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**No. ICC-01/14-01/18
Date: 11 February 2021**

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***

Public

Decision on the Yekatom Defence Request to Exclude Expert Witness P-2926

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), 67 and 69 of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Yekatom Defence Request to Exclude Expert Witness P-2926’.

I. Procedural history and submissions

1. On 9 November 2020, the Office of the Prosecutor (the ‘Prosecution’) filed its Final Witness List, which includes expert witness P-2926, whose anticipated testimony relates to the background of the conflict.¹
2. On 17 December 2020, the Yekatom Defence (the ‘Defence’) requested the exclusion of P-2926’s testimony and expert report (the ‘Request’),² arguing that (i) P-2926’s evidence would be redundant given the expected testimony of factual witnesses on the same topics;³ and (ii) excluding this evidence at this stage would serve the interests of justice and expedite the proceedings.⁴
3. Specifically, the Defence submits that a foreign background expert can only produce reports on the basis of information collected from the people who lived through the events at issue⁵ and that part of P-2926’s report is based on online publications and information obtained through meetings with two of the Prosecution’s trial witnesses.⁶ The Defence further submits that its Request is not premature, as it ‘does not argue on the merit of the mode of testimony chosen by the Prosecution for witness P-2926, but focuses exclusively on the merit of the relevance of his appearance for the trial’.⁷

¹ Final Witness List, Annex A to the Prosecution’s List of Witnesses and Evidence, ICC-01/14-01/18-724-Conf-AnxA (notified on 10 November 2020), p. 40; Order of Prosecution Witnesses, Annex B to the Prosecution’s List of Witnesses and Evidence, ICC-01/14-01/18-714-Conf-AnxB, p. 1.

² Request of Mr. Yekatom to exclude the proposed Prosecution background expert P-2926 and his report, ICC-01/14-01/18-780-Conf (public redacted version notified on 13 January 2021, ICC-01/14-01/18-780-Red), paras 1, 38.

³ See Request, ICC-01/14-01/18-780-Red, paras 2, 11-29.

⁴ See Request, ICC-01/14-01/18-780-Red, paras 2, 11, 30-36.

⁵ Request, ICC-01/14-01/18-780-Red, para. 24.

⁶ Request, ICC-01/14-01/18-780-Conf, para. 26.

⁷ Request, ICC-01/14-01/18-780-Red, para. 30.

4. On 18 December 2020, the Ngaïssona Defence informed the Chamber that it ‘fully joins’ the Request and concurs with the arguments made therein.⁸
5. On 21 December 2020, the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of Victims of Other Crimes (jointly, the ‘CLRV’) informed the Chamber that they defer to the Chamber and do not intend to file a response.⁹
6. On 23 December 2020, the Prosecution responded to the Request.¹⁰ The Prosecution requests the Chamber to dismiss the Request on the basis that it is premature, as the proposed expert’s evidence has not yet been submitted,¹¹ and also fails on the merits. With regard to the merits, the Prosecution submits that (i) the proposed expert’s evidence concerning context and background information ‘*prima facie* satisfies the conditions for expert testimony under the Court’s well-established jurisprudence’;¹² (ii) the subject-matter is within a recognised field of expertise and falls within the expert’s field of expertise;¹³ and (iii) the prospective evidence is *prima facie* relevant to, and probative of, issues in this case.¹⁴ The Prosecution further submits that the Defence’s contentions are ‘misguided’, *inter alia*, as fact witnesses and expert witnesses are two classes of witnesses that serve distinct purposes.¹⁵
7. On 19 January 2021, the Prosecution requested to formally submit P-2926’s expert report, pursuant to Rule 68(3) of the Rules (the ‘Rule 68(3) Request’).¹⁶

⁸ Email from the Ngaïssona Defence, 18 December 2020, at 15:27.

⁹ Email from the CLRV, 21 December 2020, at 10:54.

¹⁰ Prosecution’s Response to the “Request of Mr. Yekatom to exclude the proposed Prosecution background expert P-2926 and his report” (ICC-01/14-01/18-780-Conf), 23 December 2020, ICC-01/14-01/18-797-Conf (confidential version notified on 24 December 2020, and public redacted version notified on 14 January 2021, ICC-01/14-01/18-797-Red) (the ‘Response’).

¹¹ Response, ICC-01/14-01/18-797-Red, paras 1, 3-4.

¹² Response, ICC-01/14-01/18-797-Red, paras 1, 6-8.

¹³ Response, ICC-01/14-01/18-797-Red, paras 9-13.

¹⁴ Response, ICC-01/14-01/18-797-Red, paras 14-16.

¹⁵ Response, ICC-01/14-01/18-797-Red, paras 20-24.

¹⁶ Prosecution’s Request for the Formal Submission of the Expert Reports and Associated Materials of P-0925, P-2193, P-2926, and P-2927 pursuant to rule 68(3) and article 69(4), ICC-01/14-01/18-834-Conf (with confidential annexes A and B) (public redacted version notified on 25 January 2021, ICC-01/14-01/18-834-Red).

II. Analysis

8. At the outset, the Chamber recalls that the submission approach was adopted in this case.¹⁷ Consequently, it will not rule on the admissibility of each item of evidence during the course of the proceedings. Rather, the Chamber will assess the standard evidentiary criteria (namely the relevance, probative value and potential prejudice) of each item as part of its holistic assessment when deliberating on the judgment pursuant to Article 74(2) of the Statute. Nonetheless, the Chamber clarified that it would retain its discretion to ‘rule on any other admissibility related issues upfront, when appropriate, particularly if so required in order to ensure the fairness and expeditiousness of the trial’.¹⁸ The Chamber considers it appropriate to exercise its discretion in this instance.
9. First, the Chamber recalls the jurisprudence of this Court in respect of expert witnesses called to testify on issues of background and context.¹⁹ In line with this jurisprudence, it is possible to call an expert on issues that do not go specifically to the facts *sub judice*, but to necessary contextual information. According to P-2926’s Curriculum Vitae,²⁰ the witness is an expert on conflict analysis, peacebuilding, post-conflict reconstruction and governance reforms. In this regard, the Chamber further notes that, at present, his expertise has not been challenged by the Defence.
10. Second, P-2926’s report and anticipated testimony concern the background of the conflict, including the causes and circumstances of the *coup d’état* on 24 March 2013, the resignation of Michel Djotodia and the political and security situation in the Central African Republic in the relevant time period.²¹ Therefore, the subject matter of P-2926’s anticipated testimony and the report seem to fall within

¹⁷ Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631 (the ‘Initial Directions’), paras 52-53.

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

¹⁹ See Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on the Prosecution Request to Exclude Defence Witness D22-0004, 24 February 2016, ICC-01/05-01/13-1653, para. 11, n. 21 referring to Trial Chamber V(a), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupéu, 7 August 2013, ICC-01/09-01/11-844; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Defence preliminary challenges to Prosecution’s expert witnesses, 9 February 2016, ICC-01/04-02/06-1159; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on “Prosecution’s Motion to Exclude Defence Political-Military Strategy Expert”, 21 August 2012, ICC-01/05-01/08-2273.

²⁰ See CAR-OTP-2127-4327.

²¹ P-2926’s report, CAR-OTP-2127-4289; Final Witness List, ICC-01/14-01/18-724-Conf-AnxA, p. 40.

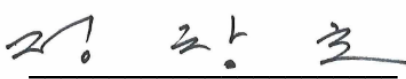
his expertise. Moreover, the Chamber considers that they do not take over the functions of the Chamber and may potentially assist the Chamber's assessment of the evidence presented.

11. For these reasons, the Chamber does not consider the expert's testimony and report to be so clearly irrelevant as to preclude the Prosecution from presenting this evidence and, accordingly, rejects the Request.
12. Finally, the Chamber recalls that the present decision is without prejudice to its evaluation of the probative value of each item of evidence as part of the Chamber's holistic assessment of evidence or its assessment of the Rule 68(3) Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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 11 February 2021

At The Hague, The Netherlands