

ANNEX 35
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 09 October 2023 14:43
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V45 LRV Team; V44 LRV Team OPCV
Cc: Associate Legal Officer-Court Officer; Trial Chamber V Communications; Chamber Decisions Communication
Subject: Decision on the Prosecution's Request for the Chamber's authorisation to submit 31 audio-visual items without corresponding translations into a working language of the Court, pursuant to Regulation 39(1) of the Regulation of the Court

[ICC] RESTRICTED

Dear counsel,

The Single Judge takes note of the Prosecution's request below concerning audio-visual material from P-1819 (the 'Request') and the Yekatom Defence's response.

In light of the matters raised therein, the Single Judge instructs the Prosecution to file the Request formally on the record latest by Thursday, 12 October 2023.

In this formal filing, the Single Judge instructs the Prosecution to (i) provide the ERNs and respective duration of 'about 120 audio-visual additional items submitted via its Fourteenth Application' as mentioned in its email below; (ii) indicate for which of these items it has already requested translations and/or transcripts and for which items this request is pending, if any; (iii) provide an estimate per item of when such translation and/or transcript is expected to be provided to the participants; and (iv) address the arguments raised in the email from the Yekatom Defence of 8 October 2023, at 22:03.

The Single Judge instructs the participants to file responses to the Request, if any, by Monday, 16 October 2023.

Kind regards,

TC V

From: [REDACTED]
Sent: 08 October 2023 22:03
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] V44 LRV Team OPCV [REDACTED]
Subject: Re : Prosecution's Request for the Chamber's authorisation to submit 31 audio-visual items without corresponding translations into a working language of the Court, pursuant to Regulation 39(1) of the Regulation of the Court

Dear Trial Chamber V,

Dear all,

The Yekatom Defence (“Defence”) takes note of the Prosecution’s email as regards to (i) a request in relation to the provision of videos in which Sango is spoken, without providing a translation in the working language of the Court; and (ii) the fact that the Prosecution is in the process of providing the translation of 120 videos submitted in its Fourteenth Bar Table Motion (ICC-01/14-01/18-2057-Conf).

First, as regards to the Prosecution’s request, the Defence submits that in light of the content of the submissions, it is necessary to proceed through a formal filing. Indeed, the Defence notes that the request touches upon important aspects of the trial such as (i) the interpretation of a right of the accused enshrined in Article 67(1)(f) of the Statute, and (ii) the submission of evidence in language other than one of the working languages of the Court. Furthermore, the submission does not concern minor procedural matters nor is it matter that must be dealt urgently. Therefore, the Defence respectfully submits that it does not fall within the type of decisions that should be dealt with by way of email (see contra ICC-01/14-01/18-631, para. 75)

In light of the impact on the substance of the case of the Prosecution’s request, the Defence respectfully requests the Chamber to invite the Prosecution to formally address its request on the record, and consequently dismiss the email request *in limine*.

Second, the Defence notes with concern the information that the Prosecution is in the midst of preparing a total of 120 translations for videos submitted in the Fourteenth Bar Table motion (“Motion”).

In the Motion, the Prosecution did not allude to the fact that translations were pending; to the contrary, paragraph 6 states that “[f]or sake of clarity, **where applicable**, each audio/video is listed with the related transcript and/or translation”. This wording tended to imply that the list was finite, and that only the videos with an already listed translation would have one.

This understanding was also based on Regulation 39(1) of the Court, as well as the spirit of the Chamber’s direction that “*the use of speech in audio-visual material during the hearing, the participant in question must indicate the ERN of a corresponding working language transcript*” (ICC-01/14-01/18-631) which would also extend to speech in a non-working language relied upon in written submissions.

The information that the Prosecution is proceeding with the translation of 120 videos, 6 years after receiving the videos from P-1819, and 3 years after filing its Final List of Evidence, is unexpected and has an important impact on the Defence response to the Motion.

Indeed, the Defence already proceeded with the analysis of more than half of the 546 items listed in the Motion (312 of those items being videos). This long and thorough analysis led the Defence to draft its position as to whether objection of the submission was warranted, as well as providing the Chamber with a position on the relevance or probative value of each video, on the basis that no translation existed and that the audio content of the video would not be relied upon.

To be clear, the Defence intended to oppose the submission of videos where (i) the Prosecution’s submissions on relevance indicated that the content of Sango conversation were being relied upon, and (ii) no translation to verify the Prosecution’s submissions on relevance was provided to the Chamber and Parties.

It would appear that the work performed by the Defence on the analysis of the Motion is partially moot in light of the Prosecution’s information that over a hundred translations are pending.

While the Defence has some ability to obtain Sango translations through its Linguistic Assistant, this capacity is limited and not sufficient to review the totality of the videos of the Motion that are currently lacking translations. This possibility is currently impeded by the consequences of the cyber-attack on the Court, as well as unresolved administrative issues affecting the access of the Linguistic Assistant to a computer; in practice, the manual handover on a USB key of some videos to be translated, as well as the collection of the translations through the same means, slowed down considerably this process. Moreover, in any case, the Defence would still need to be in possession of the

Prosecution's own translation to be able to properly provide views on the purported relevance, as specifically submitted by the Prosecution, of the videos provided in the Annex of the Motion.

In light of the 27 October 2023 deadline for responding to the Motion, the Defence intends to continue its analysis on the basis that the Sango content of a video without translation is not being relied upon. However, should the Prosecution be authorized to provide the translations after the Defence response to the Motion has been filed, the submissions would necessarily be lacking as regards to those specific videos. In this situation, the right of Mr Yekatom to present an effective defence would be infringed; as would the basic fair trial principle of *audi alteram partem*.

Consequently, the Defence requests the Chamber's intervention, pursuant to its duty to ensuring the fairness of the trial pursuant to Article 64 of the Statute. As the translations are not disclosed and no schedule is provided by the Prosecution as to when they will be made available, the Defence respectfully requests the Chamber to intervene on the following matters :

- (i) Whether the Prosecution is entitled to provide translations at this point of the case, in relation to videos part of a Bar Table Motion;
- (ii) In the affirmative; to order the Prosecution to detail which video is currently being translated and an expected schedule of disclosure of the translations; and,
- (iii) Suspend the deadline to respond to the Motion until completion and disclosure of the translations to the Defence.

Kind regards,

[REDACTED]

Yekatom Defence

De : [REDACTED] >

Envoyé : mercredi 4 octobre 2023 14:11

À : 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] V44 LRV Team OPCV [REDACTED]

Objet : RE: Prosecution's Request for the Chamber's authorisation to submit 31 audio-visual items without corresponding translations into a working language of the Court, pursuant to Regulation 39(1) of the Regulation of the Court

Dear Trial Chamber V,

Dear all,

The Yekatom Defence wishes to inform the Chamber that it intends to respond to the Prosecution's request below. The Defence intends to provide the Chamber with its position by this Friday, 6 October 2023.

Kind regards,

[REDACTED]

Yekatom Defence

De : OTP CAR IIB [REDACTED]

Envoyé : mardi 3 octobre 2023 11:28

À : Trial Chamber V Communications [REDACTED]

Cc : D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team

V44 LRV Team

V45 LRV Team

; V44 LRV Team OPCV

; OTP CAR IIB <

Objet : Prosecution's Request for the Chamber's authorisation to submit 31 audio-visual items without corresponding translations into a working language of the Court, pursuant to Regulation 39(1) of the Regulation of the Court

Dear Trial Chamber V,

The Prosecution requests authorisation to submit 31 audio-visual items tendered through its Fourteenth Application for Submission of P-1819's Evidence from the Bar Table (*see* ICC-01/14-01/18-2057-Conf), without corresponding translations into a working language of the Court, pursuant to Regulation 39(1) of the Regulation of the Court:

Count	Doc ID	Main Date	Title	1 A/V Duration	Reason for non-translation
1.	CAR-13- OTP- Dec- 2065- 4757	2013	AA014501.MXF	00:00:07	Inaudible Background chat
2.	CAR-13- OTP- Dec- 2065- 4661	2013	AA012101.MXF	00:00:19	Inaudible speech
3.	CAR-13- OTP- Dec- 2065- 4745	2013	AA014201.MXF	00:00:27	Inaudible Background chat
4.	CAR-13- OTP- Dec- 2065- 4749	2013	AA014301.MXF	00:00:09	Inaudible Background chat
5.	CAR-7- OTP- Dec- 2065- 0680	2013	AA014101.MXF	00:00:11	Inaudible voices murmuring
6.	CAR-7- OTP- Dec- 2065- 1837	2013	AA001401.MXF	00:00:30	Barely audible chattering
7.	CAR-7- OTP- Dec- 2065- 1901	2013	AA003001.MXF	00:00:17	Inaudible background chattering
8.	CAR-7- OTP- Dec- 2065- 1905	2013	AA003101.MXF	00:00:31	Inaudible background chattering

9.	CAR-7- OTP- Dec- 2065-2013 1961	AA004501.MXF	00:00:14	Inaudible chat
	CAR-10- OTP- Dec- 2065-2013 2432	AA014501.MXF	00:00:41	Inaudible voice murmuring in the background
11.	CAR-13- OTP- Dec- 2065-2013 3496	AA003001.MXF	00:00:07	Inaudible voice murmuring in the background
12.	CAR-13- OTP- Dec- 2065-2013 4657	AA012001.MXF	00:00:23	Inaudible voice murmuring in the background
13.	CAR-13- OTP- Dec- 2065-2013 4876	AA000401.MXF	00:00:08	Inaudible chat
14.	CAR-15- OTP- Dec- 2065-2013 5034	AA004301.MXF	00:00:34	Inaudible chat
15.	CAR-13- OTP- Dec- 2065-2013 5148	AA010401.MXF	00:00:18	Inaudible chat
16.	CAR-13- OTP- Dec- 2065-2013 5276	AA013601.MXF	00:00:19	Inaudible chat
17.	CAR-30- OTP- Nov- 2065-2013 5572	AA004001.MXF	00:00:38	Inaudible chat
18.	CAR-7- OTP- Dec- 2065-2013 0943	AA020601.MXF	00:00:05	Inaudible background conversation
19.	CAR-7- OTP- Dec- 2065-2013 0947	AA020701.MXF	00:00:28	Inaudible chat

20.	CAR-7- OTP- Dec- 2065-2013 0955	AA020901.MXF	00:00:05	Inaudible chat
21.	CAR-30- OTP- Nov- 2065-2013 5575	AA004101.MXF	00:00:06	Irrelevant content
22.	CAR-13- OTP- Dec- 2065-2013 4717	AA013501.MXF	00:00:13	Irrelevant content
23.	CAR-13- OTP- Dec- 2065-2013 4737	AA014001.MXF	00:00:11	Irrelevant chattering among the elements
24.	CAR-7- OTP- Dec- 2065-2013 0384	AA006701.MXF	00:00:02	Irrelevant content
25.	CAR-7- OTP- Dec- 2065-2013 1917	AA003401.MXF	00:00:10	Irrelevant chattering
26.	CAR-7- OTP- Dec- 2065-2013 0734	AA015401.MXF	00:00:11	Irrelevant chattering between the elements and villagers
27.	CAR-7- OTP- Dec- 2065-2013 1047	AA023201.MXF	00:01:23	Irrelevant chattering among the elements
28.	CAR-7- OTP- Dec- 2065-2013 1913	AA003301.MXF	00:00:05	Irrelevant chattering
29.	CAR-7- OTP- Dec- 2065-2013 1921	AA003501.MXF	00:00:16	Irrelevant chattering
30.	CAR-10- OTP- Dec- 2065-2013 2412	AA014001.MXF	00:01:16	Irrelevant chattering among the elements

31.	CAR-7- OTP- Dec- 2065- 2013 0939	AA020501.MXF	00:00:14	Irrelevant chattering among the elements
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The Prosecution intends to mostly rely on the *visual* content of these items. The fact that some may contain names and locations uttered should not warrant a translation, when the substance of the conversation is otherwise irrelevant. Moreover, the Prosecution does not consider that the audio content of these items contain material information. As such, the Prosecution considers that their translation is not necessary to advance the present proceedings. Nor would the absence of translations of these items be in any way prejudicial:

- (a) article 67(1)(f) “does not *per se* translate into the right to obtain the translation of any and all documents which are used in the context of proceedings before the Court and are not in a language which the accused ‘fully understands and speaks’: the only translations the accused is entitled to obtain are ‘such translations as are necessary to meet the requirements of fairness’ (see ICC-01/05-01/13-177, para. 6); and
- (b) the unavailability of transcripts does not impede an understanding of the nature, cause and content of the charges.

Moreover, to the extent that the material is being relied on for its *visual content* — as opposed to its *audio* content — the absence of translations is consistent with the policy reasons underlying the language requirements for Regulation 39(1). Out of the 31 audio-videos concerned, items 1 to 20 (**20 items**) contain inaudible or barely audible spoken words that are difficult to decipher and for which translation would not advance the expeditiousness of the proceedings while items 21 to 31 (**11 items**) contain spoken words which, based on the summary translations prepared by the Prosecution’s Language Services Section, are not relevant to the nature, cause and content of the charges, although some may contain relevant names or locations. In any event, to the extent that spoken words are uttered in limited instances, the Accused are conversant in the indicated language, namely Sango.

In these exceptional circumstances, the Prosecution considers that Chamber’s authorisation pursuant to Regulation 39(1) dispensing with the translations into a working language of the Court is warranted and justifiable, particularly when weighed against the countervailing interests in judicial economy and the time and resource implications, and in view of the absence of any appreciable prejudice.

The Prosecution further notes that it does not intent to provide the transcriptions and/or translations of the following 34 items also submitted via its Fourteenth Application, as they do not contain any spoken words warranting their translation:

Count	Doc ID	Main Date	Title	1 A/V Duration	Reason for non-translation
1.	CAR-7- OTP- Dec- 2065- 2013 0440		AA008101.MXF	00:00:13	No language spoken
2.	CAR-7- OTP- Dec- 2065- 2013 0448		AA008301.MXF	00:00:08	No language spoken

3.	CAR-7- OTP- Dec- 2065-2013 0456	AA008501.MXF	00:00:10	No language spoken
4.	CAR-7- OTP- Dec- 2065-2013 0520	AA010101.MXF	00:00:21	No language spoken
5.	CAR-7- OTP- Dec- 2065-2013 0862	AA018601.MXF	00:00:34	Voices murmuring in the background
6.	CAR-7- OTP- Dec- 2065-2013 0975	AA021401.MXF	00:00:04	No language spoken
7.	CAR-7- OTP- Dec- 2065-2013 0995	AA021901.MXF	00:00:21	No language spoken
8.	CAR-7- OTP- Dec- 2065-2013 1007	AA022201.MXF	00:00:25	No language spoken
9.	CAR-7- OTP- Dec- 2065-2013 1019	AA022501.MXF	00:00:09	No language spoken
10.	CAR-7- OTP- Dec- 2065-2013 1023	AA022601.MXF	00:00:11	No language spoken
11.	CAR-7- OTP- Dec- 2065-2013 1027	AA022701.MXF	00:00:13	No language spoken
12.	CAR-7- OTP- Dec- 2065-2013 1035	AA022901.MXF	00:00:03	No language spoken
13.	CAR-7- OTP- Dec- 2065-2013 1071	AA023801.MXF	00:00:26	No language spoken
14.	CAR-7- OTP- Dec- 2013	AA025001.MXF	00:00:21	No language spoken

	2065-1119				
15.	CAR-7- OTP- Dec- 2065- 2013 1127	AA025201.MXF	00:00:26	No language spoken	
16.	CAR-7- OTP- Dec- 2065- 2013 1135	AA025401.MXF	00:00:51	No language spoken	
17.	CAR-7- OTP- Dec- 2065- 2013 1973	AA004801.MXF	00:00:22	No language spoken	
18.	CAR-5- OTP- Dec- 2065- 2013 2199	AA002001.MXF	00:00:10	No language spoken	
19.	CAR-5- OTP- Dec- 2065- 2013 2203	AA002101.MXF	00:00:10	No language spoken	
20.	CAR-5- OTP- Dec- 2065- 2013 2207	AA002201.MXF	00:00:11	No language spoken	
21.	CAR-5- OTP- Dec- 2065- 2013 2211	AA002301.MXF	00:00:10	No language spoken	
22.	CAR-5- OTP- Dec- 2065- 2013 2215	AA002401.MXF	00:00:06	No language spoken	
23.	CAR-5- OTP- Dec- 2065- 2013 2219	AA002501.MXF	00:00:06	No language spoken	
24.	CAR-5- OTP- Dec- 2065- 2013 2223	AA002601.MXF	00:00:16	No language spoken	
25.	CAR-5- OTP- Dec- 2065- 2013 2227	AA002701.MXF	00:00:13	No language spoken	

26.	CAR-5- OTP- Dec- 2065-2013 2231	AA002801.MXF	00:00:07	No language spoken
27.	CAR-5- OTP- Dec- 2065-2013 2239	AA003001.MXF	00:00:18	No language spoken
28.	CAR-5- OTP- Dec- 2065-2013 2243	AA003101.MXF	00:00:18	No language spoken
29.	CAR-5- OTP- Dec- 2065-2013 2247	AA003201.MXF	00:00:28	No language spoken
30.	CAR-5- OTP- Dec- 2065-2013 2251	AA003301.MXF	00:00:11	No language spoken
31.	CAR-5- OTP- Dec- 2065-2013 2255	AA003401.MXF	00:00:09	No language spoken
32.	CAR-5- OTP- Dec- 2065-2013 2259	AA003501.MXF	00:00:09	No language spoken
33.	CAR-5- OTP- Dec- 2065-2013 2267	AA003701.MXF	00:00:13	No language spoken
34.	CAR-13- OTP- Dec- 2065-2013 3768	AA009801.MXF	00:00:12	No language spoken

The Prosecution finally notes that it is in the process of preparing the transcription and /or translations of about 120 audio-visual additional items submitted via its Fourteenth Application. These translations will be disclosed on a rolling basis as soon as they become available. Thank you.

Best regards,
On behalf of OTP Trial Team

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