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No. **ICC-01/14-01/18**
Date: **18 January 2024**

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 following the Yekatom Defence Observations to the First Decision on
the Prosecution Rule 68(2)(b) Requests**

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), 67(1) and 69(2) of the Rome Statute, and Rule 68(1), (2)(b) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision following the Yekatom Defence Observations to the First Decision on the Prosecution Rule 68(2)(b) Requests’.

1. On 6 April and 5 June 2023, the Chamber issued its first and second decisions on the Office of the Prosecutor’s (the ‘Prosecution’) requests to introduce prior recorded testimonies pursuant to Rule 68(2)(b) of the Rules (the ‘First Rule 68(2)(b) Decision’ and ‘Second Rule 68(2)(b) Decision’, respectively).¹ The Chamber introduced, *inter alia*, the prior recorded testimonies of P-1864, P-1871, P-2377 and P-0567 under Rule 68(2)(b) of the Rules, subject to the receipt of the respective declarations under Rule 68(2)(b)(ii) and (iii) of the Rules.² It also rejected the Prosecution’s requests for P-1576 and P-2050, but introduced their prior recorded testimonies *proprio motu* under Rule 68(3) of the Rules, subject to the fulfilment of the legal requirements.³
2. However, noting that a series of items had been used and explained by abovementioned witnesses in their respective statements, but not disclosed at the time the Chamber issued its decision, the Chamber deferred its decision on their introduction. It thus ordered the Prosecution to disclose them within 10 days, and

¹ First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, ICC-01/14-01/18-1833-Conf (corrected version notified on 18 April 2023, ICC-01/14-01/18-1833-Conf-Corr; public redacted version notified the same day, ICC-01/14-01/18-1833-Corr-Red); Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, ICC-01/14-01/18-1907-Conf (public redacted version notified the same day, ICC-01/14-01/18-1907-Red).

² To date, the Chamber received the declarations of P-0567 and P-2377. *See* Prosecution’s Second Submission of the Accompanying Declarations of Witnesses P-0461, P-0567, P-1530, P-1598, P-1676, P-1739, P-2133, P-2324 and P-2467, pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, 6 October 2023, ICC-01/14-01/18-2133. *See, in particular*, confidential Annex B, ICC-01/14-01/18-2133-Conf-AnxB; Prosecution’s Third Submission of the Accompanying Declarations of Witnesses P-0289, P-2325, P-2377 and P-2422 pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, 14 November 2023, ICC-01/14-01/18-2203. *See, in particular*, confidential *ex parte* Annex C, only available to the Prosecution, ICC-01/14-01/18-2203-Conf-Exp-AnxC.

³ P-1576 and P-2050 testified before the Chamber on 12 July and 14 August 2023, respectively. *See* transcripts of hearings, 12 July 2023, ICC-01/14-01/18-T-239-CONF-ENG (hereinafter ‘T-239’); 14 August 2023, ICC-01/14-01/18-T-240-CONF-ENG (hereinafter ‘T-240’).

the defence to submit observations on their introduction, if any, within 10 days of disclosure (the ‘Items’).⁴

3. On 14 April and 9 June 2023, the Prosecution disclosed the Items to the defence.⁵
4. On 25 April 2023, the Ngaïssona Defence informed the Chamber that, having reviewed the items disclosed in accordance with the First Rule 68(2)(b) Decision, it does not intend to file observations.⁶
5. On 28 April 2023, the Yekatom Defence submitted that, given the absence of information relative to the provenance and creation of Annexes 2 and 3 of P-2377’s statement,⁷ the Prosecution needs to disclose the original source of the photographs presented to the witness. Alternatively, should the screenshots have been taken from a document already disclosed, the Yekatom Defence requests the Chamber to order the Prosecution to indicate from which document they originate.⁸
6. On 20 June 2023, the Yekatom Defence informed the Chamber that, having reviewed the items disclosed in accordance with the Second Rule 68(2)(b) Decision, it does not intend to file observations.⁹
7. On 14 August 2023, during the testimony of P-2050, the Presiding Judge noted that the conditions for the application of Rule 68(3) of the Rules to her prior recorded testimony were fulfilled. In addition, the Chamber decided to introduce into evidence the items discussed in the witness’s statement, pursuant to Rule 68(3) of the Rules.¹⁰

⁴ First Rule 68(2)(b) Decision, ICC-01/14-01/18-1833-Red-Corr, paras 116, 127, 362, 365, pp. 102, 106; Second Rule 68(2)(b) Decision, ICC-01/14-01/18-1907-Red, paras 55, 59, 83-84, 146-147, pp. 60-64.

⁵ See Prosecution’s Communication of the Disclosure of Evidence on 14 April 2023, 17 April 2023, ICC-01/14-01/18-1838. See, in particular, the confidential annex, ICC-01/14-01/18-1838-Conf-Anx, p. 4; Prosecution’s Communication of the Disclosure of Evidence on 9 June 2023, 9 June 2023, ICC-01/14-01/18-1917. See, in particular, the confidential annex, ICC-01/14-01/18-1917-Conf-Anx, pp. 4-9.

⁶ Email from the Ngaïssona Defence, 25 April 2023, at 16:31.

⁷ CAR-OTP-2108-0661; CAR-OTP-2108-0663.

⁸ Yekatom Defence Observations to the “First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules”, ICC-01/14-01/18-1833-Conf-Corr, 17 April 2023, 26 April 2023, ICC-01/14-01/18-1849, paras 8-12.

⁹ Email from the Yekatom Defence, 20 June 2023, at 12:22.

¹⁰ See T-240, p. 7, lines 9-24. See also email from the Chamber, 13 November 2023, at 10:36.

8. On 28 November 2023, following the examination of P-1576, the Chamber decided to introduce into evidence the items discussed in the witness's statement, pursuant to Rule 68(3) of the Rules, with the exception of CAR-OTP-2061-4304.¹¹
9. The Chamber recalls its findings in the First and Second Rule 68(2)(b) Decisions, notably, that the Items have been used and explained by the witnesses in their respective statements, and thus form an integral part of their prior recorded testimonies.
10. While the Chamber takes note of the Yekatom Defence's submissions that, absent the information requested, it is 'unable to adequately conduct its assessment of Annexes 2 and 3', the Chamber considers that the matters raised by the Yekatom Defence concern the reliability and authenticity of the documents, which will be assessed during the judgment deliberations. They otherwise do not constitute an obstacle to the introduction of the two items into evidence pursuant to Rule 68(2)(b) of the Rules. Accordingly, the Chamber hereby introduces the items related to P-1864, P-1871, P-2377 and P-0567 into evidence pursuant to Rule 68(2)(b) of the Rules and, in the case of P-1864 and P-1871, subject to the receipt of the respective declarations under Rule 68(2)(b)(ii) and (iii) of the Rules.
11. However, in order to enable the Yekatom Defence to make submissions regarding the reliability and authenticity of the Annexes 2 and 3 to P-2377's prior recorded testimony, the Chamber instructs the Prosecution to disclose, within two weeks of notification of this decision, the original source of the photographs presented to P-2377 and attached to his statement as Annexes 2 and 3 or, in the alternative, to provide further information on their provenance, as requested by the Yekatom Defence.
12. Lastly, noting that no observations were received regarding the remaining Items, the Chamber does not need to address them.

¹¹ See email from the Chamber, 28 November 2023, at 14:00. See also T-239, p. 5, line 19 to p. 7, line 25.




FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that the items related to P-1864, P-1871, P-2377 and P-0567 are introduced into evidence pursuant to Rule 68(2)(b) of the Rules and, in the case of P-1864 and P-1871, subject to the receipt of the respective declarations under Rule 68(2)(b)(ii) and (iii) of the Rules:

- **P-1864:** CAR-OTP-2064-0873.
- **P-1871:** CAR-OTP-2064-0896.
- **P-2377:** CAR-OTP-2108-0661; CAR-OTP-2108-0663.
- **P-0567:** CAR-OTP-2041-0643; CAR-OTP-2009-4979, at 4980; and

ORDERS the Prosecution to disclose, within two weeks of notification of this decision, the original source of the photographs presented to P-2377 and attached to his statement as Annexes 2 and 3 or, in the alternative, to provide further information on their provenance, as requested by the Yekatom Defence.

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

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|  <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Péter Kovács</p> |  <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Bertram Schmitt Presiding Judge</p> |  <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Chang-ho Chung</p> |
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Dated 18 January 2024

At The Hague, The Netherlands