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No. **ICC-01/14-01/18**  
Date: **21 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 redacted version of**

**Decision on the Eleventh Prosecution Submission Request from the Bar Table  
(Open-source Material)**

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 Eleventh Prosecution Submission Request from the Bar Table (Open-source Material)’.

## **I. Procedural history**

1. By application dated 31 July 2023 (the ‘Application’),<sup>1</sup> the Office of the Prosecutor (the ‘Prosecution’) seeks the submission into evidence of 42 items (the ‘Items’).<sup>2</sup>
2. On 21 August 2023, the Yekatom Defence filed a response to the Application (the ‘Yekatom Defence Response’).<sup>3</sup>
3. On 29 September 2023, the Ngaïssona Defence filed a response to the Application (the ‘Ngaïssona Defence Response’).<sup>4</sup>

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<sup>1</sup> Prosecution’s Eleventh Application for the Submission of Open-source Evidence from the Bar Table, ICC-01/14-01/18-2010-Conf (public redacted version notified the same day, ICC-01/14-01/18-2010-Red), with confidential annex ICC-01/14-01/18-2010-Conf-Anx.

<sup>2</sup> The Items are: CAR-OTP-2001-2139; CAR-OTP-2001-2203; CAR-OTP-2001-2248; CAR-OTP-2001-2880; CAR-OTP-2001-2883; CAR-OTP-2001-2885; CAR-OTP-2001-3302; CAR-OTP-2001-3319; CAR-OTP-2001-4393; CAR-OTP-2001-4422; CAR-OTP-2001-4426; CAR-OTP-2001-4429; CAR-OTP-2001-4472; CAR-OTP-2001-4623; CAR-OTP-2001-5026; CAR-OTP-2001-5305; CAR-OTP-2001-6752; CAR-OTP-2001-6998; CAR-OTP-2002-0504; CAR-OTP-2005-0197; CAR-OTP-2006-1218; CAR-OTP-2015-0493; CAR-OTP-2017-0115; CAR-OTP-2042-5124; CAR-OTP-2042-5196; CAR-OTP-2042-5290; CAR-OTP-2057-0966; CAR-OTP-2069-3540; CAR-OTP-2074-0278; CAR-OTP-2075-0670; CAR-OTP-2079-0598; CAR-OTP-2079-0622; CAR-OTP-2079-0678; CAR-OTP-2079-1159; CAR-OTP-2079-1166; CAR-OTP-2082-0732; CAR-OTP-2083-0429; CAR-OTP-2089-0143; CAR-OTP-2091-0433; CAR-OTP-2091-1791; CAR-OTP-2110-0460; CAR-OTP-2130-5493.

<sup>3</sup> Yekatom Defence Response to ‘Prosecution’s Eleventh Application for the Submission of Open-source Evidence from the Bar Table’, ICC-01/14-01/18-2037, with confidential annex ICC-01/14-01/18-2037-Conf-AnxA.

<sup>4</sup> Defence Response to the “Prosecution’s Eleventh Application for the Submission of Open-source Evidence from the Bar Table” ICC-01/14-01/18-2010-Conf, ICC-01/14-01/18-2114-Conf, with confidential annex ICC-01/14-01/18-2114-Conf-Anx1. *See* email from the Chamber, 11 August 2023, at 18:15, granting an extension of time to respond, following an email from the Ngaïssona Defence, 2 August 2023, at 11:08.

## II. Analysis

4. The Chamber recalls the applicable law on the submission of evidence from the bar table.<sup>5</sup> As previously stated, at this stage, the Chamber will only consider whether the Items are subject to any statutory exclusionary rules, including procedural bars, obstacles, and preconditions.<sup>6</sup>
5. With respect to the Items, consisting of open-source materials, specifically ‘media articles and reports from humanitarian agencies’,<sup>7</sup> the Prosecution argues that: (i) they are *prima facie* relevant to issues at trial;<sup>8</sup> (ii) they are probative, reliable and authentic;<sup>9</sup> and (iii) their probative value outweighs any prejudicial effect.<sup>10</sup> Annexed to the Application is a detailed assessment of each of the enumerated Items.<sup>11</sup>
6. The Yekatom Defence opposes the submission of four of the Items, and provides detailed submissions on the remainder.<sup>12</sup> Specifically, the Yekatom Defence contests the submission of item 2 (CAR-OTP-2001-2203), item 8 (CAR-OTP-2001-3319), item 10 (CAR-OTP-2001-4422), and item 24 (CAR-OTP-2042-5124).<sup>13</sup> CAR-OTP-2001-2203, an Amnesty International report, is opposed, *inter alia*, on the ground of relevance, in that it relates to incidents in locations falling outside the charges.<sup>14</sup> CAR-OTP-2001-3319, a Central Intelligence Agency (‘CIA’) report, is contested, *inter alia*, on the ground of low probative value, in that no sources are provided for the figures given in the undated document.<sup>15</sup> CAR-OTP-2001-4422, a Centrafrique article, is contested, *inter alia*, on the ground that its prejudice outweighs its probative value, since it relates

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<sup>5</sup> 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, paras 53-54, 62.

<sup>6</sup> 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.

<sup>7</sup> Application, ICC-01/14-01/18-2010-Red, para. 1.

<sup>8</sup> Application, ICC-01/14-01/18-2010-Red, para. 6.

<sup>9</sup> Application, ICC-01/14-01/18-2010-Red, paras 8-10.

<sup>10</sup> Application, ICC-01/14-01/18-2010-Red, para. 11.

<sup>11</sup> Annex to the Application, ICC-01/14-01/18-2010-Conf-Anx.

<sup>12</sup> Yekatom Defence Response, ICC-01/14-01/18-2037, para. 2.

<sup>13</sup> Yekatom Defence Response, ICC-01/14-01/18-2037, para. 2.

<sup>14</sup> Annex A to the Yekatom Defence Response, ICC-01/14-01/18-2037-Conf-AnxA, p. 3.

<sup>15</sup> Annex A to the Yekatom Defence Response, ICC-01/14-01/18-2037-Conf-AnxA, pp. 8-9.

to two charges of murder against Mr Yekatom, contains vague accounts, consists of anonymous hearsay, and the Court has heard testimony on the incident described therein.<sup>16</sup> CAR-OTP-2042-5124, a Centrafrique article, is contested, *inter alia*, on the ground that its prejudice outweighs its probative value.<sup>17</sup>

7. The Ngaïssona Defence objects to the submission of all of the Items (other than item 10, CAR-OTP-2001-4422, to which it defers to the Yekatom Defence).<sup>18</sup> It contests their relevance, reliability, significance and authenticity; arguing that the prejudice to Mr Ngaïssona in tendering the Items would outweigh any *prima facie* probative value.<sup>19</sup> It requests that the Chamber consider its objections to the Items ‘when the Chamber conducts its holistic assessment of the evidence during the deliberation of the judgment’.<sup>20</sup> Objections concern the level of factual substantiation in the Items; contemporaneousness; that the sources of the reported information are vague; that the authors/interviewees were not called to testify; that the methodology of the sources and content of the material cannot be challenged; that the basis for the reported information was not put to an expert; and that the reported information consists of/contains ‘second-hand’ evidence or hearsay.<sup>21</sup> Objections also concern the characterisation as ‘reliable’ of the sources (governmental, news agencies and individual) of four of the Items.<sup>22</sup>

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<sup>16</sup> Annex A to the Yekatom Defence Response, ICC-01/14-01/18-2037-Conf-AnxA, pp. 10-11.

<sup>17</sup> Annex A to the Yekatom Defence Response, ICC-01/14-01/18-2037-Conf-AnxA, p. 19.

<sup>18</sup> Annex 1 to the Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf-Anx1, pp. 8-9.

<sup>19</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf, para. 7.

<sup>20</sup> Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf, para. 55.

<sup>21</sup> For example, Annex 1 to the Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf-Anx1: pp. 2-5, 11, 16-17, 20-21, 26-27 referring to item 1 (CAR-OTP-2001-2139), item 2 (CAR-OTP-2001-2203), item 3 (CAR-OTP-2001-2248), item 4 (CAR-OTP-2001-2880), item 14 (CAR-OTP-2001-4623); item 20 (CAR-OTP-2005-0197), item 25 (CAR-OTP-2042-5196) and item 31 (CAR-OTP-2079-0598). *See also* Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf, paras 33-54.

<sup>22</sup> Specifically in relation to the following sources: the CIA (on the ground that it is impossible to challenge material stemming from an intelligence agency, due to the lack of transparency in its working methods), Turkish Press and Afrik, (on the ground that they are neither renowned news agencies, nor has their independence been substantiated by the Prosecution), and the article by Bishop Bossangoa (on the ground that there is no means to assess its reliability and the author was not called as a witness). Annex 1 to the Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf-Anx1: pp. 7-8, referring to item 8 (CAR-OTP-2001-3319); pp. 10-11, referring to item 13 (CAR-OTP-2001-4472); p. 12, referring to item 15 (CAR-OTP-2001-5026); and pp. 17-18, referring to item 21 (CAR-OTP-2006-1218). *See also* Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf, paras 48-49, 52, 54.

Furthermore, objections concern the degree of relevance of the Items to the contextual elements or the charged crimes.<sup>23</sup>

8. With respect to item 42, CAR-OTP-2130-5493 [REDACTED], the Chamber notes that the Prosecution also sought the submission of this item through its sixteenth bar table application.<sup>24</sup> The Ngaïssona Defence opposes its submission on the ground that at 174 pages it is too voluminous for the purpose of attributing a phone number to P-2843. It, *inter alia*, contests chain of custody, contemporaneousness and accuracy, and argues that the document does not appear to be publicly available from an official source and therefore must be certified by the relevant authority.<sup>25</sup> The Yekatom Defence, on the other hand, opposes the submission into evidence of CAR-OTP-2130-5493 to the extent that the Prosecution tendered the lengthy document in its entirety for the sake of one page, contrary to judicial efficiency and economy, and defers to the Ngaïssona Defence on the specific portion relied upon for the purpose of attributing telephone numbers.<sup>26</sup>

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<sup>23</sup> For example, Annex 1 to the Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf-Anx1, pp. 2-5, 12, 22-23, 27-28, 31-32 in relation to item 1 (CAR-OTP-2001-2139), item 4 (CAR-OTP-2001-2880), item 15 (CAR-OTP-2001-5026), item 28 (CAR-OTP-2069-3540), item 33 (CAR-OTP-2079-0678) and item 39 (CAR-OTP-2091-0433). *See also* Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf, paras 8-32.

<sup>24</sup> 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.

<sup>25</sup> Annex 1 to the Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf-Anx1, pp. 33-35 *citing* Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Prosecutor's Bar Table Motions, 19 December 2010, ICC-01/04-01/07-2635, para. 24(b). In its response to the Prosecution's sixteenth bar table application, the Ngaïssona Defence, similarly to its response to the present Application, contested the submission into evidence of CAR-OTP-2130-5493, on the basis of volume, authenticity, chain of custody, reliability, contemporaneousness and prejudicial effect. *See* 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, ICC-01/14-01/18-2085-Red), paras 32-36. The Ngaïssona Defence also disputes the Prosecution's contention that the relevant telephone number was positively attributed during the testimony of P-2843, recalling that the Chamber rejected the Prosecution's request to use CAR-OTP-2130-5493 in questioning P-2843 as the prejudice in doing so would outweigh probative effect (Annex 1 to the Ngaïssona Defence Response, ICC-01/14-01/18-2114-Conf-Anx1, pp. 34-35 *citing* Transcript of hearing, 5 November 2021, ICC-01/14-01/18-T-073-Red-ENG, p. 4, lines 13-18).

<sup>26</sup> Yekatom Defence Response to '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, ICC-01/14-01/18-2079-Red), paras 8-15, 22. *See also* Annex A to the Yekatom Defence Response, ICC-01/14-01/18-2037-Conf-AnxA, p. 29.

9. The Chamber has considered the Application and the specific terms of the objections to the submission of the Items raised by the Defence. The Chamber notes that two of the Items (CAR-OTP-2005-0197 and CAR-OTP-2074-0278) have already been recognised as submitted in the same form by the Chamber and need not be ruled upon again. Furthermore, it is recalled that in its decision of 27 September 2023, on the Prosecution's sixteenth bar table application, the Chamber reserved its determination on the submission of CAR-OTP-2130-5493 to this present decision in order to consider the Defence arguments as a whole.<sup>27</sup> Having done so, given that the Prosecution seeks to rely on one page of the 174 page document,<sup>28</sup> an alphabetical list of names and contact details, which can be divorced from the majority of the document without compromising its integrity or the comprehension thereof, the Chamber recognises as formally submitted 14 pages of that item, comprising the first general section and the specific page sought to be relied upon by the Prosecution [REDACTED].
10. In the view of the Chamber, all of the other Defence objections, including the remaining objections relating to the authenticity and contemporaneousness of CAR-OTP-2130-5493, relate to the relevance, probative value and potential prejudice of the Items. Given that no procedural bars to the submission of the Items are readily apparent in the instant case, the Chamber recognises the remaining items as submitted in full. Moreover, the Chamber has taken note of the arguments of the parties as to the relevance, probative value, and potential prejudice to the accused of the submission of the Items and defers consideration thereon to its deliberation pursuant to Article 74(2) of the Statute.

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<sup>27</sup> Decision on the Sixteenth Prosecution Submission Request from the Bar Table (supplementary Call Data Records), ICC-01/14-01/18-2110, paras 23-25.

<sup>28</sup> CAR-OTP-2130-5493 [REDACTED].

**FOR THESE REASONS, THE CHAMBER HEREBY****GRANTS** the Request;**RECOGNISES** as submitted the following items:

CAR-OTP-2001-2139;	CAR-OTP-2001-5305;	CAR-OTP-2079-0678;
CAR-OTP-2001-2203;	CAR-OTP-2001-6752;	CAR-OTP-2079-1159;
CAR-OTP-2001-2248;	CAR-OTP-2001-6998;	CAR-OTP-2079-1166;
CAR-OTP-2001-2880;	CAR-OTP-2002-0504;	CAR-OTP-2082-0732;
CAR-OTP-2001-2883;	CAR-OTP-2006-1218;	CAR-OTP-2083-0429;
CAR-OTP-2001-2885;	CAR-OTP-2015-0493;	CAR-OTP-2089-0143;
CAR-OTP-2001-3302;	CAR-OTP-2017-0115;	CAR-OTP-2091-0433;
CAR-OTP-2001-3319;	CAR-OTP-2042-5124;	CAR-OTP-2091-1791;
CAR-OTP-2001-4393;	CAR-OTP-2042-5196;	CAR-OTP-2110-0460;
CAR-OTP-2001-4422;	CAR-OTP-2042-5290;	CAR-OTP-2130-5493 at [REDACTED].
CAR-OTP-2001-4426;	CAR-OTP-2057-0966;	
CAR-OTP-2001-4429;	CAR-OTP-2069-3540;	
CAR-OTP-2001-4472;	CAR-OTP-2075-0670;	
CAR-OTP-2001-4623;	CAR-OTP-2079-0598;	
CAR-OTP-2001-5026;	CAR-OTP-2079-0622;	

**ORDERS** the Registry to reflect that these items have been recognised as submitted in the JEM code; and**ORDERS** the Ngaïssona Defence to file a public redacted version of its response, ICC-01/14-01/18-2114-Conf, within one week of notification of this decision.



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



**Judge Bertram Schmitt**

**Presiding Judge**



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**Judge Péter Kovács**



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**Judge Chang-ho Chung**

Dated 21 November 2023

At The Hague, The Netherlands