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**Cour
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**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18

Date: 28 November 2023

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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Confidential

**Prosecution Response to the Yekatom Defence 'First defence request for leave to
add an item to its List of Evidence' (ICC-01/14-01/18-2220-Conf)**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamai
Ms Marie-Hélène Proulx
Ms Despoina Eleftheriou

Legal Representatives of Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massida

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Prosecution defers to Trial Chamber V's ("Chamber") discretion in the disposition of the Yekatom Defence's 22 November 2023 'First defence request for leave to add an item to its List of Evidence'¹ ("Request"), noting the proposed item's limited prospective significance to the case.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this document is filed as "Confidential" because it responds to a filing of the same classification. It may be reclassified as the Chamber deems appropriate.

III. SUBMISSIONS

3. The document sought to be added to the Yekatom Defence's List of Evidence – a TikTok trending video – constitutes extrinsic evidence of a collateral matter, namely the witness's purported health condition prior to his testimony.² The video appears to be proffered for the sole purpose of attempting to impugn the reasons why the Victims and Witnesses Unit ("VWU") permitted P-2475 to remain in his hotel room, wherein the Defence asserts that he "was reading and rereading" *his own* witness statement prior to his testimony.³ As the Defence observes, the video shows P-2475 "lip-syncing to music"⁴ – *not* reading his statement.

4. Given that the video goes to proof of a collateral matter, it is inherently of limited significance.⁵ Even then, it is unclear that the date that the video was taken

¹ ICC-01/14-01/18-2220-Conf.

² ICC-01/14-01/18-2220-Conf, para. 14.

³ ICC-01/14-01/18-2220-Conf, para. 14.

⁴ ICC-01/14-01/18-2220-Conf, para. 14.

⁵ See e.g., ICC-01/09-01/11-1776-Red, para. 18 (noting "the collateral evidence rule general[ly] requires that 'the answers given by a witness to questions put to him [or her] in cross-examination concerning collateral facts must be treated as final. They may or may not be accepted by the [trier of fact], but the cross-examiner must take them for better or worse, and cannot contradict them by other evidence. 5 The rule has been described as 'a sound general rule, based on the desirability of avoiding a multiplicity of issues.' The Chamber is certainly not bound to

corresponds to the date of its posting, or otherwise bears on the witness's health condition *at the time* the request to remain in his hotel room would have been approved by VWU. Its probative value, if any, is at best marginal.

5. Notably, in a 27 September 2023 request — *i.e.*, long after the deadline was set to file its List of Evidence⁶ — the Defence cited the March 2023 filing in which the video was referenced.⁷ Nevertheless, the Prosecution defers to the Chamber, as the Request is limited, and it appears that the Defence's failure to timely include the video in its List of Evidence was the result of an oversight.

IV. CONCLUSION

6. For the foregoing reasons, the Prosecution defers to the Chamber's discretion in the determination of the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 28th day of November 2023

At The Hague, The Netherlands

follow this rule, especially as it is applied in national jurisdictions. But, its good sense (as indicated by its purpose of avoidance of multiplicity of issues and bringing an end to litigation) recommends a place for it in the practice and procedures of this Court") (citations omitted).

⁶ ICC-01/14-01/18-1892, para. 21 (issued on 29 May 2023).

⁷ See ICC-01/14-01/18-2111-Conf, para. 9; see ICC-01/14-01/18-2220-Conf, paras. 13, fn. 8, *citing* ICC-01/14-01/18-1790-Conf-AnXI-Red.