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Internationale**



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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 *THE PROSECUTOR v.*  
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

**Public  
With Confidential Annex A**

**Public Redacted Version of the “Yekatom Defence Response to the  
“Prosecution’s Fourteenth Application for Submission of P-1819’s  
Evidence from the Bar Table”, ICC-01/14/01/18-2057-Conf”; ICC-01/14-  
01/18-2233-Conf**

**Source:** Defence for Mr. Alfred Rombhot Yekatom

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

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## **INTRODUCTION**

1. Counsel for Mr Alfred Rombhot Yekatom hereby responds to the “Prosecution’s Fourteenth Application for Submission of P-1819’s Evidence from the Bar Table”, notified on 25 August 2023 (“Request”).<sup>1</sup>
2. The Defence opposes the submission of 43 items, and provides in Annex A its observations on all items. In addition, the Defence addresses in the present response specific issues relating to the presentation and/or content of videos submitted in the Request.

## **PROCEDURAL HISTORY**

3. On 25 August 2023, the Prosecution’s Request was notified.<sup>2</sup>
4. On 3 October 2023, the Prosecution informed the Chamber, by email, that it was seeking leave to not submit translation of some of the videos included in the Request; it also informed that 120 transcriptions and translations of videos included in the Request were in the process of being produced.<sup>3</sup>
5. On 8 October 2023, the Defence opposed litigation via email correspondence in relation to such an important subject. The Defence also expressed its concern with the new information that 120 transcriptions and translations were being produced, while its work to respond to the Request was well advanced.<sup>4</sup>
6. On 9 October 2023, the Chamber ordered the Prosecution to submit a formal filing.<sup>5</sup>
7. On 12 October 2023, the *“Prosecution’s Request for authorisation to submit audio-visual items without translation into a working language of the Court, pursuant to*

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<sup>1</sup> ICC-01/14-01/18-2057-Conf.

<sup>2</sup> ICC-01/14-01/18-2057-Conf.

<sup>3</sup> Email from the Prosecution to the Chamber and Parties dated 3 October 2023 11:28.

<sup>4</sup> Email from the Defence to the Chamber and Parties dated 8 October 2023 22:02.

<sup>5</sup> Email from the Chamber to the Parties dated 9 October 2023 14:42.

*Regulation 39(1); and Update on the pending transcripts and translations”* was notified.<sup>6</sup>

8. On 16 October 2023, the “*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 »*” was notified.<sup>7</sup> In this filing the Defence pointed out specific deficiencies present in the Request, and highlighted the problems arising from the late disclosure of transcriptions and translations of videos which submission was sought by the Prosecution.
9. On 22 October 2023, the Chamber issued its “*Decision on the Prosecution’s Request to Submit Audio-Visual Items Without Translations*”.<sup>8</sup> The Chamber set the deadline for disclosure by the Prosecution of any remaining transcriptions or translations to 17 November 2023, and extended the deadline to respond to the Request to 1 December 2023.

## **SUBMISSIONS**

10. The Defence will first provide submissions in relation to the 43 documents for which submission is opposed (I). Secondly, the Defence will make specific remarks in relation to the serious deficiencies affecting the characterization of the video by the Prosecution (II). Finally, the Defence will address the content of several recurrent topics appearing in the videos (III).

### **I. On the items for which submission is opposed by the Defence**

11. The Defence opposes the submission of 43 of the items present in the Prosecution’s Request with developed arguments set out in Annex A. For further clarity, the Defence provides below an overview of its five main objections namely: absence of translation while the item is in Sango (i); absence

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<sup>6</sup> ICC-01/14-01/18-2141-Conf.

<sup>7</sup> ICC-01/14-01/18-2144-Conf.

<sup>8</sup> ICC-01/14-01/18-2160.

of *prima facie* relevance of the item (ii); content of the video or its translation is irreconcilable with the Prosecution's description and/or relevance (iii); items are duplicative of other evidence (iv); item is an indissociable annex of P-1819's statement (v).

*i) On the absence of translation provided by the Prosecution*

12. The Defence opposes the submission of two items<sup>9</sup> on the basis that the Prosecution failed to produce a translation of the content in Sango, which is a non-working language of the Court.
13. It is recalled that the Chamber, in its *Decision on the Prosecution's Request to Submit Audio-Visual Items Without Translations*, found that while "[i]t 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".<sup>10</sup> This decision is in line with Regulation 39 (1) of the Regulations of the Court which provides that all materials filed with the Registry shall be in English or French, if it is not the participant shall attach a translation.
14. Specifically, the Defence opposes the submission of item #44 CAR-OTP-2065-1925 in light of the absence of translation from Sango to either French/English and noting that the Prosecution relies on the audio of this item in its description column. Moreover, it is highlighted that this video was comprised in the Prosecution's request for delayed disclosure of audio/video translations,<sup>11</sup> but that it failed to disclose any translation by the 17 November 2023 deadline as set by the Chamber.<sup>12</sup> The Prosecution justified this lack of translation by

<sup>9</sup> CAR-OTP-2065-1925 and CAR-OTP-2065-3564.

<sup>10</sup> ICC-01/14-01/18-2160, para. 23.

<sup>11</sup> ICC-01/14-01/18-2141-Conf-AnxC, page 4, item #47.

<sup>12</sup> See paragraph 9 above.

indicating that the speech in Sango was unintelligible,<sup>13</sup> position which is untenable in light of their provision of a full overview of the Sango conversion in the description column.

15. Similarly, the Defence opposes the submission of item #393 CAR-OTP-2065-3564 due to the absence of any translation of this video by the Prosecution. The lack of translation is particularly prejudicial as the person [REDACTED] in the video speaks solely in Sango and the Prosecution relies on his answers to aver that his speech is probative of *“the policy of targeting the Muslim population, and their assimilation/conflation of the Muslims with the Seleka”*.
16. The Defence recalls its previous submissions with regard to the Prosecution’s inexcusable delays to provide translations for those videos, despite being in their possession for over six years,<sup>14</sup> and the issues caused to the Defence by such a late provision.<sup>15</sup> It is also recalled that the Chamber 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 (emphasis added)”*.<sup>16</sup> Despite those clear instructions, the Prosecution failed to disclose the translation of the two aforementioned videos. In light of the advanced stage of the proceedings, the Defence submits that the Prosecution should be precluded from seeking any future submission of either CAR-OTP-2065-1925 or CAR-OTP-2065-3564, having been given an extended opportunity to provide the necessary translations.
17. Consequently, as the provision of such translation is a precondition to the submission of the videos, the Defence requests the Chamber to reject the

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<sup>13</sup> ICC-01/14-01/18-2211, para. 3.

<sup>14</sup> ICC-01/14-01/18-2144-Conf, paras 21-26.

<sup>15</sup> ICC-01/14-01/18-2144-Conf, paras 27-34.

<sup>16</sup> ICC-01/14-01/18-2160, para. 29.

submission of items CAR-OTP-2065-1925 and CAR-OTP-2065-3564 with prejudice.

*ii) On the lacks of prima facie relevance of 25 videos*

18. The Defence opposes the submission of 25 videos<sup>17</sup> which lack any *prima facie* relevance for the adjudication of the case (“25 Videos”). The opposition by the Defence extends, when applicable, to any transcription and/or translation accompanying the 25 Videos.
19. The Defence is cognizant of the Chamber’s position that at this stage it “*will only consider whether the Items are subject to any statutory exclusionary rules, including procedural bars, obstacles, and preconditions*” while “*the participants’ arguments on the relevance and probative value*” are to be considered during its deliberation.<sup>18</sup> The Defence however notes that the Chamber has previously rejected the submission of items on the basis that “*they are not prima facie relevant to the contextual elements of the charged crimes*”.<sup>19</sup>
20. The Defence argues that submission of the 25 Videos should be dismissed as they lack *prima facie* relevance concerning any aspect of the current case. Their rejection at this stage will prevent the record from being clogged by a multitude of irrelevant videos, that the Chamber and Parties would have to potentially re-analyze later on during the trial, and waste precious time and resources doing it. The Defence provides detailed submissions of each of the 25 Videos in its Annex, but will provide below some examples to illustrate the necessity of an intervention by the Chamber.

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<sup>17</sup> CAR-OTP-2065-0448 ; CAR-OTP-2065-1127 ; CAR-OTP-2065-1135; CAR-OTP-2065-1035 ; CAR-OTP-2065-1837 ; CAR-OTP-2065-0452 ; CAR-OTP-2065-0712 ; CAR-OTP-2065-1119 ; CAR-OTP-2065-0939 ; CAR-OTP-2065-1985 ; CAR-OTP-2065-1071 ; CAR-OTP-2065-0384 ; CAR-OTP-2065-1921; CAR-OTP-2065-0943; CAR-OTP-2065-2685 ; CAR-OTP-2065-2396 ; CAR-OTP-2065-3488 ; CAR-OTP-2065-4974 ; CAR-OTP-2065-4745 ; CAR-OTP-2065-4737 ; CAR-OTP-2065-3500 ; CAR-OTP-2065-3496 ; CAR-OTP-2065-4717 ; CAR-OTP-2065-5034 ; CAR-OTP-2065-5042.

<sup>18</sup> See as an example, ICC-01/14-01/18-2199-Conf, para. 4.

<sup>19</sup> See as an example, ICC-01/14-01/18-2199-Conf, para. 23.

21. For example, item #77 CAR-OTP-2065-1127, merely depicts, as per the Prosecution's description "*the lower part of YEKATOM walking in the bush*". No words are exchanged, no face is visible, no location is recognizable. The Defence fails to understand how seeing "the lower part" of Mr Yekatom, from behind, walking during 26 seconds is relevant to show "*the organisation of YEKATOM's Group*" as alleged by the Prosecution.
22. A similar example concerns item #91 CAR-OTP-2065-1035, which is a 3 seconds focused shot of Mr Yekatom's hand holding a cross. The Prosecution alleges that this video would be probative of Mr Yekatom's "*leadership within his group*". The Prosecution makes no further link or explanation as to how it came to this conclusion from CAR-OTP-2065-1035.
23. The Defence similarly opposes the submission of item #483 CAR-OTP-2065-4717 which merely depicts a piece of wood, held by an unknown individual (as only his hands and feet are visible), in a place that cannot be determined from the video. The Prosecution avers that the video would show "*the type of weapons used in YEKATOM's group*" while from the video it cannot be confirmed that (i) the piece of wood is indeed a weapon and (ii) that it is someone from Mr Yekatom's group holding it.
24. Those few examples illustrate the need for the Chamber to intervene as regards to the 25 Videos in order to prevent the submission of grossly irrelevant material in the case record. The Defence respectfully requests the Chamber to bar the submission of those 25 Videos on the basis that their content, despite the Prosecution's overexaggerated arguments, is not *prima facie* relevant for the adjudication of the case.



***iii) On the items for which the Prosecution's submissions are irreconcilable with their content and/or translation***

25. Within the current submission approach, the Chamber at this stage *“will only consider whether the Items are subject to any statutory exclusionary rules, including procedural bars, obstacles, and preconditions”*.<sup>20</sup> In the Initial Directions on the Conduct of the Proceedings the Chamber indicated that *“[b]ar table applications shall contain (i) a short description of the item (and/or relevant portions therein); and (ii) a short description of the asserted relevance and probative value pursuant to Rule 64(1) of the Rules”*.<sup>21</sup> The Chamber explained that those instructions were fulfilled *“as long as the said ‘short description’ is sufficiently clear and applicable to the item”*.<sup>22</sup>
26. The Defence opposes the submission of 12 videos<sup>23</sup> for which the Prosecution’s description is acutely different from the actual content of the video and/or its translation (the “12 Videos”). The Defence’s objection in this regard extends, when applicable, to any transcription and/or translation accompanying the 12 Videos.
27. The discrepancies between the content of the 12 Videos and the description proffered by the Prosecution are of such significance to render the two irreconcilable such that the descriptions relied on by the Prosecution are useless. The Prosecution’s failure to provide accurate descriptions which line up to the 12 Videos clearly falls foul of the Chamber’s instruction to provide a short description *“sufficiently clear and applicable to the item”* and warrants intervention by the Chamber at this stage.

<sup>20</sup> See as an example, ICC-01/14-01/18-2199-Conf, para. 4.

<sup>21</sup> ICC-01/14-01/18-631, para. 62.

<sup>22</sup> ICC-01/14-01/18-1359, para. 8.

<sup>23</sup> CAR-OTP-2065-0440 ; CAR-OTP-2065-1937 ; CAR-OTP-2065-1929 ; CAR-OTP-2065-2033 ; CAR-OTP-2065-1941 ; CAR-OTP-2065-1953 ; CAR-OTP-2065-0528 ; CAR-OTP-2065-3688 ; CAR-OTP-2065-5412 ; CAR-OTP-2065-4069 ; CAR-OTP-2065-4484 ; CAR-OTP-2065-3794.

28. As an example, for item #306, CAR-OTP-2065-5412, the Prosecution's description is entirely different from its own official translation, CAR-OTP-00000825. Indeed, in this translation the Prosecution's allegation that *"The Anti-Balaka men continue to talk about cutting (with their machete), slaughtering and dismembering DJOTODIA and his men. They're saying the country doesn't belong to an Arab and that an Arab hasn't got any right to command or to lead them. This is not CHAD"* is totally absent. Nothing close to this alleged discussion is mentioned in the video. Instead, the translation shows a discussion regarding the location of a base.
29. As the Prosecution's description of the video is irreconcilable with the official translation, the Prosecution's asserted relevance that the video *"shows YEKATOM's Group's adherence to the policy of targeting the Muslim population, their assimilation/conflation of the Muslims with the Seleka"* is equally entirely erroneous and inapplicable.
30. Another example is item #83, CAR-OTP-2065-1937. While the Prosecution alleges in its description that *"[a]n unidentified voice says that they should be fast and move because the French already know where they are located"*; the translation<sup>24</sup> shows that this sentence is never pronounced in the video. There is no mention of the group being located by the French or of the need to move fast. The translation nullifies both the description of the Prosecution, but also its relevance regarding the group's capacity to gather intelligence.
31. A further example is item #460, CAR-OTP-2065-4069. The Prosecution alleges in its description that *"[REDACTED]"*, which in turn is used in the relevance to the video which would show *"[REDACTED]"*. However, the translation disclosed on 17 November 2023<sup>25</sup> does not support the Prosecution's claims as

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<sup>24</sup> CAR-OTP-00002194.

<sup>25</sup> CAR-OTP-00002172.

the conversation, in reality, only relates to the collection of water; [REDACTED].

32. It can only be noticed in those examples, like for all of the 12 Videos, that the Prosecution's description is so different from the content of the video, and from the Prosecution's own translation, that it cannot be concluded that they are applicable to the item. To the contrary, they are so irreconcilable that they mislead the Chamber and Parties as to the content of those items.
33. Consequently, in light of the above, the Defence respectfully requests the Chamber to reject the submission of the 12 Videos on the basis that the precondition of providing a short description applicable to the item is not met and that in turn, the *prima facie* relevance of each item cannot be deciphered.

*iv) On the videos that are duplicative*

34. At the outset, the Defence highlights that the 3 videos<sup>26</sup> opposed on this ground are not duplicative of other videos *per se*. A holistic assessment of the other videos present in the Prosecution's Request however demonstrates that the content of those videos are essentially the same as other ones.
35. This is the case of video CAR-OTP-2065-4757, which shows exactly the same as CAR-OTP-2065-4765, *i.e* [REDACTED]. This is also the case of the 2 seconds long video CAR-OTP-2065-4855 which is merely the abrupt ending of video CAR-OTP-2065-4851.
36. As for video CAR-OTP-2065-5074, the Prosecution is using it to show the type of weapons available to Mr Yekatom's group, the description being that two AK47 are visible. The Defence however notes that video CAR-OTP-2065-5074 is filmed during night time, that it is difficult to discern any weapons. As the Prosecution's intention is to show the presence of two AK47s, which can be

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<sup>26</sup> CAR-OTP-2065-4757 ; CAR-OTP-2065-5074 ; CAR-OTP-2065-4855.

seen in other videos filmed during daylight, the Defence is of the view that CAR-OTP-2065-5074 can be considered as duplicative from other evidence, as well as being of a lower quality.

37. In the spirit of judicial economy, and to prevent the case record from being clogged by material that are duplicative of over evidence, the Defence respectfully requests the Chamber to reject the submission of videos CAR-OTP-2065-4757; CAR-OTP-2065-5074 and CAR-OTP-2065-4855.

*v) On the item intrinsically linked to P-1819's statement*

38. The Defence opposes the submission of item #546 CAR-OTP-2065-0037. Indeed, the submitted item consists of an annex of P-1819's statement. As the statement is not in evidence, there is no context available as to how this sketch was produced, nor is there any evidence as to what each number represents.
39. The item is inextricable from P-1819's statement, however this witness' statement is not part of the case record as all avenues for its submission have been exhausted.
40. Consequently, the Defence submits that item CAR-OTP-2065-0037, in itself, lacks any *prima facie* relevance and its submission should be rejected.

**II. On the serious deficiencies affecting the Prosecution's Request**

*i) On the issues affecting the dates provided by the Prosecution*

41. The Defence first wishes to bring to the Chamber's attention that the dates mentioned by the Prosecution in the description column of the annex to the Request should be considered with great caution. The Prosecution provided an explanation<sup>27</sup> as to how it estimated those dates, however this explanation relies on P-1819's statement which is not in evidence. Irrespective of its basis, the

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<sup>27</sup> ICC-01/14-01/18-2057-Conf-AnxA, page 1, fn. 1.

Prosecution's explanation by itself demonstrates that it is subjective and thus subject to errors of judgement.

42. The Defence notes that a portion of the dates provided by the Prosecution are obviously erroneous. As an example, the Prosecution avers that items #37 CAR-OTP-2065-0680, #38 CAR-OTP-2065-2177 and #66 CAR-OTP-2065-1917 are all filmed in the same timeframe<sup>28</sup> while the three videos are obviously of very distinctive moments. Indeed, in one video Mr Yekatom is [REDACTED]; in the second other one he [REDACTED]; while in the third one he is in [REDACTED].
43. For clarity, and in view of presenting those submissions in a *bona fide* manner, the Defence wishes to inform the Chamber that those mistakes were noticed almost exclusively on videos which were filmed in [REDACTED] and wrongly attributed the date of [REDACTED]. The Defence did not notice mistakes to videos that were labelled by the Prosecution as being filmed between [REDACTED].
44. Consequently, the Defence respectfully submits that in its assessment of the videos submitted into evidence, the Prosecution's suggested dates should be taken into account with great caution.

*ii) On the serious errors and mischaracterizations of the content of the video and/or their translation in the Prosecution's submissions*

45. The Defence is greatly concerned by the number of obvious erroneous assertions made in the Prosecution's Request. Their accumulation throughout the annex of the Prosecution's Request paints an inaccurate and misleading image of the evidence presented, as such the Defence submits that all the assertions made in the Prosecution's annex should be assessed with great caution and not be taken at face value.

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<sup>28</sup> Prosecution's description indicates for both videos : "[REDACTED]"

46. Some of those inaccuracies relate to the identification of individuals, some of them unexplainable. One of such mistakes of identities relate to item #382, CAR-OTP-2065-3384, in which the Prosecution avers that “YEKATOM is walking at the front of the group followed by [REDACTED]” and that the video “shows YEKATOM’s leadership”. However, Mr Yekatom is absent from the video and is certainly not one of the two individuals walking at the front, from 0 to 2 sec. The person that the Prosecution mistakenly identified as Mr Yekatom, appears to be Mr Freddy Ouandjo alias Coeur de Lion.
47. As already detailed in the section above,<sup>29</sup> the content of some videos and their translations are misrepresented in the Prosecution’s description and/or asserted relevance. In addition to the examples developed before, the Defence wishes to bring a few other instances to the Chamber’s attention, which are indicative of the seriousness of the deficiencies contained in the Prosecution’s submissions:
- Item #179 CAR-OTP-2065-1953 : The Prosecution alleges that the video is relevant to show “the group’s intention to systematically target the Muslim population” despite the fact that at no point is the Muslim population mentioned. The Prosecution then misrepresents the content of the conversation by attributing to two different individuals the same sentence in order to build a narrative, which is in contradiction with the Prosecution’s own translation. Finally, the Prosecution indicates that “YEKATOM says that they can still attack even if that means they will only use stones or maces”; however, the translation<sup>30</sup> does not show Mr. Yekatom saying such a sentence at any point in the video.
  - Item #505 CAR-OTP-2065-4504 : The Prosecution alleges in its description that “One of the men of YEKATOM tells him that they have ammunitions and that

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<sup>29</sup> See above paragraphs 28 to 33.

<sup>30</sup> CAR-OTP-2118-5650.

*they are waiting for the green light ”, while official translation provided states the exact opposite for this assertion : “nous n’avons pas de munitions” at line 44.<sup>31</sup> The opposite.*

- Item #92 CAR-OTP-2065-0468 : The Defence notes that in its description the Prosecution alleges that “[o]ne of the Anti-Balaka suggests calling the Chief of Staff”. The newly disclosed translation<sup>32</sup> makes no mention at all of either the necessity to call someone, or of a so called “chief of staff”.
- Item #262 CAR-OTP-2065-2907 : The Prosecution relies on a Sango discussion to aver that Mr Yekatom is “*in the process of quartering all the members to cause insecurity*”. However, the newly disclosed translation<sup>33</sup> demonstrate that Mr Yekatom did not say such a thing, instead he said “*je vais cantonner tous les gars à cause de l’insécurité*”. By common sense it should have appeared to the Prosecution that it is illogical to quarter individuals to cause insecurity, as quartering has the opposite result. Of itself, this should have led the Prosecution to double-check their assertion before presenting it to the Chamber.

48. There are also important errors of interpretation as to the content of a video, such as for Item #284 [REDACTED]. Indeed, the Defence notes with concern the Prosecution’s description that “[REDACTED]” as the person in question talking is none other that [REDACTED] (P-0487).<sup>34</sup> It is also recalled that [REDACTED] testified to the effect that [REDACTED].<sup>35</sup> As [REDACTED] is the one talking, and that the video is filmed at a time where Mr Yekatom just established himself at the Yamwara base, the fact that [REDACTED] is a logical explanation to what is being said.

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<sup>31</sup> CAR-OTP-2127-7235.

<sup>32</sup> CAR-OTP-00002203.

<sup>33</sup> CAR-OTP-00002169.

<sup>34</sup> **P-0487**: ICC-01/14-01/18-T-206-CONF-FRA ET from 11:43:52 to 11:48:08 in which P-0487 recognizes himself in video [REDACTED].

<sup>35</sup> [REDACTED].

49. The Prosecution's error of interpretation could be linked to the poor quality of the translation <sup>36</sup> as the sentence regarding [REDACTED] is translated : "[REDACTED]". "[REDACTED]" becomes « [REDACTED] » and the term "[REDACTED]" becomes "[REDACTED]". More importantly, the translation indicates « [REDACTED] »; at no point there is mention of asking for "[REDACTED]" as alleged by the Prosecution.
50. The Prosecution's relevance for this item, to the effect that the video shows Mr Yekatom's *"ability to decide on the freedom of [REDACTED]"*, should be entirely dismissed as (i) there is no mention of [REDACTED]; (ii) it is [REDACTED] who is speaking about [REDACTED], not Mr Yekatom; and (iii) [REDACTED] affirms that he is going to get the person out, i.e. it is an affirmation and not a question to Mr Yekatom.
51. Finally, the Defence also wishes to bring to the attention of the Chamber examples of significant quality issues of translations provided by the Prosecution:
- Item #356 CAR-OTP-2065-3576 : In the newly disclosed translation for this video <sup>37</sup> it is indicated that a sentence would have been pronounced by Mr Yekatom. However, it is grossly incorrect as (i) Mr Yekatom does not appear on the video, (ii) his voice is never heard at any point, (iii) Mr Yekatom does not appear in any of the other videos filmed at the approximate same time as this one.
  - Item #398 CAR-OTP-2065-4500: A comparison between the recently disclosed Prosecution translation, <sup>38</sup> and the translation provided by the Defence in January 2023<sup>39</sup> shows that some interventions are omitted in the Prosecution's translation. Moreover, the name "FOMAC Tchadien" is transcribed as

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<sup>36</sup> CAR-OTP-00000823.

<sup>37</sup> CAR-OTP-00002221.

<sup>38</sup> CAR-OTP-00002224.

<sup>39</sup> CAR-D29-0006-1335.



“POUMASTCHADIEN”, which indicates that not even a summary check was done to prevent such obvious mistakes.

52. The examples mentioned above are just the tip of the iceberg of the serious deficiencies affecting the Prosecution’s annex. The Defence has developed for each video, in its own Annex, specific submissions that will highlight those errors, omissions, mischaracterizations, misidentifications and mistranslations.

### III. On specific submissions as regards to the content of some videos

#### *i) On the misidentification of member of other groups as member of that of Mr Yekatom*

53. The Defence highlights the importance of a video, CAR-OTP-2065-5292, which is not included in the Prosecution’s Request but is key to the understanding [REDACTED] are of a different group than Mr Yekatom’s one.
54. Indeed, in video CAR-OTP-2065-5292 Mr Yekatom wonders if they will have time to go “*là bas chez les Anti-Balaka*”.<sup>40</sup> Then in Sango an individual asks [REDACTED]; Mr Yekatom then answers that “[REDACTED]” before organizing [REDACTED].
55. This discussion in CAR-OTP-2065-5292 clearly shows that Mr Yekatom is making a distinction between his group and the Anti-Balaka, and that he plans to [REDACTED]. This clearly indicates that the individuals [REDACTED] are not part of Mr Yekatom’s group.
56. A few hours later, video #303 CAR-OTP-2065-5392 is filmed.<sup>41</sup> In this video, at 56 seconds, an individual [REDACTED]. During [REDACTED] he explains that his group comes from Bossangoa. Moreover, the surroundings do not correspond to what can be seen on videos or photographs taken at, or near, the

<sup>40</sup> The Defence hereby informs the Chamber and Parties that it will disclose a translation of video CAR-OTP-2065-5292. It intends to submit this video, its translation and its metadata through a future Defence Bar Table motion as those documents are not yet submitted in evidence.

<sup>41</sup> See a comparison of their Metadata files, row “create date”. For video CAR-OTP-2065-5292, metadata CAR-OTP-2065-7808. For video CAR-OTP-2065-5392, metadata CAR-OTP-2065-7836.

Yamwara School Base [REDACTED]. This is another indication that this group is distinct from Mr Yekatom's group.

57. The same individual in CAR-OTP-2065-5460 is also visibly leading [REDACTED].
58. The Defence thus submits that [REDACTED], totally distinct from Mr Yekatom, to [REDACTED]. The distinct nature of the group can also be deduced from the fact that during the long march to those individuals, [REDACTED], none of the usual associates of Mr Yekatom such as Mr Momokama, Mr Beina, Mr Dolowaye etc. are present.
59. While it is the Prosecution's burden to demonstrate that the individuals appearing in videos are members of Mr Yekatom's group, the Defence argues that the above submissions are sufficient to determine that the individuals appearing in video #303 CAR-OTP-2065-5392 are not part of Mr Yekatom's group.
60. Consequently, the individuals visible in the videos following CAR-OTP-2065-5392 are also not part of Mr Yekatom's group.<sup>42</sup> Therefore, each time the Prosecution avers that those videos are relevant to show "*YEKATOM's Group's adherence to the policy of targeting the Muslim population, their assimilation/conflation of the Muslims with the Seleka*", the Chamber should dismiss the argument as unfounded, due to the incorrect identification of Mr Yekatom's group.

***ii) On the Prosecution's attempt to allege the presence of child soldiers***

61. The Defence notes the Prosecution's attempt to revive the defects concerning fabrication of evidence and witness interference within Count 29, by alleging

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<sup>42</sup> Item #1 CAR-OTP-2065-5572 ; Item #2 CAR-OTP-2065-5575 ; Item #3 CAR-OTP-2065-5593 ; Item #4 CAR-OTP-2065-5547 ; Item #306 CAR-OTP-2065-5412 ; Item #316 CAR-OTP-2065-5470 ; Item #319 CAR-OTP-2065-5404 ; Item #356 CAR-OTP-2065-5444 ; Item #399 CAR-OTP-2065-5436 ; Item #464 CAR-OTP-2065-5440.

the presence of children in the videos which submission are sought in the Request.

62. As an example, in Item #56 CAR-OTP-2065-0540, the Prosecution mentions that *“Two little boys, who are joined by two other ones, follow the same road as the Anti-Balaka. They have machete in their hands and are talking about pineapples as if they are looking for them”*; prompting to aver in the relevance that the video *“shows the presence of children in YEKATOM’s Group”*.
63. However, the context of other videos within this same timeframe <sup>43</sup> demonstrates that the group is in the immediate proximity of the village of [REDACTED] where around two hundred persons are living per the Chief’s [REDACTED]. As such the presence of villagers, including children (see #58 CAR-OTP-2065-0672), is not extraordinary and nothing corroborates the claim that those individuals are part of the group. In fact, the absence of interaction and the fact they do not stop with the elements changing shoes is a sufficient indication that they are not part of the group.
64. Moreover, the fact that they have machetes cannot solely be used as an indicia of their belonging to the group, indeed a machete is a tool widely used daily, and by a wide range of ages, when living in remote part of CAR such as this one.<sup>44</sup> The fact, as the Prosecution indicates, that they talk about looking for food logically explains the fact that they have a machete in their possession. Moreover, even if it was believed those individuals are part of the group, they appear briefly in the frame in a manner that is incompatible with a firm assessment of their age as under 15 years old.
65. Another attempt by the Prosecution to salvage Count 29 was done through Item #299 CAR-OTP-2065-3480. For this video the Prosecution alleges that *“the boy*

<sup>43</sup> See as an example CAR-OTP-2065-0580

<sup>44</sup> See as an example P-1576 : ICC-01/14-01/18-T-239-CONF-FRA ET at 11:34:21 : « Je n'ai pas le souvenir de voir, par exemple, un enfant qui aurait sûr, moins de... de 15 ans, avec une arme évidente quoi, sous-entendu, la machette — tout le monde possède un machette — , donc c'est difficile de la considérer comme une arme de... de combat, puisque c'est un outil aussi qui sert à la vie de tous les jours ».

*standing behind the caporal looks younger than 15 years old*” which leads to the asserted relevance that the videos show the presence of child soldiers. However, the individual in question is a woman, not a boy, and it is the same person that the Prosecution identified as “[REDACTED]” in its description of video #288 CAR-OTP-2065-4733 (around 42 second of the video, the two girls wearing the same beanie). It is also the same woman filmed, with the same beanie, in videos #300 CAR-OTP-2065-4316 and #414 CAR-OTP-2065-4320. Those other videos clearly show that this woman is not a child under 15 years of age.

66. This mistake from the Prosecution is demonstrative of the lack of due diligence in the manner it has handled and analyzed its evidence as regards to Count 29; and more generally of all of the evidence it intends to submit through the present Bar Table Request.

## **CONCLUSION**

67. In light of the above, and as developed in section I, the Defence respectfully requests the Chamber to reject the submission of 43 items into evidence, and, when applicable, reject the submission of their accompanying transcriptions and translations.
68. In addition, the Defence respectfully requests that the Chamber recognize as formally submitted three Defence’s translations that relate to video submitted by the Prosecution in the present request.<sup>45</sup>
69. The Defence notes the Prosecution’s addition of Annex B to its Request, which relates to 51 compilations of videos “intended to facilitate the digestion of P-1819’s evidence”.<sup>46</sup> The Defence highlights that the Prosecution is not seeking submission of those compilations into the case file, and that from their title it would appear that they encompass more videos than the ones included in the

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<sup>45</sup> CAR-D29-0006-1351 (Translation of #192 CAR-OTP-2065-2073) ; CAR-D29-0006-1317 (Translation of #381 CAR-OTP-2065-4689) ; CAR-D29-0006-1335 (Translation of CAR-OTP-2065-4500).

<sup>46</sup> ICC-01/14-01/18-2057-Conf, para. 7.

Request. Consequently, those compilations should be disregarded by the Chamber and each video object of the Prosecution's Request analysed independently.

### **CONFIDENTIALITY**

70. The present response is filed on a confidential basis corresponding to the classification of the Request and due to the references to information that refers to the identity of protected witnesses. Annex A is also classified as confidential as it depicts information that would reveal the identity of several witnesses. A public redacted version will be filed in due course.

### **RELIEF SOUGHT**

71. In light of the above, the Defence respectfully requests Trial Chamber V to:

**REJECT** the submission of items CAR-OTP-2065-1925 ; CAR-OTP-2065-3564 ; CAR-OTP-2065-0448 ; CAR-OTP-2065-1127 ; CAR-OTP-2065-1135; CAR-OTP-2065-1035 ; CAR-OTP-2065-1837 ; CAR-OTP-2065-0452 ; CAR-OTP-2065-0712 ; CAR-OTP-2065-1119 ; CAR-OTP-2065-0939 ; CAR-OTP-2065-1985 ; CAR-OTP-2065-1071 ; CAR-OTP-2065-0384 ; CAR-OTP-2065-1921; CAR-OTP-2065-0943; CAR-OTP-2065-2685 ; CAR-OTP-2065-2396 ; CAR-OTP-2065-3488 ; CAR-OTP-2065-4974 ; CAR-OTP-2065-4745 ; CAR-OTP-2065-4737 ; CAR-OTP-2065-3500 ; CAR-OTP-2065-3496 ; CAR-OTP-2065-4717 ; CAR-OTP-2065-5034 ; CAR-OTP-2065-5042 ; CAR-OTP-2065-0440 ; CAR-OTP-2065-1937 ; CAR-OTP-2065-1929 ; CAR-OTP-2065-2033 ; CAR-OTP-2065-1941 ; CAR-OTP-2065-1953 ; CAR-OTP-2065-0528 ; CAR-OTP-2065-3688 ; CAR-OTP-2065-5412 ; CAR-OTP-2065-4069 ; CAR-OTP-2065-4484 ; CAR-OTP-2065-3794 ; CAR-OTP-2065-4757 ; CAR-OTP-2065-5074 ; CAR-OTP-2065-4855, and CAR-OTP-2065-0037.

**REJECT** the submission of any translations and transcriptions related to the above mentioned items; and,

**SUBMIT INTO EVIDENCE** Defence's translation of CAR-D29-0006-1351 ;  
CAR-D29-0006-1317 and CAR-D29-0006-1335.

**RESPECTFULLY SUBMITTED ON THIS 4<sup>th</sup> DAY OF DECEMBER 2023**



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