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No. ICC-01/14-01/18

Date: 19 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 Fourth Yekatom Defence Request for Submission from the Bar
Table (Telecommunication Related Material) and the Prosecution Request for
Reconsideration concerning D30-4864**

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 69(3) 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 Fourth Yekatom Defence Request for Submission from the Bar Table (Telecommunication Related Material) and the Prosecution Request for Reconsideration concerning D30-4864’.

I. Procedural history

1. On 6 June 2024, the Chamber issued its ‘Decision on Submitted Materials for D30-4864’ (the ‘6 June 2024 Decision’) in which it, *inter alia*, recognised as formally submitted five guides¹ (the ‘CST Guides’) prepared by the Yekatom Defence (the ‘Defence’). The CST Guides were prepared to assist the Chamber in its understanding of the methodology used by the Defence to produce certain call sequence tables (‘CSTs’).²
2. On 28 June 2024, in accordance with the time limit set by the Chamber,³ the Defence filed a request for the submission of three items (the ‘Items’) from the bar table (the ‘Request’).⁴ The Items comprise one call data record⁵ and two CSTs.⁶
3. On 11 July 2024, the Office of the Prosecutor (the ‘Prosecution’) indicated that it deferred to the Chamber’s discretion with regard to the Request (the ‘Response’). However, insofar as the Chamber intends to rely on the CST Guides in evaluating the probative value and weight of the Items, the Prosecution requested that the

¹ CAR-D29-0004-3912, CAR-D29-0004-3913, CAR-D29-0004-3918, CAR-D29-0004-3920 and CAR-D29-0004-3922.

² Email from the Chamber, 6 June 2024, at 12:58.

³ 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).

⁴ Yekatom Defence Request for the Formal Submission of Telecommunication Related Material, ICC-01/14-01/18-2562-Conf (with confidential Annexes A and B, ICC-01/14-01/18-2562-Conf-AnxA and ICC-01/14-01/18-2562-Conf-AnxB).

⁵ CAR-OTP-00000125.

⁶ CAR-D29-0004-3925 and CAR-D29-0004-3926.

Chamber reconsider its 6 June 2024 Decision in respect of the CST Guides (the ‘Prosecution Reconsideration Request’).⁷

4. On 22 July 2024, the Defence indicated that it opposed the Prosecution Reconsideration Request.⁸

II. Analysis

A. The Prosecution Reconsideration Request

5. The Prosecution submits that the 6 June 2024 Decision, insofar as it relates to the Chamber’s finding that the CST Guides are not testimonial in nature, ‘lacks sufficient reasoning which, independently of, and in addition to the conclusion reached, constitutes a clear error’.⁹ It argues that reconsideration is therefore necessary to prevent the injustice resulting from the Chamber’s ‘intention to rely on the CST Guides in evaluating evidence’.¹⁰
6. The Chamber notes that the Prosecution re-states and elaborates on arguments which had already been raised and taken into account by the Chamber in making the 6 June 2024 Decision.¹¹
7. In light of the above, the Chamber considers that the Prosecution has not raised any new facts or arguments warranting reconsideration. In the view of the Chamber, the Prosecution is merely seeking to relitigate a matter settled by the Chamber: it has not demonstrated any clear error of reasoning, nor that any injustice would result from recognising the CST Guides as formally submitted. The Prosecution Reconsideration Request is therefore rejected.

⁷ 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, ICC-01/14-01/18-2586-Conf.

⁸ Defence Response to “Prosecution’s Request for Reconsideration, ICC-01/14-01/18-2586-Conf, 11 July 2024”, ICC-01/14-01/18-2603-Conf, 22 July 2024.

⁹ Response ICC-01/14-01/18-2586-Conf, paras 6, 9-13.

¹⁰ Response ICC-01/14-01/18-2586-Conf, para 2, 5-6.

¹¹ See email from the Prosecution, 5 March 2024, at 19:03, and email from the Chamber, ‘Decision on Submitted Materials for D30-4864’, 6 June 2024, at 12:58.

B. The Request

8. The Chamber recalls the applicable law for the submission of evidence from the bar table.¹² It also notes the Defence's arguments on the relevance and probative value of the Items,¹³ and defers its consideration of these arguments to its deliberation of the judgment pursuant to Article 74(2) of the Statute.
9. At the outset, the Chamber observes that one of the Items (CAR-OTP-00000125) has already been recognised as formally submitted, and therefore the Chamber need not rule on it again.
10. As regards the remaining two Items, the Chamber notes that the Prosecution has not raised any procedural bars and defers to the Chamber's discretion. Having reviewed the Items, and noting the Defence's submissions,¹⁴ the Chamber is satisfied that they are *prima facie* relevant. In the absence of any procedural bars, the Chamber therefore recognises these two Items as formally submitted.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Prosecution Reconsideration Request;

GRANTS the Request with regard to items CAR-D29-0004-3925 and CAR-D29-0004-3926;

RECOGNISES items CAR-D29-0004-3925 and CAR-D29-0004-3926 as formally submitted into evidence; and

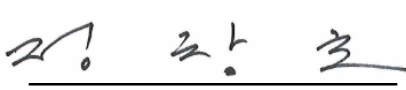
ORDERS the Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2562-Conf, and the Response, ICC-01/14-01/18-2586-Conf, respectively, within one week of notification of this decision.

¹² 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.

¹³ Request, ICC-01/14-01/18-2562-Conf, paras 15-34.

¹⁴ See the Defence's submissions regarding CAR-D29-0004-3925 and CAR-D29-0004-3926 in the Annex A to the Request, ICC-01/14-01/18-2562-Conf-AnxA, pp. 11-13, entries 14 and 15.

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 19 August 2024

At The Hague, The Netherlands