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**No. ICC-01/14-01/18
Date: 23 October 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 Twelfth Prosecution Submission Request from the Bar Table
(Photographic Evidence)**

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 Twelfth Prosecution Submission Request from the Bar Table (Photographic Evidence)’.

I. Procedural history

1. On 18 August 2023, the Office of the Prosecutor (the ‘Prosecution’) sought the formal submission of 65 photographs (the ‘Items’, and the ‘Request’, respectively), arguing that they are ‘*prima facie* relevant to the issues at trial, have sufficient probative value, and do not unfairly prejudice the Accused’.¹
2. On 6 October 2023,² the Ngaïssona Defence responded to the Request, asking the Chamber to disregard references to two documents referenced in the annex to the Request and outlining its position on the Items (the ‘Ngaïssona Defence Response’).³
3. On the same day, the Yekatom Defence also responded, not opposing the submission of the Items and providing its position on all of them (the ‘Yekatom Defence Response’).⁴

¹ Prosecution’s Twelfth Application for Submission of Photographic Evidence from the Bar Table, ICC-01/14-01/18-2032-Conf (with one confidential Annex, ICC-01/14-01/18-2032-Conf-Anx), para. 11.

² The Single Judge granted an extension of time to respond; *see* email from the Chamber, 24 August 2023, at 17:22.

³ Defence Response to the “Prosecution’s Twelfth Application for Submission of Photographic Evidence from the Bar Table” ICC-01/14-01/18-2032-Conf, ICC-01/14-01/18-2129-Conf (with confidential Annex 1).

⁴ Yekatom Defence Response to ‘Prosecution’s Twelfth Application for Submission of Photographic Evidence from the Bar Table’, ICC-01/14-01/18-2032-Conf, ICC-01/14-01/18-2132 (with confidential Annex A).

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, including potential prejudice to the accused, and defers their consideration under its deliberation 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.⁶
5. At the outset, the Chamber notes that a certain number of the Items have already been recognised as submitted, pending certification of the concerned witnesses by the Prosecution, pursuant to Rule 68(2)(b) of the Rules.⁷ The Chamber further notes that the Prosecution indicated it would no longer rely on witness P-2205.⁸
6. Having reviewed these items, the Chamber finds that there are no procedural bars to recognising them as formally submitted. Further, it notes that the Defence teams do not raise any procedural bars in respect of these items, but rather provide views on their relevance and probative value that the Chamber will consider later during its deliberations pursuant to Article 74 of the Statute. Accordingly, the Chamber recognises their formal submission.
7. Furthermore, the Ngaïssona Defence argues that its objections in relation to documents CAR-OTP-2119-0033 and CAR-OTP-2117-0727 are not moot as the

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, paras 53-54, 62.

⁶ 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. 5.

⁷ This concerns items related to two witnesses, **P-2205**: CAR-OTP-2083-1203; CAR-OTP-2083-1227; CAR-OTP-2083-1373; CAR-OTP-2083-1385; CAR-OTP-2083-1469; CAR-OTP-2083-1481; CAR-OTP-2083-1501; CAR-OTP-2083-1505; CAR-OTP-2083-1513; CAR-OTP-2083-1525; CAR-OTP-2083-1541; CAR-OTP-2083-1581; CAR-OTP-2083-1609; CAR-OTP-2083-1613; CAR-OTP-2083-1625; CAR-OTP-2083-1629; CAR-OTP-2083-1653; CAR-OTP-2083-1721; CAR-OTP-2083-1753; CAR-OTP-2083-1969; CAR-OTP-2083-1977. **P-2324**: CAR-OTP-2100-2068; CAR-OTP-2100-2069; CAR-OTP-2100-2070; CAR-OTP-2100-2071; CAR-OTP-2100-2072; CAR-OTP-2100-2074; CAR-OTP-2100-2075; CAR-OTP-2100-2076; CAR-OTP-2100-2077; CAR-OTP-2100-2078; CAR-OTP-2100-2080; CAR-OTP-2100-2082.

⁸ See Prosecution's Request for Variation of Time Limit pursuant to Regulation 35 for the Proposal of Public Redacted Versions of Prior Recorded Testimony Introduced under Rule 68(2), 11 September 2023, ICC-01/14-01/18-2090, para. 20.

Prosecution still refers to them in its annex to the Request.⁹ It submits that these two documents, taken together, constitute prior recorded testimony and cannot be taken into consideration as part of the Chamber's assessment of the Request,¹⁰ and hence requests the Chamber to disregard the Prosecution's references to these documents.¹¹

8. The Chamber notes in this regard that the Prosecution does not in fact submit these two items through its Request.¹² At the same time, it refers to the items, 'for the context of the photograph[s]'.¹³ The Chamber considers that as these items are not submitted into evidence, and therefore are not before the Chamber, it will not consider their content, in itself or as re-stated by any of the participants. The Chamber therefore considers the Ngaïssona Defence's objections against these two items moot.
9. At the same time, having considered the photographs independently of these two items, the Chamber has not identified any procedural bars to their submission. The Chamber further notes that neither Defence team raises any other procedural bars in relation to these photographs. The Chamber therefore recognises them as formally submitted.
10. Having reviewed the remainder of the Items, there appear to be no procedural bars to their submission. The Chamber therefore recognises them as formally submitted.

⁹ Ngaïssona Defence Response, ICC-01/14-01/18-2129-Conf, para. 8.

¹⁰ Ngaïssona Defence Response, ICC-01/14-01/18-2129-Conf, paras 9-11.

¹¹ Ngaïssona Defence Response, ICC-01/14-01/18-2129-Conf, para. 20.

¹² See Request, ICC-01/14-01/18-2032-Conf, paras 7-10.

¹³ See Annex to the Request, ICC-01/14-01/18-2032-Conf-Anx, pp. 2-21.

FOR THESE REASONS, THE CHAMBER HEREBY**GRANTS** the Request;**RECOGNISES** as submitted the following items:

CAR-OTP-2083-1203;	CAR-OTP-2100-2069;	CAR-OTP-2117-1153;
CAR-OTP-2083-1227;	CAR-OTP-2100-2070;	CAR-OTP-2117-1154;
CAR-OTP-2083-1373;	CAR-OTP-2100-2071;	CAR-OTP-2117-1155;
CAR-OTP-2083-1385;	CAR-OTP-2100-2072;	CAR-OTP-2117-1157;
CAR-OTP-2083-1469;	CAR-OTP-2100-2074;	CAR-OTP-2117-1160;
CAR-OTP-2083-1481;	CAR-OTP-2100-2075;	CAR-OTP-2117-1163;
CAR-OTP-2083-1501;	CAR-OTP-2100-2076;	CAR-OTP-2117-1166;
CAR-OTP-2083-1505;	CAR-OTP-2100-2077;	CAR-OTP-2117-1168;
CAR-OTP-2083-1513;	CAR-OTP-2100-2078;	CAR-OTP-2117-1173;
CAR-OTP-2083-1525;	CAR-OTP-2100-2080;	CAR-OTP-2117-1178;
CAR-OTP-2083-1541;	CAR-OTP-2100-2082;	CAR-OTP-2117-1179;
CAR-OTP-2083-1581;	CAR-OTP-2117-1190;	CAR-OTP-2117-1185;
CAR-OTP-2083-1609;	CAR-OTP-2117-1198;	CAR-OTP-2117-1188;
CAR-OTP-2083-1613;	CAR-OTP-2117-1141;	CAR-OTP-2117-1189;
CAR-OTP-2083-1625;	CAR-OTP-2117-1142;	CAR-OTP-2117-1191;
CAR-OTP-2083-1629;	CAR-OTP-2117-1143;	CAR-OTP-2117-1195;
CAR-OTP-2083-1653;	CAR-OTP-2117-1144;	CAR-OTP-2117-1197;
CAR-OTP-2083-1721;	CAR-OTP-2117-1145;	CAR-OTP-2117-1199;
CAR-OTP-2083-1753;	CAR-OTP-2117-1146;	CAR-OTP-2061-0247;
CAR-OTP-2083-1969;	CAR-OTP-2117-1148;	CAR-OTP-2061-0248;
CAR-OTP-2083-1977;	CAR-OTP-2117-1149;	CAR-OTP-2061-0249;
CAR-OTP-2100-2068;	CAR-OTP-2117-1152;	

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

ORDERS the Prosecution and the Ngaïssona Defence to file public redacted versions of the Request, ICC-01/14-01/18-2032-Conf, and the Ngaïssona Defence Response, ICC-01/14-01/18-2129-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
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Dated 23 October 2023

At The Hague, The Netherlands