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

Date: **03 August 2021**

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 Notice of withdrawal of submission ICC-01/14-01/18-1003-Conf and Request for leave to add two documents to the List of Evidence”, ICC-01/14-01/18-1042-Conf, 29 June 2021

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”) notifies Trial Chamber V (“Chamber”) of the withdrawal of its 21 May 2021 “Request for the Formal Submission of the Prior Recorded Testimony of P-2462 pursuant to Rule 68(2)(c)”.¹ On 13 June 2021, the Prosecution succeeded in re-establishing contact with P-2462, who confirmed her willingness to testify.

2. The Prosecution further requests leave from the Chamber to add two medical records received from P-2462² (“medical records”) to its List of Evidence (“LoE”)³ in accordance with its decision fixing the time limit for filing the initial list of evidence⁴ (“Request”). The addition of these two documents is warranted and appropriate in the circumstances. *First*, despite earlier attempts, the Prosecution obtained P-2462’s medical records only on 15 June 2021, after the 9 November 2020 deadline to file its LoE.⁵ *Second*, the reliance by the Prosecution on these two additional items does not cause any undue prejudice to either Accused. The medical records are of significant probative value and their addition to the LoE is in the interests of justice and the Chamber’s determination of the truth.

II. CONFIDENTIALITY

3. The Request is filed as ‘*Confidential*’ pursuant to regulation 23bis(1) of the Regulations of the Court (“RoC”), because it contains confidential information regarding a Prosecution witness. A public redacted version will be filed as soon as practicable.

¹ ICC-01/14-01/18-1003.

² CAR-OTP-2127-9467 and CAR-OTP-2127-9468.

³ ICC-01/14-01/18-724-Conf-AnxC-Corr.

⁴ ICC-01/14-01/18-589, paras. 10, 14 and 16.

⁵ ICC-01/14-01/18-589, para. 14.

III. SUBMISSIONS

4. In determining whether to grant leave in respect of adding an item of evidence to a Party's LoE, the Single Judge has held that, *first*:

“a request to add items to a list of evidence does not constitute a request for the variation of a time limit in accordance with Regulation 35 of the Regulations of the Court but rather a request for leave from the Chamber to add items in accordance with its decision fixing the time limit for filing the initial list of evidence”.⁶

5. *Second*, a Chamber should consider whether:

“reliance by the Prosecution on items additional to those included in the initial list of evidence causes undue prejudice to the procedural rights of the Defence. Factors to be considered in this determination include, *inter alia*, the extent to which the requested addition is opposed by the Defence, the time when the addition was sought, the nature and amount of the material concerned, the intended purpose of the Prosecution's requested reliance on such material, and its prospective significance in light of the charges brought against the accused and the rest of the available evidence”.⁷

6. As explained below, the Request satisfies the above criteria.

A. Background

7. P-2462 is a Muslim civilian who lived in BOSSANGO during the conflict. She was interviewed by the Prosecution on [REDACTED] June 2019.⁸ In her statement she describes, *inter alia*, the 5 December 2013 Anti-Balaka attack on BOSSANGO during which she was [REDACTED] raped. When describing the [REDACTED]. During the interview the witness told the investigators that she “kept records of [REDACTED]”,

⁶ ICC-01/14-01/18-989-Conf, para. 5.

⁷ ICC-01/14-01/18-989-Conf, para. 5; *see also* ICC-02/04-01/15-619, para. 10; ICC-02/04-01/15-600, para. 14; ICC-02/04-01/15-957, para. 6; ICC-01/04-02/06-2079, para. 22; ICC-01/04-01/07-3059, para. 21.

⁸ CAR-OTP-2111-0452.

adding that she “did not bring those documents with [her] to meet the OTP representatives”.⁹

8. The investigators, [REDACTED], attempted to collect the material in question during a follow-up meeting with P-2462 on [REDACTED] February 2020. However, on the day of the meeting P-2462 did not bring the documents with her. The Prosecution attempted to collect [REDACTED].

9. Due to COVID-19, as well as security and budgetary restrictions, the Prosecution was unable to conduct a further mission to meet P-2462 again following its February 2020 meeting with the witness. Furthermore, as previously stated,¹⁰ the Prosecution was unable to establish contact with P-2462 [REDACTED].

10. On 13 June 2021, [REDACTED], the Prosecution reached P-2462 [REDACTED]. The witness confirmed that [REDACTED]¹¹ [REDACTED]. P-2462 confirmed her willingness to testify [REDACTED].

11. [REDACTED]. On 15 June 2021 the witness sent two photographs of these medical records, which were registered into Ringtail on 25 June 2021. There has been no delay in the disclosure of this material, which is being disclosed concurrently with this filing.¹²

B. The medical records are relevant and have significant probative value

12. P-2462’s medical records are compelling evidence. Moreover, they are of significant probative value as such, and will assist the Chamber in its truth-seeking function, particularly with respect to the charged 5 December 2013 attack on

⁹ CAR-OTP-2111-0452, para. 52.

¹⁰ ICC-01/14-01/18-1003-Conf, paras. 12-16.

¹¹ ICC-01/14-01/18-1003-Conf, para. 13.

¹² Trial INCRIM package 100, disclosed on 29 June 2021.

BOSSANGO and related counts 30 and 40-42. P-2462's statement expressly mentions the medical records,¹³ which independently corroborate her account and bring to light information which may otherwise be unavailable to the Chamber.¹⁴ In particular, P-2462 REDACTED].¹⁵ [REDACTED].¹⁶ [REDACTED].¹⁷

13. The medical records are reliable and authentic. They were provided directly by P-2462, are contemporaneous ([REDACTED]¹⁸), and accurately reflect information previously provided in the witness's statement. Furthermore, the records provide [REDACTED].

14. The Single Judge previously held:

"it would be unreasonable for the Chamber, to which a truth-seeking function is assigned by the Statute, to determine that potentially relevant evidence could not, under any circumstance, be used by the Prosecution at trial if not itemised in the list of evidence [...] before the trial commences".¹⁹

15. This reasoning equally applies to the medical records in question, as the Chamber and the proceedings would benefit from the addition of this relevant and probative material.

C. Reliance on the medical records causes no undue prejudice to the Defence

16. The addition of P-2462's medical records to the LoE does not cause any undue prejudice to either Accused. The additional material to be included consists of only two documents amounting to just two pages. Both are disclosed within a few days of

¹³ CAR-OTP-2111-0452, para. 52.

¹⁴ See e.g. ICC-01/04-01/07-3059, para. 21.

¹⁵ CAR-OTP-2111-0452, para. 51.

¹⁶ CAR-OTP-2111-0452, para. 52.

¹⁷ CAR-OTP-2111-0452, para. 52.

¹⁸ See CAR-OTP-2127-9467.

¹⁹ ICC-01/14-01/18-989-Conf, para. 6; see also ICC-02/04-01/15-619, para. 8.

coming into the Prosecution's possession, and [REDACTED] in advance of P-2462's prospective testimony.

17. In addition, the Defence was aware of the existence of the medical records and the underlying information provided in them from express references to this material in P-2462's statement. Finally, the Accused will have an opportunity to address these documents during the course of trial.

IV. RELIEF SOUGHT

18. For the above reasons, the Prosecution withdraws its previous application for the formal submission of P-2462's prior recorded testimony pursuant to rule 68(2)(c), and requests leave from the Chamber to add P-2462's medical records to the Prosecution's LoE.



Karim A. A. Khan QC, Prosecutor

Dated this 3rd day of August 2021
At The Hague, The Netherlands