

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **30 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-  
EDOUARD NGAÏSSONA***

**Public**

**Public redacted version of "Prosecution's Twelfth Application for Submission of Photographic Evidence from the Bar Table", Prosecution's Twelfth Application for Submission of Photographic Evidence from the Bar Table,  
ICC-01/14-01/18-2032-Conf, 18 August 2023**

**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 65 photographs from the bar table in accordance with articles 64(9)(a), 69(3), and (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”) (“Submitted Items”).<sup>1</sup> As explained below, and for the sake of judicial economy, the Prosecution will not seek the submission of two documents that provide context to some of the photographs, and that were included in the original list provided to the Defence.<sup>2</sup>

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, contribute to an expeditious trial, and ultimately assist in determining the truth.

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) date of disclosure; (vi) description; (vii) relevance and probative value; and (viii) the Defences’ positions.<sup>3</sup>

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

<sup>2</sup> The two contextual documents (CAR-OTP-2117-0727 and CAR-OTP-2119-0033) provide context to 29 photographs listed in Categories I and II of the Annex.

<sup>3</sup> As required by the Initial Directions (ICC-01/14-01/18-631, para. 62), the Prosecution has inquired with the Defence teams and received their respective positions on the items to be tendered for submission. *See* Email from the YEKATOM Defence, 11 May 2023, at 10:09; Email from the NGAISSONA Defence, 2 June 2023, at 20:09.

## II. CONFIDENTIALITY

5. Pursuant to regulation 23bis(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

### A. The Defence’s objections are either moot or not compelling

*a. The Defences’ objections to the submission of photographs provided by particular rule 68(2)(b) and rule 68(3) witnesses are moot or not pertinent*

6. Both the YEKATOM and the NGAISSONA Defence object to the submission of the photographs provided by rule 68(2)(b) witnesses P-0505, P-2205, and P-2324, as well as those provided by rule 68(3) witness P-1576 on the basis that they have already been recognised as formally submitted.<sup>4</sup> Given that P-0505 has recently certified his statement, and that P-1576 has meanwhile testified in this case, their materials are no longer included in the present submission, rendering the Defences’ objections moot. As for the photographs provided by P-2205 and P-2324, which have been recognised as formally submitted by the Chamber,<sup>5</sup> they remain included in this submission pending the completion of the certification process pursuant to rule 68(2)(b)(ii) and (iii) of the Rules.<sup>6</sup>

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<sup>4</sup> Email from the YEKATOM Defence, 11 May 2023, at 10:09; Email from the NGAISSONA Defence, 2 June 2023, at 20:09.

<sup>5</sup> In the Chamber’s ‘First Decisions on the Prosecution’s Requests for Formal Submission of Prior Recorded Testimonies pursuant to rule 68(2)(b) of the Rules’: ICC-01/14-01/18-1833-Conf, paras. 80-81, 246, p. 101 and 103.

<sup>6</sup> See ICC-01/14-01/18-1833-Conf, p. 99.

b. *The NGAISSONA Defence's objections to the submission of two contextual documents is moot*

7. The NGAISSONA Defence further objects to the formal submission of two documents<sup>7</sup> that provide context to the photographs taken by photo journalist P-0557.<sup>8</sup> The Defence alleges that the two documents “in their ensemble qualify as prior recorded testimony and cannot be submitted via bar table motion.”<sup>9</sup>

8. CAR-OTP-2119-0033 is an investigation report drafted by a Prosecution’s investigator following a meeting with P-0557 [REDACTED] to collect a hard drive containing photographs taken by P-0557 during his stay in the CAR. During the meeting, P-0557 provided technical information on the content of the hard drive, including (i) the date and circumstances in which P-0557 took the photographs, (ii) the number of SD cards he used on his camera, (iii) the number of folders, (iv) their naming, and (v) the type of metadata available (*e.g* date and time of capture). The investigation report also contains information about the locations where the photographs were taken, and the folders in which they were stored.

9. CAR-OTP-2117-0727 is a one sentence document signed by P-0557 on [REDACTED] certifying that he is the author of the photographs contained in the hard drive handed over to the Prosecution investigator.

10. For the sake of judicial economy and given that these documents merely provide chain of custody information, which is also included in the meta-data of the photographs that they relate to, the Prosecution refrains from seeking their submission. The Defence’s objection is therefore moot.

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<sup>7</sup> CAR-OTP-2119-0033 and CAR-OTP-2117-0727.

<sup>8</sup> As defined in the Prosecution’s Trial Brief, from September 2013 through December 2014: ICC-01/14-01/18-723-Red para. 5.

<sup>9</sup> Email from the NGAISSONA Defence, 2 June 2023, at 20:09, third paragraph.

**B. The Submitted Items are *prima facie* relevant, reliable, and authentic, outweighing any prejudicial effect**

11. 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.<sup>10</sup> They are *prima facie* relevant to the issues at trial, have sufficient probative value, and do not unfairly prejudice the Accused.

*a. The Submitted Items are prima facie relevant*

12. The Submitted Items are *prima facie* relevant to material issues at trial. They show that the Anti-Balaka targeted Muslim civilians during, and after the 5 December 2013 attack on BANGUI. They also demonstrate how the violence on the Muslim civilian population by the Anti-Balaka continued throughout western CAR after the attack. They further show the organisation of the Anti-Balaka group led by YEKATOM and based at the YAMWARA School, including the identity of his elements, the training they received, as well as the type of weapons they used. Finally, they show the Anti-Balaka's leadership in July 2014 representing the group at the BRAZZAVILLE Forum.

13. In the "Description" and the "Relevance/Probative value" columns of the Annex, the Prosecution has further detailed the relevance and probative value of each of the Submitted Items.

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

14. To assess the *prima facie* reliability of evidentiary material, the Chamber may evaluate several factors, such as: its origin, the context in which it was created, the

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

method with which the information contained therein was compiled, and the availability of corroborative evidence.<sup>11</sup>

15. The Submitted Items were collected from (i) P-2205 and P-2324, two Prosecution witnesses whose statements and associated documents have already been assessed by the Chamber as reliable; (ii) P-0557, a photo journalist who was present in the CAR during the relevant period, and has attested to the authenticity of the photographs he took;<sup>12</sup> and (iii) open sources corroborating other evidence already formally submitted. They were collected by the Prosecution either directly from the source (P-2205, P-2324, and P-0557), or downloaded directly from the publishers' website.

16. The Submitted Items were generated contemporaneously to the charges before the present proceedings were even contemplated. They were provided by reliable sources who - at the time of their production or publication - had no interest in the present proceedings.

17. Except for the three photographs downloaded from open sources, the Submitted Items were provided to the Prosecution with their original metadata, such as the title, date, type of file further demonstrating their reliability and authenticity. Additionally, the Submitted Items corroborate other documentary and testimonial evidence, and their *prima facie* reliability and authenticity is clear from their content which depicts images.

*c. There is no prejudicial effect to the Defence*

18. 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

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<sup>11</sup> ICC-01/04-01/06-1399, paras. 36-40; *see also* ICC-01/04-01/07-1665-Corr, para. 98.

<sup>12</sup> CAR-OTP-2117-0727. *See also* CAR-OTP-2119-0033.

manner. Cumulatively, the following factors readily establish that the probative value of the proposed material outweighs any prejudicial effect: (i) the items are 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**

19. For the foregoing reasons, the Prosecution requests that all 65 Submitted Items listed in the 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.

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**Karim A. A. Khan KC, Prosecutor**

Dated this 30<sup>th</sup> day of October 2023  
At The Hague, The Netherlands