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TRIAL CHAMBER V

**Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Corrected public version of

**Decision on the Seventh, Tenth and Seventeenth Prosecution Submission
Requests from the Bar Table (Facebook Evidence)**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2) and (9), 69 and 74(2) of the Rome Statute (the ‘Statute’) and Rules 63 and 64 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Seventh, Tenth and Seventeenth Prosecution Submission Requests from the Bar Table (Facebook Evidence)’.

I. Procedural history

1. On 17 May,¹ 3 July and 25 August 2023, respectively, the Office of the Prosecutor (the ‘Prosecution’) sought the formal submission of a total of 865 items related to 24 Facebook user profiles (the ‘7th Request Items’; ‘7th Request’; ‘10th Request Items’; ‘10th Request’; ‘17th Request Items’; and ‘17th Request’, respectively; together, the ‘Items’).² It argues in relation to all of them that they are relevant to issues at trial, have significant probative value, and do not unfairly prejudice the accused.³
2. On 21 July 2023,⁴ the Yekatom Defence and the Ngaïssona Defence (together, the ‘Defence’) responded to the 7th Request, opposing the submission of some of the 7th Request Items, and outlining their position with respect to all items (the ‘Yekatom Defence Response to the 7th Request’ and the ‘Ngaïssona Defence Response to the 7th Request’, respectively).⁵

¹ The Single Judge granted a request for an extension of the page limit for this request. *See* email from the Chamber, 11 May 2023, at 16:28.

² Prosecution’s Seventh Application for Submission of Facebook Evidence from the Bar Table, ICC-01/14-01/18-1874-Conf (with one confidential annex) (public redacted version notified on 8 June 2023, ICC-01/14-01/18-1874-Red); Prosecution’s Tenth Application for Submission of Facebook Evidence from the Bar Table, ICC-01/14-01/18-1956-Conf (with one confidential annex); Prosecution’s Seventeenth Application for Submission of Facebook Evidence from the Bar Table, ICC-01/14-01/18-2062-Conf (with confidential Annexes A-B).

³ 7th Request, ICC-01/14-01/18-1874-Red, paras 11, 50-55; 10th Request, ICC-01/14-01/18-1956-Conf, paras 2, 7, 11, 23-27; 17th Request, ICC-01/14-01/18-2062-Conf, paras 2, 8, 11, 51-57.

⁴ The Single Judge extended the time limit to respond until 21 July 2023. *See* Decision on the Ngaïssona Defence’s Request to dismiss *in limine* ICC-01/14-01/18-1874 and for orders concerning the Prosecution’s prospective bar table applications, 25 May 2023, ICC-01/14-01/18-1884.

⁵ Yekatom Response to “Prosecution’s Seventh Application for Submission of Facebook Evidence from the Bar Table”, 17 May 2023, ICC-01/14-01/18-1874, ICC-01/14-01/18-1996-Conf (with confidential Annex A); Defence Response to the “Prosecution’s Seventh Application for the Submission of Evidence from the Bar Table” ICC-01/14-01/18-1874-Conf, ICC-01/14-01/18-1999-Conf (with confidential Annexes 1-2). The Single Judge granted a request for an extension of the page limit for this response. *See* email from the Chamber, 3 July 2023, at 10:01.

3. On 25 July and 28 August 2023,⁶ respectively, the Defence indicated not opposing the submission of the 10th Request Items, and outlined their position with respect to all of them (the ‘Yekatom Defence Response to the 10th Request’ and ‘Ngaïssona Defence Response to the 10th Request’, respectively).⁷
4. On 26 July 2023, the Prosecution sought leave to reply to the Ngaïssona Defence Response to the 7th Request (the ‘Request for Leave to Reply’).⁸
5. On 29 August 2023, the Chamber rejected the Request for Leave to Reply.⁹
6. On 28 September 2023,¹⁰ the Yekatom Defence responded to the 17th Request, opposing the submission of 18 of the 17th Request Items, and outlining its position with respect to all items (the ‘Yekatom Defence Response to the 17th Request’).¹¹
7. On 29 September 2023, the Ngaïssona Defence responded to the 17th Request, outlining its position with respect to all of the 17th Request Items (the ‘Ngaïssona Defence Response to the 17th Request’).¹² The Ngaïssona Defence also requests the Chamber ‘to strike from the records all submissions in Annex B [to the 17th Request] that are related to the Facebook accounts addressed in previous Prosecution’s applications and limit its assessment to the Prosecution’s submissions made in relation to the Facebook Items forming part of’ the 17th Request (the ‘Request to Strike’).¹³

⁶ The Single Judge granted an extension of time to respond. *See* email from the Chamber, 10 July 2023, at 12:42.

⁷ Yekatom Defence Response to ‘Prosecution’s Tenth Application for Submission of Facebook Evidence from the Bar Table’, ICC-01/14-01/18-2005-Conf (with one confidential annex); Defence Response to the “Prosecution’s Tenth Application for the Submission of Facebook Evidence from the Bar Table” ICC-01/14-01/18-1956-Conf, ICC-01/14-01/18-2065-Conf (with confidential Annex 1).

⁸ Prosecution’s Request for Leave to Reply to the NGAÏSSONA Defence’s Response to the “Prosecution’s Seventh Application for the Submission of Evidence from the Bar Table” (ICC-01/14-01/18-1874-Conf), (ICC-01/14-01/18-1999-Conf), ICC-01/14-01/18-2007.

⁹ Decision on the Prosecution Request for Leave to Reply to the Ngaïssona Defence Response to the Seventh Prosecution Submission Request from the Bar Table, ICC-01/14-01/18-2066 (the ‘Decision on Request for Leave to Reply’).

¹⁰ The Single Judge granted an extension of time to respond. *See* email from the Chamber, 4 September 2023, at 09:21.

¹¹ Yekatom Defence Response to ‘Prosecution’s Seventeenth Application for Submission of Facebook Evidence from the Bar Table’, ICC-01/14-01/18-2062-Conf, ICC-01/14-01/18-2112-Conf (with confidential Annex A).

¹² Defence Response to the “Prosecution’s Seventeenth Application for the Submission of Facebook Evidence from the Bar Table” ICC-01/14-01/18-2062-Conf, ICC-01/14-01/18-2115-Conf (with confidential Annex 1).

¹³ Ngaïssona Defence Response to the 17th Request, ICC-01/14-01/18-2115-Conf, para. 6.

II. Analysis

A. The Request to Strike

8. Turning first to the Request to Strike, the Chamber notes the Ngaiissona Defence's argument that the Prosecution 'impermissibly replied' to the Ngaiissona Defence's responses to the 7th and 10th Request, with Annex B to the 17th Request containing 'alleged user identification information in relation to 25 Facebook accounts whereas the [17th Request] relates to nine Facebook accounts only'.¹⁴ The Chamber further notes that the Ngaiissona Defence Response to the 7th Request contains arguments as to the unreliability of Facebook evidence, submitting, *inter alia*, that 'Facebook items are not self-authenticating, "*partly due to the anonymity resulting in the use of pseudonyms as user names*"', with reference to certain national jurisprudence.¹⁵
9. In addition, the Chamber notes that when rejecting the Request for Leave to Reply, it found that 'the issue of authenticity of the Facebook evidence has indeed been raised several times and is not a new issue that the Prosecution could not reasonably have anticipated'.¹⁶
10. In the 17th Request, the Prosecution provides information on 'the user attribution of the Facebook records, for which submission was requested to date', including in relation to user profiles connected to the items requested for submission in the 7th Request and 10th Request.¹⁷ It also argues that the Facebook evidence is sufficiently reliable, submitting that '[t]he attribution of each Facebook account to its effective user [...] is an issue of the reliability of the evidence rather than its authenticity', that 'their identity can also be established inferentially, through extrinsic and intrinsic evidence', and that '[t]he Chamber may consider

¹⁴ Ngaiissona Defence Response to the 17th Request, ICC-01/14-01/18-2115-Conf, para. 6.

¹⁵ Ngaiissona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf, para. 15.

¹⁶ Decision on Request for Leave to Reply, ICC-01/14-01/18-2066, para. 6.

¹⁷ 17th Request, ICC-01/14-01/18-2062-Conf, para. 5 and n. 8 ('Items listed in Annex A to this application, as well as the items listed in previous two Facebook bar table applications, ICC-01/14-01/18-1874-Conf and its Annex ICC-01/14-01/18-1874-Conf-Anx; ICC-01/14-01/18-1956-Conf and its Annex ICC-01/14-01/18-1956-Conf-Anx.'). See Annex B to the 17th Request, ICC-01/14-01/18-2062-Conf-AnxB. The Chamber notes that the information also relates to one user profile concerned by another application and related decision, see Decision on the Second Prosecution Submission Request from the Bar Table (P-0889), 24 May 2022, ICC-01/14-01/18-1429.

circumstantial evidence in its holistic assessment of the probative value and weight of the Facebook Evidence’.¹⁸

11. Importantly, the Prosecution presents arguments in all three requests to underscore its reasoning as to why, in its view, certain identified individuals were the ‘effective users’ of specified accounts.¹⁹ Annex B to the 17th Request contains additional submissions thereon.
12. The Chamber recognises that the Ngaïssona Defence had raised the issue of the unreliability of Facebook evidence linked to the question of user attribution as early as during its opening statement, as also reiterated in its response to the 7th Request.²⁰ At the same time, in the Chamber’s view, the fact that the Prosecution might have ‘impermissibly’ supplemented its submissions on user attributions by virtue of Annex B to the 17th Request, cannot and should not restrict the Chamber’s ability to fully and independently assess the relevance and probative value of the Items, including as regards the matter of user profiles and their attribution.
13. In light of the above, the Chamber is of the view that it is not necessary to ‘strike from the records’ the Prosecution’s submissions in Annex B to the 17th Request. The Chamber will, in any event, independently assess any evidentiary material introduced before it. The Request to Strike is therefore rejected.

¹⁸ 17th Request, ICC-01/14-01/18-2062-Conf, para. 54.

¹⁹ See 7th Request, ICC-01/14-01/18-1874-Conf, paras 13, 19-20, 26, 31-32, 38-40, 46; 10th Request, ICC-01/14-01/18-1956-Conf, paras 13, 15-16, 18, 21; 17th Request, ICC-01/14-01/18-2062-Conf, paras 13, 18, 22, 24 (p. 14), 28, 33, 38, 41, 46.

²⁰ See Transcript of hearing, 18 February 2021, ICC-01/14-01/18-T-016-ENG, p. 24, lines 2-9: ‘The Chamber, as we submit, will learn during this trial that Facebook evidence is, as we will prove, not reliable at its face, it’s not self-authenticating, partly due to the anonymity resulting in the use of pseudonyms as user names. Other risks we will submit during this trial will appear and were already identified by also the Court of Appeals of Texas in the *Tienda v State* case, 2012, an important case when it concerns the veracity of Facebook messages and the value of those messages as criminal evidence. And also that court ruled that that type of evidence, without more, is not sufficient to support a finding of authenticity.’; Ngaïssona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf, para. 15. See also Defence Response to the “Prosecution’s Request for Leave to Reply to the NGAÏSSONA Defence’s Response to the “Prosecution’s Seventh Application for the Submission of Evidence from the Bar Table” (ICC-01/14-01/18-1874-Conf), (ICC-01/14-01/18-1999-Conf)”, 16 August 2023, ICC-01/14-01/18-2030, para. 7.

B. Discussion on introduction of items

14. The Chamber recalls the applicable law for submission of evidence from the bar table.²¹
15. At the outset, the Chamber notes that a number of the Items have already been recognised as formally submitted.²² The Chamber therefore need not rule on them again.
16. The Ngaissona Defence objects to the submission of three items because they do not appear on the Prosecution's list of evidence.²³ The Chamber notes in this regard that the Prosecution did not apply for these items to be added to its list of evidence. In this light, the Chamber is of the view that the items should not be recognised as formally submitted and therefore rejects their introduction.
17. Furthermore, the Chamber notes the parties' arguments on the relevance and probative value of some of the Items, including potential prejudice to the accused,²⁴ the general submissions of the Defence on the unreliability of

²¹ Decision on the First Prosecution Submission Request from the Bar Table (Sexual and Gender Based Violence), 12 April 2022, ICC-01/14-01/18-1359, paras 10-12 *referring to* Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631 (the 'Initial Directions'), paras 53-54, 62.

²² CAR-OTP-2100-7317; CAR-OTP-2101-6260; CAR-OTP-2101-6897; CAR-OTP-2101-8109; CAR-OTP-2101-9735; CAR-OTP-2100-3030; CAR-OTP-2102-5143; CAR-OTP-2102-9329; CAR-OTP-2103-4827; CAR-OTP-2103-4829; CAR-OTP-2103-4831; CAR-OTP-2103-4837; CAR-OTP-2103-4841; CAR-OTP-2103-4843; CAR-OTP-2103-4844; CAR-OTP-2066-2466.

²³ CAR-OTP-2103-7505; CAR-OTP-2103-7447; CAR-OTP-2130-0268. *See* Ngaissona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf, paras 5, 69; Annex 1 to the Ngaissona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf-Anx1, pp. 242-243, 485.

²⁴ Yekatom Defence Response to the 7th Request, ICC-01/14-01/18-1996-Conf, paras 9-13; Annex A to the Yekatom Defence Response to the 7th Request, ICC-01/14-01/18-1996-Conf-AnxA, pp. 6 (CAR-OTP-2100-4347), 9 (CAR-OTP-2100-4558), 12 (CAR-OTP-2100-4795), 29-30 (CAR-OTP-2100-6921; CAR-OTP-2100-6927), 33 (CAR-OTP-2100-7111), 34 (CAR-OTP-2100-7272), 37-38 (CAR-OTP-2100-7603), 41-42 (CAR-OTP-2100-8322), 44-45 (CAR-OTP-2100-8673), 49 (CAR-OTP-2100-8985), 51 (CAR-OTP-2100-9413), 69-70 (CAR-OTP-2101-6147), 70 (CAR-OTP-2101-6216), 71 (CAR-OTP-2101-6281), 75-77 (CAR-OTP-2101-6573; CAR-OTP-2101-6583; CAR-OTP-2101-6591), 77-78 (CAR-OTP-2101-6739), 78-80 (CAR-OTP-2101-6743; CAR-OTP-2101-6768; CAR-OTP-2101-6783), 81-82 (CAR-OTP-2101-7058), 86-87 (CAR-OTP-2101-7435), 95 (CAR-OTP-2101-8008), 101-103 (CAR-OTP-2101-8328; CAR-OTP-2101-8337), 104 (CAR-OTP-2101-8380), 110-111 (CAR-OTP-2101-9009; CAR-OTP-2101-9033), 114-115 (CAR-OTP-2101-9368; CAR-OTP-2101-9402), 116-117 (CAR-OTP-2101-9627), 119-121 (CAR-OTP-2101-9915; CAR-OTP-2101-9929; CAR-OTP-2101-9941), 132 (CAR-OTP-2102-3764), 149-150 (CAR-OTP-2099-8600), 154 (CAR-OTP-2099-8756), 159-160 (CAR-OTP-2099-9195), 163-164 (CAR-OTP-2099-9468; CAR-OTP-2099-9511), 166 (CAR-OTP-2099-9653; CAR-OTP-2099-9807), 168-169 (CAR-OTP-2100-2717), 170-172 (CAR-OTP-2100-2885; CAR-OTP-2100-2906; CAR-OTP-2100-2909), 173-176 (CAR-OTP-2100-2915; CAR-OTP-2100-2916; CAR-OTP-2100-2918), 179-182 (CAR-OTP-2100-2937; CAR-OTP-2100-2942; CAR-

Facebook content²⁵ and the lack of independent authentication or contextualisation.²⁶ The Chamber defers the consideration of any such arguments to its deliberation pursuant to Article 74(2) of the Statute and, at this stage, will only consider whether the Items are subject to any statutory exclusionary rules, including procedural bars, obstacles, and preconditions.²⁷ Having reviewed these items, and noting the objections, the Chamber has not identified any procedural bars and therefore recognises them as formally submitted.

OTP-2100-2944), 183-184 (CAR-OTP-2100-2948), 226-227 (CAR-OTP-2102-9526; CAR-OTP-2102-9529), 229 (CAR-OTP-2102-9583), 230-232 (CAR-OTP-2102-9657; CAR-OTP-2102-9670), 233-234 (CAR-OTP-2102-9749), 236 (CAR-OTP-2102-9782), 239 (CAR-OTP-2102-9875), 245 (CAR-OTP-2103-1653), 248-249 (CAR-OTP-2103-1716), 250 (CAR-OTP-2103-1876), 251-252 (CAR-OTP-2103-1890; CAR-OTP-2103-1932), 255 (CAR-OTP-2103-2068), 262-263 (CAR-OTP-2102-9024; CAR-OTP-2102-9032), 269-270 (CAR-OTP-2102-9354; CAR-OTP-2102-9363), 283 (CAR-OTP-2102-5423), 304 (CAR-OTP-2102-7947), 307 (CAR-OTP-2102-8490), 308 (CAR-OTP-2102-8499), 309 (CAR-OTP-2102-8509), 314-316 (CAR-OTP-2102-8651; CAR-OTP-2102-8656; CAR-OTP-2102-8658; CAR-OTP-2102-8661), 318 (CAR-OTP-2102-8708), 321 (CAR-OTP-2102-8737), 326-328 (CAR-OTP-2102-8835; CAR-OTP-2103-4828; CAR-OTP-2103-4832; CAR-OTP-2103-4834; CAR-OTP-2103-4836; CAR-OTP-2103-4839); Ngaiissona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf, paras 17-68; Annex 1 to the Ngaiissona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf-Anx1, pp. 398-399 (CAR-OTP-2102-8899), 451-452 (CAR-OTP-2102-8490), 473-474 (CAR-OTP-2102-8811); Yekatom Defence Response to the 10th Request, ICC-01/14-01/18-2005-Conf, paras 6-13; Ngaiissona Defence Response to the 10th Request, ICC-01/14-01/18-2065-Conf, paras 11-46; Yekatom Defence Response to the 17th Request, ICC-01/14-01/18-2112-Conf, paras 5-16; Annex A to the Yekatom Defence Response to the 17th Request, ICC-01/14-01/18-2112-Conf-AnxA, pp. 12 (CAR-OTP-2103-3408), 49-50 (CAR-OTP-2103-2186; CAR-OTP-2103-2082), 50-51 (CAR-OTP-2103-2164), 51-53 (CAR-OTP-2103-2132; CAR-OTP-2103-2104; CAR-OTP-2103-2156), 53-54 (CAR-OTP-2103-2114), 54-55 (CAR-OTP-2103-2160), 60-63 (CAR-OTP-2099-7897), 90 (CAR-OTP-2132-7664), 91-92 (CAR-OTP-2132-6515), 94-96 (CAR-OTP-2132-6648; CAR-OTP-2133-2450; CAR-OTP-2133-1362), 108 (CAR-OTP-2131-1303), 112-113 (CAR-OTP-2133-7314), 114-115 (CAR-OTP-2131-6546); Ngaiissona Defence Response to the 17th Request, ICC-01/14-01/18-2115-Conf, paras 10-40; Annex 1 to the Ngaiissona Defence Response to the 17th Request, ICC-01/14-01/18-2115-Conf-Anx1, pp. 95-96 (CAR-OTP-2099-3204), 158-161 (CAR-OTP-2133-7723), 165-166 (CAR-OTP-2131-1003), 167 (CAR-OTP-2131-1038), 170-171 (CAR-OTP-2133-6457), 177-178 (CAR-OTP-2131-6546; CAR-OTP-2133-1610; CAR-OTP-2131-0993).

²⁵ Yekatom Defence Response to the 7th Request, ICC-01/4-01/18-1996-Conf, para. 11; Ngaiissona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf, paras 9-16; Ngaiissona Defence Response to the 10th Request, ICC-01/14-01/18-2065-Conf, paras 8-10; Ngaiissona Defence Response to the 17th Request, ICC-01/14-01/18-2115-Conf, paras 8-9.

²⁶ Ngaiissona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf, para. 6; Ngaiissona Defence Response to the 10th Request, ICC-01/14-01/18-2065-Conf, paras 9, 44-46; Ngaiissona Defence Response to the 17th Request, ICC-01/14-01/18-2115-Conf, paras 9, 38-40.

²⁷ Decision on the Fourth Prosecution Submission Request from the Bar Table (Recruitment and Use of Children), 24 May 2022, ICC-01/14-01/18-1428, para. 5.

18. Further, the Defence objects to the submission of certain items on account of them containing portions in Sango for which no translation into a working language of the Court has been provided.²⁸
19. The Chamber notes that for most of these items, the Prosecution does not refer to any of the passages at issue in its relevance description for the concerned items. While it is mindful of its approach to generally recognise submission of items in their entirety,²⁹ the Chamber considers that the passages which the Prosecution relies on for its relevance description can be read and understood separately from the portions in Sango. The Chamber therefore recognises these items as formally submitted, but emphasises that it will not consider any portions in Sango for purposes of its determinations. The same considerations apply to items which the Defence may not have specifically objected to.³⁰
20. However, the Chamber notes in relation to item CAR-OTP-2101-7015 that the Prosecution relies on an extract on page 7056 in its relevance description. Having reviewed the exchange, the Chamber is of the view that the entire context of the part on which the Prosecution seeks to rely is in Sango, without the Chamber being in a position to assess its relevance. In light of the fact that the Prosecution has not otherwise justified the relevance of the item, the Chamber rejects its introduction. Similarly, as regards item CAR-OTP-2102-8137, while the specific extracts the Prosecution relies on are in French, the remainder of the messages is entirely in Sango. Bearing in mind the above, the Chamber therefore rejects the introduction also of this item.

²⁸ CAR-OTP-2101-7015 (at 7056); CAR-OTP-2102-8137; CAR-OTP-2100-2994 (at 3004); CAR-OTP-2100-4956 (at 4963-64); CAR-OTP-2102-3014 (at 3051-53, 3058-59, 3066, 3078, 3144); CAR-OTP-2099-8120 (at 8120-28, 8133, 8137, 8141-42, 8145, 8147-48, 8176-77, 8182, 8188); CAR-OTP-2102-8290 (at 8308-12); CAR-OTP-2102-8444 (at 8445-46); CAR-OTP-2102-8822 (at 8822-25). *See* Annex A to the Yekatom Defence Response to the 7th Request, ICC-01/14-01/18-1996-Conf-AnxA, pp. 81, 306; Ngaïssona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf, paras 6, 69; Annex 1 to the Ngaïssona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf-Anx1, pp. 228, 247-248, 339-340, 347.

²⁹ *See also* Decision on Submitted Materials for P-2841, email from the Chamber, 2 July 2021, at 14:07.

³⁰ *See, for example*, CAR-OTP-2100-4347; CAR-OTP-2100-6170; CAR-OTP-2101-5514; CAR-OTP-2101-6011; CAR-OTP-2101-6924; CAR-OTP-2101-7435; CAR-OTP-2101-7742; CAR-OTP-2101-8205; CAR-OTP-2101-8267; CAR-OTP-2099-9653; CAR-OTP-2100-2717; CAR-OTP-2102-9934; CAR-OTP-2102-7759; CAR-OTP-2103-3481; CAR-OTP-2103-3761; CAR-OTP-2132-6515; CAR-OTP-2132-6648; CAR-OTP-2100-7713; CAR-OTP-2102-5751.

21. As regards item CAR-OTP-2066-1601, the Chamber notes that specific parts thereof have previously been recognised as formally submitted.³¹ Further noting that the Defence had an opportunity to provide their views on the entirety of the item,³² and not having identified any procedural bars, the Chamber recognises it as formally submitted in its entirety.
22. Finally, the Chamber notes that it previously deferred its determination on the submission of items CAR-OTP-2103-2375, CAR-OTP-2103-2407 and CAR-OTP-2103-2529.³³ The Chamber further notes that the Defence had two opportunities to scrutinise these items and provide their views thereon,³⁴ and that the Yekatom Defence defers to the position of the Ngaïssona Defence,³⁵ while the latter refers to its general submissions on the unreliability of Facebook material.³⁶ In this light, and not having identified any procedural bars, the Chamber therefore recognises these items as formally submitted.
23. Having reviewed the remainder of the Items, there appear to be no procedural bars to their submission. The Chamber therefore recognises them as formally submitted.

³¹ Fourteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2556 and P-1077, 14 June 2022, ICC-01/14-01/18-1457-Conf, paras 23-25, p. 12; Transcript of hearing, 29 August 2022, ICC-01/14-01/18-T-149-ENG, p. 9, lines 9-11.

³² Yekatom Defence Response to the 10th Request, ICC-01/14-01/18-2005-Conf; Annex to the Yekatom Defence Response to the 10th Request, ICC-01/14-01/18-2005-Conf-Anx, pp. 6-8; Ngaïssona Defence Response to the 10th Request, ICC-01/14-01/18-2065-Conf, paras 30-43; Annex 1 to the Ngaïssona Defence Response to the 10th Request, ICC-01/14-01/18-2065-Conf-Anx1, pp. 5-9. *See also* Annex A to the Yekatom Defence Response to the “Prosecution’s Sixth Application for the Submission of Evidence from the Bar Table”, 15 May 2023, ICC-01/14-01/18-1868-Conf, 19 June 2023, ICC-01/14-01/18-1935-Conf-AnxA, p. 113.

³³ Decision on the Sixteenth Prosecution Submission Request from the Bar Table (supplementary Call Data Records), 27 September 2023, ICC-01/14-01/18-2110, paras 12-16, p. 11.

³⁴ *See* Yekatom Defence Response to the ‘Prosecution’s Sixteenth supplementary submission of call data records and related evidence via the “bar table”’, 25 August 2023, ICC-01/14-01/18-2061, 7 September 2023, ICC-01/14-01/18-2079-Conf (public redacted version notified on 3 October 2023), paras 8-15; Defence Response to “Prosecution’s Sixteenth supplementary submission of call data records and related evidence via the “bar table”” (ICC-01/14-01/18-2061), filed 25 August 2023, 7 September 2023, ICC-01/14-01/18-2085-Conf (public redacted version notified on 4 October 2023), paras 21-26.

³⁵ Annex A to the Yekatom Defence Response to the 7th Request, ICC-01/14-01/18-1996-Conf-AnxA, pp. 187-189.

³⁶ Annex 1 to the Ngaïssona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf-Anx1, pp. 292-294, 296.

FOR THESE REASONS, THE CHAMBER HEREBY**REJECTS** the Request to Strike;**PARTLY GRANTS** the 7th Request;**GRANTS** the 10th Request;**GRANTS** the 17th Request;**REJECTS** the submission of items CAR-OTP-2103-7505; CAR-OTP-2103-7447;
CAR-OTP-2130-0268; CAR-OTP-2102-8137; CAR-OTP-2101-7015;**RECOGNISES** as formally submitted the following items:

CAR-OTP-2099-1371;	CAR-OTP-2100-4453;	CAR-OTP-2100-4902;
CAR-OTP-2099-1384;	CAR-OTP-2100-4490;	CAR-OTP-2100-4904;
CAR-OTP-2099-1466;	CAR-OTP-2100-4498;	CAR-OTP-2100-4956;
CAR-OTP-2100-2994;	CAR-OTP-2100-4558;	CAR-OTP-2100-5009;
CAR-OTP-2100-4115;	CAR-OTP-2100-4578;	CAR-OTP-2100-5015;
CAR-OTP-2100-4118;	CAR-OTP-2100-4589;	CAR-OTP-2100-5023;
CAR-OTP-2100-4137;	CAR-OTP-2100-4631;	CAR-OTP-2100-5030;
CAR-OTP-2100-4183;	CAR-OTP-2100-4637;	CAR-OTP-2100-5221;
CAR-OTP-2100-4197;	CAR-OTP-2100-4679;	CAR-OTP-2100-5275;
CAR-OTP-2100-4202;	CAR-OTP-2100-4693;	CAR-OTP-2100-5368;
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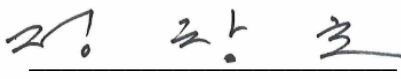
ORDERS the Registry to reflect that these items have been so recognised in the JEM code;

ORDERS the Prosecution to file public redacted versions, or request reclassification to public, of the 10th Request, ICC-01/14-01/18-1956-Conf, and the 17th Request, ICC-01/14-01/18-2062-Conf, within one week of notification of this decision;

ORDERS the Yekatom Defence to file public redacted versions, or request reclassification to public, of the Yekatom Defence Response to the 7th Request, ICC-01/14-01/18-1996-Conf, the Yekatom Defence Response to the 10th Request, ICC-01/14-01/18-2005-Conf, and the Yekatom Defence Response to the 17th Request, ICC-01/14-01/18-2112-Conf, respectively, within one week of notification of this decision; and

ORDERS the Ngaïssona Defence to file public redacted versions, or request reclassification to public, of the Ngaïssona Defence Response to the 7th Request, ICC-01/14-01/18-1999-Conf, the Ngaïssona Defence Response to the 10th Request, ICC-01/14-01/18-2065-Conf, and the Ngaïssona Defence Response to the 17th Request, ICC-01/14-01/18-2115-Conf, respectively, within one week of notification of this decision.

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

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Judge Péter Kovács	Judge Bertram Schmitt Presiding Judge	Judge Chang-ho Chung

Dated 15 April 2024

At The Hague, The Netherlands