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

Date: 23 August 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**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 “Fourth Defence Consolidated Request for Leave to add items to its List of Evidence, P-6040, P-6045 & P-6047 to its List of Witnesses and submit their prior recorded testimony pursuant to Rule 68(2)(b)” (ICC-01/14-01/18-2593-Conf)”, ICC-01/14-01/18-2601-Conf, 19 July 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

1. The Office of the Prosecutor (“Prosecution”) defers to Trial Chamber V (“Chamber”) in the disposition of the Yekatom Defence’s Request to add two decrees regarding [REDACTED] to its List of Evidence (“LoE”).¹ However, it objects to (i) the addition of witnesses D29-P-6040, D29-P-6045, and D29-P-6047 (“Three Witnesses”) to the Defence’s List of Witnesses (“LoW”); (ii) the addition of their respective prior recorded testimonies to the Defence’s List of Evidence (“LoE”) and (iii) the introduction of their respective prior recorded testimonies² pursuant to Rule 68 (2) (b).

2. Contrary to the Request, the proffered evidence of the Three Witnesses is not material to the case. At best it is tangential. The relevance of their evidence relates to the authenticity and reliability of two items³ disclosed by the Common Legal Representative for Victims - Former Child Soldiers (“CLRV1”) - which are *not* part of the Case record.⁴ Further, the Defence’s sweeping claim that their proposed evidence will aid the Chamber in its determination of the truth⁵ is unsubstantiated and speculative.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the RoC, this submission 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.

¹ ICC-01/14-01/18-2593-Conf, para. 17. CAR-D29-0001-0648 and CAR-D29-0001-0650.

² P-6040: CAR-D29-0009-0782, CAR-D29-0009-0788, CAR-D29-0009-0794, CAR-D29-0009-0795, CAR-D29-0009-0796, CAR-V45-00000020, CAR-V45-00000021 ; P-6045 : CAR-D29-0009-0708, CAR-V45-00000020, CAR-V45-00000021 ; P-6047 : CAR-D29-0009-0729, CAR-V45-00000020, CAR-V45-00000021.

³ ICC-01/14-01/18-2593-Conf, para. 32. CAR-V45-00000020 and CAR-V45-00000021.

⁴ ICC-01/14-01/18-2593-Conf, para. 36.

⁵ ICC-01/14-01/18-2593-Conf, para. 36.

III. SUBMISSIONS

A. The two decrees regarding [REDACTED]

4. The Prosecution defers to the Chamber's assessment of the two decrees submitted regarding [REDACTED].⁶

B. The Three Witnesses and their related Prior recorded testimonies

5. The Prosecution objects to the addition of the Three Witnesses to the Defence's LoW and the introduction of their respective prior recorded testimonies pursuant to Rule 68 (2) (b).⁷ *First*, the relevance of the proffered evidence concerns the reliability and authenticity of two CLRV1 items⁸ - CAR-V45-00000020 and CAR-V45-00000021 – which, although disclosed are critically *not* part of the Court record.⁹ As such, the Three Witnesses' evidence regarding these items is immaterial on its face, and amounts to a distraction from the core issues before the Chamber.

6. *Second*, the Defence's request for leave to submit the said CLRV1 items along with the prior recorded testimonies of the Three Witnesses,¹⁰ only serves to highlight that the relevance of the latter hinges on the former already being in the Court record. Which is not the case. The Defence's strategy to basically introduce the CLRV1 items into evidence¹¹ so that it can argue that the Three Witnesses' evidence impugns their authenticity and reliability such that the Chamber should not rely on them, is circular. Clearly, neither is necessary where the CLRV1 items are not submitted in the first place — which they have not been. Again, the Defence's attempt to set up a 'straw

⁶ CAR-D29-0001-0648 and CAR-D29-0001-0650.

⁷ ICC-01/14-01/18-2593-Conf, para. 61. P-6040: CAR-D29-0009-0782, CAR-D29-0009-0788, CAR-D29-0009-0794, CAR-D29-0009-0795, CAR-D29- 0009-0796, CAR-V45-00000020, CAR-V45-00000021; P-6045 : CAR-D29-0009-0708, CAR-V45-00000020, CAR-V45-00000021; P-6047 : CAR-D29-0009-0729, CAR-V45-00000020, CAR-V45-00000021.

⁸ ICC-01/14-01/18-2593-Conf, para. 32.

⁹ ICC-01/14-01/18-2593-Conf, para. 36.

¹⁰ ICC-01/14-01/18-2593-Conf, para. 47 and 61.

¹¹ ICC_01/14-01/18-2593-Conf, para. 47.

man' argument to contradict a tangential issue with marginal evidence does not justify the introduction of the Three Witnesses' statements.

7. Last, the Defence's sweeping claim that the Three Witnesses "bear relevance in assisting the Chamber in its holistic assessment" of the trial evidence¹² is unsubstantiated, and seems to be predicated on nothing more than speculation. In the same vein, the Defence also fails to substantiate how the proffered statements support its allegations concerning the fabrication of evidence in relation to Count 29.¹³

IV. CONCLUSION

8. For the reasons above, the Prosecution respectfully defers to the Chamber in respect of the two decrees regarding [REDACTED], but objects to (i) the addition of witnesses D29-P-6040, D29-P-6045, and D29-P-6047 to the Defence's LoW; (ii) the addition of their respective prior recorded testimonies to the Defence's LoE; and (iii) the introduction of their respective prior recorded testimonies¹⁴ pursuant to Rule 68 (2) (b).¹⁵



Karim A. A. Khan KC, Prosecutor

Dated this 23th of August 2024
At The Hague, The Netherlands

¹² ICC-01/14-01/18-2593-Conf, para. 36.

¹³ ICC-01/14-01/18-2593-Conf, para. 2.

¹⁴ P-6040: CAR-D29-0009-0782, CAR-D29-0009-0788, CAR-D29-0009-0794, CAR-D29-0009-0795, CAR-D29-0009-0796, CAR-V45-00000020, CAR-V45-00000021 ; P-6045 : CAR-D29-0009-0708, CAR-V45-00000020, CAR-V45-00000021 ; P-6047 : CAR-D29-0009-0729, CAR-V45-00000020, CAR-V45-00000021.

¹⁵ ICC-01/14-01/18-2593-Conf, para. 61. P-6040: CAR-D29-0009-0782, CAR-D29-0009-0788, CAR-D29-0009-0794, CAR-D29-0009-0795, CAR-D29-0009-0796, CAR-V45-00000020, CAR-V45-00000021 ; P-6045 : CAR-D29-0009-0708, CAR-V45-00000020, CAR-V45-00000021 ; P-6047 : CAR-D29-0009-0729, CAR-V45-00000020, CAR-V45-00000021.