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

Date: **18 April 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 "Third Ngaissona Defence Request for Leave to add items to its List of Evidence" (ICC-01/14-01/18-2439)""', ICC-01/14-01/18-2446-Conf, 12 April 2024

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

3. The Office of the Prosecutor (“Prosecution”) opposes, in part, the NGAISSONA Defence’s request to add eight items to its Final List of Evidence (“Request”).¹ Trial Chamber V (“Chamber”) should reject the addition of six proposed items, namely (a) three “D30-4756 documents,” CAR-D30-0028-001-R01, CAR-D30-0028-003-R01, and CAR-D30-0028-005-R01); (b) two “Cameroon documents,” CAR-D30-0003-0211 and CAR-D30-0003-0212; and (c) CAR-D30-0003-0213. The Request fails to show due diligence and to demonstrate their significance or probative value.

4. The Prosecution defers to Chamber’s discretion regarding the remaining two proposed items, subject to the observation below.

II. CONFIDENTIALITY

5. 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 classification. A public redacted version will be submitted as soon as practicable.

III. SUBMISSIONS

a) D30-P-4756’s documents

6. *First*, the request to add D30-P-4756’s documents² comes almost five months after the 17 November 2023 deadline set by the Chamber for the Defence to file its List of Evidence (“LoE”).³ That deadline moreover followed the Chamber’s May 2023 express direction to the Defence to :

¹ ICC-01/14-01/18-2439-Conf.

² CAR-D30-0028-0001-R01, CAR-D30-0028-0003-R01, and CAR-D30-0028-0005-R01.

³ ICC-01/14-01-18-1892, para. 21 (i).

“ to organise their presentation of evidence in the following thematic order, to the extent possible: contextual/background evidence, individual criminal responsibility, Attack in Bangui on 5 December 2013 and events thereafter...”⁴

7. Nearly a year later, the Defence proposes to add D30-P-4756’s documents without a reasonable justification for its delayed action. On its face, the Chamber should reject the Request as it fails to establish that the Defence acted with reasonable diligence.

8. Clearly, it cannot be a surprise to the Defence that witnesses may have in their possession additional relevant material or information at their disposal, especially documents. The Defence has also had ample opportunity to conduct any witness interviews or follow-up that it deemed necessary in preparing its case. There is little question that this matter could have (and should have) been dealt with properly and in a timely manner by the Defence in organising the presentation of its case in chief.

9. *Second*, the significance or probative value of D30-P-4756’s documents is unclear, and in any event insufficient. The proposed documents have no *prima facie* significance to the Chamber’s disposition of contested issues in this case, nor does the information they provide have a significant impact on any material issue.

b) Cameroon documents

10. The Defence argues that an “*Attestation de Carence*” obtained from the *Hôtel des Députés* in YAOUNDÉ providing that P-2625 did not stay at the hotel between March and August 2013, casts doubt on the witness’s credibility.

11. *First*, the Defence was aware of the gravamen of P-2625’s evidence since the disclosure of his Witness Statement in 2019. Moreover, the Defence was aware and would have prepared for his testimony during the pendency of the Summons issued

⁴ ICC-01/14-01/18-1892, para. 25.

for his appearance in January 2021. The Request is not clear as to why the document was obtained late. But, in any event, it is clear that the Defence in the diligent preparation of its case in chief could have obtained the relevant information in a timely manner. However, It failed to do so without justification.

12. *Second*, the attestation does not rule out that P-2625 in fact stayed at the hotel during the relevant period. The basis of the relevance put forth by the Defence hinges entirely on the accuracy of the hotel's records, and beyond that, the status of the witness whether as a registered guest or an invitee of a registered guest. Moreover the use of the document to impeach the witness's evidence after he has testified and without having put the issue directly to the witness is at least arguably unfair in respect of the evaluation of his evidence.⁵

13. *Third*, the significance of the document presumes its admissibility. Given its obvious testimonial nature, the '*attestation*' is only admissible under Rule 68. The Request advances no means through which the document could be introduced in the record, nor is any such prospect otherwise apparent. As such, the Defence fails to establish that the document's addition to the LoE would have any import in the case.

*c) D30-P-4197 documents*⁶

14. Even if Defence's use of the documents with D30-4197 is intended to expedite the proceedings, the Request fails to demonstrate that the Defence were diligent in the first instance, especially regarding the handling of document CAR-D30-0007-0822.

⁵ See e.g., ICTY Rule 90(H)(ii) (providing that "[i]n the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness"); See also *Browne v. Dunn* (1894) 6, R 67 [H L.]. (Available at <http://www.brownevduinn.com/read-the-decision/?csspreview=true>), at p. 70 per Lord Herschell, L.C. "[...] it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination [...] if you intend to impeach a witness you are bound, whilst he is still in the box, to give him an opportunity of making any explanation which is open to him."

⁶ CAR-D30-0001-0101, and CAR-D30-0007-0822.

15. In any event, the Request does not clarify the concrete evidential value of either document, and thus fails to meet the requirement of demonstrating that they are sufficiently significant to or probative of material issues in the proceedings.

d) Document CAR-D30-0003-0213

16. The Defence argues that document CAR-D30-0003-0213 contradicts P-0306's testimony denying being detained at the same prison with [REDACTED] during the course of his appearance before the Court. This owes to a misapprehension of P-0306's testimony. Notably, the English version of the transcript states:

"Mr MR KNOOPS: [16:04:41] Yes, is the Court, perhaps, inclined to ask the witness whether he's currently in prison with [REDACTED]? That might have a value for the appreciation.

PRESIDING JUDGE SCHMITT: [16:04:55] You may -- you may ask him, I think. Mr -- or, why not, I can take it away. It has turned out that it's easier when I put the question. Mr Witness, do you know if -- or is [REDACTED] currently in prison with you?

THE WITNESS: [16:05:25](Interpretation) Mr President, no, we are not together. I cannot lie to you. I'm another location of the detention centre. But it's a person with whom I worked, the person on the photo number 2 with his beard and his hat. I know him well. Photo number 2. Thank you, Mr President."⁷

17. P-0306 merely stated that he and [REDACTED] were not in the same location of the detention centre/prison — simply, that they were not together. Even assuming that P-0306's testimony was inaccurate, the significance of the document only has any bearing if the evidence demonstrates that the information as to the circumstances of

⁷ ICC-01/14-01/18-T-068-CONF-ENG CT, p. 77, l. 20-p. 78, l. 5.

[REDACTED] imprisonment were known to P-0306. There is nothing in the Request or the evidence that establishes this – whether directly or inferentially. Moreover, it is common knowledge that individuals in prison or in detention centres may be segregated – a practice not unknown even at the ICC Detention Centre. Thus, the document does nothing to dispose of this issue one way or another and lacks significance. Apart from this, the location of [REDACTED] detention is a manifestly collateral matter. Where [REDACTED] was detained is a separate issue than the witness's capacity to identify him reliably in Court. Thus, the request to add this item to the LoE similarly fails.

IV. CONCLUSION

18. For the above reasons, the Chamber should reject the Request in respect of the six proposed items described. The Prosecution otherwise defers to the Chamber's discretion regarding the disposition of the remaining two proposed items, subject to the observations noted.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 18th day of April 2024
At The Hague, The Netherlands