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No. ICC-01/14-01/18

Date: 19 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 Third Yekatom Defence Request for Submission from the Bar
Table (Legal, Governmental and Political Evidence)**

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), 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 Third Yekatom Defence Request for Submission from the Bar Table (Legal, Governmental and Political Evidence)’.

I. Procedural History

1. On 28 June 2024, in accordance with the time limit set by the Chamber,¹ the Yekatom Defence (the ‘Defence’) filed a request for the submission of 24 items from the bar table (the ‘Items’ and the ‘Request’, respectively).² The Items comprise (i) 16 documents issued by legal, governmental and political entities; (ii) two legal codes; and (iii) six cooperation requests.³ The Defence submits that the Items are *prima facie* relevant, reliable and meet the authenticity criteria.⁴
2. On 8 July 2024, the Ngaïssona Defence informed the Chamber that it does not intend to respond to the Request and defers to its discretion.⁵
3. On 11 July 2024, the Office of the Prosecutor (the ‘Prosecution’) partly opposed the Request. It requests that the Chamber reject the formal submission of nine items⁶ (the ‘Contested Items’) and defers to the Chamber’s discretion as to the remainder of the Items, subject to some observations. In addition, the Prosecution requests the Chamber to formally recognise as submitted item CAR-OTP-2136-

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 28 June 2024 (*see* email from the Chamber, 15 May 2024, at 10:30).

² Yekatom Defence Request for the Formal Submission of Legal, Governmental and Political Evidence from the Bar Table, ICC-01/14-01/18-2561 (with confidential Annex A, ICC-01/14-01/18-2561-Conf-AnxA), paras 1, 25.

³ *See* Annex A to the Request, ICC-01/14-01/18-2561-Conf-AnxA.

⁴ Request, ICC-01/14-01/18-2561, paras 2-3.

⁵ Email from the Ngaïssona Defence, 8 July 2024, at 15:19.

⁶ CAR-D29-0001-0123, CAR-D29-0001-0306, CAR-OTP-2101-3025, CAR-D29-0007-0036, CAR-D29-0007-0039, CAR-D29-0007-0041, CAR-D29-0007-0043, CAR-D29-0007-0047 and CAR-D29-0007-0196.

0185 under Articles 64(6)(d) and 69(3) of the Statute (the ‘Submission Request’) (collectively, the ‘Response’).⁷

II. Analysis

4. The Chamber recalls the applicable law for the submission of evidence from the bar table.⁸ It also takes note of the parties’ arguments on the relevance and probative value of the Items,⁹ and defers its consideration of such arguments to its deliberation of the judgment pursuant to Article 74(2) of the Statute.
5. The Prosecution argues that the Contested Items lack any *prima facie* relevance and probative value, and that one of them¹⁰ is testimonial in nature.
6. The Chamber observes that the Contested Items consist of (i) a decree signed by François Bozizé in August 2003, containing the names of certain FACA elements who benefited from a ‘*promotion à titre exceptionnel*’;¹¹ (ii) a decision issued by the Constitutional Court of the Central African Republic (the ‘CAR’) in April 2016, declaring the final results of legislative elections held that year;¹² (iii) a governmental memorandum referring to a cooperation agreement between the CAR government and the Court;¹³ (iv) a letter addressed by the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel to the Registrar of the Court, in response to requests for assistance from the Defence;¹⁴ (v) four requests for assistance addressed by the Defence to UNICEF in December 2019, January and December 2020;¹⁵ and (vi) an official response from the French authorities to a request for assistance sent by the Defence, which contains a report of the Sangaris concerning the alleged Anti-Balaka attack on Bangui on 5

⁷ Réponse à la “Yekatom Defence Request for the Formal Submission of Legal, Governmental and Political Evidence from the Bar Table” (ICC-01/14-01/18-2561), ICC-01/14-01/18-2589-Conf, paras 1-2, 50.

⁸ 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.

⁹ See Request, ICC-01/14-01/18-2561, paras 13-19; Annex A to the Request, ICC-01/14-01/18-2561-Conf-AnxA. See also Response, ICC-01/14-01/18-2589-Conf, paras 23-49.

¹⁰ CAR-D29-0007-0196.

¹¹ CAR-D29-0001-0123.

¹² CAR-D29-0001-0306.

¹³ CAR-OTP-2101-3025.

¹⁴ CAR-D29-0007-0047.

¹⁵ CAR-D29-0007-0036, CAR-D29-0007-0039, CAR-D29-0007-0041 and CAR-D29-0007-0043.

December 2013 (the ‘Bangui Attack’), including a chronology of the events and of the fighting.¹⁶

7. Having reviewed the Contested Items, the Chamber considers that they are *prima facie* relevant to the factual allegations in this case. Moreover, the Chamber notes the Defence’s arguments that the Contested Items are relevant to (i) Mr Yekatom’s military and political career, notably whether he was close to François Bozizé and shared any ‘common plan for the return of the constitutional order’; (ii) Mr Yekatom’s alleged ‘compliance with voluntary disarmament’, as well as his alleged ‘intention to assist the population and reestablish peace and security along the PK9 axis in early 2014 and onwards’; (iii) the Bangui Attack; and (iv) the Prosecution’s investigation of the case, as well as the credibility of certain of its witnesses.¹⁷ Furthermore, the Chamber is of the view that the alleged lack of probative value of the Contested Items, as argued by the Prosecution, is a matter to be addressed during the judgment deliberations and does not constitute, in itself, a procedural bar at this stage.¹⁸
8. Moreover, the Chamber is not persuaded by the Prosecution’s submissions that CAR-D29-0007-0196 is testimonial in nature.¹⁹ Rather, it consists of a response to discrete queries from the Defence in the course of its investigations. Further, the fact that the item may contain indirect evidence or hearsay does not preclude its formal submission.
9. With regard to the remainder of the Items, the Chamber notes that the Prosecution defers to its discretion and does not raise any procedural bars.
10. 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.
11. Moreover, as to the Submission Request, the Prosecution seeks to submit CAR-OTP-2136-0185, which consists of a series of photographs taken in the context

¹⁶ CAR-D29-0007-0196.

¹⁷ Request, ICC-01/14-01/18-2561, paras 2, 14-16; Annex A to the Request, ICC-01/14-01/18-2561-Conf-AnxA.

¹⁸ See Response, ICC-01/14-01/18-2589-Conf, paras 8, 10, 12, 14, 16-19, 22.

¹⁹ See Response, ICC-01/14-01/18-2589-Conf, paras 20-21.

of the search and seizure operation conducted by the CAR authorities at the residence of an individual in Bangui. These photographs also include certain ID badges that were seized and later recognised as formally submitted into evidence (the ‘ID Badges’), the authenticity of which is challenged by the Defence.²⁰ The Prosecution thus requests the Chamber to recognise CAR-OTP-2136-0185 as formally submitted *proprio motu*, since it allegedly shows that the ID Badges were seized at the residence of the individual in question, given that the document is responsive to the Defence’s allegations concerning the authenticity of the seized ID Badges, and in the spirit of efficiency, so as not to request its submission as part of ‘rebuttal evidence’.²¹

12. The Chamber first observes that CAR-OTP-2136-0185 is not on the Prosecution’s list of evidence. It further notes that the Prosecution had the opportunity of requesting the late addition of this item into its list of evidence, as well as its submission, when requesting the submission into evidence of the ID Badges during its presentation of evidence.²² In light of the above, and noting that the Defence did not have an opportunity to respond, the Chamber rejects the Submission Request.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

RECOGNISES as formally submitted CAR-D29-0001-0123, CAR-D29-0001-0146, CAR-D29-0001-0560, CAR-D29-0001-0554, CAR-D29-0001-0306, CAR-D29-0013-0028, CAR-D29-0013-0039, CAR-D29-0013-0267, CAR-D30-0007-0769, CAR-D30-0007-0792, CAR-OTP-2008-0850, CAR-OTP-2101-3025, CAR-OTP-2001-5592, CAR-OTP-2101-4062, CAR-D29-0001-0125, CAR-D29-0001-0138, CAR-D29-0001-

²⁰ See e.g. Decision on the Prosecution Request for Leave to Add 22 Items to its List of Evidence, 21 December 2022, ICC-01/14-01/18-1710-Conf; Decision on the Prosecution Request for Leave to Add Nine Items to its List of Evidence, 14 September 2022, ICC-01/14-01/18-1573-Conf; Decision on the Thirteenth Prosecution Submission Request from the Bar Table (Anti-Balaka and Governmental Documents), 10 November 2023, ICC-01/14-01/18-2199-Conf.

²¹ Response, ICC-01/14-01/18-2589-Conf, para. 49.



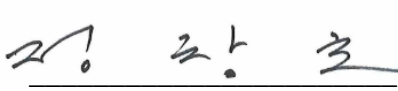
²² The Chamber notes in this regard that CAR-OTP-2136-0185 was disclosed to the Defence on 22 April 2022. See Prosecution’s Communication of the Disclosure of Evidence on 22 April 2022, 22 April 2022, ICC-01/14-01/18-1375 (with one confidential annex, ICC-01/14-01/18-1375-Conf-Anx). See, in particular, ICC-01/14-01/18-1375-Conf-Anx, p. 3, entry 12.

0573, CAR-D29-0001-0546, CAR-D29-0007-0036, CAR-D29-0007-0039, CAR-D29-0007-0041, CAR-D29-0007-0043, CAR-D29-0007-0047 and CAR-D29-0007-0196;

REJECTS the Submission Request; and

ORDERS the Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2561-Conf, and the Response, ICC-01/14-01/18-2589-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
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Dated 19 August 2024

At The Hague, The Netherlands