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No. ICC-01/14-01/18

Date: 30 May 2024

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 Prosecution Request for Submission of CAR-OTP-2083-3166

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 and Rules 63 and 64 of the Rules of Procedure and Evidence, issues this ‘Decision on the Prosecution Request for Submission of CAR-OTP-2083-3166’.

1. On 5 July 2022, the Chamber issued its ‘Decision on the Third Prosecution Submission Request (Call Data Records) [‘CDR’]’,¹ in which it partly granted a request from the Office of the Prosecutor (the ‘Prosecution’) to submit evidence from the bar table. However, the Chamber rejected, ‘without prejudice to future submission requests’, the submission of, *inter alia*, the CDR document CAR-OTP-2083-3166 (the ‘Item’), noting that the Prosecution had not stated its *prima facie* relevance. The Chamber further indicated that ‘the Prosecution is not precluded from submitting additional call related data in response to “issues arising from documentary evidence and testimony presented at trial”, should it wish to do so later’.²
2. On 20 March 2024,³ following the testimony of D29-3014 before the Chamber,⁴ the Prosecution requested the submission of the Item (the ‘Request’). It submits, *inter alia*, that the Item (i) is relevant and probative, as it ‘bears directly’ on an issue that arose during the examination of D29-3014, namely, a phone number he allegedly used and telephone contacts he allegedly had during the relevant period; (ii) is reliable and authentic; (iii) will assist the Chamber in its determination of the truth; and (iv) would not cause prejudice to the Yekatom Defence (the ‘Defence’), as it had notice of the Item since its disclosure on 3 November 2020.⁵

¹ Decision on the Third Prosecution Submission Request (Call Data Records), ICC-01/14-01/18-1499 (the ‘Initial Decision’). *See also* Prosecution’s submission of call data records and related evidence via the “bar table”, ICC-01/14-01/18-1296 (with confidential Annexes A to D) (a corrigendum of Annex A was notified on 2 March 2022, ICC-01/14-01/18-1296-Conf-AnxA-Corr).

² Initial Decision, ICC-01/14-01/18-1499, paras 49-52, p. 16.

³ The Prosecution initially requested the submission of the Item by email, but the Single Judge instructed the Prosecution to file such request on the record (*see* email from the Prosecution, 14 March 2024, at 16:35; email from the Chamber, 15 March 2024, at 16:49).

⁴ *See* transcripts of hearings, 30 January 2024, ICC-01/14-01/18-T-265-CONF-ENG; 11 March 2024, ICC-01/14-01/18-T-274-CONF-ENG.

⁵ Prosecution’s Request for submission of item CAR-OTP-2083-3166, ICC-01/14-01/18-2416-Conf, paras 1-3, 6-12.

3. On 2 April 2024, the Defence opposed the Request (the ‘Response’). It argues that the submission of the Item (i) ‘impermissibly deviates’ from the established procedure for the submission of evidence in the case; and (ii) would cause prejudice to the rights of the accused. In this regard, the Defence contends *inter alia* that since the Item was not included in the Prosecution’s list of materials for D29-3014, the Defence did not have meaningful notice of it and as a consequence could not properly test it and/or elicit information on the matter with D29-3014 and expert witness D30-4864.⁶
4. The Chamber takes note of the Prosecution’s arguments regarding the relevance of the Item, namely, that it allegedly reflects a contact between D29-3014 and ‘an individual’ in Mbaiki on 31 January 2014.⁷ However, the Chamber observes that the Prosecution does not specify the identity of the ‘individual’ or ‘other persons’ associated with the phone number that was allegedly in contact with that of D29-3014.⁸ Furthermore, the Chamber notes that the Prosecution did not use the Item with D29-3014 or any other witness despite having had the opportunity to do so, and that the Defence could not properly test the Item in court and/or explore related lines of questioning.
5. In light of the above, having reviewed the Item and after balancing the interests at stake, the Chamber rejects the Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

ORDERS the Prosecution and the Defence to file a public redacted version of the Request, ICC-01/14-01/18-2416-Conf, and the Response, ICC-01/14-01/18-2430-Conf, respectively, within one week of notification of this decision.

⁶ Yekatom Defence Response to ‘Prosecution’s Request for submission of item CAR-OTP-2083-3166’ (ICC-01/14-01/18-2416-Conf), ICC-01/14-01/18-2430-Conf, paras 1-3, 20-58.

⁷ See Request, ICC-01/14-01/18-2416-Conf, paras 8-9.

⁸ See also Response, ICC-01/14-01/18-2430-Conf, paras 22-23.

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

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

Dated 30 May 2024

At The Hague, The Netherlands