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No. ICC-01/14-01/18

Date: 3 June 2022

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 Two Items Concerning Use and Recruitment of Children
(CAR-OTP-2121-2593 and CAR-OTP-2126-0385)**

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 Ngaissona*, having regard to Articles 64(2) and (9), 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 Two Items Concerning Use and Recruitment of Children (CAR-OTP-2121-2593 and CAR-OTP-2126-0385)’.

I. Procedural history and submissions

1. On 24 May 2022, the Chamber ruled on the request¹ by the Office of the Prosecutor (the ‘Prosecution’) seeking formal submission of 49 items comprising evidence relevant to the Anti-Balaka’s recruitment and use of children, including those under the age of 15, in hostilities during the period relevant to the charges (the ‘Decision’ and the ‘Bar Table Application’ respectively).²
2. Regarding two items, namely CAR-OTP-2121-2593 and CAR-OTP-2126-0385 (the ‘First Investigation Report’ and ‘Second Investigation Report’, and collectively the ‘Investigation Reports’), the Chamber noted that they were not on the Prosecution’s List of Evidence and were also not sought for submission.³ These items had been mentioned in the annex to the Bar Table Application in relation to item CAR-OTP-2121-2595 and items CAR-OTP-2126-0413, CAR-OTP-2126-0414, CAR-OTP-2126-0415, CAR-OTP-2126-0416 (collectively, the ‘Submitted Items’).⁴ Given that the Investigation Reports closely related to the Submitted Items and may bear prospective significance to the proceedings, the Chamber directed the participants to provide their views, if any, on their

¹ Request for the Submission of Evidence from the Bar Table regarding the recruitment and use of child soldiers, ICC-01/14-01/18-1346 (with one confidential annex, ICC-01/14-01/18-1346-Conf-Anx).

² Decision on the Fourth Prosecution Submission Request from the Bar Table (Recruitment and Use of Children), ICC-01/14-01/18-1428.

³ Decision, ICC-01/14-01/18-1428, para. 15.

⁴ For item CAR-OTP-2126-0385, *see* entries in relation to items CAR-OTP-2126-0413, CAR-OTP-2126-0414, CAR-OTP-2126-0415, CAR-OTP-2126-0416 in Annex to the Bar Table Application, ICC-01/14-01/18-1346-Conf-Anx, pp. 29-31, entries 2-5. For item CAR-OTP-2121-2593, *see* entry concerning item CAR-OTP-2121-2595 in Annex to the Bar Table Application, ICC-01/14-01/18-1346-Conf-Anx, p. 29, entry 1.

(i) addition to the Prosecution’s List of Evidence; and (ii) submission before the Chamber within one week of the issuance of the Decision.⁵

3. On 27 May 2022, the Prosecution clarified that it did not seek formal recognition of the Investigation Reports in the Bar Table Application; it added that they were not presented as evidence *per se* but rather to ‘clarify the source and chain of custody of [the Submitted Items] or their reliability and authenticity’.⁶
4. On 31 May 2022, the Yekatom Defence filed its observations (the ‘Defence Observations’).⁷ It does not oppose the formal recognition of the submission of the First Investigation Report given its ‘highly concise nature’.⁸ It opposes the formal submission and addition to the Prosecution’s List of Evidence of the Second Investigation Report on grounds that it contains testimonial evidence.⁹ In addition, it contends, *inter alia*, that the prejudicial effect of recognising the submission of the Second Investigation Report outweighs the low probative value.¹⁰

II. Analysis

5. The Chamber recalls its approach regarding the submission of evidence as set out in its initial directions on the conduct of the proceedings (the ‘Initial Directions’).¹¹ At this stage, the Chamber will only consider whether the Investigation Reports are subject to any statutory exclusionary rules, including procedural bars, obstacles, and preconditions.¹²
6. The Chamber notes that the Prosecution does not request the addition of the Investigation Reports to the List of Evidence or their submission but indicated its

⁵ Decision, ICC-01/14-01/18-1428, para. 15, p. 10.

⁶ Email from the Prosecution to the Chamber, 27 May 2022, at 15:39.

⁷ Yekatom Defence Observations pursuant to the “Decision on the Fourth Prosecution Submission Request from the Bar Table (Recruitment and Use of Children)”, 24 May 2022, ICC-01/14-01/18-1428, ICC-01/14-01/18-1442-Conf (a public redacted version was filed on 2 June 2022, ICC-01/14-01/18-1442-Red).

⁸ Defence Observations, ICC-01/14-01/18-1442-Red, paras 17-18.

⁹ Defence Observations, ICC-01/14-01/18-1442-Red, paras 8-16.

¹⁰ Defence Observations, ICC-01/14-01/18-1442-Red, para. 11.

¹¹ Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631, paras 53-57.

¹² Initial Directions, ICC-01/14-01/18-631, paras 54.

readiness to request submission, should the Chamber deem it necessary.¹³ In these circumstances, the Chamber is of the view that ordering the Prosecution to request the formal submission of the Investigation Reports would be inefficient. It will therefore rule on the formal submission of the Investigation Reports *proprio motu*.

7. As regards the First Investigation Report, the Chamber notes that it provides further details concerning the provenance of item CAR-OTP-2121-2595 which has been recognised as submitted by the Chamber.¹⁴ Noting that the Yekatom Defence does not oppose its formal submission, and that there are no procedural bars, the Chamber recognises this item as submitted.
8. As regards the Second Investigation Report, the Chamber notes that this report outlines a meeting to obtain birth certificates related to P-2582. It provides further details concerning the provenance of items already submitted by the Chamber.¹⁵ It does not contain testimonial evidence as argued by Yekatom Defence. Having identified no other procedural bars, the Chamber recognises this item as submitted.
9. The Chamber takes note of the Defence Observations concerning the reliability and probative value of the Investigation Reports, including those concerning potential prejudice to the accused¹⁶ and will consider them as part of its deliberations pursuant to Article 74(2) of the Statute.

¹³ Email from the Prosecution to the Chamber, 27 May 2022, at 15:39.

¹⁴ Decision, ICC-01/14-01/18-1428, p. 10.

¹⁵ Decision, ICC-01/14-01/18-1428, p. 10.

¹⁶ Defence Observations, ICC-01/14-01/18-1442-Red, paras 10-13.

FOR THESE REASONS, THE CHAMBER HEREBY

RECOGNISES as submitted, items CAR-OTP-2121-2593 and CAR-OTP-2126-0385;
and

ORDERS the Registry to reflect that these items have been recognised in the JEM code, in accordance with paragraph 63(v) of the Initial Directions, ICC-01/14-01/18-631.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 3 June 2022

At The Hague, The Netherlands