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**No. ICC-01/14-01/18
Date: 27 September 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Fifteenth Prosecution Submission Request from the Bar Table
(Miscellaneous)**

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), 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 Fifteenth Prosecution Submission Request from the Bar Table (Miscellaneous)’.

I. Procedural history

1. On 25 August 2023, the Office of the Prosecutor (the ‘Prosecution’) filed the ‘Prosecution’s Fifteenth submission of miscellaneous items of evidence via the “bar table”’, requesting submission of 36 items (the ‘Request’ and the ‘Items’, respectively).¹
2. In support of the Request, the Prosecution submits that the Items are *prima facie* relevant to and probative of material issues at trial; they bear sufficient indicia or reliability; and that recognising their formal submission would cause no prejudice to the accused.² The Prosecution sets out the relevance and probative value of each item in an annex.³
3. On 7 September 2023, the Yekatom Defence and the Ngaïssona Defence (collectively, the ‘Defence’) responded.⁴

II. Analysis

4. The Chamber recalls the applicable law for submission of evidence from the bar table.⁵ Accordingly, the Chamber notes the participants’ arguments on the relevance and probative value of the Items and defers its consideration of these

¹ ICC-01/14-01/18-2058 (with confidential Annex, ICC-01/14-01/18-2058-Conf-Anx).

² Request, ICC-01/14-01/18-2058, para. 2.

³ Annex to the Request, ICC-01/14-01/18-2058-Conf-Anx.

⁴ Réponse à la « Prosecution’s Fifteenth submission of miscellaneous items of evidence via the “bar table”», ICC-01/14-01/18-2080 (with confidential annex, ICC-01/14-01/18-2080-Conf-Anx) (the ‘Yekatom Defence Response’); Defence Response to “Prosecution’s Fifteenth submission of miscellaneous items of evidence via the “bar table”” ICC-01/14-01/18-2058, ICC-01/14-01/18-2084-Conf (with confidential Annex A, ICC-01/14-01/18-2084-Conf-AnxA) (the ‘Ngaïssona Defence Response’).

⁵ 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 (the ‘Initial Directions’), paras 53-54, 62.

arguments to its deliberation of the judgment pursuant to Article 74(2) of the Statute. At this stage, the Chamber will only consider whether the Items are subject to any statutory exclusionary rules, including procedural bars, obstacles, and preconditions.

1. Specific excerpts of certain items

5. The Prosecution seeks submission of additional excerpts from the following items that have been previously recognised as formally submitted, namely (i) item titled ‘CENTRAL AFRICAN REPUBLIC / Materials Published by Human Rights Watch since the March 2013 Seleka Group’, CAR-OTP-2001-2308, at 2323-2325;⁶ and (ii) item titled ‘Dossier’, CAR-OTP-2003-1654, at 1687-1690, 1736.⁷
6. In respect of item CAR-OTP-2001-2308, the Prosecution seeks submission of two further open-source publications by Human Rights Watch contained therein, namely (i) an article titled ‘The Central African Republic Has Become a Nightmare for Muslims’, dated 16 March 2024, at 2315-2317; and (ii) a press release titled ‘Muslim Communities Emptied’, dated 7 March 2014, at 2329-2332.⁸ The Defence provide their views on the reliability and probative value of these excerpts.⁹
7. In respect of item CAR-OTP-2003-1654, the Prosecution seeks submission of nine further ‘Special Intelligence Bulletins’ contained therein.¹⁰ The Defence provide their views on the relevance and probative value of these excerpts;¹¹ the Yekatom Defence states that it opposes the submission of all the excerpts that do

⁶ Decision on Submitted Materials for P-2049, email from the Chamber, 23 August 2022, at 08:32.

⁷ 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, para. 8, p. 10; Fourteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-2556 and P-1077, 14 June 2022, paras 22, 24, 28, p. 12; Transcript of Hearing, 29 August 2022, p. 6, line 25 – p. 9, line 11.

⁸ Annex to the Request, ICC-01/14-01/18-2058-Conf-Anx, pp. 2-3.

⁹ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, p. 2; Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 2-5; Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, paras 7-10.

¹⁰ Annex to the Request, ICC-01/14-01/18-2058-Conf-Anx, pp. 3-4 *referring to* CAR-OTP-2003-1654, at 1669-1671, 1676-1678, 1721-1724, 1738-1741, 1757-1759, 1764-1765, 1813-1815, 1818-1819 and 1841-1845.

¹¹ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 3-5; Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 5-8; Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, paras 11-14.

not concern the period relevant to the charges and are therefore not relevant.¹² It adds that the only excerpt that it does not oppose is at pages 1841-1845 but notes, *inter alia*, that these bulletins are generally not reliable.¹³ Having reviewed these excerpts in light of the arguments by the Defence, the Chamber finds that there are no procedural bars to their submission.

2. Items related to travel documents of the accused

8. The Prosecution requests submission of items related to Mr Ngaïssona's passport and travels, namely, CAR-OTP-2017-0196, CAR-OTP-2017-0197; CAR-OTP-2017-0198, CAR-OTP-2098-0095 and CAR-OTP-2098-0107. The Ngaïssona Defence does not object to these items. In relation to item CAR-OTP-2098-0095 specifically, it submits that this item does not provide a full picture of Mr Ngaïssona's travels between 2012-2017.¹⁴
9. The Prosecution also requests submission of item CAR-OTP-2017-0210, an application for Mr Yekatom's passport that purportedly contains certain identifying information. The Yekatom Defence opposes its submission, noting that his passport already exists on the record as CAR-D29-0015-0004.¹⁵ The Chamber has regard to the Yekatom Defence's arguments and notes that they do not raise any procedural bars in respect of this item.

3. Items concerning displacement

10. The Prosecution requests submission of items that, according to it, are relevant to the displacement of the Muslim population during the relevant period. These include reports from the United Nations High Commissioner for Refugees, namely items CAR-OTP-2019-3124, CAR-OTP-2019-3131, CAR-OTP-2019-3138, CAR-OTP-2021-0813, CAR-OTP-2021-0815, CAR-OTP-2021-0820, and CAR-OTP-2021-0825. The Defence do not oppose their submission; the

¹² Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 3-4.

¹³ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 3-6.

¹⁴ Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 18-19; Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, paras 31-32.

¹⁵ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 6-7.

Yekatom Defence provides its views on the contents of some of these documents.¹⁶

11. The Prosecution also requests submission of item CAR-OTP-2061-0343 that, according to it, contains a list prepared by the International Organisation of Migration concerning the evacuation flights from the CAR. The Yekatom Defence opposes its submission on grounds that this item is incomprehensible without an explanation of the organisation that prepared it; and that it contains a list of codes, dates, cities, countries, and numbers without any other information explaining what they pertain to.¹⁷ The Chamber has regard to the Yekatom Defence's arguments and notes that they do not raise any procedural bars in respect of this item.

4. Agreed maps

12. The Prosecution requests submission of items CAR-OTP-2057-0965, CAR-OTP-2062-0666 and CAR-OTP-2070-0267 that contain agreed maps. The Defence have no objections to these items.¹⁸
13. Recalling its earlier decision considering these maps as proven,¹⁹ the Chamber sees no issue in recognising them as formally submitted.

5. Items related to P-2432

14. The Prosecution requests submission of media articles written by P-2432, namely items CAR-OTP-2117-0667, CAR-OTP-2117-0670, CAR-OTP-2117-0678, CAR-OTP-2117-0681, CAR-OTP-2117-0687, and CAR-OTP-2117-0698.
15. The Ngaïssona Defence states that the Prosecution's application pursuant to Rule 68(2)(b) of the Rules to introduce P-2432's prior recorded testimony was rejected by the Chamber. It argues that the Prosecution 'cannot introduce evidence from this witness by the back door, since the witness did not come to

¹⁶ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 8-11; Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 10-13.

¹⁷ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 13-14.

¹⁸ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 13-15; Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 14-16.

¹⁹ Decision on the Joint Submission on Agreed Facts, 19 January 2021, ICC-01/14-01/18-835, para. 5.

testify *viva voce*’; it adds that without the statement of the witness and the online link to these articles, it is not possible to authenticate the content of these articles and to verify whether the content is still online.²⁰ It argues that the prejudicial effect of these items eclipses any probative value they may have.²¹ The Ngaïssona Defence also argues broadly that the introduction through the bar table of media related material has generally been rejected in international criminal proceedings on the basis of their lack of reliability and probative value without the testimony of the witness that can testify to the accuracy of the material’s content.²² The Yekatom Defence provides additional comments on the content of some of the media articles.²³

16. First, the Chamber considers that ‘media related material’ as a category is not excluded from submission through a ‘bar table’ application. Similarly, the fact that a witness does not testify as to their accuracy also does not mean that items provided by such a witness cannot be requested via a ‘bar table’ application.²⁴
17. Second, the Chamber recalls that it rejected the Prosecution’s request for introduction of P-2432’s prior recorded testimony on the grounds that the witness provided information that touched upon Mr Ngaïssona’s acts and conduct.²⁵ The Chamber finds that such a rejection also does not bar the submission of the aforementioned individual items through a ‘bar table’ application.
18. As regards the alleged prejudice to the Defence from not being able to examine the author of these items, the Chamber emphasises that the Defence have had an opportunity to review the aforementioned media articles in full and have provided their views on them. They do not raise any statutory exclusions in respect of these items. Their arguments concerning reliability, probative value, and potential

²⁰ Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 20-24; *see also* Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, paras 22-23.

²¹ Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, para. 23.

²² Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, paras 15-17 *with further references to jurisprudence*.

²³ *See* Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, p. 19 [CAR-OTP-2117-0667]; p. 21 [CAR-OTP-2117-0681].

²⁴ *See for example* Decision on the Eighth Prosecution Submission Request from the Bar Table (Audio-Visual Material), 12 September 2023, ICC-01/14-01/18-2092-Conf (public redacted version notified the same day, ICC-01/14-01/18-2092-Red), para. 21.

²⁵ Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, 5 June 2023, ICC-01/14-01/18-1907-Conf, paras 161-162, p. 61.

prejudice from non-examination of the author will be considered by the Chamber during its deliberation of the judgment pursuant to Article 74(2) of the Statute.

6. Items related to P-2587

19. The Prosecution requests submission of two videos shot by P-2587, and related transcripts, namely, CAR-OTP-2120-0308, CAR-OTP-2118-4775, CAR-OTP-2120-0312, and CAR-OTP-2118-4781.
20. The Yekatom Defence notes that the Prosecution's description of the relevance of item CAR-OTP-2120-0308 is incomplete and provides further comments with reference to subsequent portions of the video.²⁶ The Ngaïssona Defence comments on the probative value of both videos in light of the fact that the witness providing these videos did not testify, her statement is not in evidence and no sources are named or identified in the video. In particular, the Ngaïssona Defence points out that the Chamber had introduced these documents pursuant to Rule 68(3) of the Rules but P-2587 'withdrew her collaboration with the Prosecution' and did not testify.²⁷ It adds that the prejudicial effect of being unable to challenge or examine the author of these items outweighs their probative value, if any.²⁸
21. The Chamber notes that the Prosecution withdrew P-2587 from its list of witnesses.²⁹ As mentioned above, the Chamber finds that this, by itself, does not bar the submission of the aforementioned videos through a 'bar table' application.
22. To reiterate, as regards the alleged prejudice to the Defence from not being able to examine the author of these videos, the Chamber recalls that the Defence have had an opportunity to review the videos in full and have provided their views on them. They do not raise any statutory exclusions in respect of these items. Their arguments concerning reliability, probative value, and potential prejudice from

²⁶ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 23-24.

²⁷ Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 25-27; *see also* Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, paras 24-27.

²⁸ Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, para. 27.

²⁹ Emails from the Prosecution, 1 June 2023, at 17:27 and 25 May 2023, at 23:50.

non-examination of the author will be considered by the Chamber during its deliberation of the judgment pursuant to Article 74(2) of the Statute.

7. *Remaining Items*

23. Turning to the remaining seven items, the Chamber notes that, as outlined below, the Defence do not raise procedural bars in respect of these items.
24. Item CAR-OTP-2008-1223 concerns Mr Ngaïssona attending negotiations in the Gbangou village in February 2015. The Ngaïssona Defence points out, *inter alia*, that the Prosecution misrepresents Mr Ngaïssona's role as a representative during these negotiations and that he was acting as a mediator.³⁰ The Yekatom Defence argues that this item does not concern the period of charges and is therefore, not relevant.³¹ Having reviewed these excerpts in light of the arguments by the Defence, particularly those concerning the *prima facie* relevance, the Chamber finds that there are no procedural bars to its submission.
25. Item CAR-OTP-2062-0657 contains a spreadsheet listing FACA members, including Mr Yekatom along with his rank, as provided by the UN Panel of Experts on CAR. The Defence have no objections to this item.³²
26. Item CAR-OTP-2079-1163 contains a media article on the displacement of Muslims in Bossangoa. The Ngaïssona Defence provides its views on the reliability and authenticity of this item.³³
27. Item CAR-OTP-2090-0373 contains a number of documents compiled by the French authorities. The Ngaïssona Defence provides its views on the probative value of this item whereas the Yekatom Defence states that its investigations on this document are ongoing; it adds that the Prosecution's summary of this

³⁰ Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, p. 3.

³¹ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, p. 6.

³² Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, p. 14; Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, p. 19.

³³ Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 16-17; *see also* Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf, paras 28-29.

document is not precise enough and provides comments on the contents of the document.³⁴

28. Item CAR-OTP-2025-0044 is a video with the transcript CAR-OTP-2118-5610. The Ngaïssona Defence provides its views on the reliability and authenticity of the video and the Yekatom Defence does not object to its submission.³⁵
29. Item CAR-OTP-2030-1581 is P-1577's twitter post that the Prosecution submits as relevant to the allegations concerning child soldiers. The Yekatom Defence opposes the submission of this item, providing its views on the probative value of this item.³⁶

8. Conclusion

30. Having reviewed the items mentioned above in subsections 2-7 and the requested excerpts in subsection 1, where applicable, in light of the arguments of the parties, the Chamber finds that there are no procedural bars to their submission. Accordingly, the Chamber recognises them as formally submitted.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

RECOGNISES as submitted the following items:

CAR-OTP-2001-2308,	CAR-OTP-2003-1654,	1765, 1813-1815, 1818-
at 2315-2317, 2329-	at 1669-1671, 1676-	1819, 1841-1845;
2332;	1678, 1721-1724, 1738-	
	1741, 1757-1759, 1764-	

³⁴ Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, p. 17; Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 15-17.

³⁵ Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, pp. 13-14; Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, p. 11.

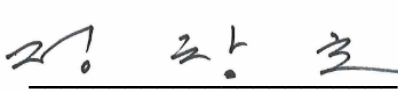
³⁶ Annex to the Yekatom Defence Response, ICC-01/14-01/18-2080-Conf-Anx, pp. 12-13. The Ngaïssona Defence defers to the Yekatom Defence in respect of this item. *See* Annex A to the Ngaïssona Defence Response, ICC-01/14-01/18-2084-Conf-AnxA, p. 14.

CAR-OTP-2008-1223;	CAR-OTP-2021-0815;	CAR-OTP-2117-0678;
CAR-OTP-2017-0196;	CAR-OTP-2021-0820;	CAR-OTP-2117-0681;
CAR-OTP-2017-0197;	CAR-OTP-2021-0825;	CAR-OTP-2117-0687;
CAR-OTP-2017-0198;	CAR-OTP-2061-0343;	CAR-OTP-2117-0698;
CAR-OTP-2098-0107;	CAR-OTP-2030-1581;	CAR-OTP-2025-0044;
CAR-OTP-2117-0667;	CAR-OTP-2057-0965;	CAR-OTP-2118-5610;
CAR-OTP-2098-0095;	CAR-OTP-2062-0666;	CAR-OTP-2120-0308;
CAR-OTP-2017-0210;	CAR-OTP-2070-0267;	CAR-OTP-2118-4775;
CAR-OTP-2019-3124;	CAR-OTP-2062-0657;	CAR-OTP-2120-0312;
CAR-OTP-2019-3131;	CAR-OTP-2079-1163;	CAR-OTP-2118-4781;
CAR-OTP-2019-3138;	CAR-OTP-2090-0373;	
CAR-OTP-2021-0813;	CAR-OTP-2117-0670;	

ORDERS the Registry to reflect that these items have been so recognised in the JEM code; and

ORDERS the Ngaïssona Defence to file a public redacted version of its response, ICC-01/14-01/18-2084-Conf, 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 27 September 2023

At The Hague, The Netherlands