

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **26 March 2024**

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***

Public

Public redacted version of “Prosecution’s Response to YEKATOM Defence’s second request for leave to amend its List of Evidence (ICC-01/14-01/18-2402-Conf)”, ICC-01/14-01/18-2414-Conf , 19 March 2024

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

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I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the Yekatom Defence’s request to add 13 new items¹ of evidence related to witness D29-P-4011 to its Final List of Evidence (“Request”).² The Request fails to demonstrate due diligence, and the significance or probative value of the Items has not been shown.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential”, as it responds to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

3. The Chamber should reject the Request as the Defence has (i) failed to act with due diligence in this matter and (ii) failed to demonstrate the significance or probative value of the items.

The Defence did not act with due diligence

4. This Request comes almost four months after the 17 November deadline set by the Chamber for the Defence to file its LoE.³ D29-P-4011 was originally slated to testify

¹ Hereinafter, “Item.”

² [REDACTED].

³ ICC-01/14-01/18-1892, para. 21 (i).

on 15 December 2023. It was only on account of [REDACTED] and the first postponement of her testimony until March 2024, and now again until April 2024, that the Defence prepared the Items.

5. The Defence asserts that it is only during a meeting on [REDACTED] that it “first became apparent” that the witness had “[REDACTED].⁴ This is not plausible and it is unavailing. *First*, despite the importance of this assessment, it strains credulity that the Defence took no steps prior to 15 December 2023 to ascertain whether her condition might affect her anticipated testimony. Given that D-29-P-4011 purports to have [REDACTED],⁵ it would seem that any matter bearing on her [REDACTED] would be critical to her testimony. *Second*, it would have been plainly evident that a map or other visual aid might be needed during her testimony at that time. It is all the more surprising that the condition [REDACTED] was not broached prior to the [REDACTED] meeting with the Defence – which no doubt was not their first.

The significance or probative value of the items is not made out

6. The significance or probative value of the Items is also unclear, and in any event insufficient. The Defence’s claim that the [REDACTED] will help “facilitate” the

⁴ [REDACTED].

⁵ [REDACTED].

understanding of D29-P-4011's evidence regarding the [REDACTED]⁶ is unconvincing. Moreover, it does not meet the threshold for their addition to the LoE.

7. The Defence's argument seems to be predicated on the suggestion that D29-P-4011 was [REDACTED]⁷ [REDACTED] at the relevant time in December 2013 and, as such, would have had the opportunity to [REDACTED].⁸ However, it remains unclear exactly where in [REDACTED] D29-P-4011 resided *at the time of the events*, which necessarily affects the probative value and significance of the Items.

8. More particularly, D29-P-4011's summary of expected testimony indicates that she has been [REDACTED] and [REDACTED]⁹ But, there is no mention that D29-P-4011's current residence/home is the same one in which she resided in the relevant time period in December 2013 or prior thereto.

9. Contrary to the Request,¹⁰ the [REDACTED]¹¹ does [REDACTED]¹² [REDACTED]¹³ [REDACTED] ¹⁴ Clearly, if the witness did not reside at the particularised location at the time of the events, the significance of the Items is

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

seriously diminished. And, absent any such substantiation the Items obviously lack significance.

10. Further, the [REDACTED]¹⁵ among the Items are testimonial, and may not be formally submitted outside of the remit of Rule 68. Moreover, to the extent that she may (or may not) be able to comment on the subject matter of their content, adds nothing to the Items themselves, much less establishes the “prospective significance to the proceedings” required for their addition to the LoE.¹⁶

11. Apart, the witness’s prospective commentary regarding the [REDACTED].¹⁷ Nor, would the witness be able to meaningfully comment on a [REDACTED]¹⁸ that was obviously not prepared by her.

¹⁵ [REDACTED].

¹⁶ ICC-01/14-01/18-1301, para. 18; *see* ICC-01/14-01/18-989, para. 5 (noting among the factors to determine the propriety of adding material to the list of witnesses, “its prospective significance in light of the charges brought against the accused and the rest of the available evidence”).

¹⁷ [REDACTED].

¹⁸ [REDACTED].

IV CONCLUSION

12. For the foregoing reasons, the Chamber should deny the Defence's Request.

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

Karim A. A. Khan KC, Prosecutor

Dated this 26th day of March 2024

At The Hague, The Netherlands