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No. ICC-01/14-01/18

Date: 16 August 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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Third Ngaißona Defence Request for Submission from the Bar
Table (Media Articles and Miscellaneous Documents)**

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), 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 Third Ngaïssona Defence Request for Submission from the Bar Table (Media Articles and Miscellaneous Documents)’.

I. Procedural History

1. On 28 June 2024, in accordance with the time limit set by the Chamber,¹ the Ngaïssona Defence (the ‘Defence’) filed a request for the submission of seven documents from the bar table (the ‘Items’ and the ‘Request’, respectively).² The Items consist of four media articles and three miscellaneous documents.³ The Defence submits that the Items are *prima facie* relevant to material issues at trial, corroborative of other evidence on the record, and that they bear sufficient indicia of reliability.⁴
2. On 8 July 2024, the Yekatom Defence informed the Chamber that it does not intend to respond to the Request and defers to the Chamber’s discretion.⁵
3. On 10 July 2024, the Office of the Prosecutor (the ‘Prosecution’) partly opposed the Request. It requests the Chamber to reject the formal submission of five items⁶ (the ‘Contested Items’), and defers to the Chamber’s discretion as to the remainder of the Items, subject to some observations (the ‘Response’).⁷

¹ The Chamber initially set the final time limit for any bar table applications by the Defence at one week after the testimony of the last witness called by the Defence, whilst encouraging it to file requests on a rolling basis during its presentation of evidence (*see* Further Directions on the Conduct of the Proceedings [End of Defence Presentation of Evidence and Closure of Evidence], 2 February 2024, ICC-01/14-01/18-2342, para. 6). The Chamber later amended the deadline for bar table motions to be filed by the Defence, requiring each Defence team to *inter alia* file bar table motions for at least two categories of items by 28 June 2024 (*see* email from the Chamber, 15 May 2024, at 10:30).

² Ngaïssona Defence’s Third Application for the Submission of Evidence from the Bar Table, ICC-01/14-01/18-2560-Conf (with confidential Annex 1, ICC-01/14-01/18-2560-Conf-Anx1), paras 1, 19.

³ *See* Annex 1 to the Request, ICC-01/14-01/18-2560-Conf-Anx1.

⁴ Request, ICC-01/14-01/18-2560-Conf, para. 2.

⁵ Email from the Yekatom Defence, 8 July 2024, at 10:50.

⁶ CAR-D30-0012-0009, CAR-D30-0012-0012, CAR-D30-0003-0211, CAR-D30-0003-0212 and CAR-D30-0001-0023.

⁷ Prosecution’s Response to “Ngaïssona Defence’s Third Application for the Submission of Evidence from the Bar Table” (ICC-01/14-01/18-2560), ICC-01/14-01/18-2584-Conf (with one confidential annex, ICC-01/14-01/18-2584-Conf-Anx), paras 1, 9.

II. Analysis

4. The Chamber recalls the applicable law for the submission of evidence from the bar table.⁸ It also takes note of the parties' arguments on the relevance and probative value of the Items,⁹ and defers its consideration of such arguments to its deliberation of the judgment pursuant to Article 74(2) of the Statute.
5. The Prosecution argues that the Defence's assertions on the *prima facie* relevance and probative value of the Contested Items are 'wholly speculative' and not substantiated. In addition, in relation to two of the Contested Items,¹⁰ the Prosecution contends that they are testimonial in nature and should have been used in court with P-2625.¹¹
6. The Chamber observes that two of the Contested Items¹² consist of media articles from 2011 concerning the post electoral crisis in Côte d'Ivoire, which contain images allegedly identical to Facebook posts submitted by the Prosecution showing FROCCA fighters.¹³ The other three Contested Items include (i) a certificate from the 'Assemblée Nationale/Hôtel des Députés', affirming that P-2625 never stayed at the hotel from March to August 2013;¹⁴ (ii) a '*compte rendu de réquisition*' from October 2023 addressed by the Cameroonian '*Directeur de la surveillance du territoire*' to the '*Directeur de la police judiciaire*', in which he states that the authorities were not successful in obtaining information as to the guests of certain hotels between March and August 2013;¹⁵ and (iii) a letter from

⁸ 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.

⁹ See Request, ICC-01/14-01/18-2560-Conf, paras 6-18; Response, ICC-01/14-01/18-2584-Conf, paras 3-8.

¹⁰ CAR-D30-0003-0211 and CAR-D30-0003-0212.

¹¹ Annex to the Response, ICC-01/14-01/18-2584-Conf-Anx; *see also* Response, ICC-01/14-01/18-2584-Conf, paras 3-7.

¹² CAR-D30-0012-0009 and CAR-D30-0012-0012.

¹³ *See also* Request, ICC-01/14-01/18-2560-Conf, para. 9.

¹⁴ CAR-D30-0003-0211.

¹⁵ CAR-D30-0003-0212.

December 2012 with a ‘request for peace’ addressed to Mr Ngaïssona by the National Executive Bureau of the ‘*Communauté Islamique Centrafricaine*’.¹⁶

7. Having reviewed the Contested Items, the Chamber considers that they are *prima facie* relevant to the factual allegations in this case. Moreover, the Chamber notes the Defence’s arguments that the Contested Items are relevant to the evidentiary weight that should be attributed to the Prosecution’s evidence on ‘certain core issues of the case’,¹⁷ as well as Mr Ngaïssona’s alleged ‘lack of anti-Muslim animus’ at the end of December 2012 and therefore his alleged ‘support of the Muslim community in CAR’ during the relevant period.¹⁸
8. Furthermore, the Chamber is of the view that the alleged lack of probative value of the Contested Items, as argued by the Prosecution, is a matter to be addressed during the judgment deliberations and does not, in itself, constitute a procedural bar at this stage.¹⁹
9. Moreover, the Chamber is not persuaded by the Prosecution’s submissions that CAR-D30-0003-0211 and CAR-D30-0003-0212 are testimonial in nature.²⁰ Rather, CAR-D30-0003-0211 constitutes a response to discrete queries from the Defence in the course of its investigations, while CAR-D30-0003-0212, which was annexed by the ‘*Hôtel des Députés*’ in its response to the Defence, contains an update as to a search for information.
10. The Chamber will take into account, as part of its judgment deliberations, the Prosecution’s argument that P-2625 did not have an opportunity to comment on CAR-D30-0003-0211 and CAR-D30-0003-0212 during his examination in court.²¹
11. With regard to the remainder of the Items, the Chamber notes that the Prosecution defers to its discretion and does not raise any procedural bars.

¹⁶ CAR-D30-0001-0023.

¹⁷ Request, ICC-01/14-01/18-2560-Conf, para. 8 *referring to* CAR-D30-0012-0009, CAR-D30-0012-0012, CAR-D30-0003-0211 and CAR-D30-0003-0212.

¹⁸ Request, ICC-01/14-01/18-2560-Conf, para. 17 *referring to* CAR-D30-0001-0023.

¹⁹ See Response, ICC-01/14-01/18-2584-Conf, paras 3, 6-7.

²⁰ See Response, ICC-01/14-01/18-2584-Conf, para. 4.

²¹ See Response, ICC-01/14-01/18-2584-Conf, para. 5.

12. In light of the above, having reviewed the remaining Items and in the absence of any procedural bars, the Chamber recognises all of the Items as formally submitted.

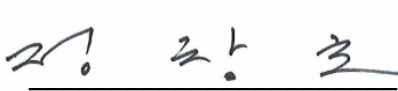
FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

RECOGNISES as formally submitted CAR-D30-0006-0328, CAR-D30-0012-0009, CAR-D30-0012-0012, CAR-D30-0006-0331, CAR-D30-0003-0211, CAR-D30-0003-0212 and CAR-D30-0001-0023; and

ORDERS the Defence and the Prosecution to file a public redacted version of the Request, ICC-01/14-01/18-2560-Conf, and the Response, ICC-01/14-01/18-2584-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 16 August 2024

At The Hague, The Netherlands