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**No. ICC-01/14-01/18
Date: 5 December 2023**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

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 First Request for Leave to Add an Item to its
List of Evidence**

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of 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) and 67 of the Rome Statute, issues this ‘Decision on the Yekatom Defence First Request for Leave to Add an Item to its List of Evidence’.

1. On 17 November 2023, the Yekatom Defence, in accordance with the time limit set by the Chamber,¹ filed its List of Evidence.²
2. On 22 November 2023, the Yekatom Defence requested the Chamber’s leave to add one item³ (the ‘Item’) to its List of Evidence (the ‘Request’).⁴ The Item consists of a 14-seconds TikTok video of Prosecution witness P-2475, who testified before the Chamber from 24 May to 2 June 2022.⁵
3. On 28 November 2023, the Office of the Prosecutor (the ‘Prosecution’) deferred to the Chamber’s discretion (the ‘Response’).⁶
4. The Single Judge recalls the applicable law for requests to add items to the list of evidence, as set out in his previous decision.⁷
5. The Single Judge observes that, due to an oversight,⁸ the Yekatom Defence filed the Request just a few days after the deadline for the filing of its List of Evidence and, in any event, weeks in advance of the start of the presentation of evidence

¹ Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), 29 May 2023, ICC-01/14-01/18-1892 (the ‘Further Directions’), para. 21(i).

² Yekatom Defence’s List of Witnesses and Evidence, ICC-01/14-01/18-2212-Conf (with confidential Annexes A, B, C and D). *See, in particular*, Annex D, ICC-01/14-01/18-2212-Conf-AnxD.

³ CAR-D29-0008-0019. The Item was disclosed on the same day. *See* Yekatom Defence Communication of the Disclosure of Evidence between 17 November 2023 and 1 December 2023, 4 December 2023, ICC-01/14-01/18-2237 (with confidential Annex A). *See, in particular*, Annex A, ICC-01/14-01/18-2237-Conf-AnxA, p. 34.

⁴ First defence request for leave to add an item to its List of Evidence, ICC-01/14-01/18-2220-Conf.

⁵ *See* Transcripts of hearings, ICC-01/14-01/18-T-130-CONF-ENG *et seq.*

⁶ 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), ICC-01/14-01/18-2227-Conf, paras 1, 6.

⁷ *See* Decision on the Prosecution Request to Add Six Email Threads to its List of Evidence, 6 May 2021, ICC-01/14-01/18-989-Conf, paras 5-6. *See also* the jurisprudence referenced therein, nn. 15-20. *See also* Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request to Add 14 Items to its List of Evidence, 24 July 2018, ICC-02/04-01/15-1314, para. 7.

⁸ *See* Request, ICC-01/14-01/18-2220-Conf, paras 7-8; Response, ICC-01/14-01/18-2227-Conf, para. 5.

by the defence teams.⁹ Furthermore, having regard to the limited nature of the Item and its intended use by the Yekatom Defence,¹⁰ as well as the lack of opposition by the Prosecution, the Single Judge sees no impediment to adding the Item to the Yekatom Defence's List of Evidence. He therefore grants the Request.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request; and

ORDERS the Yekatom Defence and the Prosecution to file a public redacted version of the Request, ICC-01/14-01/18-2220-Conf, and the Response, ICC-01/14-01/18-2227-Conf, respectively, within one week of notification of the present decision.

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



Judge Bertram Schmitt

Single Judge

Dated 5 December 2023

At The Hague, The Netherlands

⁹ See Further Directions, ICC-01/14-01/18-1892, para. 23.

¹⁰ See Request, ICC-01/14-01/18-2220-Conf, para. 14. See also Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29, 4 April 2022, ICC-01/14-01/18-1828-Conf.