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No.: **ICC-01/14-01/18**

Date: **23 June 2023**

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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version “Prosecution’s Request for an order concerning the
cooperation with [REDACTED]”, ICC-01/14-01/18-1859-Conf, 8 May 2023**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamai
Ms Marie-Hélène Proulx

Legal Representatives of Victims

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

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Pursuant to articles 64(6), 87(6), and 96(2),¹ rules 176(4) and 177(2) of the Rules of Procedure and Evidence,² and article 15(1) of the Negotiated Agreement between the United Nations and the International Criminal Court,³ the Office of the Prosecutor⁴ requests Trial Chamber V⁵ to seek the cooperation of the [REDACTED]⁶ to obtain documents in its possession and control concerning [REDACTED] in the Central African Republic (“CAR”). Specifically, these comprise the following: [REDACTED] (“Request”).

2. As framed above, the Request meets the criteria of specificity. It is relevant to [REDACTED], in that the recent testimonies of P-2018⁷ and P-1974⁸ show that these documents were used to determine the [REDACTED]. Further, the Request is necessary, given [REDACTED]’s limited cooperation with both the Prosecution and the YEKATOM Defence on this topic, that the sought documentation is no longer available to [REDACTED], and that the documents will significantly assist the Chamber in its truth seeking function.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Request is filed as “Confidential”, as it contains information pertaining to the Prosecution’s

¹ For the application of article 96(2) of the Rome Statute (“Statute”) *mutatis mutandis* to cooperation requests from intergovernmental organisations, see ICC-02/05-03/09-170, paras. 12-15.

² (“Rules”).

³ Negotiated Relationship Agreement Between the United Nations and the International Criminal Court, 20 August 2004 (“UN-ICC Agreement”).

⁴ (“Prosecution”).

⁵ (“Chamber”).

⁶ (“[REDACTED]”).

⁷ T-222 to T-226, from 17 April to 24 April 2023.

⁸ T-227 to T-228, from 18 April to 19 April 2023.

cooperation procedures and to the testimony of protected witnesses. A “Public Redacted” version of the Request will be filed as soon as practicable.

III. SUBMISSIONS

4. As several Chambers have previously held, cooperation may be sought from intergovernmental organisations pursuant to article 87(6), in the form of requests for information or documents,⁹ provided that the requirements of (i) specificity; (ii) relevance; and (iii) necessity are met.¹⁰

5. The cooperation with [REDACTED] falls within the framework of UN-ICC Agreement, pursuant to which the UN “undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to article 87, paragraph 6 of the Statute”.¹¹

A. The requirement of specificity is met

6. Several Chambers of this Court and *ad hoc* Tribunals hold that requests for production must identify specific documents, which can take the form of categories of documents, as long as they are not broad¹² or unduly onerous.¹³

7. The five categories of documents sought are:

⁹ ICC-01/14-01/18-658, para. 8.

¹⁰ ICC-02/05-03/09-170, paras. 12-15.

¹¹ Article 15(1) UN-ICC Agreement.

¹² ICC-02/05-03/09-170, paras. 16, 19. *See also* ICTY, *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-108bis, Judgement on the request of the Republic of Croatia for review of the Decision of Trial Chamber II of 18 July 1998, 29 October 1997, para. 32, (“Blaskic Review”): “identify specific documents and not *broad* categories.” (emphasis added); *Prosecutor v. Milutinovic et al*, Case No. IT-05-87-AR108bis, Decision on Request of the United States of America for Review, 12 May 2006, paras. 14-15; *Prosecutor v. Kordic and Cerkez*, Decision on the Request of the Republic of Croatia for Review of a Binding Order, Case No. IT-95-14/2-AR108/7/5, 9 September 1999, paras. 38-39: “the use of categories should not be prohibited as such”.

¹³ ICC-02/05-03/09-170, para. 16. *See also* Blaskic Review, para. 32.

a) [REDACTED]

b) [REDACTED];¹⁴

c) [REDACTED];

d) [REDACTED]; and

e) [REDACTED].

8. These categories of documents are sufficiently specific. They are outlined with sufficient clarity to enable their ‘ready identification’¹⁵ (*i.e.* identification of the country, prefecture, [REDACTED], as well as the documents sought in each category) and therefore each category contains specific limitations. As such, [REDACTED] would be able to identify the requested documents for the purpose of their transmission, which would not be unduly onerous.

B. The requirement of relevance is met

9. The Request is relevant to [REDACTED]. As results from the recent testimonies of P-2018 and P-1974, beginning in March 2014, [REDACTED].¹⁶ During [REDACTED].¹⁷ [REDACTED].¹⁸ [REDACTED];¹⁹ [REDACTED].²⁰

C. The requirement of necessity is met

¹⁴ T-225-CONF-FRA ET, p. 58, l. 4-p. 58, l. 19 (“at 58:4-58:19”) ; 75:20-76:4, [REDACTED]

¹⁵ ICC-02/05-03/09-170, para. 19.

¹⁶ T-222-CONF-FRA ET, at 21:24-23:10, 82:8-82:15.

¹⁷ For the [REDACTED] *see*: T-222-CONF-FRA ET, at 28:21-29:1; 29:16-30:4; 33:22-33:28; 39:27-40:17; For the [REDACTED] *see*: T-222-CONF-FRA ET, at 47:20-48:18; 55:25-60:19.

¹⁸ T-222-CONF-FRA ET, at 60:7-60:19.

¹⁹ T-222-CONF-FRA ET, at 100:13-100:25; T-223-CONF-FRA ET, at 28:16-28:26; T-224-CONF-FRA, at 15:13-16:12; T-225-CONF-FRA, at 9:1-9:26.

²⁰ T-224-CONF-FRA ET, at 16:27-17:19; T-226-CONF-FRA ET, at 16:15-16:22; 19:20-19:24.

10. The documents sought are necessary. *First*, the Prosecution's and the YEKATOM Defence's prior attempts to secure these documents through requests for assistance addressed to [REDACTED] have only received generic answers providing and/or directing the requestors to open source material.²¹ *Second*, the interest in obtaining the identification and verification forms seems to be shared by the YEKATOM Defence,²² as well as the Chamber.²³ *Third*, given the procedural facility with which any interested person may obtain [REDACTED] in CAR on the basis of a mere [REDACTED],²⁴ [REDACTED], and without any interest for the current procedures, will significantly assist the Chamber in its truth seeking function.

11. The Prosecution considers that there are compelling reasons for the Chamber to grant the Request. Given the factors weighed by [REDACTED] in preparing a response to a request for cooperation²⁵ and to avoid a similar generic answer, it may be helpful to refer in the transmission of any cooperation request by the Registry to the fact that: a) the evidence received by the Chamber in this case already details the [REDACTED], the names and functions of the different actors involved [REDACTED], and the names and details of [REDACTED] confidentiality obligation owed to any third party; b) the records are no longer in [REDACTED] possession, thus excluding the possibility to secure this information from its primary source; and c) the possibility to keep this material, as well as the portions of transcripts where it will be discussed, confidential. This would sufficiently mitigate any concerns [REDACTED].

²¹ CAR-D29-0007-0047. The Prosecution received a similar response whereby [REDACTED] directs to open source material. The Prosecution is prepared to provide the Chamber with this response, as the Chamber may deem necessary.

²² YEKATOM Defence similarly requested [REDACTED], see CAR-D29-0007-0041; CAR-D29-0007-0043.

²³ [REDACTED]. See T-222-CONF-FRA ET, at 60:22-61:11; T-227-CONF-FRA ET, at 66:27-67:7.

²⁴ [REDACTED].

²⁵ See CAR-D29-0007-0047, [REDACTED].

IV. RELIEF SOUGHT

12. For the above reasons, the Prosecution requests the Chamber to seek the cooperation of [REDACTED] to provide the documents listed in paragraph 7 above.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 23rd day of June 2023

At The Hague, The Netherlands