



**Original: English**

**No. ICC-01/14-01/18  
Date: 7 November 2023**

**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***

**Public**

**Decision on Prosecution Request for Judicial Notice pursuant to Article 69(6)**

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 Ngaiissona*, having regard to Article 69(6) of the Rome Statute (the ‘Statute’), issues this ‘Decision on Prosecution Request for Judicial Notice pursuant to Article 69(6)’.

## **I. Procedural history and submissions**

1. On 22 August 2023, during the confirmation of charges hearing in the case of *The Prosecutor v. Maxime Jeoffroy Eli Mokom* before Pre-Trial Chamber II, Mr Mokom made an unsworn statement about, *inter alia*, (i) the creation of the Anti-Balaka, the purported motivation behind it, and his role therein; (ii) the atrocities committed under the Seleka regime; and (iii) his whereabouts and movements during the relevant events.<sup>1</sup>
2. On 9 October 2023, the Office of the Prosecutor (the ‘Prosecution’) requested the Chamber to take judicial notice of the existence and contents of the transcript, containing the unsworn statement of Mr Mokom; and attendant audio-visual equivalent (the ‘Statement’) pursuant to Article 69(6) of the Statute, making the material set out in the annex to its request part of the record in this case (the ‘Request’).<sup>2</sup> The Prosecution submits that the Statement is ‘inherently material’ to the present proceedings due to Mr Mokom’s alleged *de facto* and *de jure* role as Anti-Balaka Coordinator for Operations, and his alleged criminal responsibility for the crimes committed by the Anti-Balaka.<sup>3</sup> The Prosecution does not seek judicial notice of ‘the truth or falsity of the [Statement] itself, but rather of the existence and contents of the attendant transcript’.<sup>4</sup>
3. On 19 October 2023, the Yekatom Defence opposed the Request.<sup>5</sup> It submits that Article 69(6) of the Statute is not a suitable legal basis for the introduction of the Statement. The Yekatom Defence argues that the content of the Statement and its

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<sup>1</sup> Transcript of hearing, ICC-01/14-01/22-T-006-Red-ENG, p. 36, line 21 to p. 39, line 25.

<sup>2</sup> Prosecution’s Request for Judicial Notice pursuant to Article 69(6), ICC-01/14-01/18-2134 (with one public annex, ICC-01/14-01/18-2134-Anx).

<sup>3</sup> Request, ICC-01/14-01/18-2134, para. 2.

<sup>4</sup> Request, ICC-01/14-01/18-2134, para. 3.

<sup>5</sup> Yekatom Defence Response to the ‘Prosecution’s Request for Judicial Notice pursuant to Article 69(6)’ (ICC-01/14-01/18-2134), ICC-01/14-01/18-2150 (the ‘Yekatom Defence Response’).

truth or falsity cannot be meaningfully divorced and refers to the lack of a concrete submission as to the specific purpose of the Request.<sup>6</sup> The Yekatom Defence submits that taking judicial notice of the Statement would cause prejudice as it would circumvent the fair trial safeguards and impose a burden on the Defence to disprove its content.<sup>7</sup>

4. On 20 October 2023, the Ngaïssona Defence opposed the Request as being ill-founded.<sup>8</sup> It submits that the Statement is not part of public knowledge as it relates to specific and contested facts of the case.<sup>9</sup>
5. On the same day, the Common Legal Representatives of the Victims of Other Crimes supported the Request.<sup>10</sup>

## II. Analysis

6. Under Article 69(6) of the Statute, the Chamber may take judicial notice of facts of common knowledge which are capable of ready determination by resort to sources whose accuracy cannot reasonably be questioned, including the dates and contents of the Court’s records.<sup>11</sup> As stated by the Appeals Chamber, the purpose of Article 69(6) of the Statute ‘is to avoid the need to introduce evidence going to the proof of facts that are already notorious’.<sup>12</sup>
7. In the present case, the parties do not dispute that Mr Mokom appeared before the Court to make an unsworn statement on 22 August 2023. However, the Request also concerns the contents of the Statement, which contain information disputed

<sup>6</sup> Yekatom Defence Response, ICC-01/14-01/18-2150, para. 9.

<sup>7</sup> Yekatom Defence Response, ICC-01/14-01/18-2150, para. 11.

<sup>8</sup> Defence’s Response to “Prosecution’s Request for Judicial Notice pursuant to Article 69(6)” (ICC-01/14-01/18-2134), 9 October 2023, ICC-01/14-01/18-2156 (the ‘Ngaïssona Defence Response’).

<sup>9</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2156, para. 11.

<sup>10</sup> Response by the Common Legal Representatives of the Victims of Other Crimes to the “Prosecution’s Request for Judicial Notice pursuant to Article 69(6)”, ICC-01/14-01/18-2153.

<sup>11</sup> See Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Prosecution Motion for Clarification of Rule 68(3) Direction in Conduct of Proceedings Decision, 15 September 2015, ICC-01/05-01/13-1249, paras 5-6. See also Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on ‘Defence Request for Judicial Notice’, 13 April 2016, ICC-01/05-01/13-1805, para. 3; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Prosecution Request for Judicial Notice, 9 November 2015, ICC-01/05-01/13-1473, paras 3-4 (the ‘Bemba et al. Decision’).

<sup>12</sup> Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Mr Bemba’s “Request for Judicial Notice”, 17 May 2017, ICC-01/05-01/13-2159, para. 8.

among the parties. Therefore, the Chamber notes that the Request is not limited to mere facts of common knowledge, and thus considers that it exceeds the scope of Article 69(6) of the Statute. Article 69(6) of the Statute is clearly not meant as an avenue to introduce evidence that is testimonial in nature.

8. Moreover, in the view of the Chamber, the mere fact that Mr Mokom made an unsworn statement on 22 August 2023 is clearly irrelevant to the present proceedings.<sup>13</sup>
9. Further noting that the Prosecution does not otherwise explain for which purpose the Chamber should take judicial notice of such matters, the Chamber therefore considers that taking judicial notice of the Statement's mere existence and date would not in any way advance the objective of expediency of the proceedings.<sup>14</sup>

**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Request.

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

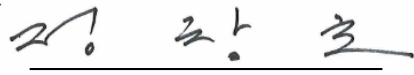


**Judge Bertram Schmitt**

**Presiding Judge**



**Judge Péter Kovács**



**Judge Chang-ho Chung**

Dated 7 November 2023

At The Hague, The Netherlands

<sup>13</sup> See also *Bemba et al.* Decision, ICC-01/05-01/13-1473, para. 6.

<sup>14</sup> The Chamber considers the Request to be distinguishable from the situation in the *Bemba et al.* Decision, since in that case taking judicial notice of the date and content of certain trial transcripts was directly relevant to the proceedings under Article 70 of the Statute in order to demonstrate witness interference and to establish a clear timeline of the proceedings. See *Bemba et al.* Decision, ICC-01/05-01/13-1473. See also Ngaïssona Defence Response, ICC-01/14-01/18-2156, para. 13.