

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **27 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 the Yekatom Defence's "Request for an extension of time for the formal submission of the prior recorded testimony of P-6018 pursuant to Rule 68(2)(b) and Second Defence Request for Leave to add items to its List of Evidence" (ICC-01/14-01/18-2228-Conf)" (ICC-01/14-01/18-2262-Conf), 14 December 2023

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Prosecution defers to the discretion of Trial Chamber V's ("Chamber"), subject to the observations below, regarding the YEKATOM Defence's request for an extension of the time limits: (a) to add a third prior statement of P-6018, together with five associated documents (together, "Third Prior Statement"¹) to its Final List of Evidence, and (b) to request the submission of the Third Prior Statement pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules").

2. As regards the YEKATOM Defence's submission of the Third Prior Statement pursuant to rule 68(2)(b) of the Rules, the Prosecution opposes the request on its merits. The Third Prior Statement is a follow-up to the witness's previous two statements² ("First and Second Statement") which the Prosecution already opposed.³ The information this witness provides pertains to issues that are materially in dispute and of significance for the Chamber's eventual determination of the charges. P-6018 should testify entirely *viva voce* or, at a minimum under rule 68(3) of the Rules so that the Prosecution can examine him under oath on relevant issues.

II. CONFIDENTIALITY

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

¹ CAR-D29-0009-0562-R01, CAR-D29-0009-0568, CAR-D29-0009-0570, CAR-D29-0009-0572, CAR-D29-0009-0574, CAR-D29-0009-0575.

² CAR-D29-0009-0396, CAR-D29-0009-0557.

³ ICC-01/14-01/18-2249-Conf, paras. 3, 6-14.

III. SUBMISSIONS

A. Inability to file the request of time extension within the time limit

4. The Prosecution defers to the Chamber's discretion regarding the Defence request to extend the time limit to add the Third Prior Statement to its Final List of Evidence, and to file a request to submit it pursuant to rule 68(2)(b) of the Rules. However, it makes the following observations:

5. *First*, the Prosecution notes that the YEKATOM Defence had scheduled to meet P-6018 on 17 November 2023, the day of the disclosure deadline. Given the realities of the field, including the plurality of factors that can lead to delays of such meetings, the time needed for a read-back, for the transmission of the statement from the field to headquarters, and the registration of evidence for a disclosure the same day, it would have been prudent to have asked for an extension at this time.

6. *Second*, the Prosecution notes that, by the afternoon, the YEKATOM Defence was aware of the witness's failure to meet them at the scheduled time and was thus impeded from completing the Third Prior Statement. As P-6018's Second Statement - taken that very morning - was included in their application and the YEKATOM Defence knew that this witness was still to provide additional evidence, the necessity for an extension to add such material to the Final List of Evidence and to file a corresponding rule 68(2)(b) application was obvious.

B. Rule 68(2)(b) application for P-6018

7. As noted, the Prosecution opposes the request to submit the Third Prior Statement under rule 68(2)(b) on its merits. P-6018 should be called to testify entirely *viva voce* or, at a minimum, pursuant to rule 68(3) of the Rules so that the veracity and reliability of his claims can be tested through cross-examination under oath before the Chamber.

8. The Prosecution refers to the applicable law on the introduction of prior recorded testimonies pursuant to rule 68(2)(b) of the Rules, as previously set out by the Chamber.⁴ In particular, it recalls the Chamber's finding that "*this sub-rule should [...] be used to streamline the proceedings where it can avoid the calling of witnesses whose evidence, in light of its content and significance to the case, does not need to be 'tested' through an oral examination of the witness at trial.*"⁵

9. The Third Prior Statement seeks to supplement P-6018's First and Second Statements with respect to P-2475's conduct in the Relevant Period.⁶

10. *First*, given that it is an extension of the First and Second Statements, the Prosecution hereby incorporates the arguments of its previous response, opposing their introduction through rule 68(2)(b) of the Rules.⁷

11. *Second*, the Third Prior Statement similarly challenges the credibility of P-2475's testimony [REDACTED]. This is based on the information that P-6018 [REDACTED] (CAR-OTP-2095-5254). Given that P-2475's testimony bears on issues that are materially in dispute, [REDACTED], the issues addressed in the Third Prior Statement are materially in dispute and of clear significance in the case.

⁴ ICC-01/14-01/18-1833-Conf-Corr, ICC-01/14-01/18-1907-Conf.

⁵ ICC-01/14-01/18-1833-Conf-Cor, para. 37.

⁶ From September 2013 through December 2014 ("Relevant Period").

⁷ ICC-01/14-01/18-2249-Conf, paras. 3, 6-14.

IV. CONCLUSION

12. For the foregoing reasons, the Prosecution defers to the Chamber's determination of the YEKATOM Defence's request for an extension of the time limits: (a) to add the Third Prior Statement to its Final List of Evidence and (b) to request its submission pursuant to rule 68(2)(b) of the Rules; and (ii) opposes the request to introduce the Third Prior Statement pursuant to rule 68(2)(b) of the Rules.

A handwritten signature in blue ink, appearing to be 'K.A.K.', with a horizontal line underneath it. The signature is centered on the page.

Karim A. A. Khan KC, Prosecutor

Dated this 27th day of March 2024
At The Hague, The Netherlands