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No. **ICC-01/14-01/18**
Date: **9 July 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 First Yekatom Defence Request for Submission from the Bar
Table (Audio-visual and Photographic Material)**

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 (the ‘Rules’), issues this ‘Decision on the First Yekatom Defence Request for Submission from the Bar Table (Audio-visual and Photographic Material)’.

I. Procedural History

1. On 31 May 2024, in accordance with the time limit set by the Chamber,¹ the Yekatom Defence filed a request for the submission of audio-visual and photographic material from the bar table (the ‘Items’ and the ‘Request’, respectively).² The Items comprise (i) 21 photographs;³ (ii) 25 videos, 18 transcripts and 33 metadata files provided by former witness P-1819;⁴ and (iii) 16 additional audios/videos, as well as 14 transcripts.⁵ The Yekatom Defence submits that the Items are *prima facie* relevant, reliable and meet the authenticity criteria.⁶
2. On 13 June 2024, the Office of the Prosecutor (the ‘Prosecution’) partly opposed the Request. It requests that the Chamber reject the formal submission of 17 items and defers to the Chamber’s discretion as to the remaining 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 Audio/Video and Photographic material, ICC-01/14-01/18-2515-Conf (with confidential Annexes A, B and C), paras 1, 44.

³ *See* Annex A to the Request, ICC-01/14-01/18-2515-Conf-AnxA.

⁴ *See* Annex B to the Request, ICC-01/14-01/18-2515-Conf-AnxB.

⁵ *See* Annex C to the Request, ICC-01/14-01/18-2515-Conf-AnxC.

⁶ Request, ICC-01/14-01/18-2515-Conf, para. 2.

⁷ Prosecution’s Response to the “Yekatom Defence Request for the formal submission of Audio/Video and Photographic material” (ICC-01/14-01/18-2515), ICC-01/14-01/18-2530-Conf (with confidential Annexes A, B and C), paras 1-2, 19.

II. Analysis

3. 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 subject to the Request,⁹ and defers its consideration until its deliberation of the judgment pursuant to Article 74(2) of the Statute.
4. At the outset, the Chamber notes that CAR-D29-0008-0025, CAR-D29-0006-1488, CAR-OTP-2122-7366, CAR-OTP-2042-3879 and CAR-D29-0006-1352 have already been recognised as formally submitted. It therefore need not rule on these items again.
5. The Chamber further observes that items CAR-OTP-2065-1143, CAR-OTP-2065-1704, CAR-OTP-2065-5192 and CAR-OTP-2065-5292 were introduced into evidence pursuant to Rule 68(3) of the Rules through P-1819, subject to the fulfilment of the requirements of said provision. However, ultimately, P-1819 did not appear before the Chamber. Noting that the parties do not oppose their submission, the Chamber, in the absence of any procedural bars, recognises these items as formally submitted.
6. Moreover, the Chamber notes that the Prosecution opposes the formal submission of CAR-D29-0003-0030, which consists of satellite images of the Boeing area, on the basis that it is not probative of the purposes for which it is tendered, and that its probative value is 'entirely speculative'.¹⁰ While taking note of the Prosecution's objections, the Chamber sees no impediments to the submission of CAR-D29-0003-0030, and therefore recognises it as formally submitted. It will assess the probative value of the item in the context of its judgment deliberations.
7. The Chamber also notes that the Prosecution objects to the submission of 14 items which contain the metadata of certain videos extracted from the materials

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-01/14-01/18-2515-Conf, paras 9-15, 18, 26-31, 39. See also Response, ICC-01/14-01/18-2530-Conf, paras 6, 13, 18.

¹⁰ Response, ICC-01/14-01/18-2530-Conf, paras 4-5.

provided by P-1819 (the ‘Contested Metadata’).¹¹ In particular, the Prosecution argues that the Contested Metadata contains ‘obvious errors on the dates’, as noted by the Yekatom Defence,¹² and that the formal submission of these items would be ‘unduly prejudicial and contrary to the interests of justice’.¹³

8. The Chamber is not persuaded that the issues raised by the Prosecution preclude the formal submission of the Contested Metadata. The Chamber has taken note of the Yekatom Defence’s and Prosecution’s arguments concerning the alleged inaccuracies in the content of the items and the purpose for which they are being submitted. It will address the reliability and probative value of the Contested Metadata in the context of its judgment deliberations, as well as whether they ‘tend to show that the Anti-Balaka elements depicted in some of the related videos were not part of [Mr Yekatom]’s Group’.¹⁴ Therefore, and in the absence of any procedural bars, the Chamber recognises the Contested Metadata as formally submitted.
9. As to the remaining videos provided by P-1819, the Chamber notes that the Prosecution does not oppose their formal submission, but invites the Chamber to take into consideration its additional observations provided in Annex B for each one.¹⁵
10. Furthermore, the Prosecution objects to the submission of CAR-D29-0008-0018 and CAR-D29-0006-1323, a video interview of P-0505 and its corresponding transcript. It argues that it consists of only the first part of an interview, and that for the sake of completeness, the remaining four parts should also be submitted. The Prosecution indicates that it downloaded the remaining parts, which only add a total of one minute and 42 seconds (part 2: CAR-OTP-00036518; part 3: CAR-OTP-00036521; part 4: CAR-OTP-00036524; part 5: CAR-OTP-00036527).¹⁶

¹¹ CAR-OTP-2065-6796, CAR-OTP-2065-6976, CAR-OTP-2065-7478, CAR-OTP-2065-7494, CAR-OTP-2065-7758, CAR-OTP-2065-7808, CAR-OTP-2065-7836, CAR-OTP-2065-7840, CAR-OTP-2065-7842, CAR-OTP-2065-7848, CAR-OTP-2065-7850, CAR-OTP-2065-7852, CAR-OTP-2065-7858 and CAR-OTP-2065-7860.

¹² See Request, ICC-01/14-01/18-2515-Conf, paras 27-29.

¹³ Response, ICC-01/14-01/18-2530-Conf, paras 7-12.

¹⁴ See Request, ICC-01/14-01/18-2515-Conf, para. 30; Response, ICC-01/14-01/18-2530-Conf, para. 12.

¹⁵ See Response, ICC-01/14-01/18-2530-Conf, para. 13.

¹⁶ Response, ICC-01/14-01/18-2530-Conf, paras 14-17.

11. Having reviewed the remaining four parts of the interview, and noting the Prosecution's arguments, the Chamber is of the view that the submission of the interview in its entirety would be of assistance for its assessment of the evidence. It therefore recognises CAR-D29-0008-0018, CAR-D29-0006-1323, CAR-OTP-00036518, CAR-OTP-00036521, CAR-OTP-00036524 and CAR-OTP-00036527 as formally submitted. It further instructs the Prosecution to provide a corresponding transcript for these four additional items.
12. Lastly, as to the remainder of the Items, the Chamber notes that their submission is not opposed by the parties. Having reviewed these items, the Chamber has not identified any procedural bars and therefore recognises them as formally submitted.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

RECOGNISES as formally submitted the following items:

| | | |
|--------------------|--------------------|--------------------|
| CAR-D29-0003-0030; | CAR-OTP-2126-1349; | CAR-OTP-2065-1280; |
| CAR-D29-0010-0127; | CAR-OTP-2126-1356; | CAR-OTP-2065-6194; |
| CAR-D29-0010-0129; | CAR-OTP-2126-1362; | CAR-OTP-2065-1284; |
| CAR-D29-0010-0131; | CAR-OTP-2126-1379; | CAR-D29-0006-1444; |
| CAR-OTP-2042-5427; | CAR-OTP-2065-1143; | CAR-D29-0006-1485; |
| CAR-OTP-2076-1444; | CAR-D29-0006-1441; | CAR-OTP-2065-6196; |
| CAR-OTP-2076-1506; | CAR-OTP-2065-6796; | CAR-OTP-2065-1564; |
| CAR-OTP-2121-1992; | CAR-OTP-2065-1200; | CAR-D29-0006-1446; |
| CAR-OTP-2126-1211; | CAR-OTP-2065-6154; | CAR-OTP-2065-6336; |
| CAR-OTP-2126-1212; | CAR-OTP-2065-1236; | CAR-OTP-2065-1592; |
| CAR-OTP-2126-1216; | CAR-OTP-2065-6172; | CAR-OTP-2065-6350; |
| CAR-OTP-2126-1219; | CAR-OTP-2065-1244; | CAR-OTP-2065-1596; |
| CAR-OTP-2126-1223; | CAR-D29-0006-1442; | CAR-D29-0006-1447; |
| CAR-OTP-2126-1232; | CAR-OTP-2065-6176; | CAR-OTP-2065-6352; |
| CAR-OTP-2126-1235; | CAR-OTP-2065-1260; | CAR-OTP-2065-1604; |
| CAR-OTP-2126-1297; | CAR-D29-0006-1443; | CAR-OTP-2065-6356; |
| CAR-OTP-2126-1300; | CAR-OTP-2065-6184; | CAR-OTP-2065-1608; |

| | | |
|--------------------|--------------------|--------------------|
| CAR-OTP-2065-6358; | CAR-D29-0006-1456; | CAR-D29-0008-0018; |
| CAR-OTP-2065-1632; | CAR-OTP-2065-6976; | CAR-D29-0006-1323; |
| CAR-OTP-2065-6370; | CAR-OTP-2065-4236; | CAR-OTP-2014-0752; |
| CAR-OTP-2065-1684; | CAR-D29-0006-1459; | CAR-D29-0006-1170; |
| CAR-D29-0006-1448; | CAR-OTP-2065-7478; | CAR-OTP-2014-0753; |
| CAR-OTP-2065-6396; | CAR-OTP-2065-4268; | CAR-OTP-2023-1473; |
| CAR-OTP-2065-1688; | CAR-D29-0006-1460; | CAR-D29-0006-1471; |
| CAR-D29-0006-1451; | CAR-OTP-2065-7494; | CAR-OTP-2023-2682; |
| CAR-OTP-2065-6398; | CAR-OTP-2065-5192; | CAR-D29-0006-0360; |
| CAR-OTP-2065-1696; | CAR-OTP-2065-7758; | CAR-OTP-2042-1871; |
| CAR-D29-0006-1452; | CAR-OTP-2065-5292; | CAR-D29-0006-1465; |
| CAR-OTP-2065-6402; | CAR-D29-0006-1486; | CAR-OTP-2042-2624; |
| CAR-OTP-2065-1700; | CAR-OTP-2065-7808; | CAR-D29-0006-0416; |
| CAR-D29-0006-1453; | CAR-OTP-2065-7836; | CAR-OTP-2042-3015; |
| CAR-OTP-2065-6404; | CAR-OTP-2065-7840; | CAR-D29-0006-1473; |
| CAR-OTP-2065-1704; | CAR-OTP-2065-7842; | CAR-OTP-2059-1218; |
| CAR-D29-0006-1489; | CAR-OTP-2065-7848; | CAR-D29-0006-1436; |
| CAR-OTP-2065-6406; | CAR-OTP-2065-7850; | CAR-OTP-2075-0517; |
| CAR-OTP-2065-1728; | CAR-OTP-2065-7852; | CAR-D29-0006-1429; |
| CAR-D29-0006-1454; | CAR-OTP-2065-7858; | CAR-OTP-2084-1311; |
| CAR-OTP-2065-6418; | CAR-OTP-2065-7860; | CAR-OTP-2084-1339; |
| CAR-OTP-2065-1736; | CAR-D29-0008-0004; | CAR-OTP-00036518; |
| CAR-D29-0006-1455; | CAR-D29-0006-1434; | CAR-OTP-00036521; |
| CAR-OTP-2065-6422; | CAR-D29-0008-0012; | CAR-OTP-00036524; |
| CAR-OTP-2065-2316; | CAR-D29-0006-1432; | CAR-OTP-00036527; |

INSTRUCTS the Prosecution to provide a transcript for items CAR-OTP-00036518, CAR-OTP-00036521, CAR-OTP-00036524 and CAR-OTP-00036527 within one week of notification of this decision; and

ORDERS the Yekatom Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2515-Conf, and the Response, ICC-01/14-01/18-2530-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 9 July 2024

At The Hague, The Netherlands