

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**

Date: **22 July 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Confidential

**Yekatom Defence Response to Prosecution's Request for Reconsideration,
ICC-01/14-01/18-2586-Conf, 11 July 2024**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') opposes the Prosecution's Request for Reconsideration,¹ of the Chamber's 6 June 2024 email Decision on Submitted Materials for D30-4864 ('6 June Submission Decision') recognising the formal submission of CAR-D29-0004-3912, CAR-D29-0004-3913, CAR-D29-0004-3918, CAR-D29-0004-3920, and CAR-D29-0004-3922 (the 'Guides').
2. The Request for Reconsideration, which is groundlessly buried within the Prosecution's response to the 'Yekatom Defence Request for the Formal Submission of Telecommunication Related Material', fails to advance any new justification or cogent reason as to why reconsideration is necessitated at this juncture. Having failed to meet the relevant threshold, the request should be denied.

PROCEDURAL HISTORY

3. From 27 February 2024 to 1 March 2024, expert witness Duncan BROWN (D30-P-4864) testified before Trial Chamber V. During the course of the Yekatom Defence examination, the expert witness commented on the Guides and verified whether or not the method described in the Guides corresponds to what he, as an expert, would undertake in the course of creating Call Sequence Tables ('CST').²
4. Upon completion of his testimony, the Defence submitted the Guides³ used with the expert pursuant to the Initial Directions on the Conduct of the Proceedings.⁴ The Prosecution opposed the submission on the basis that they were 'manifestly 'testimonial' in nature', were created 'for the purpose of the present proceedings'

¹ ICC-01/14-01/18-2586-Conf entitled 'Prosecution's Consolidated Response to "Yekatom Defence Request for the Formal Submission of Telecommunication Related Material" (ICC-01/14-01/18-2562-Conf), 28 June 2024 and Request for Reconsideration.

² D30-P-4864: ICC-01/14-01/18-T-272-ENG ET, from [13:55:58] onwards.

³ Email from the Defence to the Chamber and Parties and Participants, dated 4 March 2024, at 10:13.

⁴ ICC-01/14-01/18-631, para. 63.

and that 'if the Defence intends to introduce these so-called 'guides' as evidence in the case, they must do so through the Author who created them in accordance with the requirements Rule 68 [sic]'.⁵

5. Having considered the Prosecution's arguments, and reviewed the Guides, the Chamber determined that they were 'not testimonial in nature' and that the Chamber 'will be aided by the purely technical explanations contained therein in its consideration of both the CST as well as D30-4864's testimony' and as such the Guides were recognised as formally submitted.⁶ The Prosecution did not seek leave to appeal this decision.
6. On 28 June 2024, the Defence filed the 'Yekatom Defence Request for the Formal Submission of Telecommunication Related Material', whereby it sought the formal recognition of one call data record and two call sequence tables.⁷ The Guides were not the subject of this request.
7. On 11 June 2024 the Prosecution responded to the Yekatom Defence Request for the Formal Submission of Telecommunication Related Material and requested partial reconsideration of the 6 June Submission Decision recognising the formal submission of CAR-D29-0004-3912, CAR-D29-0004-3913, CAR-D29-0004-3918, CAR-D29-0004-3920, and CAR-D29-0004-3922 ('Request for Reconsideration').⁸

SUBMISSIONS

8. In its Request for Reconsideration, the Prosecution asserts that there is a clear error of reasoning in the 6 June Submission Decision and that reconsideration is necessary to prevent an injustice. In doing so, it recites the very same arguments already considered and dismissed by the Chamber.⁹

⁵ Email from the Prosecution to the Chamber and Parties and Participants, dated 5 March 2024 at 19:03.

⁶ Email from the Chamber to Parties and Participants dated 6 June 2024 12:58.

⁷ ICC-01/14-01/18-2562-Conf.

⁸ ICC-01/14-01/18-2586-Conf.

⁹ ICC-01/14-01/18-2586-Conf, paras 5-13.

9. First, the Prosecution fails to set out any error of reasoning on the part of the Chamber. Having noted the Defence's arguments that it relied on the Guides as 'demonstrative aids to assist the Chamber and parties to understand the methodology it used to produce the CST[']s', the Chamber accepted that the Guides contained 'purely technical explanations' which would aid the Chamber 'in its consideration of both the CST as well as D30-4864's testimony'.¹⁰ Notwithstanding the notification and procedural purpose of email decisions, it is apparent that both the factual and legal basis to understand the Chamber's decision to formally recognise the Guides was set out in the 6 June Submission Decision.
10. Nor can it be said that the 6 June Email Decision deviated from prior practice in these proceedings which would have warranted further reasoning. It is recalled that the Chamber has previously formally recognised several Reports on the extraction of data, prepared by the Scientific Response Unit of the Prosecution, in relation to Yahoo emails.¹¹ Notably, the reports were internally prepared by the Prosecution and described the methodology used to extract and process the underlying digital information. Having benefited from such a decision, the Prosecution made no similar argument contesting the testimonial nature of such reports.
11. The 6 June Email Decision is also consistent with prior jurisprudence of this Court. For example, in the *Ongwen* case, Trial Chamber IX found that documentary material which contains information which is 'routine, descriptive and non-analytical' is not testimonial in nature.¹²
12. Second, the Prosecution fails to articulate, let alone substantiate, any injustice which arises from the Chamber's decision to formally recognize the Guides. The

¹⁰ Email from the Chamber to Parties and Participants dated 6 June 2024 12:58.

¹¹ ICC-01-14-01/18-1632-Conf, para 12. Public Redacted Version available: ICC-01/14-01/18-1632-Red.

¹² ICC-02/04-01/15-795 para. 21. See also ICC-02/04-01/15-1670 para. 17 whereby Trial Chamber IX further determined that the fact that documentary material is 'in part analytical in nature does not make [it] automatically fall under Rule 68 of the Rules'.

purpose of these items is to assist the Chamber in understanding how to interpret the CSTs, which are based on complex and voluminous CDRs, and the methodology used to create those CSTs. A “purely technical” demonstrative aid intended to enhance comprehension of the CST cannot create an injustice; on the contrary, it allows both the Chamber and Parties to assess the reliability of the Defence’s CSTs by reproducing the steps described in the Guides.

13. The Prosecution’s request should therefore be rejected.

CONFIDENTIALITY

14. This response is filed on a confidential basis as it responds to a filing of the same designation. The Defence does not oppose reclassification to public.

RELIEF SOUGHT

15. In light of the above, the Defence respectfully requests that Trial Chamber V: **REJECT** the Prosecution’s Request for Reconsideration.

RESPECTFULLY SUBMITTED ON THIS 22nd DAY OF JULY 2024



Me Mylène Dimitri
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The Hague, the Netherlands