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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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

With Confidential Annex

**Request for the Submission of Evidence from the Bar Table regarding the
recruitment and use of child soldiers**

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”) requests Trial Chamber V (“Chamber”) to recognise as formally submitted 49 items of evidence from the bar table, in accordance with articles 64(9)(a), 69(3) and 69(4) of the Statute, rule 63(2) of the Rules of Procedure and Evidence (“Rules”), and the Initial Directions on the Conduct of Proceedings (“Initial Directions”).¹ These 49 items comprise evidence relevant to the Anti-Balaka’s recruitment and use of children, including those under the age of 15, in hostilities during the Relevant Period² (“Submitted Items”).

2. The Submitted Items are *prima facie* relevant to material issues at trial and mutually corroborative as to the recruitment and use of children in hostilities by the Anti-Balaka in the context of the crisis in the Central African Republic (“CAR”). As such, they are also pertinent to article 30(2) and (3) in respect of count 29. The Submitted Items bear sufficient indicia of reliability on which the Chamber may properly base its article 74 decision. Recognising their formal submission causes no prejudice to a fair trial. To the contrary, it would assist in the Chamber’s determination of the truth, and would ensure an expeditious trial.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Annex to this Request is classified as “Confidential” because it contains information revealing identifying information of trial witnesses and sources of information, both direct and indirect.

¹ ICC-01/14-01/18-631, paras. 61-62.

² As defined in the Prosecution’s Trial Brief, from September 2013 through December 2014: ICC-01/14-01/18-723-Red para. 5.

III. SUBMISSIONS

4. In order to determine the relevance or admissibility of evidence “the Chamber examines, on a preliminary basis, whether the submitted materials (i) are relevant to the trial; (ii) have probative value; and (iii) are sufficiently relevant and probative to outweigh any prejudicial effect that could be caused from their admission”.³ The Prosecution will address each of these three standard evidentiary criteria for the Submitted Items below.

5. The Submitted Items are listed in the Confidential Annex, by ERN, along with their Date, Title, Source, and Disclosure Date, as recorded in the Ecourt metadata. The last three columns set out their Relevance/Probative value (including a short description of the item), Submission Status (whether submission is sought herein, or elsewhere⁴), and the YEKATOM Defence’s position on their submission.⁵ The items are grouped in the Confidential Annex into the following five categories:

- i) CAR government documents (4 items): Includes official records related to CAR governmental activities;
- ii) International organisation and NGO documents (15 items): Includes published reports by United Nations (“UN”) agencies and NGOs;
- iii) Video footage and related transcripts and translations (17 items): Includes footage produced by international media and footage provided by Prosecution witnesses P-1819 and P-2587;

³ ICC-01/05-01/08-2012-Red, para. 13.

⁴ At the time of filing, eight items were included in a pending ‘bar table’ application ICC-01/14-01/18-1233-Conf-Anx and are marked with footnotes in the Annex. These eight documents are nevertheless included in this application because they include additional descriptions of relevance that may assist the Chamber when considering the charge of conscription, enlistment, and use of children in hostilities.

⁵ Given that the NGAISSONA Defence generally deferred to the YEKATOM Defence’s position, both on the submission and admission, of the items contained in the Confidential Annex (save for additional objections to the submission of item CAR-OTP-2003-1654), their position on each individual item in the Annex is not included.

- iv) Media articles (4 items): Includes international media articles;
- v) Documents related to Prosecution trial witnesses (9 items): Includes documents relevant to the determination of the ages of Prosecution witnesses P-2475, P-2582, and P-2620.

6. As required by the Initial Directions,⁶ the Prosecution has inquired with the Defence teams as to their respective positions on the items to be tendered for submission. The YEKATOM Defence has provided its position on the individual items, as set out in the last column of the Confidential Annex. The NGAISSONA Defence generally deferred to the YEKATOM Defence's position, both on the submission and admission, of the items contained in the Confidential Annex. In addition, the NGAISSONA Defence raised supplementary objections to the submission of document CAR-OTP-2003-1654 asserting, *inter alia*, its lack of reliability.

A. The Submitted Items are relevant to the issues at trial

7. Each Submitted Item is *prima facie* relevant to the facts at issue in the trial, as they relate to the Anti-Balaka's recruitment and use of children, including of those under the age of 15, in hostilities during the Relevant Period. More specifically, the Submitted Items are relevant to three broad categories (i) the recruitment and use of children in hostilities by the Anti-Balaka; (ii) the recruitment and use of children in hostilities specifically by YEKATOM's Anti-Balaka Group; or (iii) the authentication and/or determination of the age of children within YEKATOM's Group, including of Prosecution witnesses P-2475, P-2582, and P-2620. The Submitted Items are thus also relevant to YEKATOM's knowledge under article 30 that children under the age of 15 were conscripted, enlisted, and/or used to participate actively in hostilities by his Anti-

⁶ ICC-01/14-01/18-631, para. 62.

Balaka Group, or that this will “occur in the ordinary course of events”, underpinning his criminal responsibility for count 29.⁷

8. While the vast majority of Submitted Items fall squarely within the Relevant Period, a limited number of items post-date this period, as specified in the Annex. These items are nevertheless relevant to the facts at issue due to the continuous nature of offences of conscription and enlistment of children under the age of 15. According to the jurisprudence of the Court, “the offences of conscripting and enlisting are committed at the moment a child under the age of 15 is enrolled into or joins an armed force or group, with or without compulsion (...). These offences are *continuous in nature*. They end only when the child reaches 15 years of age or leaves the force or group” (*emphasis added*).⁸ Thus, items that post-date the Relevant Period can be of relevance to the recruitment and use of children by the Anti-Balaka during the Relevant Period. For instance, documents reporting on the demobilisation of children from the Anti-Balaka, even if the demobilisation occurred after the Relevant Period, entail the presence of the children within the Anti-Balaka preceding it.

9. The relevance of each individual item submitted is elaborated in the “Relevance” column of the Confidential Annex. A standard brief statement of relevance is given in the first sentence, followed by a description of the individual document and – as appropriate – its most salient parts. The standard statements expressly state whether the item (i) relates to the recruitment and use of children by armed groups in CAR, by the Anti-Balaka, or specifically by YEKATOM and his Anti-Balaka Group; (ii) references children under the age of 15; or (iii) relates to the authentication and/or determination of the age of Prosecution witnesses. Evidence of the recruitment and use of children by Anti-Balaka groups other than YEKATOM’s Group is relevant because it demonstrates, *inter alia*, that the recruitment and use of children was

⁷ Count 29: Conscription, enlistment, and use of children in hostilities (article 8(2)(e)(vii)).

⁸ ICC-01/04-01/06-2842, para. 618.

widespread among the Anti-Balaka (including throughout the Relevant Period), which supports the foreseeability that YEKATOM's Group – as an Anti-Balaka group – would commit this crime in the ordinary course of events.

B. The Submitted Items are probative, reliable and authentic

10. The assessment of an item's probative value "will always be a fact-specific inquiry and may take into account innumerable factors, including the indicia of reliability, trustworthiness, accuracy or voluntariness that inhere in the item of potential evidence, as well as the circumstances in which the evidence arose".⁹ A Chamber "may also take into account the extent to which the item has been authenticated. While it is not necessary that each item of evidence be authenticated via witness testimony, the Chamber needs to be satisfied that the item is what it purports to be, either because this is evident on its face or because other admissible evidence demonstrates the item's provenance".¹⁰

11. The Submitted Items are probative and bear sufficient indicia of reliability for the Chamber to base its article 74(2) decision on.

a. CAR government documents

12. The documents in this *first* category include official records related to CAR governmental activities. They are contemporaneous with the events reported in them, and were drafted before any arrest warrants had been issued in this case.

⁹ ICC-01/05-01/08-2012-Red, para. 15.

¹⁰ ICC-01/05-01/08-2012-Red, para. 15.

13. Three of the four documents submitted under this category were provided by the CAR authorities, or government officials, themselves. The fourth document¹¹ is an official publicly available ceasefire agreement obtained directly from an open source.

14. All four documents contain distinctive features, such as signatures, stamps, official letterheads, official registration numbers, and/or other significant markings, further demonstrating their reliability and authenticity. Finally, these items corroborate other documentary and testimonial evidence.

b. International organisation and NGO documents

15. The items in this *second* category include reports published by UN agencies and by four internationally recognised NGOs with a global presence: Human Rights Watch, Amnesty International, Save the Children, and Child Soldiers International. The reports were drafted either contemporaneously, or close in time to the events, and before any arrest warrants had been issued in this case. Thus, at the time of their publication, the sources of these reports had no interest in the present proceedings.

16. The majority of documents submitted under this category were directly downloaded from the relevant NGO or UN agency websites and are publicly available. Of the remaining three documents, two¹² were provided directly by their source and one¹³ was collected in hard-copy at the Bangui Forum.

17. The *prima facie* reliability and authenticity of these documents is further corroborated by, *inter alia*, their content, general appearance, date, and the apparent logo/letterhead of the organisation generating each report. Finally, these items are

¹¹ CAR-OTP-2001-3405.

¹² CAR-OTP-2110-0935 and CAR-OTP-2127-4064.

¹³ CAR-OTP-2008-1165.

mutually corroborative, as well as corroborative of other documentary and testimonial evidence.

c. Video footage and related transcripts and translations

18. The items in this *third* category include documentaries produced by international media and footage provided by Prosecution witnesses P-1819 and P-2587. All of the submitted videos except one¹⁴ were filmed and released before any arrest warrants had been issued in this case.

19. The majority of the videos submitted under this category were directly downloaded from their publisher's websites and are publicly available. The remaining two¹⁵ were provided by Prosecution witnesses P-1819 and P-2587, as mentioned above. The latter two videos are, exceptionally, being submitted via the bar table, ahead of P-1819 and P-2587's testimonies, given their specific relevance to count 29, and the large volume of material on the Prosecution's List of Evidence provided by P-1819 in particular.¹⁶ Furthermore, the Confidential Annex includes additional descriptions of the specific relevance of these two videos to the charge of conscription, enlistment, and use of children in hostilities that may assist the Chamber. Additionally, the submission of these items via the bar table does not preclude their subsequent use during the anticipated testimonies of P-1819 and P-2587.

20. The *prima facie* reliability and authenticity of the submitted videos is also corroborated by their content, which is self-authenticating. In addition, these videos corroborate other documentary and testimonial evidence.

¹⁴ CAR-OTP-2122-9074.

¹⁵ CAR-OTP-2065-3843 and CAR-OTP-2120-0305.

¹⁶ The Prosecution's List of Evidence contains 440 videos provided by P-1819.

d. Media articles

21. The items in this *fourth* category include articles produced by international media outlets. The articles were drafted either contemporaneously, or close in time to the events, and before any arrest warrants had been issued in this case. Thus, at the time of their publication, their authors had no interest in the present proceedings.

22. The items submitted under this category were directly downloaded from the relevant publishers' websites and are publicly available. The *prima facie* reliability and authenticity of these documents is further corroborated by, *inter alia*, their content, general appearance, date, and/or the apparent logo/letterhead of the organisation generating each article. Finally, these items are mutually corroborative, as well as corroborative of other documentary and testimonial evidence.

e. Documents related to Prosecution trial witnesses

23. Finally, the items in this *fifth* category include nine documents related to the determination of the age of Prosecution witnesses P-2475, P-2582, and P-2620. The Prosecution has provided the ERNs of the Investigators' Reports relating to the collection of each one of these documents, as specified in the Confidential Annex. The Investigators' Reports provide a detailed overview of the origins of each document, and of the steps taken to collect them.

24. All documents relating to the age of P-2475, P-2582, and P-2620 submitted under this category were drafted using official forms and contain distinctive features, such as signatures, stamps, official letterheads, official registration numbers, and/or other significant markings, further demonstrating their reliability and authenticity. Finally, these items corroborate other documentary and testimonial evidence.

25. The submission of these items via bar table does not preclude their subsequent use during the anticipated testimonies of P-2475, P-2582, and P-2620.

C. There is no prejudicial effect

26. The probative value of the Submitted Items outweighs any prejudicial effect for the following reasons: (i) they are highly relevant to the charges, as detailed in this motion and its Confidential Annex, and will assist the Chamber in the determination of the truth and ensure an expeditious trial; (ii) the items are probative and bear sufficient indicia of reliability; and (iii) the Defence has had sufficient notice of the content of the items and, given their inclusion in the Prosecution's List of Evidence, of the Prosecution's intent to rely on them at trial.

IV. CONCLUSION

27. For the foregoing reasons, the Prosecution requests that all 49 items listed in the Confidential Annex to this filing be recognised as formally submitted.



Karim A. A. Khan QC, Prosecutor

Dated this 1st day of April 2022
At The Hague, The Netherlands