

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 4 June 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***

Confidential

Decision on the CLRV1 Submission Request from the Bar Table

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 Marie-Hélène Proulx Lauriane Vandeler
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	Detention Section
Victims Participation and Reparations Section	Other

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), 66(2), 69 and 74(2) of the Rome Statute (the ‘Statute’) and Rules 63 and 64 of the Rules of Procedure and Evidence, issues this ‘Decision on the CLRV1 Submission Request from the Bar Table’.

I. Procedural History

1. On 18 March 2024, the Chamber partly granted the Common Legal Representative of the Former Child Soldier (the ‘CLRV1’)’s request for leave to present evidence from the bar table (the ‘Decision Granting Leave’).¹ In particular, the Chamber authorised the CLRV1 to submit (i) the ‘*carte de baptême*’ of V45-0001 (the ‘Item 1’);² (ii) the ‘*fiche de vaccination*’ of V45-0001 (the ‘Item 2’);³ and (iii) the birth certificates of V45-0001’s ‘parents’ (the ‘Item 3’ and the ‘Item 4’)⁴ (collectively, the ‘Items’).
2. On 2 April 2024, the CLRV1 sought the formal submission of the Items (the ‘Request’). The CLRV1 indicates that the Items pertain to the identifying information of V45-0001 and his parents.⁵
3. On 11 April 2024, the Ngaïssona Defence informed the Chamber that it does not intend to file a response and defers to its discretion.⁶

¹ Decision on the Common Legal Representative of the Former Child Soldiers Request for Leave to Submit Evidence from the Bar Table, ICC-01/14-01/18-2412-Conf, p. 5. *See also* Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the “bar table”, ICC-01/14-01/18-2222-Conf (with confidential *ex parte* Annex 1, only available to the CLRV1; confidential redacted version of Annex 1, and confidential Annexes 2-6) (public version notified on 25 March 2024, ICC-01/14-01/18-2222-Red) (the ‘Request for Leave’).

² CAR-V45-00000012.

³ CAR-V45-00000013.

⁴ CAR-V45-00000014; CAR-V45-00000015.

⁵ Request of the Common Legal Representative of the Former Child Soldiers for the submission of evidence from the “bar table”, ICC-01/14-01/18-2428-Conf (with confidential Annex A, ICC-01/14-01/18-2428-Conf-AnxA), paras 1, 19, p. 11. *See also* Request for Leave, ICC-01/14-01/18-2222-Red, paras 17-18.

⁶ Email from the Ngaïssona Defence, 11 April 2024, at 16:21.

4. On 15 April 2024, the Yekatom Defence opposed the Request (the 'Response'). It further requests the Chamber to find the Items inadmissible under Article 69(4) of the Statute (the 'Admissibility Ruling Request').⁷
5. On 23 April 2024, the Chamber rejected the Yekatom Defence's request to exclude, pursuant to Article 69(7) of the Statute, the evidence of, *inter alia*, V45-0001, including associated exhibits used with him in court (the 'Exclusion Request' and the 'Exclusion Decision', respectively).⁸

II. Analysis

6. The Chamber recalls the applicable law for the submission of evidence from the bar table.⁹ The Chamber recalls that it may rule on admissibility related issues upfront, when appropriate, particularly if so required in order to ensure the fairness and expeditiousness of the trial.¹⁰

A. The Admissibility Ruling Request

7. The Chamber notes the Yekatom Defence's submissions that the Admissibility Ruling Request is warranted given, *inter alia*, (i) that the Items 'concern the disputed identity of [V45-0001] whose testimony is the subject of the Exclusion Request pursuant to article 69(7)'; and (ii) the late timing of the Request.¹¹
8. First, the Chamber sees no reason to find the Items inadmissible based on the information before it at the moment. Second, as acknowledged by the Yekatom Defence, the introduction of the Items 'is not [...] limited solely to [V45-0001]'s identity and should not therefore be treated in isolation'.¹² This is precisely why,

⁷ Defence Response to 'Request of the Common Legal Representative of the Former Child Soldiers for the submission of evidence from the 'bar table'', ICC-01/14-01/18-2449-Conf, paras 1, 4, 40.

⁸ Decision on the Yekatom Defence Request for the Exclusion of Allegedly Fabricated Evidence, ICC-01/14-01/18-2460-Conf (public redacted version notified the same day, ICC-01/14-01/18-2460-Red), para. 1, p. 19. *See also* Request for the Exclusion of Fabricated Evidence, ICC-01/14-01/18-2240-Conf (with confidential Annexes A-C and public Annex D) (public redacted version notified on 9 February 2024, ICC-01/14-01/18-2240-Red).

⁹ 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.

¹⁰ *See* Initial Directions, ICC-01/14-01/18-631, para. 59.

¹¹ Response, ICC-01/14-01/18-2449-Conf, paras 5-11.

¹² *See* Response, ICC-01/14-01/18-2449-Conf, para. 3.

in the Chamber's view, it is necessary for the determination of the truth to recognise the Items as formally submitted, in order for the Chamber to holistically assess in its judgment deliberations all of the evidence so far submitted by the participants and their respective arguments in relation to Count 29.

9. Accordingly, the Chamber rejects the Admissibility Ruling Request.

B. Objections to the Items

10. Bearing in mind its findings above, the Chamber recalls that, in its Decision Granting Leave, it already considered that the Items would be of assistance in its determination of the truth, particularly, with regard to Count 29.¹³
11. The Chamber takes note of the Yekatom Defence's submissions that the Items (i) do not establish the purported identity of V45-0001; and (ii) do not meet the minimum threshold test for *prima facie* reliability.¹⁴ As already stated, the Chamber defers the consideration of these arguments, as well as those previously made in the context of the Decision Granting Leave, to its deliberation pursuant to Article 74(2) of the Statute.¹⁵ Furthermore, the Chamber stresses that its assessment of the Items will be subject to the same scrutiny during its deliberations as every other piece of evidence at the end of the trial. It will also duly take into consideration the submissions made in the context of the Exclusion Request and the Yekatom Defence's opening statement.¹⁶
12. Moreover, having reviewed the Items, and recalling its Exclusion Decision, the Chamber has not identified any procedural bars to their formal submission.
13. Lastly, the Chamber considers that the potential prejudice that the formal submission of the Items might cause to the accused is mitigated by the fact that (i) the Yekatom Defence had ample opportunity to fully examine in court V45-0001 and any other relevant witness in relation to Count 29; (ii) the Chamber has received to date a substantial amount of submissions from the Yekatom Defence in relation to the alleged fabrication of evidence throughout the

¹³ Decision Granting Leave, ICC-01/14-01/18-2412-Conf, para. 6.

¹⁴ Response, ICC-01/14-01/18-2449-Conf, paras 12-30.

¹⁵ See Decision Granting Leave, ICC-01/14-01/18-2412-Conf, para. 6.

¹⁶ See Exclusion Decision, ICC-01/14-01/18-2460-Red, para. 55.

proceedings; and (iii) the Yekatom Defence's investigations on the alleged lack of authenticity of the Items – which were disclosed in January 2024 – are 'underway' and, in addition to the submissions made in its Response, it 'intends to present the formal findings of its investigations upon completion'.¹⁷

14. In light of the above, the Chamber sees no impediment for the formal submission of the Items.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Admissibility Ruling Request;

GRANTS the Request;

RECOGNISES as formally submitted the Items CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000014 and CAR-V45-00000015; and

ORDERS the CLRV1 and the Yekatom Defence to file a public redacted version of the Request, ICC-01/14-01/18-2428-Conf, and the Response, ICC-01/14-01/18-2449-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

Dated 4 June 2024

At The Hague, The Netherlands

¹⁷ See Response, ICC-01/14-01/18-2449-Conf, paras 31-36.