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**No. ICC-01/14-01/18
Date: 13 September 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 Fifth Yekatom Defence Request for Submission from the Bar
Table (Material Related to the Alleged Fabrication of Evidence)**

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 Fifth Yekatom Defence Request for Submission from the Bar Table (Material Related to the Alleged Fabrication of Evidence)’.

I. Procedural history and submissions

1. On 23 April 2024, the Chamber rejected the Yekatom Defence’s (the ‘Defence’) ‘Request for the Exclusion of Fabricated Evidence’.¹ In this request, the Defence had argued, *inter alia*, that the present proceedings have been ‘the target of a deliberate and concerted effort to present false evidence on the part of OTP witnesses, OTP and Registry intermediaries, alleged “former child soldier” participating victims, and other individuals relied on by the OTP’ in relation to Count 29 (the ‘Allegedly Fabricated Evidence’ and the ‘Alleged Conspiracy’, respectively).²
2. On 31 July 2024,³ the Defence filed a request for the submission of 263 items from the bar table (the ‘Items’ and the ‘Request’, respectively).⁴ According to the Defence, the items comprise various materials related to the Allegedly Fabricated Evidence and the Alleged Conspiracy,⁵ notably (i) information from Facebook accounts associated with P-2475, P-2582, P-2620, P-2018 and P-2580;

¹ 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) (the ‘Decision on the Exclusion Request’).

² Request for the Exclusion of Fabricated Evidence, 5 December 2023, 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) (the ‘Exclusion Request’).

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). Noting that no bar table motions had been filed by 15 May 2024 and in order to expedite the proceedings, the Chamber later set more specific deadlines for bar table motions to be filed by the Defence (*see* email from the Chamber, 15 May 2024, at 10:30), including on 18 July 2024. Upon request by the Defence, the Single Judge ultimately granted the Defence’s request for an extension of time to file its penultimate bar table motion on 31 July 2024 (*see* email from the Chamber, 17 July 2024, at 17:25).

⁴ Yekatom Defence Request for the formal submission of material related to the Fabrication of evidence, ICC-01/14-01/18-2611-Conf (with confidential Annexes A-C).

⁵ Request, ICC-01/14-01/18-2611-Conf, paras 29-30.

(ii) ‘documents relevant to demonstrate the fraudulent nature of the “demobilization” program set up by ESF in 2014’; (iii) Prosecution investigation reports; and (iv) documents relating to the credibility of witnesses V45-0001 and V45-0002.⁶ The Defence submits that the Items are relevant, *prima facie* reliable and meet the authenticity criteria, and that no procedural bars exist.⁷

3. On 12 August 2024, the Office of the Prosecutor (the ‘Prosecution’) partly opposed the Request. It requests that the Chamber reject the formal submission of 166 items and defers to the Chamber’s discretion with respect to 80 items, subject to certain observations⁸ (the ‘Response’).⁹ The opposed items concern three categories of documents, notably ‘(i) items related to material that is not in evidence and falls outside the scope of this case [the ‘Category I Items’]; (ii) items that constitute extrinsic evidence of a collateral matter [the ‘Category II Items’]; and (iii) a re-issued birth certificate [CAR-D29-0013-0095]’.¹⁰

II. Analysis

4. The Chamber recalls the applicable law for the submission of evidence from the bar table.¹¹ It also takes note of the parties’ arguments on the relevance and probative value of the Items,¹² and defers its consideration of such arguments to its deliberation of the judgment pursuant to Article 74(2) of the Statute.
5. At the outset, the Chamber takes note of the Prosecution’s overarching submission that it considers ‘Investigation Reports (see entries 4-20 in part 2 of the Annex) and correspondence from sections of the Court submitted by the Defence are generally testimonial in nature, as they were clearly created and

⁶ Request, ICC-01/14-01/18-2611-Conf, paras 17, 44-46.

⁷ Request, ICC-01/14-01/18-2611-Conf, para. 2.

⁸ See Annex to the Prosecution’s Response to the “Yekatom Defence Request for the formal submission of material related to the Fabrication of evidence” (ICC-01/14-01/18-2611), ICC-01/14-01/18-2624-Conf-Anx.

⁹ Prosecution’s Response to the “Yekatom Defence Request for the formal submission of material related to the Fabrication of evidence” (ICC-01/14-01/18-2611), ICC-01/14-01/18-2624-Conf (with one confidential annex), paras 1-2.

¹⁰ Response, ICC-01/14-01/18-2624-Conf, para. 4.

¹¹ 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.

¹² Request, ICC-01/14-01/18-2611-Conf, paras 29-52; Annex A to the Request, ICC-01/14-01/18-2611-Conf-AnxA; Response, ICC-01/14-01/18-2624-Conf, paras 6-29; Annex to the Response, ICC-01/14-01/18-2624-Conf-Anx.

provided for the purposes of the case’.¹³ The Chamber will assess the relevant investigation reports in light of their specific content, in line with its practice of ruling on the Prosecution’s requests to submit investigation reports¹⁴ into evidence.

A. Category I and Category II Items

6. The Prosecution argues that the 83 Category I Items¹⁵ relate to material that is not in evidence and falls outside the scope of this case. In particular, it submits that they relate to P-2620, P-2582 and P-2638, whose evidence does not form part of the case record and is not being relied on to substantiate the charges against the accused.¹⁶ Furthermore, it argues that these items fall outside the time frame related to the charges and that the credibility of the abovementioned individuals is not material to this case.¹⁷
7. In relation to the Category II Items,¹⁸ the Prosecution argues that they constitute ‘extrinsic evidence of collateral matters’. In particular, it argues that (i) six are TikTok videos by P-2475 and seem to concern his ‘purported health condition, and use of a smartphone, prior to his testimony’; (ii) ‘73 are items tendered with the aim of demonstrating a relationship between P-2475 and his ex-wife and with P-2582 and/or P-2620’, including their ‘periodic contact *after* the relevant timeframe and events at issue’; and (iii) three items which ‘allegedly relate to benefits received by P-2475’ ‘do not provide any indication of the fabrication of evidence whatsoever’.¹⁹
8. The Chamber observes that the Category I and II Items consist of (i) Facebook audio and video notes, (ii) Facebook posts and profiles, (iii) Facebook messages, (iv) Facebook metadata,²⁰ (v) TikTok videos and screenshots of accounts and

¹³ Response, ICC-01/14-01/18-2624-Conf, para. 4, n. 2.

¹⁴ In this respect, the Chamber notes that the Prosecution previously sought the submission of investigation reports itself, *see for example* Request for the Submission of Evidence from the Bar Table regarding the recruitment and use of child soldiers, 1 April 2022, ICC-01/14-01/18-1346 (with one confidential annex), requesting submission of investigation report CAR-OTP-2128-1203.

¹⁵ The items are listed in the Response, ICC-01/14-01/18-2624-Conf, para. 6, n. 5-9.

¹⁶ Response, ICC-01/14-01/18-2624-Conf, paras 6-8.

¹⁷ Response, ICC-01/14-01/18-2624-Conf, paras 9-10.

¹⁸ The items are listed in the Response, ICC-01/14-01/18-2624-Conf, para. 11, n. 11-13.

¹⁹ Response, ICC-01/14-01/18-2624-Conf, paras 11, 15, 20, 25.

²⁰ See overview of the Facebook material in Annex B to the Request, ICC-01/14-01/18-2611-Conf-AnxB.

comments, (vi) investigation reports, (vii) records of the health centre of Kapou, (viii) photographs, and (ix) other documents. It further notes that all Category I and II Items pertain to the Alleged Conspiracy and/or the Allegedly Fabricated Evidence in relation to Count 29 and takes note of the Defence's submissions on this matter in the present Request,²¹ as well as in its previous and pending motions.²²

9. As previously held, the Chamber will duly examine the Defence's submissions pertaining to the standard evidentiary criteria of the Allegedly Fabricated Evidence in its judgment pursuant to Article 74 of the Statute.²³ This necessarily requires the Chamber to be privy to the Defence's materials in support of its allegations.²⁴ Considering this, and having reviewed the Category I and II Items, the Chamber considers these items *prima facie* relevant to the factual allegations under Count 29. Accordingly, the Chamber disagrees with the Prosecution that the Category I Items are irrelevant or fall outside the scope of the case.
10. Furthermore, the Chamber is not persuaded by the Prosecution's contention that the investigation reports amongst the Category I Items should not be recognised as submitted due to their testimonial nature.²⁵ Having reviewed these investigation reports,²⁶ the Chamber cannot discern any testimonial content. In this respect, the Chamber notes that they merely constitute personal records of investigators of contacts between the Prosecution and certain former witnesses, or intermediaries, in relation to discrete points of clarification; or logistics in relation to providing certain documents or arranging P-2582's interview; or the Prosecution's internal determinations regarding the disclosability of certain

²¹ Request, ICC-01/14-01/18-2611-Conf, paras 29-51; Annex A to the Request, ICC-01/14-01/18-2611-Conf-AnxA. *See further* Annex C to the Request, ICC-01/14-01/18-2611-Conf-AnxC.

²² In this respect, the Chamber recalls in particular the Exclusion Request, ICC-01/14-01/18-2240-Red.

²³ Decision on the Exclusion Request, ICC-01/14-01/18-2460-Red, para. 55.

²⁴ *See also* Decision on the CLRV1 Submission Request from the Bar Table, 4 June 2024, ICC-01/14-01/18-2520-Conf, para. 8.

²⁵ Response, ICC-01/14-01/18-2624-Conf, para. 4, n. 2. *See also* above, para. 5.

²⁶ CAR-OTP-2123-0077; CAR-OTP-2127-3960; CAR-OTP-2127-8343; CAR-OTP-00000737; CAR-OTP-00000069.

material, which have all not been adopted or approved by the individuals subject to these reports.²⁷

11. In light of the above and in the absence of any other procedural bars, the Chamber recognises the Category I and II Items as formally submitted.

B. Re-issued birth-related certificate CAR-D29-0013-0095

12. The Prosecution submits that the item is a copy of page 0428 of item CAR-D29-0001-0426, which it had previously opposed. It further submits that it is a birth certificate of an alleged child soldier, which was re-issued on 22 April 2022, thus shortly prior to P-2475's testimony, and seems to have been obtained for the purpose of this trial particularly.²⁸
13. Having reviewed the item, the Chamber considers that it is *prima facie* relevant to the factual allegations in this case. In this context, it particularly notes the Defence's submissions that the item is relevant to assess the age of this alleged child soldier in the context of Count 29, as well as to assess his birth-related document, which is already in evidence (CAR-D29-0001-0426, at 0428).²⁹ The Chamber is further of the view that the Prosecution's submissions regarding the alleged lack of probative value of this item (including the question for which purpose the item was created),³⁰ is a matter to be addressed during the judgment deliberations and does not constitute, in itself, a procedural bar at this stage.
14. In light of the above, and in the absence of any procedural bars, the Chamber recognises item CAR-D29-0013-0095 as formally submitted.

C. Remaining items

15. The Chamber notes that the Prosecution defers to its discretion with regard to the remaining items, subject to certain observations.³¹

²⁷ See *similar* Decision on the Yekatom Defence Motion for Disclosure of Screening Notes, 10 August 2020, ICC-01/14-01/18-618, paras 11-12.

²⁸ Response, ICC-01/14-01/18-2624-Conf, para. 28.

²⁹ Annex A to the Request, ICC-01/14-01/18-2611-Conf-AnxA, row 37.

³⁰ Response, ICC-01/14-01/18-2624-Conf, paras 28-29.

³¹ Response, ICC-01/14-01/18-2624-Conf, para. 2 and Annex to the Response, ICC-01/14-01/18-2624-Conf-Anx. See also above, para. 5.

16. In this respect, the Chamber first recalls the Prosecution's submission that correspondence from sections of the Court should be considered testimonial. The Chamber understands this submission to concern item CAR-OTP-00002013, which appears to be the only item of such nature in the Request. It observes that this item is a summary by the Victims Participation and Reparations Section's Field Officer concerning contacts between P-1974, P-2018, P-2580 and P-2638 and the dual status witnesses P-2582 and P-2620 during the completion and/or collection of their victim application forms, as communicated to the Prosecution. In light of this content, the Chamber considers that the item is not testimonial in nature.
17. Second, with respect to the investigation reports amongst the remaining items,³² the Chamber observes that they merely contain personal records of investigators of meetings or calls; discrete points of clarification; notes on potential leads; records of the handover of documents; the Prosecution's internal determinations regarding the disclosability of certain material following a Defence request; or phone attributions made by the Prosecution, which have all not been adopted or approved by the individuals subject to these reports. Accordingly, the Chamber does not consider them to be testimonial.
18. Third, and as pointed out by the Prosecution,³³ the Chamber recalls that it previously rejected the formal submission of items CAR-D29-0013-0250 and CAR-D29-0013-0253. Notably, the Chamber held that it had already recognised as formally submitted annotated copies of these items³⁴ in a previous decision³⁵ and therefore saw no need in that specific instance to also recognise CAR-D29-0013-0250 and CAR-D29-0013-0253 as formally submitted.³⁶ The Chamber considers that the present circumstances are no different. In light of the already

³² CAR-OTP-00001302; CAR-OTP-00000006; CAR-OTP-00001755; CAR-OTP-2135-4474; CAR-OTP-2126-0377; CAR-OTP-2130-3274; CAR-OTP-2072-0457; CAR-OTP-2135-1589; CAR-OTP-2135-4181; CAR-OTP-2135-4183; CAR-OTP-00000012; CAR-D29-0024-0003.

³³ See also Annex to the Response, ICC-01/14-01/18-2624-Conf-Anx, part II, rows 30 and 32.

³⁴ Namely CAR-D29-0009-0267 and CAR-D29-0009-0497.

³⁵ Second Decision on the Yekatom Defence Requests for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) and Related Requests, 26 March 2024, ICC-01/14-01/18-2424-Conf.

³⁶ Decision on Submitted Materials for V45-0001 and V45-0002, email from the Chamber, 16 July 2024, at 11:50.

submitted annotated copies, the Chamber therefore rejects the submission of these two items.

19. Having reviewed all remaining items, there appear to be no procedural bars to their submission. Consequently, the Chamber recognises them as formally submitted.

FOR THESE REASONS, THE CHAMBER HEREBY

PARTLY GRANTS the Request;

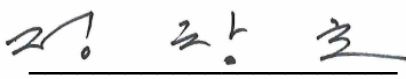
REJECTS the submission of items CAR-D29-0013-0250 and CAR-D29-0013-0253;

RECOGNISES as formally submitted all items listed in Annex A to the Request, ICC-01/14-01/18-2611-Conf-AnxA, second column (entitled ‘ERN’), and any respective transcriptions and translations thereof, with the exception of items CAR-D29-0013-0250 and CAR-D29-0013-0253 and those items identified as ‘already formally submitted’ (CAR-D29-0016-0155, CAR-D29-0013-0256, CAR-D29-0013-0252, CAR-D29-0013-0254, CAR-D29-0013-0265, CAR-D29-0014-0151, CAR-D29-0014-0152, CAR-D29-0014-0157, CAR-D29-0014-0169, CAR-V45-00000007, CAR-D29-0010-0161, CAR-D29-0010-0162, CAR-D29-0010-0163, CAR-V45-00000011, CAR-D29-0010-0009);

ORDERS the Registry to reflect that these items have been so recognised in the JEM code; and

ORDERS the Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2611-Conf, and the Response, ICC-01/14-01/18-2624-Conf, respectively, within two weeks 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 13 September 2024

At The Hague, The Netherlands