

ANNEX 1

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Version

From: Trial Chamber V Communications
Sent: 13 November 2023 13:13
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for P-1990
Attachments: Yekatom Defence submission of evidence following the examination of P-1990

Follow Up Flag: Follow up
Flag Status: Flagged

[ICC] RESTRICTED

Dear Counsel, dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of P-1990 by the Prosecution and the Yekatom Defence, the Ngaïssona Defence's objections, and the Prosecution's response thereto (see emails attached and below).

At the outset, the Chamber notes that items CAR-D29-0006-1312, CAR-D29-0008-0017, CAR-OTP-2065-1348 and CAR-OTP-2065-6228 have already been recognised as submitted. The Chamber need therefore not rule on them again.

In addition, the Chamber notes that items CAR-OTP-2065-2867, CAR-OTP-2127-3658, CAR-OTP-2065-5470 and CAR-OTP-2107-1559 have also been requested for submission in the context of a 'bar table' application (see ICC-01/14-01/18-2057-Conf-AnxA, pp. 170, 173, 190, 191). Further bearing in mind the objections of the Ngaïssona Defence in relation to CAR-OTP-2065-5470 and CAR-OTP-2107-1559, and that it will have the opportunity to provide its response on their requested submission through the mentioned 'bar table' application, the Chamber defers its determination on the submission of these four items and will consider the arguments on them when deciding on their submission in the context of the mentioned 'bar table' application.

Thus, and in the absence of any procedural bars, the Chamber recognises as formally submitted the following items:

Doc ID	Title	Type
CAR-D29-0002-0128	Centrafrique : l'aéroport de Bangui pris d'assaut par des milliers de réfugiés	Media / press article
CAR-D29-0003-0144	D29 Analysis of IRAD Exhumations at Yamwara	Satellite images and related reports
CAR-D29-0003-0167	Ngou Cater neighbourhood - Yamwara School localisation	Satellite images and related reports
CAR-D29-0003-0171	D29 Analysis of CAR-OTP-2119-0193 location	Satellite images and related reports
CAR-D29-0006-1183	Transcription of CAR-D29-0008-0014	Transcript
CAR-D29-0006-1342	Transcription de CAR-OTP-2065-4141	Transcript
CAR-D29-0006-1344	Traduction FR de CAR-OTP-2012-0485	Translation - FRA
CAR-D29-0006-1346	Transcription de CAR-D29-0008-0024	Transcript

CAR-D29-0006-1347	Transcription de CAR-OTP-2065-4665	Transcript
CAR-D29-0006-1349	Transcription de CAR-OTP-2012-0485	Transcript
CAR-D29-0008-0014	L'aéroport de Bangui occupé en réaction aux violences de la Séléka	Audio / Video Material
CAR-D29-0008-0024	Central African Republic unrest	Audio / Video Material
CAR-OTP-00001499	INVESTIGATION REPORT / OTP interaction with CAR-OTP-P-1990 on 27/11/2017	ICC Investigation notes / report / correspondence
CAR-OTP-00001520	INVESTIGATION REPORT / NOTES FROM IMAGERY UNIT	ICC Investigation notes / report / correspondence
CAR-OTP-00001521	230517_CAR2B_EXIF_extract_.xlsx	List / table
CAR-OTP-2012-0485	Video 148 / La Seleka de la RCA après le coup d'Etat 1	Audio / Video Material
CAR-OTP-2065-4121	AA014501.MXF	Audio / Video Material
CAR-OTP-2065-4141	AA015001.MXF	Audio / Video Material
CAR-OTP-2065-4665	AA012201.MXF	Audio / Video Material
CAR-OTP-2065-4701	AA013101.MXF	Audio / Video Material
CAR-OTP-2065-7606	Metadata Extraction of CAR-OTP-2065-4665 - AA012201.MXF	Metadata
CAR-OTP-2065-7624	Metadata Extraction of CAR-OTP-2065-4701 - AA013101.MXF	Metadata
CAR-OTP-2066-0593	KOKORO 2 (YAWARA) SCHOOL	ICC Investigation notes / report / correspondence
CAR-OTP-2126-0292	DETAILS STATISTIQUES DES RECHERCHES, IDENTIFICATIONS ET CONFIRMATIONS DES TOMBES	List / table
CAR-OTP-2126-0775	DJI_0273.JPG	Photograph/s
CAR-OTP-2126-1324	DJI_0822.JPG	Photograph/s
CAR-OTP-2126-1400	DJI_0898.JPG	Photograph/s
CAR-OTP-2126-1402	DJI_0900.JPG	Photograph/s
CAR-OTP-2126-1403	DJI_0901.JPG	Photograph/s
CAR-OTP-2126-2017	DSC_0624.JPG	Photograph/s

Further, the Chamber confirms that the requirements of Rule 68(3) of the Rules have been met for the following items:

Doc ID	Title	Type
CAR-OTP-2124-0247	WITNESS STATEMENT	ICC Statement - General
CAR-OTP-2122-5638	Traduction d'élément de preuve / DÉCLARATION DE TÉMOIN / WITNESS STATEMENT	ICC Statement - Translation - FRA

CAR-OTP-2119-0187	DSCN1403.JPG	Photograph/s
CAR-OTP-2119-0188	DSCN1404.JPG	Photograph/s
CAR-OTP-2124-0261		Satellite images and related reports

The Registry is directed to proceed in accordance with paragraph 63(v) of the Initial Directions, ICC-01/14-01/18-631.

Kind regards,
TC V

From: OTP CAR IIB [REDACTED]
Sent: 08 June 2023 18:11
To: [REDACTED]; OTP CAR IIB [REDACTED] Trial Chamber V Communications [REDACTED] >
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team <[REDACTED]>; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]; [REDACTED]; [REDACTED]; Associate Legal Officer-Court Officer <[REDACTED]> >
Subject: RE: Prosecution Submission of evidence following the examination of P-1990

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear All,

The Prosecution hereby responds to the Ngaissona Defence's ("Defence") opposition to the formal submission of item CAR-OTP-2065-5470 and its transcript CAR-OTP-2107-1559, in the context of the Prosecution Submission of evidence following the examination of witness P-1990.

First, contrary to the Defence's claim, the mere fact that a video is not mentioned in the statement of a particular witness or was not taken by that witness does not preclude the submission of the video in question through the witness when its content is relevant and presents indicia of reliability on its face. The content of CAR-OTP-2065-5470 is clearly relevant to the subject matter of this case, and notably the composition and organisation of the Anti-Balaka movement. The individual who appears to be speaking with authority on the video, Sylvester YANGOUZOU, has already and been identified as one of the main leaders of the Anti-Balaka (*see e.g.* ICC-01/14-01/18-T-185-CONF-ENG, page 36, line 18-page 38, line 4; ICC-01/04-01/18-T-155-CONF-FRA, page 84, line 11-page 85, line 20). The statement he made about being joined by the FACA in GOBERE and having spread out to other locations throughout the CAR is consistent with the evidence heard by the Chamber in this case. Moreover, after watching the video in question, P-1990 confirmed that its content is not only consistent with what he heard from people going to the field – namely that the Anti-Balaka came from all over the CAR - but he also confirmed the presence of FACA members within the group of Anti-Balaka based at the YAMWARA school (*see* ICC-01/14-01/18-T-236-ENG ET, page 30, lines 16-18; pages 31, line 20-page 32, line 16).

Second, and contrary to the Defence's allegation, the video is not prejudicial to the Defence. The interest of the Accused to confront evidence that would implicate him was in fact satisfied, as the Defence had the opportunity to examine witness P-1990 on the facts and circumstances mentioned in the video; but declined to do so. Additionally, as the video was (i) disclosed long before the commencement of the trial and (ii) introduced into evidence as part of P-1819's prior recorded testimony subject to the fulfilment of

the legal requirements of Rule 68(3) of the Rules (*see* Decision ICC-01/14-01/18-1661-Conf-Corr, para. 42, n. 58, p. 33; Annex A to the P-1819 Request, ICC-01/14-01/18-1414-Conf-AnxA); the Defence has been on notice about its content and fully had the opportunity to investigate those facts and circumstances.

Finally, the Court's regulatory framework does not bar the submission of an item appropriately used in Court with a witness, notwithstanding the existence of other alternative available means of submission.

Kind regards,

On behalf of the OTP Trial Team

From: [REDACTED]
Sent: 07 June 2023 15:12
To: OTP CAR IIB [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Prosecution Submission of evidence following the examination of P-1990

Dear Trial Chamber,

The Defence for Mr Ngaissona objects to the submission of item CAR-OTP-2065-5470 and its transcript CAR-OTP-2107-1559. Counsel Knoops objected to the use of the item during testimony because among other reasons, the video does not appear in the statement of the witness and the video was not taken by the witness (T-236-Eng, p. 21, l. 1 to p. 22, l. 9; p. 25, lines 8-10; p. 29, ll. 14-15).

Submission of the item in the present circumstances is either prejudicial or not helpful in the search for the truth.

The witness had nothing to say about the video and re-iterated what he had already said clearly in his statement (T-236-Eng, p. 30, l. 10 to p. 31, l. 10). The submission of the video adds nothing to this testimony or the statement. As the Presiding Judge noted when Counsel initially set out the Defence objection "the video is not introduced now via the witness. We have a witness here and what the witness says, having seen the video, is the evidence" (T-236-Eng, p. 22, ll. 24-25). Again, the witness knew nothing about its contents.

On the other hand, submission of the item will cause prejudice to the Defence. The Prosecution recently emailed the Chamber to explain that P-1819, who purportedly took the video, [REDACTED] and the individual who appears in the video and the Prosecution asked about is dead (Sylvestre Yagouzou, *see*, for example, T-116-CONF-ENG, p. 10, l. 23). Thus, it is not possible for the Defence to seek clarifications or further context about what is said in the video or even its context. Therefore, especially given that the witness had nothing to say about it, the Prosecution is seeking to introduce this item through the back-door. All the while, the video contains a claim that, read through a Prosecution perspective, supports an claim in the Prosecution's case and is strongly contested by the Defence (T-236-Eng, p. 21, ll. 13-17).

Finally, with the greatest of respect to the Presiding Judge who noted that "it makes no difference if it is presented by the bar table, as you would word it in an adversarial system or if you show it to the witness" (T-236-Eng, p. 23, ll. 1-2), there is a procedural difference that is relevant to whether the Defence is prejudiced in this circumstance. If the item was submitted via a bar-table request or other procedural mechanism, the Prosecution would be obliged to first state where the item fits into its case and explain how submission fulfils certain procedural conditions (e.g. ICC-01/14-01/18-631, para. 62). The Defence would then be able to respond. Here, via email, the Prosecution has decided to not make submissions and the witness had nothing to say about the item. The absence of argumentation in the Prosecution's email submission would not fulfil the criteria in the Initial Directions on the Conduct of the Proceedings ('Directions') for submission via the bar-table. Moreover, under the Directions, the Prosecution has an automatic right to respond to the present objection via email (ICC-01/14-01/18-631, para. 63(iii)). In contrast to a

bar-table submission request, when an item is submitted via email, the Defence, as here, is often placed in a position of guessing at the Prosecution's future arguments when objecting to an item. Especially since the witness had nothing to say about the item, the Chamber accepting submission of this specific item via email under all these circumstances is prejudicial.

Kind regards,

██████████ on behalf of Counsel

From: OTP CAR IIB ██████████

Sent: 02 June 2023 13:50

To: Trial Chamber V Communications ██████████

Cc: OTP CAR IIB ██████████ D29 Yekatom Defence Team ██████████

D30 Ngaissona Defence Team ██████████; V44 LRV Team

██████████ V45 LRV Team ██████████

██████████ Associate Legal Officer-Court Officer ██████████

Subject: Prosecution Submission of evidence following the examination of P-1990

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the *Initial Directions on the Conduct of the Proceedings* (ICC-01/14-01/18-631), the Prosecution requests that the following items be recognised as formally submitted:

- i. Documents discussed with the witness during the course of his examination by the Prosecution:

Count	Doc ID	WIT – Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1	CAR-OTP-2065-2867	CAR-OTP-P-1990	Audio / Video Material	30/05/23	OTP	YES
2	CAR-OTP-2065-5470	CAR-OTP-P-1990	Audio / Video Material	30/05/23	OTP	YES
3	CAR-OTP-2107-1559	CAR-OTP-P-1990	Transcript	30/05/23	OTP	YES
4	CAR-OTP-2127-3658	CAR-OTP-P-1990	Translation - FRA	30/05/23	OTP	YES

- ii. Five items submitted under Rule 68(3) at the start of P-1990's testimony (ICC-01/14-01/18-1833-Conf, paras. 325-328; ICC-01/14-01/18-T-236-CONF-ENG ET, p. 5, l. 16-p. 7, l. 4:

Count	Doc ID	WIT-Used through	Document Type	EVD - Date	EVD – Participant Tendering	Request Submission
1.	CAR-OTP-2124-0247	CAR-OTP-P-1990	ICC Statement - General	30/05/23	OTP	YES
2.	CAR-OTP-2122-5638	CAR-OTP-P-1990	ICC Statement - Translation - FRA	30/05/23 1/06/23	OTP	YES

3.	CAR-OTP-2119-0187	CAR-OTP-P-1990	Photograph/s	30/05/23	OTP	YES
4.	CAR-OTP-2119-0188	CAR-OTP-P-1990	Photograph/s	30/05/23	OTP	YES
5.	CAR-OTP-2124-0261	CAR-OTP-P-1990	Satellite images and related reports	30/05/23	OTP	YES

The Prosecution notes that Annex D to P-1990's statement (CAR-OTP-2119-0193) is not listed in the table above, as it has already been deemed formally submitted.

Kind regards,

On behalf of OTP Trial Team

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From: [REDACTED]
Sent: 02 June 2023 17:08
To: Trial Chamber V Communications
Cc: OTP CAR IIB; D30 Ngaissona Defence Team; D29 Yekatom Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: Yekatom Defence submission of evidence following the examination of P-1990

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Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom respectfully seeks the formal submission of the following documents used during its examination of witness P-1990.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
1	CAR-D29-0002-0128	Centrafrique : l'aéroport de Bangui pris d'assaut par des milliers de réfugiés	Media / press article	D29	CAR-OTP-P-1990
2	CAR-D29-0003-0144	D29 Analysis of IRAD Exhumations at Yamwara	Satellite images and related reports	D29	CAR-OTP-P-1990
3	CAR-D29-0003-0167	Ngou Cater neighbourhood - Yamwara School localisation	Satellite images and related reports	D29	CAR-OTP-P-1990
4	CAR-D29-0003-0171	D29 Analysis of CAR-OTP-2119-0193 location	Satellite images and related reports	D29	CAR-OTP-P-1990
5	CAR-D29-0006-1183	Transcription of CAR-D29-0008-0014	Transcript	D29	CAR-OTP-P-1990
6	CAR-D29-0006-1312	Transcript of CAR-OTP-2065-1348	Transcript	D29	CAR-OTP-P-1528 CAR-OTP-P-1990
7	CAR-D29-0006-1342	Transcription de CAR-OTP-2065-4141	Transcript	D29	CAR-OTP-P-1990
8	CAR-D29-0006-1344	Traduction FR de CAR-OTP-2012-0485	Translation - FRA	D29	CAR-OTP-P-1990
9	CAR-D29-0006-1346	Transcription de CAR-D29-0008-0024	Transcript	D29	CAR-OTP-P-1990
10	CAR-D29-0006-1347	Transcription de CAR-OTP-2065-4665	Transcript	D29	CAR-OTP-P-1990
11	CAR-D29-0006-1349	Transcription de CAR-OTP-2012-0485	Transcript	D29	CAR-OTP-P-1990
12	CAR-D29-0008-0014	L'aéroport de Bangui occupé en réaction aux violences de la Séléka	Audio / Video Material	D29	CAR-OTP-P-1990
13	CAR-D29-0008-0017	Boeing Market	Audio / Video Material	D29	CAR-OTP-P-1528 CAR-OTP-P-1990
14	CAR-D29-0008-0024	Central African Republic unrest	Audio / Video Material	D29	CAR-OTP-P-1990
15	CAR-OTP-00001499-R01	INVESTIGATION REPORT / OTP interaction with CAR-OTP-P-1990 on 27/11/2017	ICC Investigation notes / report / correspondence	D29	CAR-OTP-P-1990
16	CAR-OTP-00001520-R01	INVESTIGATION REPORT / NOTES FROM IMAGERY UNIT	ICC Investigation notes / report / correspondence	D29	CAR-OTP-P-1990
17	CAR-OTP-00001521	230517_CAR2B_EXIF_extract.xlsx	List / table	D29	CAR-OTP-P-1990
18	CAR-OTP-2012-0485	Video 148 / La Seleka de la RCA après le coup d'Etat 1	Audio / Video Material	D29	CAR-OTP-P-1990

19	CAR-OTP-2065-1348	AA040301.MXF	Audio / Video Material	D29	CAR-OTP-P-1528 CAR-OTP-P-1990
20	CAR-OTP-2065-4121	AA014501.MXF	Audio / Video Material	D29	CAR-OTP-P-1990
21	CAR-OTP-2065-4141	AA015001.MXF	Audio / Video Material	D29	CAR-OTP-P-1990
22	CAR-OTP-2065-4665	AA012201.MXF	Audio / Video Material	D29	CAR-OTP-P-1990
23	CAR-OTP-2065-4701	AA013101.MXF	Audio / Video Material	D29	CAR-OTP-P-1990
24	CAR-OTP-2065-6228	AA040301.MXF	Metadata	D29	CAR-OTP-P-1528 CAR-OTP-P-1990
25	CAR-OTP-2065-7606	Metadata Extraction of CAR-OTP-2065-4665 - AA012201.MXF	Metadata	D29	CAR-OTP-P-1990
26	CAR-OTP-2065-7624	Metadata Extraction of CAR-OTP-2065-4701 - AA013101.MXF	Metadata	D29	CAR-OTP-P-1990
27	CAR-OTP-2066-0593-R01	KOKORO 2 (YAWARA) SCHOOL	ICC Investigation notes / report / correspondence	D29	CAR-OTP-P-1990
28	CAR-OTP-2126-0292-R01	DETAILS STATISTIQUES DES RECHERCHES, IDENTIFICATIONS ET CONFIRMATIONS DES TOMBES	List / table	D29	CAR-OTP-P-1990
29	CAR-OTP-2126-0775	DJI_0273.JPG	Photograph/s	D29	CAR-OTP-P-1990
30	CAR-OTP-2126-1324	DJI_0822.JPG	Photograph/s	D29	CAR-OTP-P-1990
31	CAR-OTP-2126-1400	DJI_0898.JPG	Photograph/s	D29	CAR-OTP-P-1990
32	CAR-OTP-2126-1402	DJI_0900.JPG	Photograph/s	D29	CAR-OTP-P-1990
33	CAR-OTP-2126-1403	DJI_0901.JPG	Photograph/s	D29	CAR-OTP-P-1990
34	CAR-OTP-2126-2017	DSC_0624.JPG	Photograph/s	D29	CAR-OTP-P-1990

Kind regards,

██████████

Legal Intern – Yekatom Defence Team

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