

Annex 1

Public Redacted Version

From: Trial Chamber V Communications
Sent: 02 October 2023 10:57
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for P-2354
Follow Up Flag: Flag for follow up
Flag Status: Flagged

[ICC] RESTRICTED

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the email on the submission of evidence following the examination of P-2354 by the Prosecution, the Ngaïssona Defence's objections, and the Prosecution's response thereto (*see* emails below).

At the outset, the Chamber notes that item CAR-OTP-2096-2493 has already been recognised as submitted, and it therefore need not rule on it again.

Further, the Chamber notes that item **CAR-OTP-2108-0682** has been recognised as submitted pursuant to Rule 68(2)(b) of the Rules in decision ICC-01/14-01/18-1833-Conf-Corr concerning P-2377. However, such recognition is conditional on the declaration being provided under Rule 68(2)(b) (ii) and (iii). Therefore, the Chamber will address its submission in the context of P-2354's testimony.

In this regard, the Chamber notes the objections of the Ngaïssona Defence to the submission of item CAR-OTP-2108-0682, arguing that as it is not able to clarify the date of the footage with its author, its admission would be prejudicial should the Chamber 'seek to use it to confirm P-2354 account of events'.

With regard to item **CAR-OTP-2100-0118**, the Ngaïssona Defence indicates that similar arguments apply as to item CAR-OTP-2096-2493, yet it does not oppose its submission, but requests the Chamber 'to take into account the limited probative value the item has, when deliberating on the judgment'.

The Prosecution responds that (i) the objections should be rejected as the Ngaïssona Defence does not identify any procedural bar to submission; (ii) the videos are highly probative, especially in light of the witness's comments on them; and (iii) it is unclear how graphic images are prejudicial and that the graphic nature of some of the images is in itself probative.

Having considered the item and the arguments by the parties, the Chamber is of the view that the objections formulated by the Ngaïssona Defence rather concern the item's relevance and probative value. In this regard, the Chamber recalls that it will assess these matters in the context of its judgment deliberations. Having identified no other procedural bar to the item's submission, the Chamber therefore recognises it as submitted.

Thus, and in the absence of any procedural bars, the Chamber recognises as formally submitted the following items:

Doc ID	Title	Type
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CAR-OTP-2100-0118	Centrafrique un General accuse les partisans de l'ex president-20190107.mp4	Audio / Video Material
CAR-OTP-2108-0682	FR_BANGUI_ATAQUE_ATIG_NEWS_5_12_2013.mov	Audio / Video Material
CAR-OTP-2122-6035	Traduction / Transcription de document audio/vidéo / FR_BANGUI_ATAQU	Translation - FRA

Further, the Chamber confirms that the requirements of Rule 68(3) of the Rules have been met for the following items:

Doc ID	Title	Type
CAR-OTP-2105-0991	WITNESS STATEMENT	ICC Statement - General
CAR-OTP-2122-4507	Traduction d'élément de preuve / DÉCLARATION DE TÉMOIN / WITNESS STATEMENT	ICC Statement – Translation - FRA
CAR-OTP-00001152	SR Notes-Observations	ICC Witness Preparation Log / Clarification

The Registry is directed to proceed in accordance with paragraph 63(v) of the Initial Directions, ICC-01/14-01/18-631.

Kind regards,
TC V

From: OTP CAR IIB [REDACTED]
Sent: 07 March 2023 19:44
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; [REDACTED]; Associate Legal Officer-Court Officer [REDACTED] OTP CAR IIB [REDACTED]
Subject: RE: Prosecution Submission of evidence following the examination of P-2354

Dear Trial Chamber V,

The NGAISSONA Defence's objections to the submission of the two videos (CAR-OTP-2096-2493 and CAR-OTP-2108-0682) should be rejected.

Firstly, the Defence identifies no procedural bar to submission. Their objection should be rejected on this basis alone, and their arguments on weight dismissed as premature. There is no requirement that video material be submitted through the author, nor that the author even be identified. The record is replete with videos submitted through witnesses who are not the author, or where the author is in any case unknown, including by the Defence (*see, for example*, CAR-OTP-2012-0436, CAR-OTP-2023-1527, and CAR-OTP-2081-0973).

Secondly, contrary to the Defence's argument on all three videos (CAR-OTP-2096-2493, CAR-OTP-2100-0118 and CAR-OTP-2108-0682) that the prejudicial value outweighs the probative value, the Prosecution submits that the videos are highly probative, especially so in light of the witness's commentary on them. As to video CAR-OTP-2096-2493, the witness did not merely recognise a public building as the Defence contends, he also confirmed that he saw the bodies depicted at the premises "with my own eyes" (T-210-CONF-ENG p. 8, l. 6-9). As to video CAR-OTP-2100-0118, the witness similarly confirmed that the images depicted were what he saw at Ali Babolo mosque on 5 December 2013, stating "This was exactly it." (T-210-CONF-ENG, p. 9, 5-8). Finally, video CAR-OTP-2108-0682 contains contemporaneous images also filmed at Ali Babolo on 5 December 2013, which support parts of the witness statement, for example, his observation of dead children (*see* CAR-OTP-2105-0991 at 0996, para. 29). The witness was also able to provide relevant

testimony on the prevalence of the perception of Muslims as foreigners in CAR at the time, having clearly been the subject of such discrimination (T-210-CONF-ENG p. 12, l. 8-13).

Thirdly, it is unclear from the Defence's arguments how images of the Muslims killed and mutilated during the BANGUI attack of 5 December 2013, as graphic as they may be, are prejudicial. To the extent that they are, the Trial Chamber – as a professional chamber of judges – is perfectly capable of putting out of its mind any such prejudicial effect. In any case, the graphic nature of some of the images, far from being gratuitous, is in itself probative. The images of a dead child (see CAR-OTP-2108-0682 at 00:00:52) and of a male corpse with the genitals removed (see CAR-OTP-2100-0118 at 00:00:59 – 00:01:03) are probative of the nature of and motive for the attack on the civilian population. The killing of children is indicative of the Anti-Balaka's targeting of civilians. The gender-based violence of genital mutilation, although not charged as a distinct crime in the case, is indicative of the retributory nature of the attack.

Finally, as to the date of the footage shown to the witness from video CAR-OTP-2108-0682, the Prosecution regrets that the Defence did not raise this as an *inter partes* matter, or at least raise an objection in the Courtroom so that the matter could be clarified directly. Video CAR-OTP-2108-0682 assembles various individual rushes filmed by P-2377, in a way clearly intended for broadcast. The individual rushes cut together can be found among the many provided by P-2377 to the OTP and disclosed to the Defence. *See, for example*, CAR-OTP-2108-1457 depicting bloody corpses piled upon each other in a small room of the Ali Babolo Mosque; CAR-OTP-2108-1458 and CAR-OTP-2108-1460 depicting interviews with two men present; CAR-OTP-2108-1462 depicting the bloody corpses of five children; and CAR-OTP-2108-1468 depicting an interview with one of the female survivors outside the Mosque. All of these rushes are dated as 5 December 2013 because they were provided electronically to the OTP by P-2377 in a file entitled "J5". As P-2377 asserts in his statement, the file entitled "J5" contains "*images capturées le 5 décembre, la première fois que je suis allé à la mosquée.*" (CAR-OTP-2108-0609 at 0626, para. 70.) The Prosecution hope this clarifies the matter, and remains ready to provide any further information the Chamber may deem useful.

Kind regards,
On behalf of OTP Trial Team

From: [REDACTED]
Sent: 06 March 2023 15:33
To: OTP CAR IIB [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]
 [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]
 [REDACTED] V45 LRV Team [REDACTED]
 [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Prosecution Submission of evidence following the examination of P-2354

Dear Trial Chamber V,

The Defence opposes the submission of video #1 CAR-OTP-2096-2493. This video excerpt was provided to the OTP by P-0505, a witness whose statement is being submitted through Rule 68(2)(b) (decision is pending) without annexes. The prejudice of admission outweighs the probative value. *First*, the probative value is minimal. The only comment provided on the video by the witness was that he recognised the Ali Babolo Mosque and confirmed that that was the location where he saw the bodies on 5 December (ICC-01/14-01/18-T-210-CONF-FRA ET, p. 8, lines 5-23). This could have been obtained by simply showing a photo of the mosque and not a suggestive and graphic video. *Second*, the Prosecution did not submit this material through the alleged author of the video, P-0505. The Defence deferred to the discretion of the Chamber on the Rule 68(2)(b) request in 2021 (ICC-01/14-01/18-887-Conf, p. 4, para. 6). Had the Prosecution submitted such graphic video material in 2021, the Defence's response may have differed. Therefore, the Prosecution cannot remedy its decision to not include the video from its Rule 68(2)(b) request, and recycle the material of a witness with another witness two years later. Witness P-0505 will not testify to the authenticity of these videos. Therefore, Trial Chamber V cannot consider them authenticated by the mere virtue that a witness recognised a public building in it.

A similar argument applies to video #2 CAR-OTP-2100-0118. However, the Defence does not oppose its submission. The Defence requests Trial Chamber V to take into account the limited probative value the item has, when deliberating on the judgment. The video is open source, and the author is not identified. In addition, the witness' answer is ambiguous as to whether the video is what they saw or similar to what they saw (ICC-01/14-01/18-T-210-CONF-FRA ET, p. 9, lines 6-16). Therefore, Trial Chamber V should not conclude that the bodies on the video are the bodies described in the Rule 68(3) statement.

Finally, the Defence opposes the submission of video #3 CAR-OTP-2108-0682. The video was provided by P-2377, a witness whose statement is being submitted through Rule 68(2)(b) (decision is pending). Despite the metadata of the video indicating that the footage was created on 5 December 2013, the visit of the journalist (P-2377) to the women in the courtyard in the video suggests that the footage was taken at a later date. In his statement, P-2377 mentions this visit in the section about a second visit to the mosque, which occurred two or three days after the first visit to the mosque on 5 December (see CAR-OTP-2108-0609-R01, paras 57-58). In addition, in the video, the journalist remarks that there is a smell of pestilence emanating from the scene. However, in his statement, during the first visit in the mosque on 5 December, P-2377 highlighted that there was no particular smell (see para. 49). The Defence will not be able to clarify the date of this footage with its author, and therefore, admitting the video via P-2354 is prejudicial should Trial Chamber V seek to use it to confirm P-2354 account of events. Therefore, if the Prosecution Request is granted, the item's probative value read together with P-2354 statement is extremely limited.

Respectfully yours,

[REDACTED]

From: OTP CAR IIB [REDACTED]
Sent: 02 March 2023 08:54
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team
 [REDACTED] V44 LRV Team OPCV [REDACTED]; V44 LRV Team
 [REDACTED]; V45 LRV Team [REDACTED]
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]; OTP CAR IIB
 [REDACTED]
Subject: Prosecution Submission of evidence following the examination of P-2354

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the *Initial Directions on the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Prosecution requests that the following items be recognised as formally submitted:

- i. Documents discussed with the witness during the course of his examination by the Prosecution:

Count	Doc ID	WIT – Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1	CAR-OTP-2096-2493	P-2354	Audio / Video Material	01/03/23	OTP	Yes
2	CAR-OTP-2100-0118	P-2354	Audio / Video Material	01/03/23	OTP	Yes
3	CAR-OTP-2108-0682	P-2354	Audio / Video Material	01/03/23	OTP	Yes
4	CAR-OTP-2122-6035	P-2354	Translation - FRA	01/03/23	OTP	Yes

- ii. Three items submitted under Rule 68(3) at the start of the witness's testimony:

Count	Doc ID	WIT-Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1.	CAR-OTP-2105-0991	P-2354	ICC Statement - General	01/03/23	OTP	Yes
2.	CAR-OTP-2122-4507	P-2354	ICC Statement – Translation - FRA	01/03/23	OTP	Yes
3.	CAR-OTP-00001152	P-2354	ICC Statement – General	01/03/23	OTP	Yes

Kind regards,
On behalf of OTP Trial Team

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