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Date: **12 April 2024**

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

Public Redacted Version of the “Yekatom Defence Request for Leave to Add 22 Items to its List of Evidence”, 26 March 2024, ICC-01/14-01/18-2425-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. The Defence for Mr Alfred Rombhot Yekatom (“Defence”) respectfully requests Trial Chamber V’s (“Chamber”) leave to amend its List of Evidence.
2. Specifically, the Defence requests the addition of 22 items which it submits are of significant relevance and probative value and would not cause any unfair prejudice nor infringe on the fair and expeditious conduct of the proceedings, due to their nature and amount.

PROCEDURAL HISTORY

3. On 29 March 2023, Trial Chamber V issued the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (“Further Directions”).¹
4. On 11 September 2023, the Prosecution filed the “Prosecution’s Notice of the Close of its Case-in-Chief”.²
5. On 17 November 2023, the Defence filed its List of Witnesses (“LoW”), including *inter alia* Sylvie Patricia SOKOYO-KOBO (D29-P-6016)³ and requested the formal submission of her prior recorded testimony pursuant to Rule 68(2)(b).⁴ On the same date, the Defence filed its List of Evidence (“LoE”).⁵
6. On 5 December 2023, the Defence filed its “Request for the Exclusion of Fabricated Evidence”.⁶

¹ ICC-01/14-01/18-1892.

² ICC-01/14-01/18-2089.

³ ICC-01/14-01/18-2212-Conf-AnxA, #22.

⁴ ICC-01/14-01/18-2213-Conf, paras. 61-64.

⁵ ICC-01/14-01/18-2212-Conf-AnxD.

⁶ ICC-01/14-01/18-2240-Conf.

7. On 1 March 2024, the Defence informed the Chamber and Participants of its prospective bar table applications.⁷
8. On 15 March 2024, the Defence notified the Chamber that it intended to call D29-P-6016 to testify during the first week of the 31st evidentiary block pursuant to Rule 68(3).⁸
9. On 18 March 2024, the Chamber instructed the Defence to file the envisioned Rule 68(3) request by 20 March 2024 and indicate whether it intends to withdraw its request under Rule 68(2)(b).⁹
10. On 20 March 2024, the Defence withdrew its request under Rule 68(2)(b) and informed the Chamber of its intention to call D29-P-6016 as a *viva voce* witness instead of the envisioned Rule 68(3). The Defence also informed the Chamber that her testimony is scheduled to begin on 8 April 2024.¹⁰

SUBMISSIONS

11. The Defence wishes to add to its LoE 22 items as detailed below (collectively, the “Items”):
 - Four items resulting from the completion of D29-P-3014’s testimony;¹¹
 - Nine items obtained by the Defence through open-source investigations;¹²

⁷ ICC-01/14-01/18-2392.

⁸ Email from the Defence to the Chamber, Parties and Participants sent on 15 March 2024 at 16:00.

⁹ Email from the Chamber to Parties and Participants sent on 18 March 2024 at 9:45.

¹⁰ Email from the Defence to Parties and Participants sent on 20 March 2024 at 13:25.

¹¹ CAR-D29-0002-0683; CAR-D29-0002-0685; CAR-D29-0004-3925; CAR-D29-0004-3926.

¹² CAR-D29-0001-0565; CAR-D29-0002-0690; CAR-D29-0016-0174; CAR-D29-0016-0176; CAR-D29-0016-0178; CAR-D29-0016-0179; CAR-D29-0016-0180; CAR-D29-0001-0573; CAR-D29-0002-0686.

- Three items following the execution of two pending requests for assistance;¹³
- Six items which constitute material obtained from the Government of Ireland following a Defence cooperation request;¹⁴

12. At the outset, the Defence notes that, although this request contains several items varying by type, date, source identity and chain of custody, it considers that grouping the relevant Items into the present request would be a more efficient manner in which to proceed.

A. Material resulting from D29-P-3014's testimony

a) *CAR-D29-0002-0683 and CAR-D29-0002-0685*

13. Both documents are publicly available media articles published in January 2015 which demonstrate that former President Catherine SAMBA-PANZA's (P-0952) first visit to BODA, following the January 2014 outbreak of violence there, took place in January 2015. By extension, they demonstrate that Defence witness Fidèle SOUSSOU's (D29-P-3014) first post-conflict 'sensibilization' and outreach meetings with the BODA Muslim community also took place in January 2015¹⁵ which in turn demonstrates that at the time of his participation in a 30 August 2014 meeting among BODA '*ressortissants*'¹⁶, he had not yet had the opportunity to hear the views of the BODA Muslim population. The items are relevant to material issues, mutually corroborative, and bear sufficient indicia of reliability.
14. The sought amendment is timely in the circumstances. The Defence could not have reasonably anticipated that the Prosecution would seek to impugn the

¹³ CAR-D29-0004-3924; CAR-D29-0024-0003; CAR-D29-0007-0196-R01.

¹⁴ CAR-D29-0008-0100; CAR-D29-0008-0101; CAR-D29-0008-0102; CAR-D29-0008-0103; CAR-D29-0008-0104; CAR-D29-0019-3698.

¹⁵ **P-1962** : ICC-01/14-01/18-T-274 ENG ET, 17:20-19:5 and 50:16-51:6.

¹⁶ See CAR-OTP-2101-2916.

credibility of D29-P-3014 on the basis of its misapprehension of the chronology of relevant events. In this regard, the fact that the Defence was permitted to re-examine D29-P-3014 on this matter indicates that the basis for this misapprehension was a matter that arose out of cross-examination and merited clarification. Nor was the Defence in a position to clarify the exact date of P-0952's visit to BODA, given that D29-P-3014 had already specified that he couldn't remember the first time he returned to BODA;¹⁷ nor could he remember the exact date(s) of the MBAÏKI meetings that took place in the lead-up to P-0952's visit. Following the conclusion of D29-P-3014's cross-examination on 11 March 2024, having determined the necessity of further clarifying the relevant chronology of events, the Defence expeditiously conducted open-source research into the matter and the articles were found, stamped, and disclosed by 21 March 2024.¹⁸

15. The nature and amount of the material militates in favour of allowing their addition: both articles are brief and factually straightforward, as is the material issue to which they go to proof. Their review and analysis will require negligible Prosecution resources. They are easily verifiable given that President Samba-Panza (P-0952) was a public figure and the dates of her visit to Boda are available in the public domain. Their late addition will not prejudice the Prosecution in any meaningful sense. In any event, the Prosecution cannot reasonably claim prejudice given that this request arises entirely from the Prosecution's miscomprehension of the chronology of relevant events.
16. The purpose of the Defence's reliance on these items (and their prospective significance) lies in the Defence's attempts to rectify a Prosecution line of examination that, if left partially unaddressed, may otherwise create a false impression as to the credibility of D29-P-3014; which by extension may

¹⁷ **P-3014** : ICC-01/14-01/18-T-274 ENG ET, 17:20-22; see also, 17:22-18:25.

¹⁸ Trial D29 package 91 21 March 2024.

detrimentally impact the Defence's ability to challenge the prejudicial claims of Prosecution witness [REDACTED] (P-1962) regarding [REDACTED].¹⁹

17. In any event, the Defence will tender these items through a bar table application giving Parties and Participants further time to analyse the items and make corresponding submissions should they so wish.
 - b) *CAR-D29-0004-3925 and CAR-D29-0004-3926*
18. The nature, amount, intended purpose, and prospective significance of CAR-D29-0004-3925 and CAR-D29-0004-3926 ("Two CSTs") militates in favour of granting their addition to the Defence List of Evidence.
19. The Two CSTs present concise and limited extracts of underlying CDRs in a format that will facilitate the Chamber and Parties' analysis and appreciation of not only the CDRs themselves but of the inferences that can be drawn therefrom. Specifically, CAR-D29-0004-3925 presents an extract of underlying CDR CAR-OTP-2112-1654, with a corresponding date range of 15 January to 28 February 2014; while CAR-D29-0004-3926 present an extract of underlying CDR CAR-OTP-2112-1619 with a corresponding date range of beginning February to end April 2014.
20. CAR-D29-0004-3925 is intended to be relied on to demonstrate that phone number [REDACTED] attributed (by the Prosecution) to Roddy MBOSSE continuously and consistently activates cell towers in BANGUI²⁰ in the relevant period – and most notably, in the period [REDACTED] – thus indicating that MBOSSE was present in BANGUI (or in any event not present in BODA) in that period. Its significance lies in the fact that this directly contradicts the contested evidence of P-1962, who claims that MBOSSE was among the group of

¹⁹ See ICC-01/14-01/18-T-253 ENG ET WT, 22:23-24:6; see also, e.g. **P-1962** : CAR-OTP-2068-0037, paras. 31-35.

²⁰ See, CAR-OTP-2009-4962, providing information as to Telecel cell tower locations, including coordinates.

individuals [REDACTED];²¹ that MBOSSE led a group of fighters in the combat that took place (in BODA) the next morning, from 5:00 to 10:00;²² and that MBOSSE remained in BODA from 4 February onward.^{23,24}

21. CAR-D29-0004-3926 is intended to be relied on to demonstrate that phone number [REDACTED] attributed (by the Prosecution) to Habib SOUSSOU, consistently and repeatedly activates cell towers in BANGUI²⁵ in the period 8 February 2014 through 21 April 2014, thus indicating that Habib SOUSSOU was present in BANGUI (and in any event not in BODA) in that period. Its significance lies in the fact that this contradicts the contested evidence of P-1962 with regard to Habib SOUSSOU's alleged presence in BODA and his involvement in the establishment of the BODA Anti-Balaka coordination in the immediate aftermath of the outbreak of violence in BODA, at the end of January and in early February.²⁶ In this regard, it also indirectly corroborates the [REDACTED].²⁷
22. Both of the Two CSTs thus constitute further evidence demonstrating that P-1962's evidence is fundamentally unreliable – especially with respect to his

²¹ **P-1962** : CAR-OTP-2068-0037, paras. 26, 31, 37.

²² **P-1962** : CAR-OTP-2068-0037, paras. 40, 43.

²³ **P-1962** : CAR-OTP-2068-0037, para. 48.

²⁴ Specifically, these claims are irreconcilable with the CST as follows: i) rows 1094-1096, 1098-1103 of the tendered CST indicate that throughout the [REDACTED] MBOSSE's telephone activates cell towers in BANGUI on nine occasions; ii) rows 1105, 1107 and 1109, indicating that from 6:50 to 8:20 on 4 February 2014 (i.e. while per P-1962 he is alleged to have been leading combat in BODA) MBOSSE's telephone activates BANGUI cell towers on three occasions; and iii) rows 1110-1242, indicating that MBOSSE's telephone activates a BANGUI cell tower at least once per day in the period 5 through 28 February 2014, with the exception of four days for which no data is available - specifically, 5, 6, 21 and 28 February (*contra* P-1962's claim that MBOSSE remained in BODA after the fighting). In this regard, the Defence also recalls the testimony of CDR expert witness Duncan BROWN (D30-P-4864), who stated that it was technically impossible for a mobile phone to connect to a cell tower in a city located 100-120 km away; see, ICC-01/14-01/18-T-272-ENG ET, 46:15-19.

²⁵ See, *supra*, fn. 20.

²⁶ See, **P-1962** : CAR-OTP-2068-0037, paras. 48, 80-82, 90.

²⁷ See, **P-1962** : CAR-OTP-2071-0023, p. 0035.

claimed [REDACTED];²⁸ [REDACTED];²⁹ the fighting in BODA;³⁰ and the establishment of the BODA Anti-Balaka coordination in the aftermath.³¹

23. The addition of the Two CSTs is not ‘untimely’ in any meaningful sense, and in any event, their addition can cause no conceivable undue prejudice. The underlying CDRs for both of the Two CSTs – i.e. CAR-OTP-2112-1654 and CAR-OTP-2112-1619 – were provided to the Prosecution in July 2019; and the information regarding Telecel cell tower locations (CAR-OTP-2009-4962) in June 2015. The information relied on by the Prosecution to attribute the relevant phone numbers to MBOSSE and Habib SOUSSOU has been in its possession since at least January 2018, when it interviewed P-1962.³² For all intents and purposes, the Prosecution has thus had all of the information contained within the Two CSTs, and by extension, has been on notice of its prospective significance, since July 2019 at the latest – i.e. for nearly five years. The Defence also notes that both the underlying CDRs and the Telecel cell site information are on the Prosecution’s List of Evidence, which itself would have been drawn up with careful analysis and assessment by the Prosecution;³³ and the underlying CDRs were tendered on two occasions by the Prosecution, first via a bar table motion,³⁴ and most recently, through D29-P-3014.³⁵
24. Furthermore, in the circumstances, any claims of undue prejudice on the part of the Prosecution should be dismissed in the interests of justice and fairness. Given the manner in which the CDRs presented in the Two CSTs directly contradict key claims of Prosecution witness P-1962, the Prosecution’s failure to

²⁸ See e.g. **P-1962** : CAR-OTP-2068-0037, paras. 26, 31, 37.

²⁹ **P-1962** : ICC-01/14-01/18-T-139-CONF-FRA CT, 39:2-17; and CAR-OTP-2068-0037, paras. 31-35.

³⁰ **P-1962** : CAR-OTP-2068-0037, paras. 39-45.

³¹ See e.g., **P-1962** : CAR-OTP-2068-0037, paras. 48, 80-82, 90.

³² See, **P-1962** : CAR-OTP-2068-0037, paras. 131, 140.

³³ See e.g. *Prosecutor v. Gicheru*, Decision on the Prosecutor Request concerning the Defence List of Evidence, [ICC-01/09-01/20-133](#), 12 April 2021, paras. 11 and 12. The Prosecution was further effectively put on renewed notice as to the Defence’s intention to rely on these documents through the Defence’s List of Evidence; see, ICC-01/14-01/18-2212-Conf, para. 20.

³⁴ ICC-01/14-01/18-1296-Conf-AnxD, items #565 and #599.

³⁵ Email from the Prosecution to Chamber, Parties and Participants sent on 12 March 2024 at 14:24.

formally disclose the underlying CDRs as exculpatory evidence³⁶ raises questions about whether the Prosecution has met its obligations under article 67(2); not to mention its broader duty to assist the Chamber to search for the truth and duly investigate exculpatory circumstances, under article 54(1).

B. Material obtained by the Defence following open-source investigations

25. The Defence wishes to add nine items obtained following open-source investigations to its LoE.³⁷

a) *Open-source material intended for use with Defence witness D29-P-6016*

26. As detailed below, the Defence intends to include seven of these items in its list of material to be used during the course of D29-P-6016's examination.³⁸

i. Material relating to the Mission interafricaine de surveillance des accords de Bangui

27. CAR-D29-0001-0565 is a publicly available legal document establishing the *Mission interafricaine de surveillance des accords de Bangui* ("MISAB"); CAR-D29-0002-0690 is a publicly available media article published on 16 September 2014 presenting a concise summary in chronological order of the numerous international peacekeeping operations in the Central African Republic since 1997.³⁹

28. The Defence intends to include these documents in its list of material to be used in the course of D29-P-6016's testimony. The Defence recalls that D29-P-6016's testimony will establish her union with Aubin KOUSSAGALE [REDACTED]

³⁶ See e.g. *Prosecutor v Mokom*, Public Redacted Version of 'Decision on the Defence's requests for disclosure and rectification of disclosure metadata', [ICC-01/14-01/22-219-Red](#), 3 July 2023, paras. 27, 33, 38; and *Prosecutor v. Abd-Al-Rahman*, Second Order on disclosure and related matters, [ICC-02/05-01/20-169](#), 2 October 2020, para. 24.

³⁷ CAR-D29-0001-0565; CAR-D29-0002-0690; CAR-D29-0016-0174; CAR-D29-0016-0176; CAR-D29-0016-0178; CAR-D29-0016-0179; CAR-D29-0016-0180; CAR-D29-0001-0573; CAR-D29-0002-0686.

³⁸ CAR-D29-0001-0565; CAR-D29-0002-0690; CAR-D29-0016-0174; CAR-D29-0016-0176; CAR-D29-0016-0178; CAR-D29-0016-0179; CAR-D29-0016-0180.

³⁹ Both items were disclosed on 21 March 2024 in Trial D29 package 91 21 March 2024.

and the subsequent birth of their son Geoffroy KOUSSAGALE [REDACTED]. She explains that she became pregnant with her daughter born on 11 January 2000 and that several years elapsed between the birth of P-2475 and her daughter. She recalls that P-2475 was approximately one year and seven months old before the fights between the MISAB and mutineers.⁴⁰ Her proposed evidence is cumulative and corroborative of *inter alia* documentary evidence⁴¹, D29-P-6018's proposed testimony regarding P-2475's date of birth⁴² and the established fabrication of documents in relation to the latter's age.⁴³

29. As evoked above, the crux of D29-P-6016's testimony revolves around the determination of P-2475's date of birth. In order to refresh the witness's memory as to the entry into force of the MISAB i.e. January 1997 and therefore establish P-2475's date of birth, the Defence plans on showing the witness CAR-D29-0001-0565 and CAR-D29-0002-0690. It is not uncommon for witnesses not to have a sharp memory of dates and to rely on key events in order to situate their narrative, especially given the limited average education level in the Central African Republic. This item of evidence will therefore assist in establishing the timeline relevant to the testimony of D29-P-6016.

ii. Open-source Facebook material

30. The Defence also wishes to add five documents to its LoE⁴⁴ which it intends to include in its list of material to be used in the course of D29-P-6016's testimony. The items consist of Facebook material from two distinct profiles, obtained following an open-source investigation: CAR-D29-0016-0174 is a screenshot of the profile in the name of "[REDACTED]" ("First Profile"); CAR-D29-0016-0176 is a screenshot of a different profile in the name of "[REDACTED]" ("Second

⁴⁰ **P-6016** : CAR-D29-0009-0427-R01, paras. 24, 30-36.

⁴¹ See CAR-D29-0013-0004, CAR-D29-0014-0065, CAR-D29-0016-0071-R01, CAR-D29-0016-0066-R01.

⁴² **P-6018** : CAR-D29-0009-0396-R01, para. 19.

⁴³ CAR-OTP-00000320.

⁴⁴ CAR-D29-0016-0174; CAR-D29-0016-0176; CAR-D29-0016-0178; CAR-D29-0016-0179; CAR-D29-0016-0180.

Profile"); CAR-D29-0016-0178, CAR-D29-0016-0179, and CAR-D29-0016-0180 are three pictures posted by the Second Profile. The items are relevant to material issues at trial and bear sufficient indicia of reliability, justifying their late addition to the Defence's LoE.

31. The Defence submits that the First Profile belongs to [REDACTED] (P-2582). The Defence intends to put this profile to D29-P-6016 during her testimony in order to see if she recognises the individual depicted i.e. P-2582. This is relevant since [REDACTED].⁴⁵ The Defence is cognizant that there are already pictures of P-2582 in the case file but given her recent change of appearance, the Defence deems it relevant that a more contemporary picture of P-2582 be shown to D29-P-6016 during her examination alongside an older one.
32. The Defence submits that the Second Profile belongs to P-2475 in light of the following details: he appears in a photo posted to the profile;⁴⁶ [REDACTED]⁴⁷ [REDACTED]⁴⁸; D29-P-6016 appears on a picture holding a young child;⁴⁹ and P-2475's girlfriend whom D29-P-6016 is well acquainted with⁵⁰ appears on a separate picture with the same child.⁵¹ The Defence intends to put this profile and associated pictures to D29-P-6016 during her testimony so that she can identify herself as well as the other individuals in the pictures and therefore confirm that the account belongs to P-2475.
33. The Defence submits that the seven items' prospective significance to the proceedings outweighs the potential prejudice to Parties and Participants, if any. On the contrary, the sought addition of these items to the Defence's LoE would contribute to the expeditiousness of P-6016's examination.

⁴⁵ ICC-01/14-01/18-2135-Conf, paras. 20-21.

⁴⁶ CAR-D29-0016-0180.

⁴⁷ CAR-D29-0016-0176.

⁴⁸ See CAR-D29-0016-0067-R01; CAR-D29-0016-0088-R01.

⁴⁹ CAR-D29-0016-0178.

⁵⁰ **P-6016** : CAR-D29-0009-0427-R01, paras. 34, 38; CAR-D29-0009-0533-R01, para. 17.

⁵¹ CAR-D29-0016-0179.

34. All seven items are brief⁵² and factually straightforward, and the material issue to which they go to prove is of narrow scope. Their review and analysis will require negligible resources from participants.
35. Further, Parties and Participants will have sufficient time to review the material ahead of D29-P-6016's testimony and be afforded the possibility to test their content during cross-examination.

b) CAR-D29-0001-0573

36. This item is the Central African Code of Criminal Procedure⁵³ for which the purpose of the Defence's reliance relates to the legal provisions applicable to search and seizure operations. The Defence recalls that it has consistently made various submissions on the procedural issues that affected the search and seizure operation of [REDACTED].⁵⁴
37. The Defence submits the prejudice that could be caused in relation to this item is nonexistent. First, as put by the Presiding Judge, the Code could be considered "common knowledge".⁵⁵ Second, the item bears prospective significance to the proceedings as to understanding the way investigations are conducted in the Central African Republic and consequently the reliability of the evidence transmitted as a result of such investigations. The Code's prospective significance to the proceedings therefore outweighs its prejudice, if any.
38. In any event, the Defence will tender these items through a bar table application giving Parties and Participants further time to analyse the items and make corresponding submissions should they so wish.

⁵² The seven documents total 13 pages.

⁵³ Entry into force through "Loi n°10.002 du 6 Janvier 2010 portant Code de Procédure Pénale Centrafricain".

⁵⁴ [REDACTED].

⁵⁵ **P-1813** : ICC-01/14-01/18-T-181-CONF-ENG ET, 13:12-19.

c) CAR-D29-0002-0686

39. This item is a publicly available media article published on 6 March 2014 which reports on deputy mayor Saleh DJIDO's murder. Its purported relevance is to demonstrate that the latter was attacked by an angry mob of nearly 100 people (with no mention of involvement of the Anti-Balaka),⁵⁶ under the eyes of police officers. Although Congolese peacekeepers arrested several people and handed them over to the police, they were all set free, most of them escaping into the forest. Nobody was charged.⁵⁷
40. Further, the press article is reliable and authentic as an indication of the information circulating in the press contemporaneously to DJIDO's murder at the end of February 2014.
41. At the outset, the Defence is cognizant that, while the item was found in November following an open-source investigation, it was disclosed four months later due to a regrettable oversight.⁵⁸
42. Regardless, the addition of this item to the Defence's LoE at this stage would cause minimal prejudice to Parties and Participants. The document is of limited size and scope, as is the material issue to which it goes to proof. Its review will not infringe on the expeditious conduct of the proceedings nor require participants' resources. Furthermore, its relevance is consistent with Prosecution evidence *inter alia* regarding the circumstances of the killing and the fact that perpetrators were arrested and later released.⁵⁹ Lastly, the Defence will tender these items through a bar table application giving Parties and Participants further time to analyse the items and make corresponding submissions should they so wish.

⁵⁶ ICC-01/14-01/18-723-Conf, paras. 471-472.

⁵⁷ CAR-D29-0002-0686, p. 0688.

⁵⁸ Trial D29 package 91 21 March 2024.

⁵⁹ See e.g. CAR-OTP-2118-0420, 0436, l. 597-608.

C. Material obtained following the execution of two outstanding requests for assistance

43. The Defence requests the addition of three items⁶⁰ which were obtained following the execution of two pending cooperation requests. The items are relevant to material issues at trial and bear sufficient indicia of reliability as they originate from reliable entities, justifying their late addition to the Defence's LoE.
44. CAR-D29-0004-3924 is a Call Data Record ("CDR") obtained on 16 February 2024 from Orange pursuant to a request for assistance sent on 12 September 2022. CAR-D29-0024-0003 is an investigation report prepared by the Defence relating to D29-P-6025's phone number attribution.
45. The CDR concerns the attribution of the number [REDACTED] to [REDACTED] (P-2638) which is corroborated by various documentary evidence.⁶¹ It further demonstrates regular contact between P-2638 and Defence witness [REDACTED] (D29-P-6025) which supports the latter's testimony with regard to his close relationship with P-2638.⁶²
46. Similarly, CAR-D29-0007-0196-R01 is a response obtained from the Government of France on 19 March 2024 pertaining to a request for assistance sent on 4 October 2019 for reports made by the Sangaris concerning the 5 December attacks in BANGUI ("Sangaris document"). The document is relevant as it provides detailed information on the unravelling of the 5 December 2013 attacks, with chronological observations made by the Sangaris forces.

⁶⁰ CAR-D29-0004-3924; CAR-D29-0024-0003; CAR-D29-0007-0196-R01.

⁶¹ This corroborates the phone number attributed to P-2638 in CAR-OTP-00000012-R01, CAR-OTP-00001073, and CAR-D29-0021-3212, p. 3218. See also ICC-01/14-01/18-2290-Conf, para. 12.

⁶² **P-6025** : CAR-D29-0009-0280-R01, paras. 18-19; ICC-01/14-01/18-T-263-CONF-ENG ET, 17:20-18:20.

47. Specifically, the document mentions that “*Vers 10h00, il est possible de considérer que la capitale était sous le contrôle des ex-Séléka et que les anti-Balaka ne représentaient plus une menace*”. This information is corroborative of video evidence presented during the trial which followed the Seleka advance through CATTIN up to MPOKO-BAC where they arrived at 10:32.⁶³ This information was collected first-hand by the French forces, who met the Seleka when the latter were returning from CATTIN.⁶⁴
48. The document also refers to reprisals of the Seleka with reference to specific locations⁶⁵, corroborating the testimonies of several witnesses, including former Prime Minister Nicolas TIANGAYE (P-0291) who mentioned the Seleka reprisals following the 5 December 2013 attack.⁶⁶
49. Finally, the document also provides information with regard to Seleka killings at the Amitié hospital. This information corroborates several testimonies, such as that of P-0291⁶⁷ and documentary evidence.⁶⁸
50. The fact that the items were obtained after the 17 November deadline is due to circumstances outside the Defence’s control. Despite numerous attempts to expedite the treatment of the requests for assistance and diligent follow-ups, the items were only transmitted on 16 February and 19 March 2024 respectively. Moreover, the Defence has previously notified the Chamber and Participants of

⁶³ See CAR-OTP-2065-1652 and corresponding metadata CAR-OTP-2065-6380. See also the presentation conducted by the Defence with witness P-1528 : ICC-01/14-01/18-T-179-CONF-ENG CT, from [15:18:24] to [15:30:05].

⁶⁴ See CAR-OTP-2065-1684 and corresponding metadata CAR-OTP-2065-6396 indicating that the video was filmed at 10:57 on 5 December 2013.

⁶⁵ See page 0196 : “*Vers 08h00, [...] les ex-Séléka ont début des actions de nettoyage de PK9 et Boy Rabe*”, page 0197 “*Suite aux combats, les ex-Séléka se seraient lancés dans des actions de "nettoyage" de certains quartiers (Fatima, Sara, Benz-vi) et de concessions religieuses*”.

⁶⁶ **P-0291** : ICC-01/14-01/18-T-052-ENG ET, 8:15-9:7.

⁶⁷ **P-0291** : ICC-01/14-01/18-T-052-ENG ET, 9:8-10:4.

⁶⁸ See notably CAR-OTP-2001-2769, p. 2800-2801 which states that : “In a further act of retaliation, the Seleka surrounded and entered Amitié hospital (4th district) on 5 December, removing people who had been injured. [...] The Seleka entered the hospital and took 11 people with them, including my husband, R.M. Y. They killed the 11 people, including my husband, right inside the hospital”. The Defence notes that this item was recognised as formally submitted via email Decision on Submitted Materials for P-0287 (14 June 2021).

the numerous requests for cooperation which remain unanswered and unexecuted.⁶⁹

51. Furthermore, the late addition of these items to the Defence's LoE does not cause unfair prejudice to Parties and Participants.
52. First, the Defence exercised reasonable diligence in reviewing and analysing the received material and disclosing it electronically on 21 March 2024 i.e. within a month for the CDR and a mere two days for the Sangaris document.⁷⁰ With regard to the CDR, the Defence submits that the month delay between receipt and disclosure is justified and reasonable given the technical nature of the document which required the assistance of the Defence's part-time telecom specialist to decipher and analyse it. The Defence takes this opportunity to give notice of its intent to disclose Call Sequence Tables ("CSTs") and request leave to add them to its LoE at a later stage due to the volume of the material involved, the technical nature of the document as well as resource constraints.
53. Second, as elaborated above, the items provide evidence that is consistent with the Defence's theory of the case, which the Parties and Participants are well aware of at this stage of the proceedings.
54. Lastly, the Defence will tender these items through a bar table application giving Parties and Participants further time to analyse the items if need be and make corresponding submissions.⁷¹

⁶⁹ ICC-01/14-01/18-2212-Conf, para. 19; ICC-01/14-01/18-2392, para. 3.

⁷⁰ Trial D29 package 91 21 March 2024.

⁷¹ See ICC-01/14-01/18-2392.

D. Material obtained from the Government of Ireland following a cooperation request

55. The Defence wishes to add 6 Facebook items, comprising 5 audios totalling 10 minutes and 1 conversation thread totalling 6 pages.⁷² This material was obtained from the Government of Ireland following a cooperation request under the same circumstances as the other Facebook records obtained from the Irish authorities on the Defence's LoE.⁷³
56. The Defence is cognizant that the material was obtained prior to the 17 November deadline. Despite conducting a review of the material as diligently as possible ahead of the imposed deadline, regrettably, the items were inadvertently omitted from its LoE.
57. However, the Defence submits that the late addition of these items causes no prejudice to the Parties and Participants.
58. Firstly, as soon as the Defence realized its omission, it disclosed the six items.⁷⁴ Parties and Participants have had access to the six items since December 2023.
59. Secondly, these items were all cited in substantiating the Defence's request for the exclusion of fabricated evidence⁷⁵ to which the concerned Parties and Participants exercised their right to respond in mid-January 2024, over a month and a half after the disclosure of the items.⁷⁶ Parties and Participants were thus on notice of the Defence's intended reliance and substantive arguments relating to these items. Furthermore, the items are limited in volume.

⁷² CAR-D29-0008-0100; CAR-D29-0008-0101; CAR-D29-0008-0102; CAR-D29-0008-0103; CAR-D29-0008-0104; CAR-D29-0019-3698.

⁷³ ICC-01/14-01/18-1538-Conf; ICC-01/14-01/18-1531-Conf-Exp; Letter received by the Defence on 2 March 2023, Ref 132/6/1092/22.

⁷⁴ Trial D29 package 83 1 December 2023.

⁷⁵ ICC-01/14-01/18-2240-Conf-AnxA, page 17, fn. 133; page 18, fn. 140; and page 23 fns. 174, 175, 176.

⁷⁶ See Prosecution and CLRV1 responses, respectively ICC-01/14-01/18-2313-Conf and ICC-01/14-01/18-2314-Conf.

60. Lastly, the Defence notes that, depending on the Chamber's ruling on its request to exclude evidence, it will tender these items through a bar table application giving Parties and Participants further time to analyse the items if need be and make corresponding submissions.⁷⁷

CONCLUSION

61. In light of the above, the addition of the Items to the Defence's List of Evidence is warranted and appropriate in the circumstances. The Items are relevant and of significant probative value, their prospective significance to the proceedings outweighs the potential prejudice caused to Parties and Participants, and their introduction will advance the Chamber's mandate of determination of the truth. The fair and expeditious conduct of the proceedings is not infringed by permitting the Defence to add the Items. Moreover, the request does not concern the submission of evidence, but merely the inclusion of the items on its List of Evidence. Nothing prevents the Parties and Participants from raising additional arguments concerning the submission of these items at a later and more relevant stage in the proceedings. The Defence therefore respectfully requests the Chamber's leave to add the Items to its List of Evidence.

CONFIDENTIALITY

62. This request is filed on a confidential basis as it pertains to confidential evidence. A public redacted version will be filed in due course.

⁷⁷ See ICC-01/14-01/18-2392.

RELIEF SOUGHT

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

GRANT leave to add the Items to the Defence List of Evidence.

RESPECTFULLY SUBMITTED ON THIS 12th DAY OF APRIL 2024



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