

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**

Date: **21 December 2021**

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 leave to add Six Items to the
List of Evidence", 14 December 2021, ICC-01/14-01/18-1212-Conf**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan QC

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri

Mr Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Mr Richard Landry Omissé-Namkeamaï

Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun

Mr Abdou Dangabo Moussa

Ms Elisabeth Rabesandratana

Mr Yaré Fall

Ms Marie-Edith Douzima-Lawson

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. SUBMISSIONS

1. The Office of the Prosecutor (“Prosecution”) seeks leave from Trial Chamber V (“Chamber”) to add six items (“Items”)¹ related to [REDACTED] to its List of Evidence (“LoE”)² in accordance with the Decision Setting the Commencement Date of the Trial (“Decision”)³ and subsequent decisions.⁴ The addition of the Items is warranted and appropriate in the circumstances. The Items are of significant probative value and their addition would not cause unfair prejudice or derail the proceedings. Rather, their addition is in the interests of justice and the Chamber’s determination of the truth.

2. The six items are available in Ecourt and appended at Confidential Annexes A to F.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), the Prosecution files this Request and its annexes as “*Confidential*” because they contain confidential information regarding Prosecution evidence. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The addition of the Items to the LoE is justified because they are of significant probative value and the addition causes no unfair prejudice.

¹ CAR-OTP-2134-0407, CAR-OTP-2134-0441, CAR-OTP-2134-0449, CAR-OTP-2134-1599, CAR-OTP-2134-1852, CAR-OTP-2134-1868.

² ICC-01/14-01/18-724-Conf-AnxC-Corr.

³ ICC-01/14-01/18-589, para. 10, 14 and 16.

⁴ ICC-01/14-01/18-989-Conf, para. 5-6; ICC-01/14-01/18-1080-Conf, para. 7; T-073-ENG ET, p. 3, l. 16-17; ICC-01/14-01/18-1206, para. 5.

A. Background

5. On 18 October and 24 November 2021, the Prosecution interviewed [REDACTED]. Despite its best efforts, it was not possible for the Prosecution to complete the interview any sooner, due to circumstances outside its control.

6. [REDACTED].

7. Given that the interview is now complete and no further related investigative activity is anticipated, the Prosecution seeks to add the following six documents to its LoE:

- i. CAR-OTP-2134-1599:⁵ the *procès verbal* of the interview from 18 October 2021;
- ii. CAR-OTP-2134-1852:⁶ the *procès verbal* of the interview from 24 November 2021;
- iii. CAR-OTP-2134-1868:⁷ 12 pages of material annexed to the *procès verbale* from 24 November 2021. This consists of:
 - a. At 1868-1869: a document titled [REDACTED] extracted from [REDACTED] computer hard-drive, bearing original ERN CAR-OTP-2134-0449 (also subject to this motion, *see below*);

⁵ Collected by the Prosecution from the [REDACTED] on 18 October 2021 and disclosed to the Defence on 29 October 2021. Appended at Confidential Annex A.

⁶ Collected by the Prosecution from the [REDACTED] on 25 November 2021 and disclosed to the Defence on 14 December 2021. Appended at Confidential Annex B.

⁷ Collected by the Prosecution from the [REDACTED] on 25 November 2021 and disclosed to the Defence on 14 December 2021. Appended at Confidential Annex C.

- b. At 1870-1871: an email chain with subject [REDACTED], bearing original ERN CAR-OTP-2124-0903;⁸
 - c. At 1872: An email chain with subject [REDACTED], bearing original ERN CAR-OTP-2130-4360; and
 - d. At 1874-1879: A document titled [REDACTED] extracted from [REDACTED] hard-drive, bearing original ERN CAR-OTP-2134-0441 (also subject to this motion, *see below*);
- iv. CAR-OTP-2134-0449:⁹ The MS Word document titled [REDACTED] extracted from [REDACTED] computer hard-drive by the [REDACTED] (referenced above);
- v. CAR-OTP-2134-0441:¹⁰ The MS Word document titled [REDACTED] extracted from [REDACTED] computer hard-drive by the [REDACTED] (referenced above); and
- vi. CAR-OTP-2134-0407:¹¹ An investigation report of the [REDACTED],¹² detailing the extraction and analysis of the data – including CAR-OTP-2134-0441 and CAR-OTP-2134-0449¹³ – from [REDACTED] computer hard-drive.

⁸ Already included on the Prosecution's LoE and formally submitted: *see* ICC-01/14-01/18-964.

⁹ Collected by the Prosecution from the [REDACTED] on 14 June 2021 and disclosed to the Defence on 4 August 2021. Appended at Confidential Annex D. While this document is substantively subsumed within the material annexed to [REDACTED] record of interview (CAR-OTP-2134-1868 at 1868-1869), it would nevertheless assist the Chamber, Parties and Participants to understand the provenance of this document in its original form.

¹⁰ Collected by the Prosecution from the [REDACTED] on 14 June 2021 and disclosed to the Defence on 4 August 2021. Appended at Confidential Annex E. While this document is substantively subsumed within the material annexed to [REDACTED] record of interview (CAR-OTP-2134-1868 at 1874-1879), it would nevertheless assist the Chamber, Parties and Participants to understand the provenance of this document in its original form.

¹¹ Collected by the Prosecution from the [REDACTED] on 14 June 2021 and disclosed to the Defence on 27 August 2021. Appended at Confidential Annex F.

¹² [REDACTED].

¹³ *See, in particular*, CAR-OTP-2134-0407 at 0419-0420.

B. The documents are relevant and have significant probative value

8. These six documents will assist the Chamber in its truth-seeking function with respect to the circumstances surrounding an email requesting, *inter alia*, military equipment and materiel [REDACTED].¹⁴ As the Chamber has already heard in the course of the proceedings, [REDACTED].¹⁵ According to P-2843, [REDACTED]¹⁶ The documents are of significant probative value with respect to NGAISSONA's contribution to the commission of crimes by the Anti-Balaka as charged under article 25(3)(c) and (d), including the actions of the CAMEROON Group's planning and coordination of military operations to regain power following the Seleka offensive.¹⁷

9. [REDACTED],¹⁸ [REDACTED].¹⁹ [REDACTED].²⁰ [REDACTED].²¹ [REDACTED].²² [REDACTED].²³

10. The two documents extracted from [REDACTED] hard-drive (CAR-OTP-2134-0449 and CAR-OTP-2134-0441) are indicative of [REDACTED]. As such, they are relevant to NGAISSONA's [REDACTED]. Both documents were provided to the Prosecution by the [REDACTED] in June 2021, following the [REDACTED] seizure of the hard-drive at [REDACTED] residence in September 2020.

11. Document CAR-OTP-2134-0449 titled [REDACTED] and saved under document name [REDACTED],²⁴ is a request in English for [REDACTED].

¹⁴ See the fullest chain available at CAR-OTP-2124-0903.

¹⁵ P-2843: T-73-CONF-ENG ET p. 73, l. 24-p.74, l.13, commenting on CAR-OTP-2124-0900, a partial version of the fuller chain at CAR-OTP-2124-0903.

¹⁶ P-2843: T-73-CONF-ENG ET p. 75, l. 19-25.

¹⁷ See ICC-01/14-01/18-723-Red, section IV.B.a), para. 67 et seq.

¹⁸ P-2841: CAR-OTP-2127-4238 at 4246, para. 47; CAR-OTP-2062-0657, row 1601. See also P-0801: T-034-ENG ET, p. 19, l. 19-21.

¹⁹ P-0801: T-034-ENG ET, p. 50, l. 17-p. 51, l. 4. See also p. 58, l. 17-p. 59, l. 16.

²⁰ CAR-OTP-2134-1599 at 1600; CAR-OTP-2134-1852 at 1854.

²¹ CAR-OTP-2134-1852 at 1865.

²² CAR-OTP-2134-1852 at 1865-1866.

²³ CAR-OTP-2134-1852 at 1865.

²⁴ CAR-OTP-2134-0407 at 0420.

12. Document CAR-OTP-2134-0441 titled [REDACTED] and saved under document name [REDACTED],²⁵ is a list in French of [REDACTED] bearing striking similarities to the items listed in CAR-OTP-2134-0449. For example, both documents follow the same order, by listing first [REDACTED]. The quantities of [REDACTED] are often identical.²⁶ Both lists also conclude with an apparent reference to [REDACTED]²⁷ [REDACTED]²⁸). In his record of interview of 24 November 2021, [REDACTED].²⁹

13. Document CAR-OTP-2134-0407 establishes that the two preceding documents were forensically extracted from [REDACTED] hard-drive by the [REDACTED], and further provides relevant metadata about the documents. As foreshadowed at footnotes 24 and 25 above, it gives the document names as saved on the hard-drives. It also shows that the MS Word document available at CAR-OTP-2134-0441 (*i.e.* the French version) was modified for the last time on [REDACTED],³⁰ and that the MS Word document available at CAR-OTP-2134-0449 (*i.e.* the English version) was modified for the last time on [REDACTED].³¹ This would tend to indicate that the French version was re-drafted into the English version, likely for transmission to an English-speaking supplier. [REDACTED].

14. Viewed together, the six documents are highly probative as to the actions of BOZIZE and his supporters in CAMEROON in 2013 – including NGAISSONA – in planning and coordinating military operations to regain power in CAR. In particular, they show that BOZIZE and his supporters were in mid-2013 looking to [REDACTED] to lead their military campaign against the Seleka. With regard to [REDACTED] specifically, the Items corroborate the evidence already heard i) that [REDACTED] and others, including NGAISSONA, were involved in organising Anti-Balaka

²⁵ CAR-OTP-2134-0407 at 0419.

²⁶ For example, [REDACTED].

²⁷ CAR-OTP-2134-0449 at 0450.

²⁸ CAR-OTP-2134-0441 at 0446.

²⁹ CAR-OTP-2134-1852 at 1866.

³⁰ CAR-OTP-2134-0407 at 0430, row listing [REDACTED].

³¹ CAR-OTP-2134-0407 at 0431, row listing [REDACTED].

operations from CAMEROON in 2013, as [REDACTED];³² and ii) that BOZIZE along with [REDACTED] and others had taken steps to [REDACTED].³³

C. Reliance on the documents causes no unfair prejudice to the Defence

15. The addition of these six documents to the LoE does not cause unfair prejudice to the Accused. All six documents were timely disclosed and are limited in volume. In particular, the identification of [REDACTED] has been known to the Defence since as early as 1 April 2021, when other documents containing this information were disclosed.³⁴

³² P-0801: T-034-ENG ET, p. 50, l. 17-p. 51, l. 4. *See also* p. 58, l. 17-p. 59, l. 16.

³³ CAR-OTP-2101-9735 at 9747-9748, 16:37:00 – 16:38:36, commented upon by 2841: CAR-OTP-2127-4238 at 4246, para. 46. *See also* CAR-OTP-2101-9735 at 9753, 20:28:40 – 20:30:29, commented upon by 2841: CAR-OTP-2127-4238 at 4247, para. 50, 53; and T-029, p. 39, l. 6-p. 40, l. 8 ; and CAR-OTP-2101-9451 at 9486, 19:38:49 – 19:39:58.

³⁴ *Cf* [REDACTED] (T-073-CONF-ENG ET, p. 77, l. 15-16), the record of interview conducted (solely) by the [REDACTED] in September 2020 was provided to the OTP in December 2020, and disclosed to the Defence on 1 April 2021. *See in particular* CAR-OTP-2131-0359 at 0359 and 0365. *See also* CAR-OTP-2131-0354 at 0354; CAR-OTP-2131-0367 at 0367; CAR-OTP-2131-0373 at 0373; CAR-OTP-2131-0379 at 0379; CAR-OTP-2131-0384 at 0384; CAR-OTP-2131-0388 at 0388; CAR-OTP-2131-0392 at 0392; CAR-OTP-2131-0401 at 0401.

IV. CONCLUSION

16. The fair and expeditious conduct of the proceedings is not infringed by permitting the Prosecution to add the Items. It is justified because they are of significant probative value, their addition causes no unfair prejudice, and their introduction will advance the Chamber's mandate to search for the truth.

17. For the above reasons, the Prosecution requests leave from the Chamber to add the Items to its LoE.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan QC, Prosecutor

Dated this 21st day of December 2021
At The Hague, The Netherlands