

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**
Date: **20 September 2023**

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 Eight Application for Submission of
Audio/Videos Evidence from the Bar Table “,
26 June 2023, ICC-01/14-01/18-1945-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 KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

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 Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Pursuant to the Initial Decision on the Conduct of Proceedings,¹ and in accordance with articles 64(9)(a), 69(2), (3), and (4) of the Statute, rule 63(2) of the Rules of Procedure and Evidence (“Rules”), the Office of the Prosecutor (“Prosecution”) requests Trial Chamber V (“Chamber”) to recognise as formally submitted 328 items of evidence from the bar table. These items comprise 117 items of audio/video evidence (“audio/videos”)² obtained from various sources, including the authorities of the Central African Republic (“CAR”), Prosecution witnesses and contacts, and open sources; 186 transcripts³ and/or translations of these audio/videos; as well as 25 documents providing context to some of the audio/videos,⁴ including the circumstances in which they were filmed or recorded, the date of their publication, etc. (“Submitted Items”).

2. The Submitted Items are *prima facie* relevant to material issues at trial, are corroborative of other Prosecution evidence, and bear sufficient indicia of reliability to be recognised as formally submitted by the Chamber.

3. Recognising the formal submission of this evidence now causes no prejudice to the Defence, as it will enable the Chamber to better understand and contextualise other evidence in the case, and ultimately assist in determining the truth. Moreover, it will also ensure an expeditious trial by streamlining the presentation of the evidence, saving valuable Court resources and time.

¹ ICC-01/14-01/18-631, paras. 61-62 (“Initial Directions”).

² Two of these 117 audio/videos (namely CAR-OTP-2126-2478 and CAR-OTP-2118-0415) are the French and English version of the same video, *see* Confidential Annex (“Annex”), Category IV, entry 4.

³ The Prosecution notes that some of the transcripts listed in the Annex do not contain content, as the transcribed audio/videos are in Sango, a non-written language. These Sango transcripts are included in this request for sake of completeness.

⁴ One contextual document, CAR-OTP-2092-0986, provides context to three audio/videos and therefore appears three times in the Annex, *see* Annex, Category I, entry 7, Category II, entry 6, and Category VII, entry 4.

4. For each of the Submitted Items, the Annex to this filing lists their: (i) evidence registration number (“ERN”); (ii) main date; (iii) title; (iv) source identity; (v) duration; (vi) date of disclosure; (vii) description; (viii) relevance and probative value; and (ix) the NGAISSONA Defence’s position on their submission.⁵

5. In the relevance and probative value column of the Annex, a detailed analysis of each audio/video is included, i.e., (i) whether excerpts, or the entire item are sought to be submitted; (ii) the persons of interest appearing or mentioned therein; (iii) the date of the item; (iv) the location where the item was filmed or recorded; (v) the relevant issue to which it relates; (vi) a brief description of the individual item and – as appropriate – its most salient parts; (vii) the ERNs of the transcript and translation; and (viii) the language(s) spoken. For some of these items, additional information is included to provide more context, or to establish their links to other items of evidence recognised/to be recognised as formally submitted.

6. For sake of clarity, where applicable, each audio/video is listed together with the related transcript and/or translation.

7. It should be noted that 19 of the 117 audio/videos⁶ have recently been recognised as formally submitted through the Chamber’s First and Second Decisions on the Prosecution’s Requests for Formal Submission of Prior Recorded Testimonies pursuant to rule 68(2)(b) of the Rules.⁷ These items are still included in this submission pending the completion of the certification process pursuant to rule 68(2)(b)(ii) and

⁵ As required by the Initial Directions (ICC-01/14-01/18-631, para. 62), the Prosecution has inquired with the Defence teams as to their respective positions on the items to be tendered for submission. The NGAISSONA Defence has provided its position on the individual items, as set out in the last column of the Annex. The YEKATOM Defence did not indicate their position.

⁶ They were provided by, or are related to rule 68(2)(b) witnesses P-0505, P-0595, P-2377, and P-2416. **P-0505:** CAR-OTP-2096-2493, CAR-OTP-2096-2494, CAR-OTP-2095-9141, CAR-OTP-2096-2477, CAR-OTP-2096-2478; and **P-0595:** CAR-OTP-2019-1230; **P-2377:** CAR-OTP-2108-0745, CAR-OTP-2108-0949, CAR-OTP-2108-1306, CAR-OTP-2108-1454, CAR-OTP-2108-1461, CAR-OTP-2108-0678, CAR-OTP-2108-1285, CAR-OTP-2108-1299, CAR-OTP-2108-1307, CAR-OTP-2108-1312, CAR-OTP-2108-1313, CAR-OTP-2108-1314; **P-2416:** CAR-OTP-2106-0684.

⁷ See ICC-01/14-01/18-1833-Conf, paras. 196, 215-216, 364, pp. 100-102; ICC-01/14-01/18-1907-Conf, paras. 35-36, p. 61.

(iii) of the Rules.⁸ Similarly, the Chamber recently decided that among the Submitted Items, four audio/videos,⁹ and two contextual documents¹⁰ will be introduced into evidence through witness P-2050, pursuant to rule 68(3) of the Rules.¹¹ These items also remain in this submission pending the fulfilment of the legal requirements of rule 68(3) of the Rules during the upcoming testimony of P-2050.

8. In addition, two contextual documents, highlighted in grey in the Annex, were in the meantime recognised as formally submitted by the Chamber.¹² Although the Prosecution does not seek their formal submission anew, they are nevertheless included to reinforce the relevance of other Submitted Items.

II. CONFIDENTIALITY

9. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), the Prosecution files this submission as ‘*Confidential*’ because it refers to sources and materials of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

10. The Submitted Items meet the criteria for recognition as formally submitted, in accordance with the Chamber’s Decision on the First Prosecution Submission Request from the Bar Table.¹³ They are relevant to the issues at trial, have significant probative

⁸ See ICC-01/14-01/18-1833-Conf, p. 99; ICC-01/14-01/18-1907-Conf, p.59.

⁹ CAR-OTP-2076-1114, CAR-OTP-2076-1115, CAR-OTP-2076-1116, and CAR-OTP-2076-1117.

¹⁰ CAR-OTP-2076-1291 and CAR-OTP-2076-1292.

¹¹ The Chamber rejected the Prosecution’s request to introduce the prior recorded testimony of witness P-2050 pursuant to rule 68(2)(b) of the Rules and instead decided that it will be introduced pursuant to rule 68(3) of the Rules. See ICC-01/14-01/18-1907-Conf, paras. 144-146, p. 63.

¹² *I.e.*, CAR-OTP-2076-0717 and CAR-OTP-2135-1740: see Email Decision on Submitted Materials for P-0446, 12 October 2022.

¹³ ICC-01/14-01/18-1359, paras. 10-12, referring to the Initial Directions ICC-01/14-01/18-631, paras. 53-54, 62.

value, and do not unfairly prejudice the Accused. The relevance and probative value of the Submitted Items is discussed below.

A. The Submitted Items are *prima facie* relevant

11. The 328 Submitted Items concern 117 audio/videos and fall within the following seven categories:

- a. *Category I* – Background of the CAR conflict: 10 audio/videos and their related documents;
- b. *Category II* – Situation in BOSSANGO: nine audio/videos and their related documents;
- c. *Category III* – 5 December 2013 attack on BANGUI and the aftermath: 19 audio/videos and their related documents;
- d. *Category IV* – Areas under YEKATOM’s control: eight audio/videos and their related documents;
- e. *Category V* – Organization of the Anti-Balaka: four audio/videos and their related documents;
- f. *Category VI* – NGAISSONA’s public statements: 12 audio/videos and their related documents; and
- g. *Category VII* – Anti-Balaka’s crimes committed in various locations of the Western CAR: 55 audio/videos and their related documents.

12. The items in *Category I* relate to the general background of the conflict in the CAR. Some items in this category contain footage of events leading to the conflict, including the creation of the COCORA by individuals who later founded the Anti-Balaka movement, and their propaganda of Anti-Muslim rhetoric which led to the early mobilisation of the youth before the Seleka’s coup on 11 March 2013. Other audio/videos in this category contain news reports on attacks conducted by the Anti-Balaka in various locations in the CAR prior to 5 December 2013, as well as the Anti-Balaka’s active participation in numerous discussions on the return of peace in the CAR. The audio/videos submitted under this category provide the Chamber with the relevant context of the conflict, as well as the details of the early mobilisation of the Anti-Balaka which led to the 5 December 2013 attack.

13. The contextual document listed in this category¹⁴ is a media article from which three items were downloaded.¹⁵ This item is submitted as it informs the date of the related audio/videos.

14. The items in *Category II* relate to the events in and around BOSSANGO, before and after 5 December 2013. They contain footage of Anti-Balaka elements describing the attacks they participated in, and their targeting of the local Muslim population which forced them to leave their homes. They also include footage of children in the Anti-Balaka ranks, and weapons used by the group. The items in this category are relevant to establish the organisation of the armed group, the use of child soldiers, and the enslavement, forcible transfer, and/or deportation of Muslims from BOSSANGO since early September 2013, including the poor living conditions at the *Ecole de la Liberté* in BOSSANGO.

15. The two contextual documents listed in this category¹⁶ are submitted as they inform the dates of two related audio/videos.¹⁷

16. The items in *Category III* relate to the situation in BANGUI between early December 2013 and mid-July 2014. These items contain footage of the Anti-Balaka attack of BANGUI on 5 December 2013, the type of weapons used by the Anti-Balaka and the Seleka, and contemporaneous statements of witnesses and victims describing the crimes committed in various locations of BANGUI, including BOEING and PK5. These items are relevant to establish the existence of an armed conflict in the CAR, and the Anti-Balaka policy of targeting the Muslim civilian population, leading to them being enclaved, forcibly displaced and/or deported.

¹⁴ CAR-OTP-2092-0986.

¹⁵ CAR-OTP-2092-0989, CAR-OTP-2092-0990, and CAR-OTP-2092-0991.

¹⁶ CAR-OTP-2092-0986 and CAR-OTP-2082-0793.

¹⁷ CAR-OTP-2092-0990 and CAR-OTP-2066-0463.

17. The four contextual documents¹⁸ corroborate the date and content of three interviews of Muslim victims in PK5 by Prosecution's rule 68(3) witness P-2050. As noted,¹⁹ the Prosecution does not intend to submit two of these contextual documents, as they have already been recognised as formally submitted.

18. The items in *Category IV* relate to the areas under YEKATOM's control. They contain footage of YEKATOM and elements of his group ("YEKATOM's Group") in various locations, including the YAMWARA School base and MBAIKI. They are relevant to establish the structure and organisation of YEKATOM's Group, YEKATOM's authority over his elements, his involvement in the creation of the Anti-Balaka movement, YEKATOM and his elements' shared policy of targeting Muslims, and his links with other members of the Anti-Balaka Coordination. They are further relevant to establish YEKATOM's violent behaviour.

19. The contextual document listed in this category²⁰ is a screenshot of the webpage from where documentary CAR-OTP-2126-2478 was downloaded. The item contains a description of the documentary, as well as the date of its production.

20. The items in *Category V* relate to the organisation of the Anti-Balaka movement in general. They contain footage of members of the Anti-Balaka attending trainings, wearing identification badges, expressing their submission to NGAISSONA's authority, or voicing their Anti-Muslim sentiments. These items are relevant to establish not only the organisation and functioning of the Anti-Balaka, but also NGAISSONA's authority over the group.

21. The items in *Category VI* relate to contemporaneous public statements made by NGAISSONA during the relevant period, addressing *inter alia*, the formalisation and

¹⁸ CAR-OTP-2076-1291, CAR-OTP-2076-1292, CAR-OTP-2076-0717, and its translation CAR-OTP-2135-1740.

¹⁹ See above paragraph 8: it concerns CAR-OTP-2076-0717 and its translation CAR-OTP-2135-1740.

²⁰ CAR-OTP-2118-0414.

structure of the Anti-Balaka after 5 December 2013, the crimes committed by the group, and NGAISSONA's role in the Anti-Balaka. The content of these audio/videos is relevant to establish NGAISSONA's authority over the Anti-Balaka, his role as the National Coordinator, and his knowledge, public denial, and advocacy for the impunity of Anti-Balaka crimes.

22. The contextual document²¹ informs the date of a meeting held by NGAISSONA on 29 November 2014, and which was recorded in several audio/videos.²²

23. The items in *Category VII* relate to crimes committed by the Anti-Balaka in various locations of Western CAR. They contain footage of crimes committed in BANGUI, YALOKÉ, BERBERATI, BOHONG, BOUAR, BOALI, BODA, BOSSEMPTELE, BOUCA, CARNOT, GUEN, TOPIYA, and other locations. They also include interviews of Muslim victims of the Anti-Balaka describing the attacks by the Anti-Balaka which forced them to leave their country and take refuge in foreign countries. These audio/videos are relevant to establish that the Anti-Balaka conducted a widespread and/or systematic attack against the Muslim civilian population in the CAR during the relevant period of the charges. The crimes described in these audio/videos are consistent with those committed in the charged locations in this case and show the massive displacement of the Muslim population from the above-mentioned locations, due to the persistent targeting of this community by the Anti-Balaka.

24. The 21 contextual documents include 18 photographs of Peuhl victims of the Anti-Balaka attacks who took refuge in CAMEROON, and who were interviewed in the context of a mission conducted by a [REDACTED] in an MSF hospital in

²¹ CAR-OTP-2067-1500.

²² CAR-OTP-2023-2917, CAR-OTP-2023-2931, and CAR-OTP-2023-2936.

GAROUA-BOULAI;²³ a report drafted in the context of this mission;²⁴ and two media articles²⁵ which inform the dates of three audio/videos.²⁶

B. The Submitted Items are *prima facie* reliable and authentic

25. To assess *prima facie* reliability of evidentiary material, the Chamber may evaluate the factors affecting its authenticity, such as: its origin, the context in which it was created, the method with which the information contained therein was compiled, and the availability of corroborative evidence.²⁷

26. The Submitted Items are *prima facie* reliable and authentic. *First*, they were broadcast or generated contemporaneously to the charges, before the present proceedings were even contemplated. *Second*, as detailed below, they were downloaded from the websites of renowned International NGOs and news outlets, or provided by reliable sources, including the CAR authorities and individuals contacted and/or interviewed by the Prosecution, who - at the time of their creation - had no interest in these proceedings. *Third*, the items corroborate other documentary and testimonial evidence. *Finally*, the *prima facie* reliability and authenticity of these audio/videos is clear from their content, which depicts images, and contains conversations or sound that flows naturally, but also from self-authenticating indicators, such as the mentioning of dates, individuals, locations, and events.

a. Audio/videos collected from the CAR authorities

27. 23 audio/videos are radio and TV programs collected from [REDACTED] which are contemporaneous to the events reported therein. They were filmed or recorded before any arrest warrant had been issued in this case. As specified in their 'chain of

²³ See Annex, Category VII, entries 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 59, 61, 70, 72.

²⁴ CAR-OTP-2016-1015.

²⁵ CAR-OTP-2079-0803 and CAR-OTP-2092-0986.

²⁶ CAR-OTP-2079-0808, CAR-OTP-2079-0809, and CAR-OTP-2092-0989.

²⁷ ICC-01/04-01/06-1399, paras. 36-40; *see also* ICC-01/04-01/07-1665-Corr, para. 98.

custody' metadata, three of them were provided by the CAR Prosecutor General Office.²⁸ The remaining 20 radio and TV programs were provided by the respective [REDACTED], following a Prosecution's Request for Assistance ("RFA") addressed to the CAR authorities.

28. All these audio/videos were provided to the Prosecution with their original metadata, such as the title, date, type of file, digital signature, and other features, further demonstrating their reliability and authenticity. Additionally, these items corroborate other documentary and testimonial evidence, and their *prima facie* reliability and authenticity is clear from their content.

b. Audio/videos collected from individual sources

29. 49 audio/videos were collected from individual sources, i.e., individuals interviewed or contacted by the Prosecution.

30. Of those, 21 audio/videos were filmed by [REDACTED] who are relied on as Prosecution witnesses in these proceedings.²⁹ In their respective statements, the [REDACTED] describe the circumstances in which they filmed the audio/videos, the type of devices they used, the dates of the footage, the type of file in which they were downloaded, and the naming of each rush or groups of rushes.³⁰ As explained by the witnesses, the footage they filmed during the relevant period in the CAR was often purchased by news outlets such as France 24, Arte, France 2, France 3, France 5, ITélé, Canal Plus, TV5 Monde, Wiener Zeitung, SUEDWIND, Le Monde Diplomatique, and others,³¹ which diffused them publicly, including on their respective websites.

²⁸ See CAR-OTP-2000-0522, CAR-OTP-2000-0677, and CAR-OTP-2000-0724.

²⁹ *I.e.*, Rule 68(2)(b) witnesses P-0505 and P-2377; rule 68(3) witness P-2050.

³⁰ See **P-0505**: CAR-OTP-2014-0129, at 0132, paras. 17-19; **P-2050**: CAR-OTP-2076-0911, at 0933-0934, 0938, paras. 125-256, 140; and **P-2377**: CAR-OTP-2108-0609, at 0612-0613, 0625-0629, paras. 18-19, 69-74.

³¹ See **P-0505**: CAR-OTP-2014-0129, at 0131, para. 13; **P-2050**: CAR-OTP-2076-0911, at 0913, para. 15; and **P-2377**: CAR-OTP-2108-0809, at 0612, para. 16.

31. The remaining 28 audio/videos were collected from individual sources, who are not relied on as Prosecution witnesses in these proceedings. However, several of them provided a statement to the Prosecution in which they explained the provenance of each audio/video, and/or identified individuals featuring therein (P-0434, P-0519, P-0568, P-1597, and P-2416).³²

32. Two of the individual sources did not provide a statement (P-1875 and P-2591). However, P-1875 provided two files,³³ containing the relevant metadata such as the file name, file path, date, file type, file size, and which sufficiently show the *prima facie* reliability and authenticity of the items.³⁴ P-2591, on the other hand [REDACTED] in the CAR during the relevant period.³⁵

33. All these audio/videos were provided to the Prosecution with their original metadata, such as the title, date, type of file, digital signature, the file attributes, and other features, further demonstrating their reliability and authenticity. The provided metadata are included on the cover page of these audio/videos. Additionally, these items corroborate other documentary and testimonial evidence, and their *prima facie* reliability and authenticity is clear from their content.

c. Audio/videos from open sources

34. 45 audio/videos are news reports and documentaries (comprising a.o., interviews with members of the Anti-Balaka), produced by international media. These news reports and documentaries were filmed and released before any arrest warrant had been issued in this case. All the items were directly downloaded from their publishers' websites. Where available, they were downloaded with their related and

³² Some of these audio/videos were taken from the Internet or bought by the witnesses. See **P-0434**: CAR-OTP-2014-0660, at 0675-0676, paras. 92-93, 0681-0682, entries 9 and 18; **P-0519**: CAR-OTP-2016-0652, at 0675-0676, para. 112; **P-0568**: CAR-OTP-2045-1352 at 1356-1357 l. 111-176; **P-1597**: CAR-OTP-2050-0513, at 0530, paras. 115-116; **P-2416**: CAR-OTP-2106-0489, at 0533-0534, paras. 117-119. P-1597's statement will be disclosed shortly for sake of completeness.

³³ CAR-OTP-2066-0213 and CAR-OTP-2066-0463.

³⁴ See the extracted metadata on the cover pages of CAR-OTP-2066-0213 and CAR-OTP-2066-0463.

³⁵ See CAR-OTP-2118-0415 and its English translation at CAR-OTP-2126-2478.

contemporaneous media articles detailing, *inter alia*, a description of their content, dates, and locations where the items were filmed.

35. The *prima facie* reliability and authenticity of these audio/videos is apparent, as they were collected digitally with their original metadata and, where available, contemporaneous media articles. Additionally, these items corroborate other documentary and testimonial evidence, and their *prima facie* reliability and authenticity is clear from their content.

C. Absence of prejudice to the Defence

36. The recognition of the material as formally submitted is not prejudicial to the Defence. All items were lawfully obtained and disclosed to the Defence in a timely manner. Cumulatively, the following factors readily establish that the probative value of the proposed material outweighs any prejudicial effect: (i) the items are highly relevant to the charges, as detailed in this motion and its Annex, and will assist the Chamber in its determination of the truth and ensure an expeditious trial; (ii) the items are probative and bear sufficient indicia of reliability; and (iii) the Defence had sufficient notice of the content of the items and, given their inclusion in the Prosecution's List of Evidence, of the Prosecution's intention to rely on them at trial.

IV. RELIEF SOUGHT

37. For the foregoing reasons, the Prosecution requests that all 328 Submitted Items listed in the Confidential Annex to this filing be recognised as formally submitted.

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

Karim A. A. Khan KC, Prosecutor

Dated this 20th day of September 2023
At The Hague, The Netherlands