-572-Red, para. 18.

⁵¹ See paragraphs 18-20 above. See also *e.g.* *Ntaganda* TC Judgment, ICC-01/04-02/06-2359, paras 1110-1112. In particular, regarding the charges of conscripting or enlisting children under the age of 15 years into armed forces or groups and the Defence’s submission that the Updated Document Containing the Charges did not identify a ‘single’ victim, Trial Chamber VI found that ‘in the circumstances of th[e] case, [...] the charges underlying [those] [c]ounts [were] sufficiently specific’.

depending on the circumstances, be contained in other auxiliary documents, such as the Trial Brief.⁵²

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Motion.

Done in both English and French, the English version being authoritative.

 Judge Péter Kovács	 Judge Bertram Schmitt Presiding Judge	 Judge Chang-ho Chung
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Dated 13 July 2020

At The Hague, The Netherlands

⁵² See *Lubanga* Appeals Judgment, ICC-01/04-01/06-3121-Red, paras 124, 132; *Ntaganda* TC Judgment, ICC-01/04-02/06-2359, para. 37.