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No. **ICC-01/14-01/18**
Date: **15 February 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 on Submission of CAR-OTP-2126-2529 as an Associated Item to the
Expert Report of D30-4864**

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 (the ‘Statute’), Rules 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on Submission of CAR-OTP-2126-2529 as an Associated Item to the Expert Report of D30-4864’.

I. Procedural history and submissions

1. On 5 February 2024, subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules, the Chamber allowed the introduction of the prior recorded testimony of expert witness D30-4864 (the ‘Decision’).¹ The Chamber also indicated that whilst it was considering introducing CAR-OTP-2126-2529 as an associated item to D30-4864’s expert report² (the ‘Item’ and the ‘Report’, respectively), given the Item’s nature and noting that the Prosecution did not call its author to testify, it considered it prudent to provide the participants with an opportunity to comment on its introduction. It thus instructed the participants to provide any such submissions by 12 February 2024.³
2. On 12 February 2024, the Yekatom Defence, Ngaïssona Defence and the Office of the Prosecutor (the ‘Prosecution’) provided their submissions. The Yekatom Defence deferred to the Chamber’s discretion and the Ngaïssona Defence and the Prosecution argued that the Item should not be submitted into evidence (the ‘Yekatom Defence Submissions’, ‘Ngaïssona Defence Submissions’ and ‘Prosecution Submissions’, respectively).⁴

¹ Decision on the Ngaïssona Defence Request for Formal Submission of Expert Report and Associated Items Pursuant to Rule 68(3) of the Rules, ICC-01/14-01/18-2346, para. 15, p. 8.

² CAR-D30-0018-0001.

³ Decision, ICC-01/14-01/18-2346, paras 14-15, p. 8.

⁴ Yekatom Defence Observations Pursuant to the “Decision on the Ngaïssona Defence Request for Formal Submission of Expert Report and Associated Items Pursuant to Rule 68(3) of the Rules”, ICC-01/14-01/18-2346, ICC-01/14-01/18-2353, paras 3-6; Prosecution’s Submissions on the introduction of CAR-OTP-2126-2529, ICC-01/14-01/18-2356-Conf, paras 1, 9; Defence Observations on the Potential Submission of CAR-OTP-2126-2529 as Associated Material to the Report of D30-P-4864 (ICC-01/14-01/18-2346), ICC-01/14-01/18-2358-Conf, paras 1, 13.

II. Analysis

3. The Chamber recalls the applicable law as previously set out regarding Rule 68(3) of the Rules.⁵
4. The Chamber has taken note of the submissions of the Ngaiissona Defence and Prosecution that the Item should not be introduced as an associated item to the Report as, *inter alia*, (i) it has 106 technical annexes, which were not examined or commented on by D30-4864, nor relied upon by the Prosecution;⁶ (ii) the submission of the Item itself, as the prior recorded testimony of its author, should have been sought pursuant to Rule 68 of the Rules, the conditions for which have not been fulfilled;⁷ and (iii) the Report is ‘self-contained’ and does not ‘require resort to the wider text of the [Item] or the items associated with it’.⁸
5. In light of the above, the Chamber will not introduce the Item as an associated item to the Report.

⁵ Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the Ngaiissona Defence Motion to Limit the Scope of P-2926’s Evidence, 10 March 2021, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16. *See also* Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, 29 April 2022, ICC-01/14-01/18-1383, paras 4-17.

⁶ Ngaiissona Defence Submissions, ICC-01/14-01/18-2358-Conf, paras 1, 5-9, 12; Prosecution Submissions, ICC-01/14-01/18-2356-Conf, paras 5, 8. *See also* Yekatom Defence Submissions, ICC-01/14-01/18-2353, paras 4-5.

⁷ Ngaiissona Defence Submissions, ICC-01/14-01/18-2358-Conf, paras 10-11; Prosecution Submissions, ICC-01/14-01/18-2356-Conf, paras 6-8.

⁸ Ngaiissona Defence Submissions, ICC-01/14-01/18-2358-Conf, para. 9. *See also* Prosecution Submissions, ICC-01/14-01/18-2356-Conf, paras 3-4.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that the Item (CAR-OTP-2126-2529) will not be introduced into evidence as an associated item to the Report pursuant to Rule 68(3) of the Rules; and

ORDERS the Prosecution and the Ngaissona Defence, respectively, to file public redacted versions of the Prosecution Submissions, ICC-01/14-01/18-2356-Conf and the Ngaissona Defence Submissions, ICC-01/14-01/18-2358-Conf, within one week of notification of this decision.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 15 February 2024

At The Hague, The Netherlands