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**No. ICC-01/14-01/18
Date: 26 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 Motion for Right of Audience

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(1)(b) and (e) of the Rome Statute (the ‘Statute’), Rule 22 of the Rules of Procedure and Evidence (the ‘Rules’), Regulations 67-68 of the Regulations of the Court (the ‘Regulations’), and Regulations 124-125 and 127 of the Regulations of the Registry, issues this ‘Decision on the Yekatom Defence Motion for Right of Audience’.

I. Procedural history

1. On 1 February 2021, the Yekatom Defence (the ‘Defence’) filed the ‘Motion Seeking Leave of Rights of Audience’ (the ‘Motion’).¹ The Defence requests the Chamber to authorise three categories of members of its team to conduct ‘examination and cross-examination of witnesses’,² namely its legal assistants,³ an electronic evidence specialist,⁴ and two legal consultants.⁵
2. On 8 February 2021, the Office of the Prosecutor (the ‘Prosecution’) responded to the Motion, deferring to the Chamber’s discretion, but raising concerns in respect of the potential impact on Mr Yekatom’s rights pursuant to Article 67(1) of the Statute (the ‘Response’).⁶
3. On 10 February 2021, the Ngaïssona Defence informed the Chamber that it supports the arguments and relief sought in the Motion.⁷

II. Analysis

4. At the outset, the Chamber recalls the legal framework defining the privileges and obligations of counsel, assistants to counsel and other defence team members, as set out in its decision on the scope of privileged communications between an

¹ Motion, ICC-01/14-01/18-867-Conf (public redacted version filed on 3 February 2021, ICC-01/14-01/18-867-Red). *See also* email from the Yekatom Defence, 26 January 2021, at 12:47. *See further* email from the Chamber, 27 January 2021, at 12:10; email from the Prosecution, 26 January 2021, at 14:49.

² Motion, ICC-01/14-01/18-867-Red, paras 1, 5, 25.

³ Motion, ICC-01/14-01/18-867-Red, paras 9-11.

⁴ Motion, ICC-01/14-01/18-867-Red, paras 12-14.

⁵ Motion, ICC-01/14-01/18-867-Red, paras 15-23.

⁶ Prosecution’s Response to the Yekatom Defence’s Motion Seeking Leave of Rights of Audience (ICC-01/14-01/18-867-Conf), ICC-01/14-01/18-876-Conf, paras 1, 3, 9.

⁷ Email from the Ngaïssona Defence, 10 February 2021, at 11:50.

accused and his defence team.⁸ Article 67(1)(b) of the Statute provides that the accused shall be entitled to counsel of his choosing. According to Rule 22(1) of the Rules, counsel may be assisted by other persons with relevant expertise. Regulation 68 of the Regulations clarifies that such persons ‘may include persons who can assist counsel in the presentation of the case before a Chamber’ and that ‘[t]he criteria to be met by these persons shall be determined in the Regulations of the Registry’.⁹ These criteria are set out in Regulation 124 of the Regulations of the Registry.¹⁰ These provisions permit counsel to be assisted by individuals who are on the list of assistants to counsel (the ‘List of Assistants’), created and maintained by the Registry.¹¹

5. Having regard to the above, the Chamber considers that assistants to counsel may also question witnesses as a matter of right following their inclusion on the List of Assistants.¹²
6. Consequently, the Chamber authorises those defence team members who fulfil the requirements of Regulation 124 of the Regulations of the Registry to question witnesses in court, regardless of their job title. Noting that the Defence’s electronic evidence specialist is included on the List of Assistants,¹³ the Chamber accordingly also grants this defence team member the right of audience.

⁸ Decision on the Ngaïssona Defence Request on the Scope of Privileged Communications, 4 November 2020, ICC-01/14-01/18-712-Conf (public redacted version notified on 16 February 2021, ICC-01/14-01/18-712-Red) (the ‘Decision on the Scope of Privileged Communications’), paras 12-15.

⁹ See also Decision on the Scope of Privileged Communications, ICC-01/14-01/18-712-Red, para. 13.

¹⁰ See also Decision on the Scope of Privileged Communications, ICC-01/14-01/18-712-Red, para. 14.

¹¹ See Decision on the Scope of Privileged Communications, ICC-01/14-01/18-712-Red, paras 13-14.

¹² This is consistent with the Court’s practice where assistants to counsel have questioned witnesses before other chambers of this Court. See for example Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, transcript of hearing, 29 September 2020, ICC-01/12-01/18-T-031-Red3-ENG, pp. 2, 27; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, transcript of hearing, 5 October 2017, ICC-02/04-01/15-T-119-Red2-ENG, pp. 2, 13; Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, transcript of hearing, 7 September 2017, ICC-02/11-01/15-T-188-Red2-ENG, p. 26; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, transcript of hearing, 15 September 2016, ICC-01/04-02/06-T-132-Red2-ENG, pp. 2, 6-7; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, transcript of hearing, 3 April 2014, ICC-01/09-01/11-T-106-Red-ENG, p. 2; transcript of hearing, 4 April 2014, ICC-01/09-01/11-T-107-Red-ENG, p. 58.

¹³ Motion, ICC-01/14-01/18-867-Red, para. 12. See also List of Assistants, <https://www.icc-cpi.int/about/registry/pages/list-of-assistants.aspx> (last accessed on 26 February 2021).

7. Further, the Chamber notes that the legal consultants mentioned in the Motion are not included in the List of Assistants,¹⁴ and therefore do not have an automatic right to question witnesses. Nonetheless, the Chamber retains the right to permit other individuals to examine witnesses in special circumstances on a case-by-case basis.
8. The Chamber considers examination of witnesses to be an important task in the representation of an accused, which should be performed solely by those equipped with the required experience. Therefore, familiarity with the witnesses' evidence, as argued by the Defence in this instance,¹⁵ is insufficient, in itself, for authorising persons not on the List of Assistants to question witnesses. Accordingly, the Chamber rejects the present request concerning the Defence's legal consultants.

¹⁴ See List of Assistants, <https://www.icc-cpi.int/about/registry/pages/list-of-assistants.aspx> (last accessed on 26 February 2021).

¹⁵ Motion, ICC-01/14-01/18-867-Red, paras 16-17, 19-20.

FOR THESE REASONS, THE CHAMBER HEREBY

AUTHORISES assistants to counsel to question witnesses in court as long as they fulfil the requirements of Regulation 124 of the Regulations of the Registry;

REJECTS the remainder of the Motion; and

ORDERS the Prosecution to file a public redacted version of the Response or request its reclassification within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 26 February 2021

At The Hague, The Netherlands