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

Date: 28 May 2022

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 “Urgent Yekatom Defence Request for partial reconsideration of ‘Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU’”, ICC-01/14-01/18-2500-Conf”, ICC-01/14-01/18-2505-Conf, 22 May 2024

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

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I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the Yekatom Defence’s “Request for partial reconsideration of the ‘Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU’ (“Inspection Decision”).¹ *First*, the Request fails to meet the threshold requirement for the Chamber’s reconsideration of the Inspection Decision. *Second*, the Defence fails to establish standing in respect to the ultimate relief sought through the proposed reconsideration. Thus, no prejudice arises in respect of the implementation of the Inspection Decision as such.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(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

A. Reconsideration is not justified

3. The Request fails to satisfy the threshold conditions for reconsideration. Not only does it fail to show “a clear error of reasoning”, the Defence also fails to substantiate that in the absence of reconsideration the implementation of the Inspection Decision would result in an injustice.² Moreover, the Request does not assert any new or previously unavailable facts or circumstances which were either unknown or not considered by the Chamber when issuing the Inspection Decision³ — to the contrary.⁴ Further, the Request identifies nothing in the Inspection Decision that

¹ ICC-01/14-01/18-2500-Conf (“Request”).

² ICC-01/14-01/18-2182, para. 8.

³ See e.g. ICC-01/05-01/08-1691-Red, para. 17; see also ICC-01/12-01/18-734, para. 11 (noting that “[n]ew facts and arguments arising since the decision was rendered may be relevant to [assess whether reconsideration is necessary to prevent an injustice]”).

⁴ See e.g. ICC-01/14-01/18-2500-Conf, para. 3-5 (referring to specific events); see also, paras. 6-7 (referencing generalised risks regarding the preservation of evidence).

was beyond the Chamber's contemplation in determining the disposition of P-2580's and P-2638's [REDACTED].

4. Aside from the speculative contention that [REDACTED],⁵ the Request offers no factual substantiation.

5. Indeed, rather than proffering grounds to establish *legal grounds* for its specific request, the Defence has instead once again sought another vehicle to promote its contentions concerning alleged witness interference – all the while attempting to obfuscate the fact that its claims have been appropriately and timely addressed by the Court and by the Prosecution. This includes their proper [REDACTED] further investigation [REDACTED], consistent with the Statute⁶ and the Court's regulatory framework.

B. The Request fails to establish standing or any prejudice

6. The Defence lacks standing with respect to the disposition of P-2580's and P-2638's [REDACTED]. Clearly, the Defence is not a Party or Participant in respect of any prospective article 70 proceeding, whether under the auspices of the Court or the equivalent [REDACTED]. Absent standing, the Defence cannot demonstrate prejudice in respect of *this case* as a result of the implementation of the Inspection Decision. It has no express or implied right to request that the Chamber order "[REDACTED]."⁷

7. The potential absence of evidence of *unknown* content is not *per se* prejudicial. The Defence itself declined to provide information [REDACTED],⁸ without any such effect. It thus belies the representation that prejudice is caused because of [REDACTED].⁹

⁵ ICC-01/14-01/18-2500-Conf, para. 9.

⁶ See *e.g.* Article 70(4).

⁷ ICC-01/14-01/18-2500-Conf, para. 10.

⁸ [REDACTED].

⁹ ICC-01/14-01/18-2500-Conf, para. 12.

8. In any case, the contention relies on pure speculation about what might happen in alleging that “[REDACTED].”¹⁰ This patently fails to substantiate any actual and present risk of prejudice. It is unavailing, and cannot discharge the Defence’s well-established burden to satisfy the threshold conditions for reconsideration.

IV. RELIEF SOUGHT

9. For the above reasons, the Request should be rejected in all respects.



Karim A. A. Khan KC, Prosecutor

Dated this 28th of May 2024
At The Hague, The Netherlands

¹⁰ ICC-01/14-01/18-2500-Conf, para. 5.