



Original: English

No. **ICC-01/14-01/18**
Date: **23 October 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Prosecution's Request to Submit Audio-Visual Items Without
Translations**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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 and 67(1) of the Rome Statute and Regulations 35 and 39 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution’s Request to Submit Audio-Visual Items Without Translations’.

I. Procedural history

1. On 25 August 2023, the Office of the Prosecutor (the ‘Prosecution’) filed the ‘Prosecution’s Fourteenth Application for Submission of P-1819’s Evidence from the Bar Table’ (the ‘Fourteenth Bar Table Application’).¹
2. On 4 September 2023, upon requests by the Ngaïssona Defence and the Yekatom Defence (collectively, the ‘Defence’), the Chamber extended the time limit to respond to the Fourteenth Bar Table Application until 27 October 2023.²
3. On 12 October 2023,³ the Prosecution requested the Chamber to authorise the submission of 31 audio-visual items, which were already tendered through the Fourteenth Bar Table Application, without corresponding translations into a working language of the Court (the ‘Prosecution Request’).⁴
4. Secondly, it informed the Chamber and the participants that it does not intend to provide the transcripts and/or translations of another 35 items,⁵ also submitted through the Fourteenth Bar Table Application, as they do not contain any spoken words warranting their translation.⁶

¹ ICC-01/14-01/18-2057-Conf (with confidential Annexes A and B).

² Email from the Chamber, 4 September 2023, at 09:21.

³ The Prosecution first made the request by email on 3 October 2023. *See* email from the Prosecution, 3 October 2023, at 11:28 (the ‘Email Request’). The Chamber instructed the Prosecution to file this request formally on the record by 12 October 2023. *See* email from the Chamber, 9 October 2023, at 14:43 (the ‘Email Decision’). *See also* email from the Yekatom Defence, 8 October 2023, at 22:03.

⁴ Prosecution’s Request for authorisation to submit audio-visual items without translation into a working language of the Court, pursuant to Regulation 39(1); and Update on the pending transcripts and translations, ICC-01/14-01/18-2141-Conf (with confidential Annexes AC). *See also* Annex A to the Prosecution Request, ICC-01/14-01/18-2141-Conf-AnxA.

⁵ In its Email Request, the Prosecution stated that it does not intend to provide any transcripts and/or translations for 34 items. In the Prosecution Request, it added one more item to this list, namely, CAR-OTP-2065-5128. *See* Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 1, n. 5. *See also* Annex B to the Prosecution Request, ICC-01/14-01/18-2141-Conf-AnxB.

⁶ Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 1.

5. Thirdly, the Prosecution provided the details of 119 audio-visual items,⁷ forming part of the Fourteenth Bar Table Application, for which transcripts and/or translations are pending.⁸
6. On 16 October 2023, the Defence filed their responses.⁹
7. The Yekatom Defence submits that (i) it does not oppose the Prosecution Request on the condition that the 31 audio-visual items are not to be relied upon for their audio content;¹⁰ and (ii) the Prosecution's proposition to provide translations of '95' videos in the future should be rejected.¹¹ Alternatively, it requests the Chamber (i) to suspend the deadline to respond to the Fourteenth Bar Table Application; and (ii) to provide the Defence with 48 hours from the date of the formal disclosure of the concerned transcripts and/or translations to suggest a reasonable date to provide such response (the 'Yekatom Defence Request').¹²
8. On the same day, the Prosecution filed an addendum to the Prosecution Request (the 'Addendum').¹³
9. On 17 October 2023, the Yekatom Defence requested to extend the 27 October 2023 time limit to respond to the Fourteenth Bar Table Application (the 'Yekatom Defence Request for Extension of Time') until 10 November 2023. In support of

⁷ In the Email Request, the Prosecution noted that it will disclose, on a rolling basis, the transcripts and/or translations of 'about 120 audio-visual additional items' submitted through the Fourteenth Bar Table Application. In the Email Decision, the Chamber instructed the Prosecution, *inter alia*, to (i) provide the ERNs and respective duration of these items; (ii) indicate for which of these items it has already requested transcripts and/or translations and for which items this request is pending, if any; and (iii) provide an estimate per item of when such transcript and/or translation is expected to be provided to the participants.

⁸ Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 2. *See also* Annex C to the Prosecution Request, ICC-01/14-01/18-2141-Conf-AnxC.

⁹ Réponse de la Défense de M. Yekatom à la « Prosecution's Request for authorisation to submit audio-visual items without translation into a working language of the Court, pursuant to Regulation 39(1); and Update on the pending transcripts and translations », ICC-01/14-01/18-2141-Conf, 12 octobre 2023, ICC-01/14-01/18-2144-Conf (the 'Yekatom Defence Response'); the Ngaïssona Defence responded that it fully joins the Yekatom Defence Response and supports the arguments therein. *See* email from the Ngaïssona Defence to the Chamber, 16 October 2023, at 14:20.

¹⁰ Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, paras 16-17, p. 14.

¹¹ Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, para. 18, p. 14; *see also* paras 19-35.

¹² Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, paras 41-43, p. 14.

¹³ Addendum to "Prosecution's Request for authorisation to submit audio-visual items without translation into a working language of the Court, pursuant to Regulation 39(1); and Update on the pending transcripts and translations", ICC-01/14-01/18-2141-Conf, 12 October 2023, ICC-01/14-01/18-2147-Conf (with confidential updated Annex C, ICC-01/14-01/18-2147-Conf-AnxC).

its request, it points to its current competing workload, access issues, resource concerns, and the upcoming hearing schedule.¹⁴

II. Analysis

10. At the outset, the Chamber notes that the Prosecution indicates not intending to provide the translations and/or transcripts of 35 items submitted through the Fourteenth Bar Table Application because they do not contain any spoken words.¹⁵ As the Prosecution does not formulate any request in relation to these items, and the Defence does not make any submissions in this regard, the Chamber will address the Prosecution's explanation in the context of deciding on the Fourteenth Bar Table Application in respect of these items.¹⁶

A. *The Prosecution Request*

11. The Chamber notes the Prosecution's submission concerning the 31 audio-visual items that it intends to 'rely on the visual content of these items' and does not consider that the audio content of these items contains material information.¹⁷ It further notes that the Prosecution considers that their translation is not necessary to advance the proceedings nor is the absence of these translations prejudicial.¹⁸

12. The Chamber recalls that the Defence does not oppose the Prosecution Request in respect of these 31 items on the condition that they are not relied upon for their audio content.¹⁹

¹⁴ Email from the Yekatom Defence to the Chamber, 17 October 2023, at 16:20.

¹⁵ Prosecution Request, ICC-01/14-01/18-2141-Conf, paras 1-2; *see also* Annex B to the Prosecution Request, ICC-01/14-01/18-2141-Conf-AnxB.

¹⁶ This concerns items CAR-OTP-2065-0440; CAR-OTP-2065-0448; CAR-OTP-2065-0456; CAR-OTP-2065-0520; CAR-OTP-2065-0862; CAR-OTP-2065-0975; CAR-OTP-2065-0995; CAR-OTP-2065-1007; CAR-OTP-2065-1019; CAR-OTP-2065-1023; CAR-OTP-2065-1027; CAR-OTP-2065-1035; CAR-OTP-2065-1071; CAR-OTP-2065-1119; CAR-OTP-2065-1127; CAR-OTP-2065-1135; CAR-OTP-2065-1973; CAR-OTP-2065-2199; CAR-OTP-2065-2203; CAR-OTP-2065-2207; CAR-OTP-2065-2211; CAR-OTP-2065-2215; CAR-OTP-2065-2219; CAR-OTP-2065-2223; CAR-OTP-2065-2227; CAR-OTP-2065-2231; CAR-OTP-2065-2239; CAR-OTP-2065-2243; CAR-OTP-2065-2247; CAR-OTP-2065-2251; CAR-OTP-2065-2255; CAR-OTP-2065-2259; CAR-OTP-2065-2267; CAR-OTP-2065-3768.

¹⁷ Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 4.

¹⁸ Prosecution Request, ICC-01/14-01/18-2141-Conf, paras 4, 8.

¹⁹ Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, paras 16-17, p. 14.

13. In relation to 20 out of these 31 items, regarding which the Prosecution submits that they contain merely ‘inaudible or barely audible spoken words’,²⁰ the Chamber will not consider the lack of translation and/or transcripts as a factor against their formal submission.²¹
14. Regarding the remaining 11 items, the Prosecution submits that while they contain spoken words, they are not relevant to the nature, cause, and content of the charges. The Prosecution does not consider that their translation is required or otherwise necessary to advance the proceedings, noting that the accused are conversant in the language spoken in these items, Sango.²²
15. Having reviewed these 11 items²³ for the purposes of the current decision, the Chamber considers that transcripts and/or translations are needed for the following items: CAR-OTP-2065-1047, CAR-OTP-2065-2412, and CAR-OTP-2065-0939.
16. Accordingly, the Chamber rejects the Prosecution’s request in respect of the three items mentioned above. It directs the Prosecution to request translations of these items to be prepared, and to disclose them to the participants by **17 November 2023**.

²⁰ Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 6. This concerns items CAR-OTP-2065-4757; CAR-OTP-2065-4661; CAR-OTP-2065-4745; CAR-OTP-2065-4749; CAR-OTP-2065-0680; CAR-OTP-2065-1837; CAR-OTP-2065-1901; CAR-OTP-2065-1905; CAR-OTP-2065-1961; CAR-OTP-2065-2432; CAR-OTP-2065-3496; CAR-OTP-2065-4657; CAR-OTP-2065-4876; CAR-OTP-2065-5034; CAR-OTP-2065-5148; CAR-OTP-2065-5276; CAR-OTP-2065-5572; CAR-OTP-2065-0943; CAR-OTP-2065-0947; CAR-OTP-2065-0955.

²¹ *See for example* Decision on the Eighth Prosecution Submission Request from the Bar Table (Audio-Visual Material), 12 September 2023, ICC-01/14-01/18-2092-Conf (public redacted version notified the same day), p. 14 that recognised the submission of item CAR-OTP-2080-1472 that contains no spoken words.

²² Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 6.

²³ CAR-OTP-2065-5575; CAR-OTP-2065-4717; CAR-OTP-2065-4737; CAR-OTP-2065-0384; CAR-OTP-2065-1917; CAR-OTP-2065-0734; CAR-OTP-2065-1047; CAR-OTP-2065-1913; CAR-OTP-2065-1921; CAR-OTP-2065-2412; CAR-OTP-2065-0939.

B. The Yekatom Defence Request

17. The Chamber notes the Prosecution's submission concerning 119 audio-visual items²⁴ for which transcripts and/or translations were pending disclosure to the participants at the time of filing the Prosecution Request.²⁵
18. The Chamber notes that, since the filing of the Prosecution Request, the Prosecution has disclosed to the participants transcripts and/or translations for 13 items (out of 119), either formally or as courtesy copies.²⁶ Therefore, as of 20 October 2023, transcripts and/or translations have not yet been prepared and disclosed to the participants in respect of 106 items (the 'Pending Translations').²⁷ Accordingly, the Chamber considers the arguments of the Yekatom Defence concerning the '95' items to equally apply to the 11 items added by the Prosecution.
19. The Defence submits that the delay in providing the Pending Translations is inexcusable and entirely a result of a lack of diligence on behalf of the Prosecution; and for this reason, their submission should be rejected.²⁸
20. In particular, it points out that the Prosecution has been in possession of the underlying videos for six years and P-1819, who provided these items, was on the list of witnesses for three years.²⁹ It also points out that, in the absence of the transcripts and/or translations, the Prosecution's 'description' of the items in the

²⁴ In the Email Request, the Prosecution had indicated that this concerned 'about 120 items'. In the Prosecution Request, the Prosecution provided further details. One item, CAR-OTP-2065-5128, out of the 120 items was removed and added to Annex B to the Prosecution Request as it did not contain audible speech, bringing the number to 119. *See* Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 16, nn. 5, 15.

²⁵ Prosecution Request, ICC-01/14-01/18-2141-Conf, paras 16-18; *see also* Annex C to the Prosecution Request, ICC-01/14-01/18-2141-Conf-AnxC.

²⁶ These include items CAR-OTP-2065-4416; CAR-OTP-2065-4468; CAR-OTP-2065-5132; CAR-OTP-2065-0452; CAR-OTP-2065-0580; CAR-OTP-2065-0584; CAR-OTP-2065-0708; CAR-OTP-2065-1003; CAR-OTP-2065-1079; CAR-OTP-2065-3288; CAR-OTP-2065-3835; CAR-OTP-2065-4645; CAR-OTP-2065-5660. *See also* email from the Prosecution, 11 October 2023, at 18:00; email from the Prosecution, 18 October 2023, at 11:31.

²⁷ The Chamber notes that the Yekatom Defence Request was confined to the '95' items for which transcripts and/or translations were pending at the time. *See* Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, paras 18-19. However, subsequent to the filing of the Yekatom Defence Request, the Prosecution filed its Addendum adding 11 items to the list of the pending 95 items. These include items CAR-OTP-2065-0376; CAR-OTP-2065-0991; CAR-OTP-2065-1095; CAR-OTP-2065-1107; CAR-OTP-2065-2033; CAR-OTP-2065-2276; CAR-OTP-2065-2488; CAR-OTP-2065-3480; CAR-OTP-2065-3857; CAR-OTP-2065-4484; CAR-OTP-2065-5547.

²⁸ Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, para. 20; *see also* paras 21-35.

²⁹ Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, para. 22.

Fourteenth Bar Table Application was often not sufficient to prepare a response and these items will require a fresh analysis once the Pending Translations are provided.³⁰ It adds that it would not be in the interest of fairness to require the Defence to analyse these items upon provision of the Pending Translations .³¹

21. The Chamber notes the Prosecution's argument that it is not required to provide the transcripts and/or translations simultaneously with the original audio-visual items included in its list of evidence.³²
22. The Chamber recalls that recognising the formal submission of audio-visual material automatically includes recognising the formal submission of any associated transcripts or translations which were duly disclosed. It further recalls that this would be the case irrespective of whether these transcripts/translations were on the list of evidence.³³ Therefore, in principle, there is no bar to transcripts and/or translations of audio-visual material being provided after the filing of the list of evidence.
23. Nonetheless, the Chamber considers that transcripts and/or translations in at least one of the working languages of the Court assist the participants as well as the Chamber in reviewing the items when they are submitted as evidence. It may not be strictly necessary for items to be accompanied by transcripts and/or translations at the time of filing of the list of evidence, however, it becomes necessary when such items are requested for submission, and if the submitting party intends to rely on spoken word contained therein. This is particularly the case for items which contain, in full or in part, spoken words in a language other than one of the working languages of the Court. Therefore, at the very latest, the concerned transcripts and/or translations should have been disclosed to the participants at the time of filing of the Fourteenth Bar Table Application.

³⁰ Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, paras 31-32; *see also* paras 29-30.

³¹ Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, paras 33, 35.

³² Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 10 *referring to* Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631 (the 'Initial Directions'), para. 64; Decision on the Eighth Prosecution Submission Request from the Bar Table (Audio-Visual Material), 12 September 2023, ICC-01/14-01/18-2092-Conf (public redacted version notified the same day, ICC-01/14-01/18-2092-Red) (the 'Decision on AV items'), para. 38.

³³ Initial Directions, ICC-01/14-01/18-631, para. 64.

24. In this regard, the Chamber finds the Prosecution's reliance on its earlier decision concerning audio-visual material inapposite because that decision concerned items that already existed in at least one of the working languages of the Court.³⁴
25. Furthermore, the Chamber finds unsatisfactory the Prosecution's lack of explanation as to why (i) the concerned transcripts and/or translations were not disclosed at an earlier stage, and at the very latest, before the filing of the Fourteenth Bar Table Application; (ii) it did not inform the participants and the Chamber of the status of the transcripts and/or translations concerning these items earlier; and/or (iii) it did not formulate a request pursuant to Regulation 35 of the Regulations in respect of providing the required transcripts and/or translations.
26. Bearing this in mind, the Chamber notes that, following the Chamber's directions, the Prosecution has provided the details of the items that are currently being translated and the respective timeline of when the related transcripts and/or translations can be received.³⁵ As per the estimates provided by the Prosecution, the Pending Translations are expected on 17 November 2023.
27. The Chamber further notes that the Prosecution does not oppose any related request by the Defence for an extension of time to respond to the Fourteenth Bar Table Application.³⁶
28. The Chamber also considers that the provision of the Pending Translations is necessary to decide on the Fourteenth Bar Table Application fully.
29. In light of these circumstances and noting the submissions of the parties, the Chamber considers it appropriate to set **17 November 2023** as the final deadline for disclosure of any pending transcripts and/or translations in relation to the material underlying the Fourteenth Bar Table Application, formally or in the form of a courtesy copy.
30. Bearing in mind these timelines, the arguments underlying the Yekatom Defence Request for Extension of Time, as well as the volume of the material concerned,

³⁴ Decision on AV items, ICC-01/14-01/18-2092-Red, para. 37.

³⁵ Prosecution Request, ICC-01/14-01/18-2141-Conf, paras 16-17; Annex C to the Prosecution Request, ICC-01/14-01/18-2141-Conf-AnxC.

³⁶ Prosecution Request, ICC-01/14-01/18-2141-Conf, para. 15.

the Single Judge considers that good cause has been shown, pursuant to Regulation 35 of the Regulations, to extend the time limits for responses by the participants, if any, to the Fourteenth Bar Table Application, to **1 December 2023**.

31. At this stage, the Chamber does not consider it necessary to grant the Yekatom Defence Request insofar as it concerns providing the Defence with 48 hours to suggest a date on when it can provide a response to the Fourteenth Bar Table Application.
32. Accordingly, the Chamber rejects the Yekatom Defence Request and grants the Yekatom Defence Request for Extension of Time.
33. Lastly, the Chamber notes that the Yekatom Defence does not object to its response being reclassified as public.³⁷ The Chamber notes that certain excerpts of items contained in paragraph 30 of the Yekatom Defence Response tend to identify P-1819 and would require redactions. Accordingly, it is directed to file a public redacted version of the Yekatom Defence Response.

FOR THESE REASONS, THE CHAMBER HEREBY

PARTLY GRANTS the Prosecution Request;

REJECTS the Prosecution Request in respect of items CAR-OTP-2065-1047, CAR-OTP-2065-2412, and CAR-OTP-2065-0939;

DIRECTS the Prosecution to prepare and disclose the transcripts and/or translations of the following items latest by **17 November 2023**: CAR-OTP-2065-1047, CAR-OTP-2065-2412, and CAR-OTP-2065-0939;

SETS 17 November 2023 as the final deadline for disclosure of any pending transcripts and/or translations in relation to the material underlying the Fourteenth Bar Table Application, formally or in the form of a courtesy copy;

³⁷ Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, para. 44.

REJECTS the Yekatom Defence Request;

GRANTS the Yekatom Defence Request for Extension of Time;

EXTENDS the time limit for the participants to file responses to the Fourteenth Bar Table Application until **1 December 2023**;

ORDERS the Prosecution to file public redacted versions, or request reclassification to public, of the Prosecution Request, ICC-01/14-01/18-2141-Conf and the Addendum, ICC-01/14-01/18-2147-Conf; and

ORDERS the Yekatom Defence to file a public redacted version of the Yekatom Defence Response, ICC-01/14-01/18-2144-Conf, in line with paragraph 33 above, within one week of notification of this decision.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 23 October 2023

At The Hague, The Netherlands