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**No. ICC-01/14-01/18
Date: 17 September 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single 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 Yekatom Defence Request for Cooperation from the
African Union**

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaißona*, having regard to Articles 57(3)(b), 61(11), 64(6)(a) and 87(6) of the Rome Statute (the ‘Statute’) and Rule 116(1) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Yekatom Defence Request for Cooperation from the African Union’.

I. Procedural history and submissions

1. On 4 August 2020, the Yekatom Defence (the ‘Defence’) requested the Chamber to direct the African Union (the ‘AU’) to transmit a series of nine items enumerated in Annex A to its request (the ‘Request’).¹ According to the Defence, the AU would have gained possession of these documents from the *Mission internationale de soutien à la Centrafrique sous conduite africaine* (the ‘MISCA’).²
2. The Defence argues that an order from the Chamber to the AU is necessary since prior attempts to obtain these items have been unsuccessful.³ It submits that it addressed two letters to the President of the AU Commission, on 14 November 2019 and 5 June 2020,⁴ but received no response as of 3 August 2020.⁵
3. The Defence further submits that it attempted to obtain certain documents from the Office of the Prosecutor (the ‘Prosecution’) under Rule 77 of the Rules, but the Prosecution indicated that it was not in possession of any of the documents.⁶

¹ Demande de la Défense de Monsieur Yekatom afin que soit rendue une Ordonnance relativement à la coopération de l’Union Africaine, ICC-01/14-01/18-612 (with confidential *ex parte* Annex A, only available to the Yekatom Defence, ICC-01/14-01/18-612-Conf-Exp-AnxA; and confidential Annexes B, C and D, ICC-01/14-01/18-612-Conf-AnxB, ICC-01/14-01/18-612-Conf-AnxC and ICC-01/14-01/18-612-Conf-AnxD, respectively) (confidential redacted version of Annex A notified on 5 August 2020), para. 1.

² Request, ICC-01/14-01/18-612, para. 3.

³ Request, ICC-01/14-01/18-612, para. 2.

⁴ See Request, ICC-01/14-01/18-612, paras 4-8. See also Annex B to the Request, ICC-01/14-01/18-612-Conf-AnxB.

⁵ See Request, ICC-01/14-01/18-612, paras 7, 11. See also Annex D to the Request, ICC-01/14-01/18-612-Conf-AnxD, p. 3.

⁶ See Request, ICC-01/14-01/18-612, paras 9-10. See also Annex C to the Request, ICC-01/14-01/18-612-Conf-AnxC, p. 4.

4. On 10 August 2020, the Single Judge ordered the Registry to invite the AU to submit observations on the Request by 4 September 2020.⁷
5. On 11 August 2020, the Prosecution responded to the Request.⁸ The Prosecution defers to the Chamber's discretion and adds that, if the Request is granted, the Chamber should further direct the AU to provide the requested items to the parties and participants equally.⁹
6. On 11 September 2020, the Registry transmitted the AU's observations.¹⁰ The AU submits that (i) it has not been able to locate the requested documents and information in its archives; and (ii) the MISCA has ceased operation and transferred its authority to the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (the 'MINUSCA').¹¹

II. Analysis

7. Pursuant to Article 57(3)(b) of the Statute and Rule 116(1) of the Rules, the Chamber may 'seek such cooperation pursuant to Part 9 as may be necessary to assist [a] person [who has been arrested] in the preparation of his or her defence' where it is satisfied that such an order would 'facilitate the collection of evidence that may be material to the proper determination of the issues being adjudicated, or to the proper preparation of the person's defence'.
8. Cooperation may be sought from intergovernmental organisations pursuant to Article 87(6) of the Statute,¹² which provides that the Court 'may ask any

⁷ Order Requesting Observations on the Yekatom Defence Request for Cooperation from the African Union, ICC-01/14-01/18-619.

⁸ Prosecution's Observations on the « Demande de la Défense de Monsieur Yekatom afin que soit rendue une Ordonnance relativement à la coopération de l'Union Africaine » (ICC-01/14-01/18-612), ICC-01/14-01/18-622 (the 'Response').

⁹ Response, ICC-01/14-01/18-622, para. 2.

¹⁰ See Transmission of Observations from the African Union pursuant to the Order ICC-01/14-01/18-619, ICC-01/14-01/18-649 (with confidential Annex I, ICC-01/14-01/18-649-Conf-AnxI; and confidential Annex II, ICC-01/14-01/18-649-Conf-AnxII [the 'AU Observations']).

¹¹ AU Observations, ICC-01/14-01/18-649-Conf-AnxII, p. 2.

¹² See Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Decision on "Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union", 1 July 2011, ICC-02/05-03/09-170, para. 9; Decision on the second defence's application pursuant to Articles 57(3)(b) and 64(6)(a) of the Statute, 21 December 2011, ICC-02/05-03/09-268-Conf (public redacted version notified the same day, ICC-02/05-03/09-268-Red), para. 13.

intergovernmental organization to provide information or documents’ and ‘may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate’.

9. The Single Judge notes that the AU indicates that it has sought to locate the requested documents in its archives and was unable to find them.¹³ For this reason, the Single Judge considers that seeking the AU’s cooperation on this matter would not provide further assistance to Mr Yekatom in the preparation of his defence, within the meaning of Article 57(3)(b) of the Statute. Accordingly, the Single Judge rejects the Request.
10. Notwithstanding, the Single Judge recalls the AU’s observations with regard to the ending mandate of the MISCA.¹⁴ In this regard, the Single Judge notes that the MISCA’s authority has been transferred to the MINUSCA and that the items sought may therefore be in the possession of the United Nations.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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



Judge Bertram Schmitt

Single Judge

Dated 17 September 2020

At The Hague, The Netherlands

¹³ AU Observations, ICC-01/14-01/18-649-Conf-AnxII, p. 2.

¹⁴ AU Observations, ICC-01/14-01/18-649-Conf-AnxII, p. 2.