

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 15 November 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***

Confidential

Decision on the Prosecution Request to call an Individual as Chamber Witness

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

The Office of the Prosecutor Karim A. A. Khan Mame Mandiaye Niang Kweku Vanderpuye	Counsel for Alfred Yekatom Mylène Dimitri Thomas Hannis Anta Guissé Sarah Bafadhel
	Counsel for Patrice-Edouard Ngaïssona Geert-Jan Alexander Knoops Richard Omissé-Namkeamaï Marie-Hélène Proulx
Legal Representatives of Victims Abdou Dangabo Moussa Elisabeth Rabesandratana Yaré Fall Marie-Edith Douzima-Lawson Paolina Massidda Dmytro Suprun	Legal Representatives of Applicants
Unrepresented Victims	Unrepresented Applicants for Participation/Reparations
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives	<i>Amicus Curiae</i>

REGISTRY	
Registrar Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit Nigel Verrill	Detention Section
Victims Participation and Reparations Section	Other Pre-Trial Chamber II

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 64(2), 64(6)(b), (d) and 69(3) of the Rome Statute (the 'Statute'), issues this 'Decision on the Prosecution Request to call an Individual as Chamber Witness'.

I. Procedural history

1. On 2 November 2023, the Office of the Prosecutor (the 'Prosecution') filed a '*Requête de l'Accusation aux fins de citation de Maxime MOKOM comme témoin de la Chambre et de délivrance d'une citation à comparaître à cet effet*' (the 'Request' and the 'Individual', respectively).¹ The Prosecution requests the Chamber to (i) call the Individual as a Chamber witness as this would be in the interests of justice and would assist the Chamber in its determination of the truth; and (ii) issue an order, if possible, before the date of his departure from the Host State; or otherwise, with the aim of ensuring the testimony, order the Registry to transmit a request for assistance to the state where the Individual would be transferred.²
2. On 7 and 9 November 2023 respectively,³ the Yekatom Defence and the Ngaïssona Defence (together, the 'Defence') filed their responses.⁴ The Yekatom Defence defers to the discretion of the Chamber on the substance of the Request.⁵ The Ngaïssona Defence opposes the Request.⁶
3. Additionally, the Yekatom Defence requests that the Chamber invite observations from the Individual's counsel on the Request (the 'Yekatom Defence's First

¹ ICC-01/14-01/18-2186-Conf-Exp (confidential redacted version notified the same day, ICC-01/14-01/18-2186-Conf-Red).

² Request, ICC-01/14-01/18-2186-Conf-Red, paras 5-12, 17-20.

³ The Single Judge shortened the deadline for responses to the Request to 9 November 2023. *See* email from the Chamber, 2 November 2023, at 14:34.

⁴ Yekatom Defence Response to the "*Requête de l'Accusation aux fins de citation de Maxime MOKOM comme témoin de la Chambre et de délivrance d'une citation à comparaître à cet effet*", ICC-01/14-01/18-2186-Conf-Red, ICC-01/14-01/18-2194-Conf (the 'Yekatom Defence Response'); Defence Response to "*Version confidentielle expurgée de la « Requête de l'Accusation aux fins de citation de Maxime MOKOM comme témoin de la Chambre et de délivrance d'une citation à comparaître à cet effet »*" (ICC-01/14-01/18-2186-Conf-Red), ICC-01/14-01/18-2198-Conf (the 'Ngaïssona Defence Response').

⁵ Yekatom Defence Response, ICC-01/14-01/18-2194-Conf, para. 34.

⁶ Ngaïssona Defence Response, ICC-01/14-01/18-2198-Conf, para. 1, p. 14.

Request').⁷ It also requests that the Chamber order the parties to file public redacted versions of their respective submissions with the identity of the Individual made public (the 'Yekatom Defence's Second Request').⁸

II. Analysis

4. The Chamber recalls that, in accordance with Article 64(6)(d) of the Statute, it can '[o]rder the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties'. Further, pursuant to Article 69(3) of the Statute, the Chamber has 'the authority to request the submission of all evidence that it considers necessary for the determination of the truth'.⁹ The Chamber also emphasises that a chamber's decision to follow this avenue is discretionary.
5. The Chamber notes that while the Yekatom Defence defers to the Chamber's discretion regarding the merits of the Request,¹⁰ it also makes submissions on (i) the potential considerations arising pursuant to Rule 74 and 75 of the Rules of Procedure and Evidence (the 'Rules') should the Individual testify before the Chamber;¹¹ (ii) the Prosecution mischaracterising previous Yekatom Defence submissions; and (iii) issues with the Prosecution characterising the Individual's specific circumstances as 'new circumstances'.¹²
6. The Chamber further notes the Ngaïssona Defence's submissions, *inter alia*, that the Request (i) is an attempt to circumvent the Prosecution's closure of its case and amounts to an abuse of process;¹³ (ii) proceeds on the incorrect premise that the Individual's testimony would advance the interests of truth;¹⁴ (iii) if granted,

⁷ Yekatom Defence Response, ICC-01/14-01/18-2194-Conf, paras 9-11, 13, 19, 31, 34.

⁸ Yekatom Defence Response, ICC-01/14-01/18-2194-Conf, paras 32-34.

⁹ See also Order regarding the Remainder of the Prosecution's Presentation of Evidence and Order pursuant to Article 64(6)(d) of the Statute, 31 January 2023, ICC-01/14-01/18-1739 (reclassified to public on 2 November 2023), para. 9.

¹⁰ Yekatom Defence Response, ICC-01/14-01/18-2194-Conf, para. 31.

¹¹ Yekatom Defence Response, ICC-01/14-01/18-2194-Conf, paras 14-19.

¹² Yekatom Defence Response, ICC-01/14-01/18-2194-Conf, paras 20-30.

¹³ Ngaïssona Defence Response, ICC-01/14-01/18-2198-Conf, paras 1, 3-16.

¹⁴ Ngaïssona Defence Response, ICC-01/14-01/18-2198-Conf, paras 1, 17-19.

would violate Mr Ngaïssona's fair trial rights;¹⁵ and (iv) draws an inapposite analogy to the Chamber's decision to call P-0952 as a Chamber witness.¹⁶

7. Bearing the above in mind, the Chamber declines to exercise its discretion pursuant to Article 64(6)(d) of the Statute in the present instance for the following reasons.
8. First, the Chamber is not convinced that the Individual's potential testimony can be envisaged in such a way as to meaningfully contribute to the determination of the truth. On the one hand, due to the Individual's special circumstances, particularly the alleged role attributed to the Individual, the Chamber cannot reasonably consider providing the Individual with assurances pursuant to Rule 74 of the Rules. On the other hand, for the same reasons, requiring the Individual to testify before the Chamber without such assurances would run counter to respecting his right against self-incrimination.
9. Second, the Chamber is of the view that calling the Individual as a Chamber witness would not be compatible with the Chamber's obligations pursuant to Article 64(2) of the Statute to ensure that a trial is fair and expeditious. This is based on the current stage of the proceedings, the anticipated evidence to be elicited from the Individual, and the potential efforts needed to ensure the Individual's testimony.
10. In light of the above, the Chamber is not of the view that it would be assisted by the testimony of the Individual. Accordingly, the Chamber rejects the Request.
11. Further, the Chamber considers the Yekatom Defence's First Request moot and, noting the Yekatom Defence's Second Request, invites the Prosecution to make public the identity of the Individual.

¹⁵ Ngaïssona Defence Response, ICC-01/14-01/18-2198-Conf, paras 1, 20-27.

¹⁶ Ngaïssona Defence Response, ICC-01/14-01/18-2198-Conf, paras 1, 28-29.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request;

CONSIDERS MOOT the Yekatom Defence's First Request;

INVITES the Prosecution to make public the identity of the Individual;

PARTLY GRANTS the Yekatom Defence's Second Request;

ORDERS the Prosecution to file a public redacted version of the Request, ICC-01/14-01/18-2186-Conf-Exp within one week of the notification of this decision; and

ORDERS the Yekatom Defence and the Ngaïssona Defence to file public redacted versions of their respective responses, ICC-01/14-01/18-2194-Conf and ICC-01/14-01/18-2198-Conf, within two weeks of the notification of this decision.

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

		
	Judge Bertram Schmitt	
	Presiding Judge	
		
Judge Péter Kovács		Judge Chang-ho Chung

Dated 15 November 2023

At The Hague, The Netherlands