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**No.: ICC-01/14-01/21
Date: 13 February 2024**

TRIAL CHAMBER VI

Before:

**Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Decision on the Prosecution's Applications for Submission of Documents from
the Bar Table**

Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 64, 67(1), 69 and 74(2) of the Rome Statute (the ‘Statute’), rules 63, 64, 68, and 77 of the Rules of Procedure and Evidence (the ‘Rules’), issues this Decision on the Prosecution’s Applications for Submission of Documents from the bar Table.

I. PROCEDURAL HISTORY

1. On 21 February 2022, the Chamber set 23 May 2022 as the final deadline for all Prosecution requests to introduce evidence other than through a witness.¹
2. On 9 March 2022, the Chamber issued the Directions on the Conduct of Proceedings (the ‘Directions on the Conduct of Proceedings’), in which it provided guidance as to how it would approach the submission and admission of evidence in this case.²
3. On 14 April 2022, the Prosecution submitted its first application to submit evidence from the bar table, pertaining to 148 items that were obtained from the *Ministère de la Sécurité, de l’émigration-immigration et de l’ordre public* (the ‘First Application’).³ The Defence responded to the First Application on 29 April 2022 (the ‘First Defence Response’).⁴
4. On 25 April 2022, the Prosecution submitted its second application to submit evidence from the bar table, pertaining to 61 items that were obtained from the Office of the Prime Minister of the Central African Republic (the ‘CAR’) (the

¹ Decision Setting the Commencement Date of the Trial and Related Deadlines, 21 February 2022, [ICC-01/14-01/21-243](#).

² Directions on the Conduct of Proceedings, 9 March 2022, [ICC-01/14-01/21-251](#), paras 16-21.

³ Public Redacted Version of “Prosecution’s First Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, 21 April 2022, [ICC-01/14-01/21-279-Red](#) (a confidential version was filed on 21 April 2022, ICC-01/14-01/21-279-Conf).

⁴ Version publique expurgée du « Corrigendum de la « Réponse de la Défense à la « Prosecution’s First Application for Submission of Documents from the Bar Table Pursuant to Article 64(9) » (ICC-01/14-01/21-279-Conf) déposée le 14 avril 2022 », 9 May 2022, [ICC-01/14-01/21-292-Corr-Red](#). A corrigendum of the First Defence Response was filed on 3 May 2022. A confidential version of the First Defence Response was filed on 29 April 2022, ICC-01/14-01/21-292-Conf.

‘Second Application’).⁵ The Defence responded to the Second Application on 6 May 2022 (the ‘Second Defence Response’).⁶ The Common Legal Representative of Victims also responded on 6 May 2022 (the ‘Victims’ Submissions’).⁷

5. On 26 April 2022, the Prosecution submitted its third application to submit evidence from the bar table, pertaining to 35 items that were obtained from the *Deuxième Bureau du service de renseignement militaire* at *Camp de Roux* (the ‘Third Application’).⁸ The Defence responded to the Third Application on 6 May 2022 (the ‘Third Defence Response’).⁹
6. On 17 May 2022, the Prosecution submitted its fourth application to submit evidence from the bar table, pertaining to 121 items that were obtained from particular email accounts (the ‘Fourth Application’).¹⁰ The Defence responded to the Fourth Application on 27 May 2022 (the ‘Fourth Defence Response’).¹¹
7. On 20 May 2022, the Prosecution submitted its fifth application to submit evidence from the bar table, pertaining to 156 items that were obtained during a

⁵ Public Redacted Version of “Prosecution’s Second Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, 26 April 2022, [ICC-01/14-01/21-285-Red](#) (a confidential version was filed on 25 April 2022, ICC-01/14-01/21-285-Conf).

⁶ Version publique expurgée de la « Réponse de la Défense à la « Prosecution’s Second Application for Submission of Documents from the Bar Table Pursuant to Article 64(9) » (ICC-01/14-01/21-285-Conf) déposée e 25 avril 2022 », 16 May 2022, [ICC-01/14-01/21-299-Red](#) (a confidential version was filed on 6 May 2022, ICC-01/14-01/21-299-Conf).

⁷ Public Redacted Version of “Victims’ response to the ‘Prosecution’s Second Application for Submission of Documents from the Bar Table pursuant to Article 64(9)’ (ICC-01/14-01/21-285-Conf)”, [ICC-01/14-01/21-298-Red](#) (a confidential version was filed on 10 May 2022, ICC-01/14-01/21-298-Conf).

⁸ Public Redacted Version of “Prosecution’s Third Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, 15 May 2022, [ICC-01/14-01/21-286-Red](#) (a confidential version was filed on 26 April 2022, ICC-01/14-01/21-286-Conf).

⁹ Version publique expurgée de la « Réponse de la Défense à la « Prosecution’s Third Application for Submission of Documents from the Bar Table Pursuant to Article 64(9) » (ICC-01/14-01/21-286-Conf) déposée le 26 avril 2022 », 16 May 2022, [ICC-01/14-01/21-301-Red](#) (a confidential version was filed on 9 May 2022, ICC-01/14-01/21-301-Conf).

¹⁰ Public Redacted Version of “Prosecution’s Fourth Application for Submission of Documents from the bar Table Pursuant to Article 64(9)”, 2 June 2022, [ICC-01/14-01/21-312-Red](#) (a confidential version was filed on 17 May 2022, ICC-01/14-01/21-312-Conf).

¹¹ Version publique expurgée de la « Réponse de la Defense à la ‘Prosecution’s Fourth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-312-Conf) déposée le 17 mai 2022 », 6 June 2022, [ICC-01/14-01/21-332-Red](#), (a confidential version was filed on 27 May 2022, ICC-01/14-01/21-332-Conf).

crime scene examination of the OCRB and the CEDAD (the ‘Fifth Application’).¹² The Defence responded to the Fifth Application on 2 June 2022 (the ‘Fifth Defence Response’).¹³

8. On 23 May 2022, the Prosecution submitted its sixth application to submit evidence from the bar table, pertaining to 153 items that were obtained from a variety of sources (the ‘Sixth Application’).¹⁴ The Defence responded to the Sixth Application on 13 June 2022 (the ‘Sixth Defence Response’).¹⁵
9. On 10 June 2022, the Prosecution filed its List of Witnesses (the ‘List of Witnesses’).¹⁶
10. On 13 June 2022, the Prosecution filed its List of Evidence (the ‘List of Evidence’).¹⁷

II. SUBMISSIONS

11. Given the volume and level of detail of the parties’ submissions, the Chamber will only summarise their main arguments. The Chamber has taken note of the detailed submissions in relation to the relevance, authenticity, probative value, and potential prejudice of individual items of evidence. Those detailed submissions will be considered in due course.

¹² Public Redacted Version of “Prosecution’s Fifth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, 27 May 2022, [ICC-01/14-01/21-321-Red](#) (a confidential version was filed on 20 May 2022, ICC-01/14-01/21-321-Conf).

¹³ Version publique expurgée de la « Réponse de la Defense à la ‘Prosecution’s Fifth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ », 8 June 2022, [ICC-01/14-01/21-342-Red](#) (a confidential version was filed on 2 June 2022, ICC-01/14-01/21-342-Conf).

¹⁴ Public Redacted Version of “Prosecution’s Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, 30 May 2022, [ICC-01/14-01/21-325-Red](#) (a confidential version was filed on 23 May 2022, ICC-01/14-01/21-325-Conf).

¹⁵ Version publique expurgée de la « Réponse de la Defense à la ‘Prosecution’s Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ » (ICC-01/14-01/21-325-Conf) déposée le 23 mai 2022, 27 June 2022, [ICC-01/14-01/21-360-Red](#) (a confidential version was filed on 13 June 2022, ICC-01/14-01/21-360-Conf).

¹⁶ Prosecution’s List of Witnesses, Proposed Order of Appearance, and Summaries of Anticipated Testimony, 10 June 2022, [ICC-01/14-01/21-354](#) + confidential annexes.

¹⁷ Prosecution’s List of Evidence, 13 June 2022, [ICC-01/14-01/21-358](#) + confidential annexes. On 31 January 2023, the Prosecution filed the Prosecution’s Updated List of Evidence, [ICC-01/14-01/21-588](#) + confidential annexes.

A. Summary of the Prosecution's Main Submissions

12. As noted in the Procedural History, the Prosecution submitted six applications. With the exception of the Sixth Application, these applications are focused on items of evidence that were obtained from a particular source. In particular:

- a. The First Application pertains to 148 items obtained from the *Ministère de la Sécurité, de l'émigration-immigration et de l'ordre public* (Ministry of Security).
- b. The Second Application pertains to 61 items obtained from the *Primature* (Office of the Prime Minister of the Central African Republic).
- c. The Third Application pertains to 35 items obtained from the archive of the *Deuxième Bureau du service du renseignement militaire* at Camp de Roux in Bangui.
- d. The Fourth Application pertains to 121 items obtained from four email accounts.
- e. The Fifth Application pertains to 156 items produced by the Forensic Services Section of the Office of the Prosecution as part of crime scene examinations of the OCRB and the CEDAD carried out in 2016 and 2017.
- f. The Sixth Application pertains to 153 items falling into different categories and obtained from various sources:

25 audio/video files;¹⁸

1 meeting report;¹⁹

27 media articles;²⁰

19 United Nations' documents;²¹

9 reports from NGOs and research institutes;²²

1 medical report from Médecins sans Frontières;²³

¹⁸ Annex A to [Sixth Application](#), items 1-25.

¹⁹ Annex A to [Sixth Application](#), item 26.

²⁰ Annex A to [Sixth Application](#), items 27-53.

²¹ Annex A to [Sixth Application](#), items 54-71.

²² Annex A to [Sixth Application](#), items 72-80.

²³ Annex A to [Sixth Application](#), item 81.

- 2 complaints with civil claims;²⁴
- 2 maps;²⁵
- 29 official CAR documents;²⁶
- 2 documents from the Bureau National de la Documentation;²⁷
- 1 document from the Tribunal de Grande Instance register;²⁸
- 2 documents from the Section de Recherches et d'Investigations;²⁹
- 2 hospital records;³⁰
- 29 victims' complaints;³¹
- 3 documents provided by the French authorities.³²

13. According to the Prosecution, all items are authentic and reliable and their submission would not cause prejudice to the Defence. The Prosecution submitted tables with each of its applications, containing a short explanation of the relevance, probative value and authenticity of each item. Below, the Chamber summarises the Prosecution's main arguments.

1. Relevance

14. In terms of relevance, the Prosecution has provided a succinct explanation for each item in the tables attached to the six Applications. Over 350 (i.e. around 60 percent) of the items contained in its Applications are claimed to be relevant to the contextual elements of war crimes and/or crimes against humanity. More specifically, the Prosecution claims that the items it wishes to tender via the bar table are relevant for the following issues:

²⁴ Annex A to [Sixth Application](#), items 82-83.

²⁵ Annex A to [Sixth Application](#), items 84-85.

²⁶ Annex B to [Sixth Application](#), items 1-29.

²⁷ Annex B to [Sixth Application](#), items 30-31.

²⁸ Annex B to [Sixth Application](#), item 32.

²⁹ Annex B to [Sixth Application](#), items 33-34.

³⁰ Annex B to [Sixth Application](#), items 35-36.

³¹ Annex B to [Sixth Application](#), items 37-65.

³² Annex B to [Sixth Application](#), items 66-68.

- a) the structure and functioning of the Seleka;³³
- b) the role and authority of Nouradine Adam;³⁴
- c) the control of the Seleka over institutions relevant to maintaining security and public order in the CAR government for the relevant period of the charges;³⁵
- d) the organisation of the parties to the conflict and the existence of ongoing armed hostilities;³⁶
- e) the targeting of members of the FACA;³⁷
- f) the targeting of certain neighbourhoods in Bangui;³⁸
- g) the Seleka operation in Boy Rabe in April 2013;³⁹
- h) the Seleka operation in Boy Rabe on 20-24 August 2013;⁴⁰
- i) the attack on the 7th arrondissement on 13 April 2013;⁴¹
- j) the PK-9 minibus incident;⁴²

³³ [First Application](#), paras 15-17, with reference to items 4, 5, 7-12, 17, 19, 21, 25, 27-35, 37-47, 49, 51-56, 60, 61, 62, 63, 65-67, 70-72, 75-78, 80, 81, 85, 86, 98, 99, 103, 108, 110, 111, 113, 119, 120, 121-128, 130-139, 141, 143-145; [Second Application](#), para. 11, with reference to items 11-14, 17, 50-51, 53, and 57-60; [Third Application](#), para. 4, with reference to items 2, 16, 30, 31, and 34.

³⁴ [First Application](#), paras 10-11, with reference to items: 4, 5, 7-12, 17, 19, 21, 25, 27, 28, 30-35, 37, 39, 40-42, 44, 48, 50-52, 54-57, 59-63, 71, 72, 77, 78, 80, 81, 98, 99, 103, 111, 119, 120, 121, 123, 134, 137, 138, 139, 141-145.

³⁵ [First Application](#), para. 13, with reference to all items.

³⁶ [First Application](#), para. 14, with reference to items 68, 69, 80-85, 87-94, 97, 100-102, 104, 106, 113, 115, 117, 118, 129, 140; [Second Application](#), paras 8-10, with reference to items 3, 5-9, 19-21, 23, 26-34, 36-42, 47, 52, 55, 56, and 61; [Third Application](#), paras 8-13, with reference to items 5-8, 11, 13-15, 17-23, 25, 27-29, and 32-33; [Fourth Application](#), paras 7-25; [Sixth Application](#), paras 9-10, with reference to items 1, 11, 15, 17, 20, 23, 26, 31, 35, 37-38, 41, 44-47, 49, 52, 54, 56, 59-61, 63-64, 67-68, 73, 75-77, 79-80, 84 from Annex A and items 3, 10, 14, 20, and 30-31 from Annex B. The Prosecution also claims that these items are corroborative of the expected testimony of witnesses P-0291, P-0312, P-0342, P-0349, P-0510, P-0884, P-0966, P-1167, P-1339, P-1420, P-1967, P-2105, P-2232, P-2328, and P-2563.

³⁷ [Second Application](#), para. 12, with reference to item 4.

³⁸ [Second Application](#), paras 13-17, with reference to items 15, 24-25, 44-46, 48.

³⁹ [Sixth Application](#), para. 12, with reference to items 9, 13, 27, 62, 71, 73, 81, and 83 from Annex A and items 4-5, 37, 43, 51-54, 59-60, and 64. The Prosecution also claims that these items support the expected testimony of witnesses P-0100, P-0119, P-0342, P-1263, P-1264, P-1297, P-1313, P-1420, P-1524, P-1825, and P-1970.

⁴⁰ [Sixth Application](#) para. 13, with reference to items 39-40, 42-43, 73 and 76 from Annex A and items 49, 52, 56, and 62 from Annex B. The Prosecution also claims that these items support the expected testimony of witnesses P-1263, P-1297, P-1424, P-1427, P-1523, P-1825, P-2042, and P-2087.

⁴¹ [Sixth Application](#), paras 14-15, with reference to items 5 and 29 from Annex A and items 4-6, 38-42, and 57 from Annex B. The Prosecution also claims that these items corroborate the expected testimony of witnesses P-0312, P-0881, P-0882, P-1808 and P-2386.

⁴² [Sixth Application](#), paras 16-17, with reference to items 34, 50, 55, 68, 70, and 72 from Annex A and items 45 and 66 from Annex B. The Prosecution also claims that these items corroborate the expected testimony of witnesses and P-0529 and P-2573.

- k) the layout of the OCRB compound;⁴³
- l) the layout of the CEDAD compound;⁴⁴
- m) the role and conduct of Mr Said after the time relevant to the charges;⁴⁵
- n) the crimes charged in Incident 29(d) of the Confirmation Decision;⁴⁶
- o) the crimes charged in Incident 29(h) of the Confirmation Decision;⁴⁷ and
- p) the crimes charged in Incident 29(j) of the Confirmation Decision.⁴⁸

2. Authenticity

15. To establish the authenticity of the items contained in the First, Second, and Third Applications, the Prosecution has submitted a number of investigation reports, explaining when and how the items were collected by the Prosecution.⁴⁹ In relation to the Fifth Application, the Prosecution submits two expert reports, which explain how and when the items (photos and videos) were produced.⁵⁰ In relation to the Sixth Application, the Prosecution refers to two investigation reports, which relate to only a few of the items contained in the Application.⁵¹ As will be noted below, the Defence has itself identified further investigation reports in relation to some – but not all – of the other items.
16. In relation to the Fourth Application, the Prosecution claims that all items are self-authenticating, as they were obtained from an ‘objective primary source’

⁴³ [Fifth Application](#), paras 8-10, with reference to P-0338, P-0481, P-0547, P-0787, P-1167, P-1737, P-2105, P-2161, P-2179, P-2400, P-2478, P-2563, and P-3064.

⁴⁴ [Fifth Application](#), paras 11-13, with reference to P-0662, P-0664, and P-2105.

⁴⁵ [Second Application](#), para. 18, with reference to items 22 and 49.

⁴⁶ [Sixth Application](#), para. 19, with reference to items 53 and 69 from Annex A.

⁴⁷ [Sixth Application](#), para. 20, with reference to items 32-33, 36, and 71 from Annex A and items 32 and 48 from Annex B.

⁴⁸ [Sixth Application](#), para. 21, with reference to item 51 from Annex A and items 35 and 46 from Annex B.

⁴⁹ In relation to the items obtained from the *Ministère de la Sécurité, de l'émigration-immigration et de l'ordre public* (the ‘Ministry of Security’): CAR-OTP-2122-4152; CAR-OTP-2135-2461; In relation to items obtained from the *Primature* (Office of the Prime Minister of the Central African Republic): CAR-OTP-2100-0289 and CAR-OTP-2118-8568; In relation to items obtained from the archive of the *Deuxième Bureau du service du renseignement militaire* at *Camp de Roux* in Bangui: CAR-OTP-2127-8222.

⁵⁰ In relation to items produced during the examination of the OCRB site: CAR-OTP-2062-0743 (English translation: CAR-OTP-2118-3740); In relation to items produced during the examination of the CEDAD site: CAR-OTP-2058-0264 (English translation: CAR-OTP-2118-3978).

⁵¹ In relation to items obtained from the *Section de Recherches et d'Investigations*: CAR-OTP-2124-0316; In relation to items obtained from the *Commission Mixte d'Enquête* (CMDE): CAR-OTP-2005-0448.

which maintained a contemporaneous and complete record as part of its regular business activity.⁵² In terms of attributing the accounts to the individuals identified by the Prosecution, the latter refers to: (i) the names of the accounts; (ii) the content of the communications; and (iii) information provided by the service provider, including account management tools, subscriber details and contact lists.⁵³

3. *Reliability*

17. In terms of reliability of the information contained in the items of evidence, the Prosecution argues that they were obtained from ‘objective and primary’ sources.⁵⁴ The chain of custody also shows that many of the items were stored in the archives of the entity from which they were retrieved, where the originals remain.⁵⁵ In relation to the Fourth Application, the Prosecution points out that the email service provider maintained contemporaneous and complete records as part of its regular course of business and was operating under domestic regulation.⁵⁶
18. The Prosecution also claims that many items display indicia of reliability, such as headers, signatures, stamps, reference numbers, etc., and that several of the documents relate to ‘typical activities’ of the entities from which they were collected.⁵⁷ The detailed submissions for each item are contained in the tables annexed to the Applications.

4. *Prejudice*

19. In arguing that the accused suffers no prejudice from the submission of the items of evidence, the Prosecution points out that the Defence had sufficient notice to prepare. It also claims that the Defence will have the opportunity to address the

⁵² [Fourth Application](#), para. 27.

⁵³ [Fourth Application](#), para. 28, with reference to CAR-OTP-2080-1753 (for P-0876), CAR-OTP-2056-0371 (for P-0808, CAR-OTP-2126-2571 and CAR-OTP-2126-2573).

⁵⁴ [First Application](#), para. 19; [Second Application](#), para. 20; [Third Application](#), para. 16; [Fourth Application](#), para. 27; [Fifth Application](#), paras 14-15; [Sixth Application](#), paras 22-23.

⁵⁵ [First Application](#), para. 21 [Third Application](#), para. 18; [Fourth Application](#), para. 29.

⁵⁶ [Fourth Application](#), para. 27.

⁵⁷ [First Application](#), para. 20; [Second Application](#), para. 21; [Third Application](#), para. 17; [Fifth Application](#), paras 14-15; [Sixth Application](#), paras 22-23.

items with several Prosecution witnesses⁵⁸ and is free to call its own witnesses or introduce rebuttal evidence.

B. Summary of Main Defence Submissions

20. For the purposes of this decision, the Chamber will not set out the Defence's arguments and objections in detail. With very few exceptions,⁵⁹ the Defence asks the Chamber to reject all of the Prosecution's requests. It also asks the Chamber to use its discretion pursuant to paragraph 21 of the Directions on the Conduct of Proceedings and to rule on the admissibility of all the individual items immediately.⁶⁰ According to the Defence, the vast majority of items should be declared inadmissible, usually for a combination of reasons. The Chamber will outline the main reasons below:

1. General observations on the use of bar table motions

21. The Defence argues that the use of bar table motions negatively affects the principle of orality of criminal proceedings which, according to the Defence, requires that any matter of substance must be discussed orally during the trial, especially items of evidence.⁶¹ Accordingly, the Defence argues, the introduction of evidence other than through a witness must be the exception rather than the rule.⁶² It follows, according to the Defence, that: (i) the submission of evidence from the bar table should be reserved for uncontested issues;⁶³ (ii) evidence should not be introduced from the bar table when witnesses are available who can

⁵⁸ [First Application](#), para. 22, with reference to P-0291, P-0338, P-0349, P-0435, P-0787, P-1167, P-2105, P-2240, P-2328, P-2478, P-2563; [Second Application](#), para. 23, with reference to P-0291; [Third Application](#), paras 13, 19, with reference to P-0291, P-0349, P-0884, P-0966, P-0975, P-1339, P-1512, P-2232, P-2328, P-2251; [Fourth Application](#), para. 30, with reference to P-2322 and P-2328; the [Fifth](#) and [Sixth Applications](#) do not specify which witnesses could speak to the items of evidence contained in these bar table motions.

⁵⁹ The Defence agrees to the submission of 16 of the items listed in Annex A of the [Second Application](#), without accepting the veracity of their content. See [Second Application](#), para. 4, [Second Defence Response](#), paras 11, 43-45. In particular, the Defence agrees to the submission of items 15, 18, and 28-41.

⁶⁰ [First Defence Response](#), paras 66-68; [Second Defence Response](#), paras 47-48; [Third Defence Response](#), paras 39-41; [Fourth Defence Response](#), paras 25-27.

⁶¹ [First Defence Response](#), para. 11.

⁶² [First Defence Response](#), para. 13.

⁶³ [First Defence Response](#), para. 19.

provide information about it;⁶⁴ (iii) bar table motions should be reserved for the later stages of the proceedings;⁶⁵ and (iv) the Prosecution must demonstrate in detail that each individual item of evidence is relevant and authentic.⁶⁶ The Defence further argues that the Chamber must provide detailed reasoning in relation to each individual item of evidence so as to allow the Defence to understand the charges against the accused.⁶⁷

2. *Issues relating to relevance*

22. In relation to relevance, the Defence argues that the Prosecution has often limited itself to offering vague generalities, without explaining how the individual items it wishes to submit are linked to a particular factual allegation contained in the charges.⁶⁸ In particular, the Defence argues that a large number of items were either disclosed as incriminating evidence before the confirmation hearing but not relied upon by the Prosecution for the confirmation hearing, or disclosed after the confirmation hearing. According to the Defence, this shows that the Prosecution is changing its case, which makes it all the more important for the Prosecution to explain how it intends to rely on each item.⁶⁹

3. *Issues relating to Prosecution's investigation methods*

23. According to the Defence, the Prosecution's investigation methodology was seriously flawed. The Defence claims that the Prosecution neither investigated the origin, the author, the context of the items' creation, nor the chain of custody before the Prosecution took possession of the items.⁷⁰

⁶⁴ [First Defence Response](#), para. 20.

⁶⁵ [First Defence Response](#), para. 21.

⁶⁶ [First Defence Response](#), paras 22-23.

⁶⁷ [First Defence Response](#), paras 24-26.

⁶⁸ [First Defence Response](#), paras 35-36; [Second Defence Response](#), paras 25-31; [Third Defence Response](#), paras 19-21; [Fourth Defence Response](#), para. 23; [Fifth Defence Response](#), para. 19; [Sixth Defence Response](#), paras 12-13.

⁶⁹ [First Defence Response](#), paras 35-36; [Second Defence Response](#), paras 25-31; [Third Defence Response](#), paras 19-21; [Fourth Defence Response](#), para. 23; [Fifth Defence Response](#), para. 19; [Sixth Defence Response](#), paras 12-13.

⁷⁰ For the Defence's submissions in relation to authenticity, see below II.B.5 Issues relating to authenticity.

24. The Defence points out that, in relation to a number of items, the Prosecution did not even prepare a corresponding investigation report which could explain when and where the items were obtained.⁷¹ This makes it difficult to assess the items' authenticity.⁷²
25. For those items for which there is a corresponding investigation report, the Defence raises the following concerns: (i) many of the investigation reports were written several years after the actual investigation took place and are thus less precise and exact; (ii) the investigation reports do not provide information that could establish authenticity; (iii) the Prosecution failed to question the CAR authorities about the authors of the documents and the context in which they were created; (iv) some of the Prosecution investigators did not understand French and therefore could not have conducted an independent investigation into documents they could not understand - moreover, no information is provided about the interpreters used; (v) the investigators relied entirely on their CAR counterparts for the location and selection of documents - no explanation about the methodology of the CAR counterparts is provided; (vi) the reports provide no information about the background of the Prosecution's local interlocutors, in particular their role during the conflict, etc., which makes it impossible to assess their possible political and personal bias; (vii) the reports provide very little information about where the items were stored and/or who had access to them between the moment of creation and collection by the Prosecution; and (viii) the absence of an itemised list of documents collected by the investigators makes it impossible to verify that any particular document was actually obtained during the mission(s) described in the report.⁷³

⁷¹ Particularly in relation to the [Sixth Application](#), the Defence complains that the Prosecution did not refer to the corresponding investigation reports for each of the 19 sources from which the items were obtained. The Defence points out that the [Sixth Application](#) pertains to items obtained from the CAR ministries of health and justice, the Directorate of the administrative police, United Nations Office of Legal Affairs, United Nations Office of the High Commissioner for Human Rights, *Médecins sans frontières*, AVED, OJED, IPIS and CEJP. [Sixth Defence Response](#), paras 100 and 102.

⁷² [Sixth Defence Response](#), paras 14, 103.

⁷³ [First Defence Response](#), paras 37-62; [Second Defence Response](#), paras 32-39; [Third Defence Response](#), paras 22-38; [Sixth Defence Response](#), paras 14-23 and 27-98.

4. *Issues relating to reliability*

26. According to the Defence, a large number of items, some of which the Prosecution qualifies as self-authenticating, lack the minimum indicia of reliability. In particular, there is no date, no official heading, no stamp etc. Moreover, some items that are presented as official documents are handwritten on checkered school paper.⁷⁴
27. The Defence also points out that some items contain anonymous hearsay.⁷⁵ Specifically in relation to the newspapers the Prosecution wishes to submit, the Defence argues that they have, by definition, low probative value and that it is incumbent upon the Prosecution to verify the information contained in such documents.⁷⁶

5. *Issues relating to authenticity*

(a) **Incomplete chain of custody**

28. According to the Defence, the Prosecution has systematically failed to provide a complete chain of custody. The chain of custody mentioned in e-Court and the investigation reports only starts from the moment when the Prosecution took custody of the item but says nothing about who held the item between the moment of its creation and when it was obtained by the prosecution. It is thus impossible to determine whether the item is genuine and/or whether it has been manipulated.⁷⁷
29. In relation to some items, the Defence points out that the source is very vague⁷⁸ or not even identified at all. In particular, in relation to certain items obtained from an open source, the Defence claims the Prosecution failed to indicate from

⁷⁴ [First Defence Response](#), paras 33-34; [Second Defence Response](#), paras 23-24; [Third Defence Response](#), paras 17-18; [Sixth Defence Response](#), paras 9-10.

⁷⁵ [Second Defence Response](#), para. 27.

⁷⁶ [Second Defence Response](#), para. 45.

⁷⁷ [First Defence Response](#), paras 31-32; [Second Defence Response](#), para. 22; [Third Defence Response](#), para. 16; [Sixth Defence Response](#), para. 8.

⁷⁸ The Defence points out some examples where very imprecise information was provided: (i) in relation to CAR-OTP-2064-0674, the only information provided is that it was obtained from ‘the government of CAR’; and (ii) in relation to CAR-OTP-2010-0547 the Prosecution only states that ‘[t]he document was obtained by the OTP from CAR government employee’. [Sixth Defence Response](#), para. 101.

which specific source (i.e. URL) the item was obtained, by which methodology it was obtained, biographical information about the claimed authors, etc.⁷⁹

30. The Defence further argues that evidence in the case record shows that certain Central African institutions were systematically pillaged, which gives rise to the possibility that certain documents were destroyed, and also that certain falsified items were placed in the institution.⁸⁰ The Defence point out, in this regard, that P-0435 testified that the registers he had kept were destroyed, which casts doubt on the authenticity of the registers obtained by the Prosecution.⁸¹ The Defence also draws attention to the fact that the relevant investigation report mentions that the commander of the *Deuxième Bureau du service du renseignement militaire* at *Camp de Roux* in 2014 claims that these offices were completely pillaged and that he had found no documents when he assumed his position.⁸² According to the Defence, given that the *Deuxième Bureau du service du renseignement militaire* at *Camp de Roux* was pillaged and that the CAR authorities were not capable of preserving the non-pillaged archives in acceptable conditions, any document for which it is not possible to reconstitute the entire chain of custody must be treated with extreme caution and cannot be admitted.⁸³

(b) Issues relating to email correspondence

31. In relation to the Fourth Application, the Defence claims that the Prosecution has not established the authenticity of the emails tendered. In particular, the Defence argues that the Prosecution did not carry out an autonomous and independent investigation to determine whether the authors or recipients of the emails are indeed the persons indicated by the Prosecution or to verify the veracity of the content of the emails.⁸⁴ Regarding the authenticity of the items, the Defence questions the Prosecution's characterisation of the emails as self-authenticating and points out that two of the identified owners of the email accounts are

⁷⁹ [Sixth Defence Response](#), ICC-01/14-01/21-360-Conf, paras. 11, 99-103

⁸⁰ [First Defence Response](#), para. 58.

⁸¹ [First Defence Response](#), para. 59.

⁸² [Third Defence Response](#), para. 36, with reference to CAR-OTP-2127-8222.

⁸³ [Third Defence Response](#), para. 37.

⁸⁴ [Fourth Defence Response](#), ICC-01/14-01/21-332-Conf, paras 16-17.

Prosecution witnesses.⁸⁵ According to the Defence, the Prosecution should have called these witnesses to discuss the authenticity and content of the emails, especially since the Prosecution never seems to have discussed this with them during the investigation.⁸⁶

6. *Items presented without context*

32. In relation to the Fourth Application, the Defence claims that certain items are presented out of context. By only tendering a selection of items taken from a larger collection, the Prosecution makes it impossible to assess the true relevance and probative value of the items submitted.⁸⁷ According to the Defence, the Prosecution should disclose the complete correspondence between the persons concerned in order to better understand the context in which the 121 items were sent and their relevance to the charges.⁸⁸

7. *Items linked to particular witnesses*

33. The Defence objects to the submission of a number of items on the basis that the Prosecution should (have) introduce(d) them through a particular witness instead of via the bar table.⁸⁹ The Defence also argues that over 100 items are linked to specific Prosecution witnesses.⁹⁰ According to the Defence, it is only possible to determine the authenticity of these items after the corresponding witnesses have testified, making it pointless to try to introduce them over the bar table beforehand.⁹¹ The Defence therefore asks the Chamber to conclude that it is inappropriate to allow the submission of items to the extent that the Prosecution should call all persons with whom it has been in contact in relation to the collection of particular items of evidence.⁹²

⁸⁵ [Fourth Defence Response](#), paras 14 and 17-18, with reference to P-0876 and P-2843.

⁸⁶ [Fourth Defence Response](#), para. 18.

⁸⁷ [Fourth Defence Response](#), para. 19.

⁸⁸ [Fourth Defence Response](#), para. 19.

⁸⁹ [Sixth Defence Response](#), paras 63-65; [Second Defence Response](#), paras 40-42; [Fourth Defence Response](#), para. 18; [Sixth Defence Response](#), paras 104-107.

⁹⁰ [First Defence Response](#), para. 32; Annex E to [Fourth Defence Response](#); [Fourth Defence Response](#), para. 18; Annex E to [Sixth Defence Response](#).

⁹¹ [Sixth Defence Response](#), paras 105-106.

⁹² [Sixth Defence Response](#), para. 109.

34. Specifically in relation to items produced by Prosecution itself, the Defence claims that it is incumbent upon the Prosecution to call the persons who collected the items and wrote the related reports in order to understand the context of the mission, the relationship with the Central African Authorities during the missions, and the precise parameters of the investigations.⁹³

8. *Items linked to the case against Messrs Yekatom and Ngaïssona*

35. According to the Defence, a number of items implicate witnesses from the case of the *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the ‘*Yekatom and Ngaïssona Case*’) or are mentioned in the Prosecution’s trial brief in the *Yekatom and Ngaïssona Case*. The Defence claims that the Chamber and the Defence should have access to any discussion of the submission, admissibility, and probative value of these exhibits before Trial Chamber V.⁹⁴

C. Submissions by the Victims Legal Representative in relation to the Second Application

36. According to the Common Legal Representative, allowing the submission of the 61 items will assist the Chamber in assessing the nature, complexity and extent of the victimisation and may be valuable to the determination of the appropriate form and amount of reparations.⁹⁵ The CLRV states that there is no need for the Chamber to consider the standard evidentiary criteria at this point.⁹⁶ In particular, the CLRV argues that undue prejudice determinations at the point of submission can only be done reliably for items where it is immediately obvious that they cannot be fairly relied upon for any purpose.⁹⁷ This is not the case for any of the items in question.

⁹³ [Fifth Defence Response](#), paras 13-18, 22.

⁹⁴ [Fourth Defence Response](#), ICC-01/14-01/21-332-Conf, paras 20-22.

⁹⁵ [Victims’ Submissions](#), para. 3.

⁹⁶ [Victims’ Submissions](#), para. 11.

⁹⁷ [Victims’ Submissions](#), para. 15.

37. The CLRV further argues that recognising the submission of these items will obviate the need to call more witnesses to attest to their authenticity and shorten the overall length of the examination of witnesses at trial.⁹⁸

III. APPLICABLE LAW

38. As indicated in the Directions on the Conduct of Proceedings, as a general rule, the Chamber will: (i) recognise the submission of items of evidence without a prior ruling on the admissibility of the evidence; and (ii) evaluate the standard evidentiary criteria as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused, in its judgment pursuant to article 74 of the Statute.⁹⁹ In other words, the Chamber will not pronounce on the alleged relevance, probative value and/or potential prejudice (or lack thereof) of any given item of evidence at this stage of the proceedings unless the Chamber deems it necessary to do so in order to provide clarity to the parties and participants, to avoid the calling of unnecessary evidence or to otherwise advance the fairness or efficiency of the trial proceedings.¹⁰⁰
39. This is without prejudice to the parties and participants' obligation under rule 64(1) of the Rules to raise issues as to admissibility of evidence, including

⁹⁸ [Victims' Submissions](#), para. 17.

⁹⁹ [Directions on the Conduct of Proceedings](#), para. 16; See also Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Public redacted version of Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", 8 March 2018, [ICC-01/05-01/13-2275-Red](#) ('*Bemba et al.* Appeals Judgment'), para. 598; Trial Chamber III, *The Prosecutor v. Paul Gicheru*, Directions on the Conduct of the Proceedings, 7 October 2021, [ICC-01/09-01/20-189](#) ('*Gicheru* Directions on the Conduct of Proceedings'), para. 11; Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ('*Ali Kushayb*'), Directions on the conduct of proceedings, 4 October 2021, [ICC-02/05-01/20-478](#) ('*Abd-Al-Rahman* Directions on the Conduct of Proceedings'), para. 25; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Initial Directions on the Conduct of the Proceedings, 26 August 2020, [ICC-01/14-01/18-631](#) ('*Yekatom & Ngaïssona* Directions on the Conduct of Proceedings'), para. 53; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Directions on the conduct of proceedings, [ICC-01/12-01/18-789-AnxA](#), annexed to Decision on the conduct of the proceedings ('*Al-Hassan* Directions on the Conduct of Proceedings'), para. 29; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Initial Directions on the Conduct of Proceedings, 13 July 2016, [ICC-02/04-01/15-497](#) ('*Ongwen* Directions on the Conduct of Proceedings'), para. 24.

¹⁰⁰ [Directions on the Conduct of Proceedings](#), para. 21.

on any of the standard evidentiary criteria, at the time when the evidence is submitted to the Chamber or immediately after such an issue becomes known.¹⁰¹

40. In principle, the Chamber will thus recognise as formally submitted all items of evidence proposed by the Prosecution, insofar as: (i) the item is included in the Prosecution's List of Evidence; (ii) there is no procedural bar to its introduction from the bar table; (iii) the item does not fall foul of any of the Statute's exclusionary rules; and (iv) the Chamber sees no exceptional reason to apply the standard evidentiary criteria at this stage. The Chamber may nevertheless disallow the introduction of an item of evidence via the bar table if it is of the view that a witness has been identified who can meaningfully comment on the relevance, authenticity or probative value of the item of evidence.

IV. ANALYSIS

A. Preliminary Issues

1. *The Scale and Timing of Bar Table Motions*

41. As a preliminary matter, the Chamber notes that the Defence is of the view that bar table motions should be reserved for the later stages of the proceedings¹⁰² and that submission of evidence from the bar table should be reserved for uncontested issues.¹⁰³ The Defence bases this view on the argument that the use of bar table motions negatively affects the principle of orality, which it argues requires that any matter of substance must be discussed orally during the trial, especially items of evidence.¹⁰⁴ Accordingly, the Defence argues, the introduction of evidence other than through a witness must be the exception rather than the rule.¹⁰⁵
42. The Chamber agrees with the Defence that the principle of orality is a well-established feature of many criminal law systems, and is reflected in the Rome

¹⁰¹ [Directions on the Conduct of Proceedings](#), para. 18. See also [Gicheru Directions on the Conduct of Proceedings](#), para. 13; [Abd-Al-Rahman Directions on the Conduct of Proceedings](#), para. 27; [Yekatom & Ngaiissona Directions on the Conduct of Proceedings](#), para. 61; [Al-Hassan Directions on the Conduct of Proceedings](#), para. 31; [Ongwen Directions on the Conduct of Proceedings](#), para. 27.

¹⁰² [First Defence Response](#), para. 21.

¹⁰³ [First Defence Response](#), para. 19.

¹⁰⁴ [First Defence Response](#), para. 11.

¹⁰⁵ [First Defence Response](#), para. 13.

Statute.¹⁰⁶ However, as with most principles, it is not absolute. If a witness can be identified who can give useful evidence about the authenticity and/or content of a particular item of evidence, it should ordinarily be introduced through that witness. It may nonetheless still be permissible to introduce an item of evidence via the bar table in certain circumstances. In assessing whether or not an item of evidence may be introduced via the bar table instead of via a related witness, the Chamber will take into account the following considerations: (i) whether the related witness is available and scheduled to testify; (ii) whether and to what extent the authenticity and probative value of the item are genuinely in doubt and/or contested; and (iii) the nature and apparent significance of the item.

43. In relation to consideration (ii), although the burden to demonstrate authenticity clearly rests with the party submitting the item, if the opposing party wishes to contest the authenticity of the item, it must articulate clear, cogent and precise arguments that are directly relevant to that specific item. The Chamber will not consider vague or generic objections.
44. It is not the responsibility of the Chamber to independently enquire as to whether a related witness can be identified in respect of each item of evidence contained in a bar table motion. If a party asserts that a related witness exists through whom an item of evidence should be submitted, it is the responsibility of the party making the assertion to identify that witness and sufficiently explain the relationship between the identified witness and the item of evidence. The Chamber will deal with the Defence's specific submissions in this regard below.

2. *Items already Recognised as Formally Submitted*

45. The Chamber notes that a number of items have already been formally recognised as submitted during the course of the proceedings. Other items were already authorised to be submitted as associated materials related to prior recorded testimony which the Chamber allowed the introduction of pursuant to rule

¹⁰⁶ [First Defence Response](#), para. 15; article 69(2) of the Statute.

68(2)(b) and 68(3) of the Rules. It is not necessary to deal with these items in the present decision.

(a) First Application:

46. From the 148 items the Prosecution wishes to submit via the bar table, 13 were already recognised as formally submitted

CAR-OTP-2031-0456	CAR-OTP-2034-2388	CAR-OTP-2034-4541
CAR-OTP-2031-0684	CAR-OTP-2034-3043	CAR-OTP-2034-4641
CAR-OTP-2034-1740	CAR-OTP-2034-3103	CAR-OTP-2034-4649
CAR-OTP-2034-2304	CAR-OTP-2034-3627	
CAR-OTP-2034-2353	CAR-OTP-2034-4515	

(b) Second Application

47. From the 61 items the Prosecution wishes to submit via the bar table, 1 item was already recognised as formally submitted:

CAR-OTP-2101-1888

48. Another item was already authorised to be introduced, subject to the formal requirements of rule 68 being met:

CAR-OTP-2100-1790¹⁰⁷

(c) Third Application

49. From the 35 items the Prosecution wishes to submit via the bar table, 1 was already authorised to be introduced, subject to the formal requirements of rule 68 being met:

CAR-OTP-2075-1289¹⁰⁸

¹⁰⁷ Public redacted version of Decision on the Prosecution's Requests under Rule 68(3) to Introduce the Prior Recorded Testimony of P-2931, P-0481, P-0349, P-2328, P-0834, P-2573, P-2232, P-0884, P-2251 and P-0291, 21 December 2022, [ICC-01/14-01/21-571-Red](#) ('Third Rule 68(3) Decision'). A confidential version was filed on the 12 December 2022, ICC-01/14-01/21-571-Conf., 21 December 2022, ICC-01/14-01/21-571-Red (the 'Third Rule 68(3) Decision').

¹⁰⁸ [Third Rule 68\(3\) Decision](#).

(d) Fifth Application

From the 156 items the Prosecution wishes to submit via the bar table, 33 were already recognised as formally submitted:

CAR-OTP-2033-6802	CAR-OTP-2033-7064	CAR-OTP-2033-7270
CAR-OTP-2033-6811	CAR-OTP-2033-7068	CAR-OTP-2033-7301
CAR-OTP-2033-6820	CAR-OTP-2033-7154	CAR-OTP-2033-7305
CAR-OTP-2033-6871	CAR-OTP-2033-7163	CAR-OTP-2033-7316
CAR-OTP-2033-6907	CAR-OTP-2033-7170	CAR-OTP-2033-7326
CAR-OTP-2033-7041	CAR-OTP-2033-7175	CAR-OTP-2033-7337
CAR-OTP-2033-7044	CAR-OTP-2033-7194	CAR-OTP-2033-7555
CAR-OTP-2033-7049	CAR-OTP-2033-7205	CAR-OTP-2033-7703
CAR-OTP-2033-7056	CAR-OTP-2033-7215	CAR-OTP-2033-7718
CAR-OTP-2033-7060	CAR-OTP-2033-7250	CAR-OTP-2033-7729
CAR-OTP-2033-7061	CAR-OTP-2033-7259	
CAR-OTP-2118-3740 ¹⁰⁹		

(e) Sixth Application

50. From the 153 items the Prosecution wishes to submit via the bar table, 14 were already recognised as formally submitted:

CAR-OTP-2016-0485	CAR-OTP-2004-1926	CAR-OTP-2044-0734
CAR-OTP-2004-1597	CAR-OTP-2005-0368	CAR-OTP-2044-0573
CAR-OTP-2004-1385	CAR-OTP-2005-0369	CAR-OTP-2128-0750
CAR-OTP-2005-0375	CAR-OTP-2067-0120	CAR-OTP-2128-0753
CAR-OTP-2005-0377	CAR-OTP-2069-0332	

¹⁰⁹ As noted below, this item was only used to show two digital renditions on page 3761 of the report.

51. The Chamber also already authorised 7 items to be introduced, subject to the formal requirements of rule 68 being met:

CAR-OTP-2005-3227¹¹⁰ CAR-OTP-2124-0512¹¹³ CAR-OTP-2001-2769¹¹⁶
 CAR-OTP-2041-0423¹¹¹ CAR-OTP-2001-6251¹¹⁴
 CAR-OTP-2008-2415¹¹² CAR-OTP-2001-1870¹¹⁵

3. *Duplicates*

52. Before turning to the substantive issues that the Chamber will address in this decision, it is first necessary to deal with the issue of duplicates. Indeed, the Chamber has noted a fairly large number of items that appear more than once in the Prosecution’s bar table motions.

53. In some instances, the items are not completely identical but are different versions of the same document. For example, CAR-OTP-2034-2678 is an official statement dated 1 July 2013. Handwritten on the top right corner is ‘Radio NDEKE-LUKA’. The same document, this time with the inscription ‘Radio Centrafrique’ is registered under CAR-OTP-2034-2243. According to the Prosecution, both versions were obtained from the archives of the CAR Ministry of Public Security. Both are submitted as part of the First Application as items 11 and 54 respectively.¹¹⁷ In terms of their alleged relevance, the Prosecution argues that CAR-OTP-2034-2243 is “Relevant to the role and authority of Nouradine ADAM during the Seleka regime as Minister of Public Security”, whereas CAR-OTP-2034-2678 is said to be “Relevant to the role and authority of Nouradine ADAM as Minister of Public Security during the Seleka regime. It

¹¹⁰ Public Redacted Version of Decision on the Prosecution’s First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules, filed on 20 October 2022 (ICC-01/14-01/21-507-Conf), 21 October 2022, [ICC-01/14-01/21-507-Red](#) (the ‘First, Second and Fourth Rule 68(2)(b) Decision’).

¹¹¹ [First, Second and Fourth Rule 68\(2\)\(b\) Decision](#).

¹¹² Decision on the Prosecution Requests pursuant to Rule 68(2)(b) to Introduce the Prior Recorded Testimony of P-0358, P-1180, P-2263 and P-2295, 21 November 2022, [ICC-01/14-01/21-556](#).

¹¹³ [Third Rule 68\(3\) Decision](#).

¹¹⁴ [Third Rule 68\(3\) Decision](#).

¹¹⁵ [First, Second and Fourth Rule 68\(2\)\(b\) Decision](#).

¹¹⁶ [Third Rule 68\(3\) Decision](#).

¹¹⁷ [First Application](#).

is also relevant to the Seleka control over the police at the relevant time.” It is not apparent why the Prosecution deems it necessary to submit two versions of this document or why the second version is deemed relevant to an additional factual proposition.

54. Similarly, the exact same map appears four times in the Prosecution’s Fourth Application.¹¹⁸ The Chamber understands that this item may have been attached to an email thread and therefore appears several times. However, this does not explain why the Prosecution considered it necessary to ask to submit it four times.
55. Another example is CAR-OTP-2130-3638. This is an email sent on 13 August 2013 at 12:00 from one individual to Patrice Ngaïssona. CAR-OTP-2130-3641 is the same email being forwarded by Patrice Ngaïssona to another email address, whereas CAR-OTP-2130-3639 contains the same email and a short response by Patrice Ngaïssona to the abovementioned individual, dated 13 August 2013 at 19:43. In relation to all three versions, the Prosecution claims that they are “relevant to the re-organisation of the pro-BOZIZE forces and thus to the chapeau elements of war crimes.”¹¹⁹ The Prosecution clearly acknowledges the overlap but does not explain the necessity to submit all three versions, given that the last version contains the entire email chain.
56. The Chamber recognises that it may sometimes be useful to submit several versions of a particular item. However, when this is done, the need for this should be clearly explained. The Prosecution has failed to do so in more than thirty instances. The Defence and the Chamber are consequently left guessing as to why they would have to analyse the same item several times.
57. The Prosecution is instructed to inform the Chamber which of the duplicates it wishes to formally submit or to provide an explanation as to why more than one version of the same item should be submitted onto the case record.

¹¹⁸ CAR-OTP-2126-2633, CAR-OTP-2126-2637, CAR-OTP-2126-2638, CAR-OTP-2126-2643.

¹¹⁹ [Fourth Application](#), Annex A, rows 52-54.

4. *Privileged information*

58. The Chamber notes that CAR-OTP-2083-0929 is a medical certificate of sexual violence issued by a caregiver of *Médecins sans Frontières* ('MSF'). The document states explicitly that it is based on the patient's medical file and that it is covered by medical secrecy.
59. The Chamber further notes that the Prosecution made a separate request for the introduction of P-1313's prior recorded testimony on 29 April 2022,¹²⁰ i.e. almost one month before the Sixth Application. The Prosecution did not include the medical certificate in the list of Associated Material to be introduced pursuant to Rule 68(2)(c).¹²¹ However, the list did include a document entitled *Autorisation de communiquer des renseignements*, signed by P-1313 on 24 September 2013.¹²² This authorisation explicitly authorises MSF to release medical information.
60. The Chamber observes that the Prosecution made no effort to explain why the medical certificate was not included in the abovementioned rule 68(2)(c) request or to assist the Chamber by pointing to the written consent form. It is not the Chamber's responsibility to ascertain whether or not the items of evidence the Prosecution wants to submit are still covered by privilege.

B. General Defence Objections Relating to the Admissibility of Items

61. As noted above, barring exceptional circumstances, the Chamber will defer consideration of arguments relating to the relevance, probative value (including authenticity) and potential prejudice until the deliberation phase. In principle, the Chamber will only consider the admissibility of individual items of evidence at this stage if the Defence claims – or the Chamber finds - that they fall foul of one of the exclusionary rules.
62. The Defence has not raised any violation of article 69(7) of the Statute in relation to any of the items included in the Prosecution's six bar table motions. However,

¹²⁰ Prosecution Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses, 9 May 2022, [ICC-01/14-01/21-290-Red](#) (A confidential version was filed on , 29 April 2022, ICC-01/14-01/21-290-Conf).

¹²¹ ICC-01/14-01/21-290-Conf-AnxA, p. 5.

¹²² CAR-OTP-2038-0110.

it has raised several issues relating to the relevance and probative value of almost all items which the Prosecution wishes to submit. The Chamber has noted these arguments and will consider them at the appropriate time.

1. Insufficient notice of relevance

63. The Chamber will briefly address the Defence's claim that it has received insufficient notice of how the Prosecution intends to use the evidence it wishes to submit via the bar table. As noted above, the Defence complains that the Prosecution has not explained how each item is linked to a particular factual allegation in the charges.¹²³ The Defence points out, in this regard, that: (i) a number of items were disclosed as incriminating evidence before the confirmation hearing but not relied upon by the Prosecution for the confirmation hearing; and (ii) many of the items contained in the bar table motions were disclosed only after the confirmation hearing. According to the Defence, this shows that the Prosecution is changing its case, which makes it all the more important for the Prosecution to explain how it relies on the item, bearing in mind that this will only be fixed when the Prosecution has submitted its Trial Brief.¹²⁴
64. Since the Defence made these submissions, the Prosecution has filed its Trial Brief. The Chamber observes that more than 450 items contained in the Prosecution's six Applications are not mentioned in the Prosecution's Trial Brief. This amounts to more than 70 percent of all items included in the Prosecution's Applications that have not yet been recognised as formally submitted.
65. The Chamber also notes that the Prosecution has provided an explanation of the claimed relevance of each item in its Applications. The Chamber agrees with the Defence¹²⁵ that, in many cases, this explanation is indeed rather vague and general. In particular, the Prosecution often fails to explain how a particular item tends to prove a specific factual proposition that is relevant to the case. To take an example, CAR-OTP-2034-3043 is a mission order signed by a senior law

¹²³ See para. 22 above.

¹²⁴ [First Defence Response](#), paras 35-36; [Second Defence Response](#), paras 25-31; [Third Defence Response](#), paras 19-21; [Fourth Defence Response](#), para. 23; [Fifth Defence Response](#), para. 19; [Sixth Defence Response](#), paras 12-13.

¹²⁵ [Sixth Defence Response](#), para. 12.

enforcement officer authorising three French journalists to go to Bossangoa to report. The Prosecution argues that this item is “[r]elevant to the functioning of the Seleka government as well as armed hostilities in Bossangoa, thus relevant to the chapeau elements of war crimes.”¹²⁶ It is not immediately apparent how the fact that the authorities allowed journalists to do their work makes the existence of an armed conflict more or less probable.

66. Nevertheless, relevance will be assessed only at the end of the trial, when all the evidence has been submitted and when the parties will have had an opportunity to explain their evidentiary claims in full. It would therefore be premature to exclude any items at this stage on the ground that the Prosecution has not (yet) fully explained their relevance.
67. The Chamber is cognisant of the fact that rule 64(1) of the Rules requires parties to raise issues of relevance or admissibility at the time when the item is submitted to the Chamber. However, the Defence can only be expected to make submissions based on the information available to it at the time those submissions are made. If the Prosecution’s submissions in relation to the relevance and/or probative value of an item evolves over the course of the trial, the Defence will not be precluded from responding to these submissions at that stage. The fact that an item has already been formally recognised as submitted does not prevent the parties from making further arguments about the admissibility criteria, subject to the considerations outlined above.¹²⁷

2. *Missing investigation reports*

68. As noted above, the Defence has identified and discussed seven investigation reports, which it claims are relevant to items which the Prosecution wishes to submit via the Sixth Application, but which were not mentioned or relied upon by the Prosecution itself. Neither the Prosecution nor the Defence asked for the submission of these reports in the context of the Sixth Application.

¹²⁶ [First Application](#), Annex A (Row 82).

¹²⁷ See paragraph 43 above.

69. First, the Chamber notes that, although the Prosecution does not refer to investigation report CAR-OTP-2122-4152 (relating to items obtained from the Ministry of Security) in the context of the Sixth Application, this report was tendered for submission via the bar table in the First Application.¹²⁸ The Chamber sees no reason why this report could not be considered for the purpose of evaluating the authenticity of the three items allegedly obtained from the Ministry of Security which the Prosecution is now seeking to submit in the Sixth Application.¹²⁹
70. In relation to the remaining reports, the Chamber notes that only two of them appear on the Prosecution's List of Evidence. They are report CAR-OTP-2136-0948 relating a register obtained from the *Procureur de la République*¹³⁰ and report CAR-OTP-2127-9309 relating to two items obtained from the *Bureau National de Documentation* ('BND').¹³¹
71. The remaining reports were disclosed to the Defence but are not included in the Prosecution's List of Evidence.
- a) report CAR-OTP-2130-6245 relating to four items obtained from *Radio Centrafrique*,¹³²
 - b) report CAR-OTP-2118-7926 relating to five items obtained from MINUSCA;¹³³
 - c) report CAR-OTP-2122-4089 relating to six items obtained from the *Directeur du Journal Officiel des Archives et de la Documentation*,¹³⁴

¹²⁸ [First Application](#), Annex A, row 147.

¹²⁹ CAR-OTP-2034-2340; CAR-OTP-2034-1768; and CAR-OTP-2034-3552.

¹³⁰ CAR-OTP-2008-2415.

¹³¹ CAR-OTP-2064-0634 and CAR-OTP-2064-0674.

¹³² CAR-OTP-2042-2136; CAR-OTP-2027-2504; CAR-OTP-2042-0747; and CAR-OTP-2042-2217.

¹³³ CAR-OTP-2088-2964; CAR-OTP-2088-2868; CAR-OTP-2088-2811; CAR-OTP-2088-3053; and CAR-OTP-2088-2689.

¹³⁴ CAR-OTP-2004-1597; CAR-OTP-2004-1385; CAR-OTP-2004-1926; CAR-OTP-2004-1086; CAR-OTP-2004-0273; and CAR-OTP-2004-0890.

d) report CAR-OTP-2127-8231 relating to two items obtained from the *Commission chargée d'Identification et d'Enregistrement de Eléments de Seleka et des FACA*;¹³⁵

72. It is not clear to the Chamber why the Prosecution chose to include certain investigation reports in its List of Evidence and leave others out. It is similarly unclear why the Prosecution chose to rely on some of the investigation reports included in its List of Evidence to demonstrate the authenticity of the collected items but to ignore others.
73. Be that as it may, as noted above, the Prosecution is expected to call a number of Prosecution investigators who may be able to provide the authenticating and other information contained in the reports when they take the stand.

C. Other Issues Arising from the Applications

74. In the remainder of the decision, the Chamber will deal with a number of specific issues raised by the Defence.

1. Evidence related to available witnesses

75. As noted, the Defence has argued that the Prosecution should not be allowed to submit items of evidence via the bar table if there is an available witness who could authenticate them. As discussed above, the Chamber is of the view that, while items of evidence should ordinarily be introduced through the witness to which they relate, their introduction via the bar table is permissible in certain circumstances. In its assessment as to whether or not an item of evidence may instead be introduced via the bar table, the Chamber refers to its considerations outlined above.¹³⁶
76. In what follows, the Chamber will discuss the items in different categories, namely: (i) items allegedly linked to witnesses who are not on the Prosecution's List of Witnesses; (ii) items allegedly linked to witnesses who are on the Prosecution's List of Witnesses; (iii) items allegedly linked to witnesses who will

¹³⁵ CAR-OTP-2067-0120 - Décision portant incorporation des jeunes recrues dans les Forces Armées Centrafricaines and CAR-OTP-2069-0332 - BDD IDENTIF SELEKA CORRIGEE.xlsx / Commission chargée d'identification et d'enregistrement des éléments de Seleka et des FACA.

¹³⁶ See paragraph 42 above.

testify pursuant to rule 68(3) of the Rules; and (iv) items allegedly linked to witnesses whose prior recorded statements were authorised for introduction pursuant to rule 68(2) of the Rules.

77. As a preliminary matter, the Chamber notes that the following items, which were mentioned by the Defence as due to be authenticated by particular witnesses have already been formally submitted through other witnesses:

- a) CAR-OTP-2069-0332 (to be authenticated by P-1975)¹³⁷ was already submitted through P-2607;
- b) CAR-OTP-2034-2388 (to be authenticated by P-0887 and/or P-1105)¹³⁸ was already submitted through P-0435);
- c) CAR-OTP-2034-3043 (to be authenticated by P-0964)¹³⁹ was already submitted through P-2240 by the Defence itself;
- d) CAR-OTP-2034-4515 (to be authenticated by P-0964)¹⁴⁰ was already submitted through P-0338;
- e) CAR-OTP-2005-3227 (to be authenticated by P-1523)¹⁴¹ was already submitted through P-1523 pursuant to rule 68(2)(b) of the Rules;¹⁴²
- f) CAR-OTP-2041-0423 (to be authenticated by P-2042)¹⁴³ was already submitted through P-2042 pursuant to rule 68(2)(b) of the Rules;¹⁴⁴
- g) CAR-OTP-2128-0750 (to be authenticated by P-2890) was already submitted through P-2931 by the Prosecution and the Defence;
- h) CAR-OTP-2128-0753 (to be authenticated by P-2890) was already submitted through P-2931.

78. The Chamber considers the Defence arguments in relation to these items moot.

(a) Witnesses not on Prosecution's List of Witnesses

79. In its several responses, the Defence has identified over 100 items which it alleges to have a link with one or more witnesses who were interviewed by the

¹³⁷ [Sixth Defence Response](#), para. 107.

¹³⁸ [First Defence Response](#), Annex E.

¹³⁹ [First Defence Response](#), Annex E.

¹⁴⁰ [First Defence Response](#), Annex E.

¹⁴¹ [Sixth Defence Response](#), Annex E.

¹⁴² ICC-01/14-01/21-507.

¹⁴³ [Sixth Defence Response](#), Annex E.

¹⁴⁴ ICC-01/14-01/21-507.

Prosecution but who are not on the Prosecution's List of Witnesses. The Defence identifies close to 30 witnesses falling into this category. It is not clear to the Chamber whether the Defence is proposing that all these witnesses should be added to the Prosecution's List of Witnesses or whether it is arguing that the relevant items should be rejected because the related witnesses are not on this list.

80. In any event, the fact that these witnesses are not on the Prosecution's List of Witnesses and will not testify before the Chamber does not, by itself, constitute a procedural bar to the submission of items that are allegedly related to them.¹⁴⁵
81. Moreover, the Chamber notes that the Defence makes no effort to explain how it determined that a particular witness should (have) be(en) called in order to authenticate a particular document. For example, in relation to CAR-OTP-2101-0504, the Defence lists P-0570, P-1011, and P-1186 as witnesses who should (have) be(en) called to introduce this item.¹⁴⁶ This is despite the fact that the item in question is a scanned version of a Central African newspaper, *Le Democrate*, dated 26 December 2012, and that the Defence indicated to the Prosecution that it agrees with the submission of this item.¹⁴⁷
82. For item CAR-OTP-2012-0523, which is a television documentary which the Prosecution claims to have obtained from an open source, the Defence lists no fewer than six different witnesses,¹⁴⁸ some of whom cannot be identified by the Chamber on the basis of the disclosed materials, who should (have) be(en) called to authenticate it. It is true that certain witnesses have been asked to *comment on the content* of the documentary¹⁴⁹ However, this does not mean that they are therefore in a position to *authenticate* the item or to comment on how it was produced. Moreover, the Chamber notes that the same video, but with a different

¹⁴⁵ Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision on the Eighth Prosecution Submission Request from the Bar Table \(Audio-Visual Material\)](#), 12 September 2023, ICC-01/14-01/18-2092-Conf, para. 21 (a public redacted version of this decision was filed on the same date).

¹⁴⁶ [Second Defence Response](#), Annex E.

¹⁴⁷ [Second Application](#), Annex A, p. 19.

¹⁴⁸ [Sixth Defence Response](#), Annex E.

¹⁴⁹ See, e.g. P-0622, CAR-OTP-2022-0121 at 0147. N.B. the video that was shown to P-0622 was registered as CAR-OTP-2022-0154-R01. The content is the same as CAR-OTP-2012-0523.

ERN,¹⁵⁰ was included in the list of material to be introduced for P-0622 via rule 68(2)(b) of the Rules.¹⁵¹ The Chamber rejected the Prosecution's request to allow the introduction of P-0622's prior recorded testimony via rule 68(2)(b) of the Rules and the witness is still expected to testify pursuant to rule 68(3) of the Rules.¹⁵² The Chamber will rule on this item in the relevant section below.¹⁵³

83. A final example is CAR-OTP-2124-0316,¹⁵⁴ a one-page Investigation Report prepared by the Office of the Prosecutor. According to the Defence, the Prosecution should (have) call(ed) P-0417 to authenticate this document, even though this person is neither identified nor his relationship to the document explained. The Chamber also notes that the metadata for this item indicates that it is related to P-3114, who is on the Prosecution's List of Witnesses and who is in all likelihood in a position to authenticate the Investigation Report.
84. As noted above, the Defence makes no effort to explain the basis upon which it asserts the witnesses it identifies are related witness in the sense described above,¹⁵⁵ through whom an item of evidence should be introduced. The link between the items of evidence identified by the Defence and the witnesses it claims are related to them is unclear. Under these circumstances, the Chamber sees no reason to reject the formal submission of these items.

(b) Witnesses on Prosecution's List of Witnesses as *Viva Voce* Witnesses

(i) Fifth Application

85. In relation to the Prosecution's Fifth Application, the Defence argues that the Prosecution should call the Prosecution staff members who were involved in the creation of the items in order to authenticate them and to provide context about the investigative mission as well as relations with the Central African

¹⁵⁰ CAR-OTP-2022-0154-R01.

¹⁵¹ Annex A to the Prosecution's sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b), 23 May 2022, ICC-01/14-01/21-328-Conf-AnxA, p. 2.

¹⁵² Public Redacted Version of Decision on the Prosecution's Sixth Request Pursuant to Rule 68(2)(b) of the Rules, 21 November 2022, [ICC-01/14-01/21-555-Red](#).

¹⁵³ See Witnesses on Prosecution's List of Witnesses as Rule 68(3) Witnesses below.

¹⁵⁴ [Sixth Defence Response](#), Annex E.

¹⁵⁵ See paragraph 42.

authorities.¹⁵⁶ This request seems to be related primarily to P-3112, who is the author of the expert reports concerning the examination of the OCRB¹⁵⁷ and CEDAD¹⁵⁸ sites and who is currently scheduled to testify *viva voce* in this trial.

86. As noted above, the Chamber recalls that 33 of the 156 items in the Fifth Application have already been formally submitted through various witnesses. The Chamber will not make a ruling with respect to those items.
87. The Chamber notes that the two expert reports authored by P-3112, CAR-OTP-2062-0743 (ENG translation: CAR-OTP-2118-3740) and CAR-OTP-2058-0264 (ENG translation: CAR-OTP-2118-3978), describe the methodology and the results of the examination of the crime scenes at the OCRB and CEDAD as well as their immediate surroundings.
88. The Chamber observes that CAR-OTP-2118-3740 was already submitted through P-0547.¹⁵⁹ However, the report was only shown to the witness to look at two digital renditions on page 3761 of the report. The annotated version of this page was formally submitted separately as CAR-REG-0002-0012.
89. The Chamber further observes that the remaining items appear to be photographs and videos taken or recorded by a member of the Prosecution investigation team during a forensic examination of the OCRB and CEDAD sites. The two accompanying expert reports and annexes thereto explain the background of the mission and the methodology. However, the Chamber has noted possible inaccuracies/inconsistencies between the description of some of the items provided by the Prosecution in the Fifth Application and the description of the same items in the accompanying expert reports.
90. The expert reports themselves also seem to suffer from inconsistencies. For example, in the Fifth Application, the Prosecution indicates that item CAR-OTP-2033-6874 is a photograph of the inside of the above ground cell G4 at the

¹⁵⁶ [Fifth Defence Response](#), para. 14.

¹⁵⁷ CAR-OTP-2062-0743 (ENG translation: CAR-OTP-2118-3740).

¹⁵⁸ CAR-OTP-2058-0264 (ENG translation: CAR-OTP-2118-3978).

¹⁵⁹ Transcript of hearing, ICC-01/14-01/21-T-014-CONF-ENG CT, pp. 3-4.

OCRB.¹⁶⁰ However, in the relevant expert report, CAR-OTP-2033-6874 is listed as a photograph of the south-west interior wall of cell G2¹⁶¹ as well as the south-west interior wall of cell G4.¹⁶² Similarly, items CAR-OTP-2033-6910 and CAR-OTP-2033-6923 are listed in the Fifth Application as photographs of the inside of cell G3, whereas the expert report lists them as photos of the north-west and south-east interior walls of Cell G3, respectively,¹⁶³ as well as the north-west and south-east interior walls of Cell G2.¹⁶⁴

91. In assessing whether or not the items of evidence subject to the Fifth Application (other than those already formally submitted) should be introduced via the bar table, the Chamber has had regard to the considerations outlined above.¹⁶⁵ It observes, in particular, that P-3112 is currently scheduled to testify in these proceedings and may be expected to give useful evidence about the authenticity and/or content of the items (including any inconsistencies in the reports). In these circumstances, the Chamber will not permit the formal submission of the items subject to the Fifth Application via the bar table (without prejudice to those already formally submitted). This is without prejudice to the Prosecution's right to ask for the formal submission of all or some of these items when P-3112 or other witnesses testify.

(ii) *Investigation Reports*

92. In relation to CAR-OTP-2122-4152; CAR-OTP-2135-2461;¹⁶⁶ CAR-OTP-2100-0289; CAR-OTP-2118-8568;¹⁶⁷ CAR-OTP-2127-8222;¹⁶⁸ CAR-OTP-2124-

¹⁶⁰ [Fifth Application](#), Annex A-Corr, p. 1.

¹⁶¹ CAR-OTP-2062-0743 at 0856.

¹⁶² CAR-OTP-2062-0743 at 0859.

¹⁶³ CAR-OTP-2062-0743 at 0858.

¹⁶⁴ CAR-OTP-2062-0743 at 0856.

¹⁶⁵ See above, para. 42.

¹⁶⁶ [First Application](#), in relation to the items obtained from the *Ministère de la Sécurité, de l'émigration-immigration et de l'ordre public* (the 'Ministry of Security').

¹⁶⁷ [Second Application](#), in relation to items obtained from the *Primature* (Office of the Prime Minister of the Central African Republic).

¹⁶⁸ [Third Application](#), in relation to items obtained from the archive of the *Deuxième Bureau du service du renseignement militaire* at *Camp de Roux* in Bangui.

0316;¹⁶⁹ CAR-OTP-2005-0448,¹⁷⁰ the Chamber has taken note of the Defence's submissions about the alleged shortcomings of these reports as well as the flaws in the Prosecution's investigation methodology more generally.

93. In assessing whether or not these items of evidence should be introduced via the bar table, the Chamber has had regard to the considerations outlined above.¹⁷¹ It observes, in particular, that the Prosecution is planning on calling a number of investigators,¹⁷² who may be expected to give useful evidence about the authenticity and/or content of the reports and address the Defence's criticisms about them. In these circumstances, the Chamber will not permit the formal submission of these reports via the bar table.

(c) Witnesses on Prosecution's List of Witnesses as Rule 68(3) Witnesses

94. The Defence also argues that a number of items should not be recognised as submitted because they are related to witnesses who are expected to testify pursuant to rule 68(3) of the Rules. As noted above, while items of evidence should ordinarily be introduced through the witness to which they relate, their introduction via the bar table is permissible in certain circumstances. In assessing whether or not an item of evidence may instead be introduced via the bar table, the Chamber has had regard to the considerations outlined above.¹⁷³
95. In relation to P-0435, who already testified pursuant to rule 68(3) of the Rules, the Defence argues that two items should have been introduced via her.¹⁷⁴ For one item (CAR-OTP-2034-4541), this did in fact occur.¹⁷⁵ The other item (CAR-OTP-2034-2976), was not submitted through P-0435 as such, but it was introduced via P-0435 as part of a compilation of documents.¹⁷⁶ Since CAR-OTP-

¹⁶⁹ [Sixth Application](#), in relation to items obtained from the *Section de Recherches et d'Investigations*.

¹⁷⁰ [Sixth Application](#), in relation to items obtained from the *Commission Mixte d'Enquête* (CMDE).

¹⁷¹ See above, para. 42.

¹⁷² P-3113; P-3114 ; P-3115.

¹⁷³ See above, para. 42.

¹⁷⁴ [First Defence Response](#), Annex E.

¹⁷⁵ Transcript of hearing held on 17 November 2022, ICC-01/14-01/21-T-041-CONF CT, p. 2-4.

¹⁷⁶ CAR-OTP-2136-0589 at 0617.

2034-2976 is thus a duplicate, the Chamber will not authorise the formal submission of this item.

96. In relation to P-0291, the Defence has identified three items, which it claims should be introduced via this witness.¹⁷⁷ One item (CAR-OTP-2101-2139) is a formal letter ostensibly signed by P-0291. The second (CAR-OTP-2101-2684) is a Government Decree establishing a *Conseil National de Sécurité*, ostensibly signed by P-0291. The third (CAR-OTP-2101-3718) is a list of attendees to a meeting of the *Conseil National de Sécurité*, ostensibly signed by P-0291 (among others). The Chamber observes that the Prosecution did not include these three items as Associated Material in its request to introduce P-0291's prior recorded testimony pursuant to rule 68(3) of the Rules.¹⁷⁸ Having regard to the considerations outlined above¹⁷⁹ and, in particular, the nature of these items, the Chamber agrees with Defence that they should be introduced via P-0291.
97. In relation to P-0491, the Defence argues that the Prosecution should introduce CAR-OTP-2005-0612 via this witness.¹⁸⁰ The Chamber notes that the Prosecution has also sought to introduce a copy of this item (CAR-OTP-2013-0693), which was allegedly shown to P-0491, who confirmed that it was a copy of the original complaint he had submitted.¹⁸¹ The Prosecution sought to submit this item, as well as versions of several documents that are contained in the dossier in its request to introduce the prior recorded testimony of P-0491 pursuant to rule 68(2)(b) of the Rules.¹⁸² The Chamber rejected the request pursuant to rule 68(2)(b) of the Rules.¹⁸³

¹⁷⁷ [Second Defence Response](#), Annex E.

¹⁷⁸ Prosecution's seventh request to introduce prior recorded testimony pursuant to rule 68(3), in relation to P-0291, P-0349, P-0884, P-2232, P-2251, and P-2328, 27 June 2022, ICC-01/14-01/21-376-Conf-AnxA.82.

¹⁷⁹ See above, para.42.

¹⁸⁰ [Sixth Defence Response](#), Annex E.

¹⁸¹ Prior recorded testimony of P-0491, CAR-OTP-2013-0678, paras 29-30 et seq.

¹⁸² Annex A to the Prosecution's second request to introduce prior recorded testimony pursuant to rule 68(2)(b), 13 May 2022, ICC-01/14-01/21-307-Conf-AnxA, p. 2.

¹⁸³ [First, Second and Fourth Rule 68\(2\)\(b\) Decision](#).

98. The Chamber has had regard to the considerations outlined above¹⁸⁴ and notes, in particular, that P-0491 was only presented with a photocopy of the dossier (i.e. CAR-OTP-2013-0693) when he gave his statement, and could be expected to give useful evidence about the authenticity of the original (i.e. CAR-OTP-2005-0612). The Chamber reiterates its instruction to the Prosecution not to submit several versions of the same document, unless there are cogent reasons for this, which must be explained.
99. As mentioned,¹⁸⁵ the Defence argues that CAR-OTP-2012-0523 should be introduced via a number of witnesses, including P-0622.¹⁸⁶ Given that the item is a television documentary and P-0622 was apparently not involved in its production but only commented on its content, the Chamber does not think it is necessary to submit it via this witness. The Chamber has also not been able to identify any other witnesses who could speak to the production of the film. Accordingly, the Chamber will allow the formal submission of this item via the bar table. This is without prejudice to the Defence's right to question P-0622 in relation to this item.

(d) Witnesses on Prosecution's List of Witnesses as Rule 68(2) Witnesses

100. The Defence also refers to a number of witnesses whose prior recorded testimony the Chamber already authorised the introduction of pursuant to rule 68(2) of the Rules. These witnesses are thus not expected to testify. The Defence's arguments would thus imply that the Chamber would either have to reverse its earlier rule 68(2) decisions or that the items could no longer be introduced as a result of those decisions.
101. In particular, the Defence argues that CAR-OTP-2009-1570, CAR-OTP-2005-3063, and CAR-OTP-2013-0182 should be submitted through P-0100. The Chamber already authorised the introduction of P-0100's prior recorded

¹⁸⁴ See above, para. 42.

¹⁸⁵ See para. 8282 above.

¹⁸⁶ [Sixth Defence Response](#), Annex E.

testimony pursuant to rule 68(2)(b) of the Rules on 20 October 2022.¹⁸⁷ The Chamber notes that the Prosecution did not include these three items in its List of Material to be Introduced for P-0100.¹⁸⁸ The Defence does not explain why it argues that these items should be introduced through this witness. The Chamber is aware that the metadata for these items in e-Court lists them as ‘Related to Witness’ P-0100. But this, without more, is insufficient to establish that P-0100 would be in a position to provide useful evidence about the authenticity and/or content of the item.

102. In respect of CAR-OTP-2002-2290, the Chamber observes that the Defence claims that the item should be authenticated by P-0882 but makes no effort to explain why the authenticity is in question.¹⁸⁹ Having regard to the considerations outlined above,¹⁹⁰ and in particular the nature and apparent significance of the item, the Chamber does not consider it necessary to reverse its earlier ruling and require P-0882 to testify solely to authenticate this item. The Chamber therefore authorises the introduction of CAR-OTP-2002-2290 via the bar table.

103. In relation to CAR-OTP-2083-0929, which the Defence claims should be authenticated by P-1313,¹⁹¹ the Chamber notes that it authorised the introduction of her prior recorded testimony pursuant to rule 68(2)(c) of the Rules on account that she is deceased.¹⁹² The witness would thus in any event not be available to testify to the authenticity of this item, making the Defence submission moot. The Chamber therefore authorises the introduction of CAR-OTP-2083-0929.

2. Complete email correspondence should be disclosed

104. As noted, the Defence argues in the context of the Fourth Application that the Prosecution failed to provide the Defence and the Chamber with the necessary context to fully understand the relevance of the 121 emails which the Prosecution

¹⁸⁷ [First, Second and Fourth Rule 68\(2\)\(b\) Decision](#), paras 45-46.

¹⁸⁸ List of Material to be Introduced for P-0100, P-1277, P-1424, P-1427, P-1523, P-1563, P-1825, P-1970, P-2042. & P-2087, 29 April 2022, ICC-01/14-01/21-289-Conf-AnxA, p. 2.

¹⁸⁹ [Sixth Defence Response](#), Annex E.

¹⁹⁰ See above, para. 42.

¹⁹¹ [Sixth Defence Response](#), Annex E.

¹⁹² Public Redacted Version of Decision on the Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses, 20 October 2022, [ICC-01/14-01/21-506-Red](#).

wishes to submit. To remedy this problem, the Defence asks the Prosecution to disclose the entirety of the email exchanges between the persons concerned by the emails that are the subject of the Fourth Application.¹⁹³ Failing this, the Defence argues, it would be impossible for the Defence or the Chamber to assess the relevance and probative value of the 121 aforementioned emails.¹⁹⁴

105. The Chamber interprets the Defence's argument as a request for additional disclosure by the Prosecution pursuant to rule 77 of the Rules. It leaves it to the parties to resolve this matter between themselves. Insofar as the Defence is right that the Prosecution has failed to provide the necessary context to properly assess the relevance and probative value of the 121 emails it wishes to submit, the Chamber considers it premature to take a position on this issue. Moreover, it is the Prosecution's responsibility to ensure that it properly establishes the admissibility and probative value of the items it submits.

3. *Items related to Prosecution witness in Yekatom and Ngaïssona trial*

106. In relation to the Fourth Application, the Defence claims that more than 50 items directly implicate Prosecution witnesses in the case against Messrs Yekatom and Ngaïssona and are referenced by the Prosecution in its trial brief in that case.¹⁹⁵ According to the Defence, this would entitle it to be given access to any discussion about these items, in terms of their submission, admissibility, probative value, etc., before Trial Chamber V. The Defence provides no legal basis for this request, but argues that it needs this information in order to make fully informed submissions in relation to these items in the present case.¹⁹⁶

107. The Chamber rejects the Defence request. First, apart from making vague assertions about needing access to "all useful information", the Defence does not explain why the parties' submissions before Trial Chamber V or indeed Trial Chamber V's pronouncements on any of these items would be necessary or even relevant for it to be able to make its own submissions. Second, the Defence does

¹⁹³ [Fourth Defence Response](#), para. 19.

¹⁹⁴ [Fourth Defence Response](#), para. 19.

¹⁹⁵ [Fourth Defence Response](#), para. 21.

¹⁹⁶ [Fourth Defence Response](#), para. 22.

not identify the “more than 50” items concerned. Clearly, it is not incumbent upon the Chamber to ascertain which items are related to Prosecution witnesses in another case. Insofar as the submissions in the *Yekatom and Ngaiissona* case do not fall under article 67(2) of the Statute or rule 77 of the Rules, the Prosecution has no such obligation either.

4. *Items not on Prosecution List of Evidence and not tendered by the Prosecution through the Bar Table Motion, but objected to by the Defence*

108. The Chamber has noted that the Defence has raised objections to two items which are not tendered by the Prosecution for submission via the bar table. In particular, in the Fourth Defence Response, the Defence objects to item CAR-OTP-2124-0195 (a short excel table containing three email addresses) on the ground that the item was disclosed after the confirmation hearing.¹⁹⁷ It also objects, in the Sixth Defence Response, to item CAR-OTP-2034-1734 (a photograph of both sides of an evidence bag) on the ground that the item was disclosed before the confirmation hearing, but not relied upon for that hearing by the Prosecution.¹⁹⁸

109. As noted, the Prosecution does not seek to submit these items, which are not included in the Prosecution’s List of Evidence. It is unclear to the Chamber why the Defence raises objections to these items. The Chamber will therefore ignore these objections and sees no reason to order the submission of these items on its own authority.

5. *Items tendered by the Prosecution through the Bar Table Motion and objected to by the Defence, but not on Prosecution List of Evidence*

110. In the Sixth Application, the Prosecution asks for the introduction of “CAR-OTP-2124-0318 to CAR-OTP-2124-0393”.¹⁹⁹ These items are photographs of individual pages of what the Prosecution alleges is a register of the *Section de Recherches et d’Investigations* (‘SRI’). Each page of the Register was given a separate ERN and seems to correspond to a calendar date, starting at the end of

¹⁹⁷ [Fourth Defence Response](#), Annex B (Row 46).

¹⁹⁸ [Sixth Defence Response](#), Annex C (Row 14).

¹⁹⁹ [Sixth Application](#), Annex B (Row 34).

September 2013 and running until 19 December 2013, containing a daily accounting of pre-trial detainees in custody at an SRI facility. However, although 76 pages of the register have been disclosed and are available in e-Court, only the photos of the front and back covers of the register (CAR-OTP-2124-0318 and CAR-OTP-2124-0393) are included in the Prosecution's List of Evidence.

111. While the Defence raises objections to all of the abovementioned items,²⁰⁰ it does not do so on the basis of the fact that they are not included in the Prosecution's List of Evidence. Since the Prosecution clearly intended to tender the entire register and not just the outside covers, the Chamber assumes that the omission of the actual content of the register from the List of Evidence was a mistake. If this is correct, the Chamber orders the Prosecution to create an integrated version with a single ERN, which contains the entire register and add this to its List of Evidence.
112. The Chamber notes, in this regard, that some pages of the register may be missing. Indeed, the register has chronological entries for every day starting on 30 September 2013 but then suddenly jumps from 6 December 2013 to 12 December 2013 and from there to 17 December.²⁰¹ If the Prosecution decides to submit the entire register, it is hereby instructed to ensure that no pages containing substantive entries have been inadvertently left out. If there is a specific reason why certain pages are missing, the Prosecution is hereby instructed to explain this to the Chamber.
113. This course of action causes no prejudice to the Defence, which has clearly had an opportunity to consider the disclosed pages that are not included in the Prosecution's List of Evidence. Indeed, the Defence has raised specific objections based on the alleged lack of *prima facie* reliability in relation to 12 specific items.²⁰² The Chamber notes that most of these objections pertain to blank pages that do not contain any information. Nevertheless, there can be no allegation that

²⁰⁰ [Sixth Defence Response](#), Annex A (Rows 8-19); Annex B (Rows 4-76) and Annex C (Rows 16-87).

²⁰¹ See CAR-OTP-2124-0379, CAR-OTP-2124-0380 and CAR-OTP-2124-0381.

²⁰² See [Sixth Defence Response](#), Annex A (Rows 8 to 19).

the Defence did not have sufficient notice of the fact that the Prosecution intends to rely on the register.

D. Error in e-Court

114. Finally, the Chamber also needs to correct an error in e-Court. Due to a clerical error on the part of the Chamber,²⁰³ item CAR-OTP-2033-7229 was wrongly listed as formally submitted. The item that should be marked as formally submitted is CAR-OTP-2033-7729.

FOR THESE REASONS, THE CHAMBER HEREBY

INSTRUCTS the Prosecution to inform which of the duplicates listed in Annex B it wishes to submit.

REJECTS the Fifth Application;

ORDERS the Prosecution to upload a complete an integrated version of the SRI Register under a single ERN;

DOES NOT authorise the formal submission of:

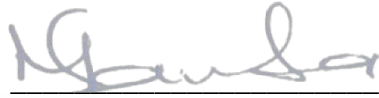
CAR-OTP-2002-2105	CAR-OTP-2100-0289	CAR-OTP-2122-4152
CAR-OTP-2005-0448	CAR-OTP-2101-2139	CAR-OTP-2124-0316
CAR-OTP-2005-0612	CAR-OTP-2101-2684	CAR-OTP-2124-0318
CAR-OTP-2034-2976	CAR-OTP-2101-3718	CAR-OTP-2124-0393
CAR-OTP-2058-0264	CAR-OTP-2118-3978	CAR-OTP-2127-8222
CAR-OTP-2062-0743	CAR-OTP-2118-8568	CAR-OTP-2135-2461

RECOGNISES the formal submission of the items listed in Annex A; and

INSTRUCTS the Registry to mark item CAR-OTP-2033-7729 as formally submitted through P-1737 instead of CAR-OTP-2033-7229.

²⁰³ Email sent by Trial Chamber VI to Registry et al. on 8 February 2023 at 14:19.

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

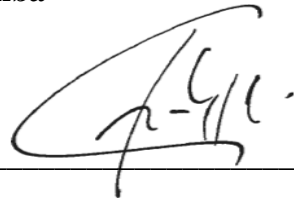


Judge Miatta Maria Samba

Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Dated 13 February 2024

At The Hague, The Netherlands