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No. ICC-01/14-01/18

Date: 16 August 2024

TRIAL CHAMBER V

Before:

Judge Bertram Schmitt, Presiding Judge

Judge Péter Kovács

Judge Chang-ho Chung

Judge Beti Hohler, Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

***THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Second Yekatom Defence Request for Submission from the Bar
Table (Open Source Material)**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Marie-Hélène Proulx
Lauriane Vandeler

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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), 66(2), 69 and 74(2) of the Rome Statute (the ‘Statute’) and Rules 63 and 64 of the Rules of Procedure and Evidence, issues this ‘Decision on the Second Yekatom Defence Request for Submission from the Bar Table (Open Source Material)’.

I. Procedural History

1. On 31 May 2024, in accordance with the time limit set by the Chamber,¹ the Yekatom Defence (the ‘Defence’) filed a request for the submission of 31 items from the bar table (the ‘Items’ and the ‘Request’, respectively).² The Items comprise (i) 19 media/press articles; (ii) seven social media items; (iii) three reports; and (iv) two additional items.³ The Defence submits that the Items are *prima facie* relevant to and probative of material issues at trial, mutually corroborative, and that they bear sufficient indicia of reliability and authenticity.⁴
2. On 18 June 2024,⁵ the Office of the Prosecutor (the ‘Prosecution’) partly opposed the Request. It requests that the Chamber reject the formal submission of three items⁶ (the ‘Contested Items’) and defers to the Chamber’s discretion as to the remainder of the Items, subject to some observations (the ‘Response’).⁷

¹ The Chamber initially set the final time limit for any bar table applications by the Defence at one week after the testimony of the last witness called by the Defence, whilst encouraging it to file requests on a rolling basis during its presentation of evidence (see Further Directions on the Conduct of the Proceedings [End of Defence Presentation of Evidence and Closure of Evidence], 2 February 2024, ICC-01/14-01/18-2342, para. 6). The Chamber later amended the deadline for bar table motions to be filed by the Defence, requiring each Defence team to *inter alia* file bar table motions for at least two categories of items by 31 May 2024 (see email from the Chamber, 15 May 2024, at 10:30).

² Yekatom Defence Request for the Formal Submission of Open-source Evidence from the Bar Table, ICC-01/14-01/18-2516 (with confidential Annex A, ICC-01/14-01/18-2516-Conf-AnxA), paras 1, 22.

³ See Annex A to the Request, ICC-01/14-01/18-2516-Conf-AnxA.

⁴ Request, ICC-01/14-01/18-2516, paras 2-3.

⁵ The Single Judge granted an extension of time pursuant to Regulation 35 of the Regulations of the Court to respond to the Request (see email from the Chamber, 5 June 2024, at 15:47).

⁶ CAR-D29-0002-0046, CAR-D29-0002-0123 and CAR-OTP-2001-0241.

⁷ Prosecution’s Response to “Yekatom Defence Request for the Formal Submission of Open-source Evidence from the Bar Table (ICC-01/14-01/18-2516)”, ICC-01/14-01/18-2534-Conf (with confidential Annex A and B, ICC-01/14-01/18-2534-Conf-AnxA and ICC-01/14-01/18-2534-Conf-AnxB), paras 1, 12.

3. On 21 and 25 June, 2024, respectively, the Defence requested the Chamber's leave to reply to the Response (the 'Request for Leave to Reply'),⁸ and the Prosecution opposed the Request for Leave to Reply (the 'Response to the Leave to Reply').⁹
4. On 9 July 2024, the Single Judge rejected the Request for Leave to Reply.¹⁰

II. Analysis

5. The Chamber recalls the applicable law for the submission of evidence from the bar table.¹¹ It also takes note of the parties' arguments on the relevance and probative value of the Items,¹² and defers its consideration of such arguments to its deliberation of the judgment pursuant to Article 74(2) of the Statute.
6. The Prosecution argues that the Defence's assertions on the Contested Items' *prima facie* relevance and probative value are 'wholly speculative' and not substantiated. In addition, in relation to one of the Contested Items,¹³ the Prosecution contends that it should have been used in court with P-2328.¹⁴
7. The Chamber observes that the Contested Items consist of (i) a press article from April 2015 concerning P-2328's political career and reputation;¹⁵ (ii) a report of the sunrise and sunset times for the month of December 2013 in Bangui;¹⁶ and (iii) a statement from former Prosecutor Fatou Bensouda from March 2013, in

⁸ Request for Leave to Reply to Prosecution's Response to the 'Yekatom Defense Request for the Formal Submission of Open-source Evidence from the Bar Table', 18 June 2024, ICC-01/14-01/18-2534-Conf, ICC-01/14-01/18-2539-Conf, paras 1, 6.

⁹ Prosecution's Response to Yekatom Defence's 'Request for Leave to Reply to Prosecution's Response to the 'Yekatom Defense Request for the Formal Submission of Open-source Evidence from the Bar Table'', ICC-01/14-01/18-2547-Conf, paras 1, 6.

¹⁰ Email from the Chamber, 9 July 2024, at 15:00.

¹¹ 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.

¹² See Request, ICC-01/14-01/18-2516, paras 11-18; Response, ICC-01/14-01/18-2534-Conf, paras 3-11.

¹³ CAR-D29-0002-0046.

¹⁴ Annex A to the Response, ICC-01/14-01/18-2534-Conf-AnxA; *see also* Response, ICC-01/14-01/18-2534-Conf, paras 3-10.

¹⁵ CAR-D29-0002-0046.

¹⁶ CAR-D29-0002-0123.

which she expresses her concern about reports of the worsening situation in the Central African Republic (the ‘CAR’).¹⁷

8. Having reviewed the Contested Items, the Chamber considers that they are *prima facie* relevant to factual allegations of the case. Moreover, the Chamber notes the Defence’s arguments that these items relate to, *inter alia*, (i) the security situation in the CAR when the Seleka took power, allegedly ‘causing Mr Yekatom to take arms to defend and liberate his country’; (ii) Mr Yekatom’s alleged ‘intention to reestablish peace and security along the PK9 Axis in early 2014’; (iii) the ‘timeframe of the Yamwara School incident’; and (iv) the ‘overall lack of credibility’ of P-2328.¹⁸
9. With regard to CAR-D29-0002-0046, and contrary to the Prosecution submissions,¹⁹ the Chamber considers that the fact that the Defence decided not to use CAR-D29-0002-0046 with P-2328 in court is not sufficient in itself to preclude its submission through this Request. Nevertheless, the Chamber will take into account, as part of its judgment deliberations, the Prosecution’s argument that P-2328 did not comment on CAR-D29-0002-0046 during his examination in court.
10. Furthermore, the Chamber is of the view that the alleged lack of probative value of the Contested Items, as argued by the Prosecution,²⁰ is a matter to be addressed during the judgment deliberations and does not constitute, in itself, a procedural bar at this stage.
11. With regard to the remainder of the Items, the Chamber notes that the Prosecution defers to its discretion. In light of the above, having reviewed the remaining Items and in the absence of any procedural bars, the Chamber recognises all of the Items as formally submitted.²¹

¹⁷ CAR-OTP-2001-0241.

¹⁸ See Request, ICC-01/14-01/18-2516, paras 2, 13-15; Annex A to the Request, ICC-01/14-01/18-2516-Conf-AnxA, pp. 2 and 48, entries 1 and 30.

¹⁹ See Response, ICC-01/14-01/18-2534-Conf, paras 3-4.

²⁰ See Response, ICC-01/14-01/18-2534-Conf, paras 3-10.

²¹ The Chamber notes that while it already recognised as formally submitted specific pages of CAR-D29-0005-0399 and CAR-D29-0005-0503, by virtue of this decision, these two items are recognised as formally submitted in their entirety.

FOR THESE REASONS, THE CHAMBER HEREBY**GRANTS** the Request;

RECOGNISES as formally submitted CAR-D29-0002-0046, CAR-D29-0002-0054, CAR-D29-0002-0059, CAR-D29-0002-0070, CAR-D29-0002-0091, CAR-D29-0002-0098, CAR-D29-0002-0110, CAR-D29-0002-0120, CAR-D29-0002-0140, CAR-D29-0002-0173, CAR-D29-0002-0671, CAR-D29-0002-0676, CAR-D29-0002-0680, CAR-D29-0002-0686, CAR-OTP-2001-1756, CAR-OTP-2001-4274, CAR-OTP-2001-4861, CAR-OTP-2054-1371, CAR-OTP-2064-1013, CAR-D29-0016-0097, CAR-D29-0016-0101, CAR-D29-0016-0112, CAR-D29-0016-0113, CAR-D29-0016-0115, CAR-D29-0016-0116, CAR-D29-0016-0118, CAR-D29-0012-0001, CAR-D29-0005-0399, CAR-D29-0005-0503, CAR-D29-0002-0123 and CAR-OTP-2001-0241; and

ORDERS the Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2516-Conf; the Request for Leave to Reply, ICC-01/14-01/18-2539-Conf; the Response, ICC-01/14-01/18-2534-Conf; and the Response to the Request for Leave to Reply, ICC-01/14-01/18-2547-Conf, respectively, 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 16 August 2024

At The Hague, The Netherlands