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No.: **ICC-01/14-01/18**
Date: **25 October 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 Request for Leave to Add Seven Items to
the List of Evidence”, ICC-01/14-01/18-1144-Conf,
22 October 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. SUBMISSIONS

1. The Office of the Prosecutor (“Prosecution”) seeks leave from Trial Chamber V (“Chamber”) to add seven items (“Items”)¹ to its List of Evidence (“LoE”),² in accordance with the Decision Setting the Commencement Date of the Trial (“Decision”)³ and subsequent decisions.⁴ The addition of the Items is warranted and appropriate in the circumstances. The Items are of significant probative value and their addition would not cause undue prejudice to either Accused, or derail the proceedings. Rather, their addition is in the interests of justice and the Chamber’s determination of the truth.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), this submission is classified as “*Confidential*” because it references Prosecution evidence which may not be disclosed to the public, and refers to confidential filings. A public redacted version is filed concurrently.

III. SUBMISSIONS

3. The addition of the Items to the LoE is justified because they are of significant probative value and the addition causes no undue prejudice to either Accused.

4. Whereas the seven items would normally have been disclosed by the 9 November 2020 disclosure deadline and added to the LoE⁵, they were instead subject to a delayed disclosure order.⁶ When they were ultimately disclosed on 14 December

¹ CAR-OTP-2121-2577; CAR-OTP-2121-2578, CAR-OTP-2121-2595, CAR-OTP-2126-0413, CAR-OTP-2126-0414, CAR-OTP-2126-0415, CAR-OTP-2126-0416, CAR-OTP-2127-3960.

² ICC-01/14-01/18-724-Conf-AnxC-Corr.

³ ICC-01/14-01/18-589, paras. 10, 14 and 16.

⁴ ICC-01/14-01/18-989-Conf, paras. 5-6; ICC-01/14-01/18-1080-Conf, para. 7.

⁵ ICC-01/14-01/18-589, paras. 10, 14 and 16.

⁶ [REDACTED].

2020, following the full implementation of protection measures, an administrative oversight meant that the Prosecution did not at that time seek to add them to its LoE. Alerted to this by a similar oversight in relation to P-0306,⁷ the Prosecution now seeks to so add the seven documents.

A. Documents related to P-2620 (three items)⁸

i. *Background*

5. The three documents consist of:

- CAR-OTP-2121-2577: a black and white copy of P-2620's birth certificate, "Annex A" to P-2620's second statement of 14 January 2020;⁹
- CAR-OTP-2121-2578: the medical records of P-2620's daughter, "Annex B" to P-2620's second statement of 14 January 2020;¹⁰ and
- CAR-OTP-2121-2595: a colour photo of P-2620's original birth certificate, provided by P-2620 to investigators on 16 January 2020.¹¹

ii. *The documents are relevant and have significant probative value*

6. The three documents will assist the Chamber in its truth-seeking function, with respect to ascertaining the age of P-2620 at the relevant time, for the purpose of Count

⁷ [REDACTED].

⁸ CAR-OTP-2121-2577; CAR-OTP-2121-2578 and CAR-OTP-2121-2595.

⁹ See CAR-OTP-2121-2567. The witness describes Annex A as containing her birth certificate at page 2569, para. 11.

¹⁰ See CAR-OTP-2121-2567. The witness describes Annex B as containing her daughter's medical records at page 2572, para. 31.

¹¹ See investigation report at CAR-OTP-2121-2593.

29 as confirmed by Pre-Trial Chamber II.¹² They are therefore of significant probative value.

7. The witness's birth certificate – available in copy at CAR-OTP-2121-2577 and in original form at CAR-OTP-2121-2595 – corroborate her evidence that she was under the age of 15 while in YEKATOM's Group.¹³ While the two documents are substantively duplicative – one being a photograph of the original and another being a copy – it would be expeditious for both versions to be added to the LoE. This is especially so because the witness is designated to testify under rule 68(3) of the Rules, and the copy is annexed to her statement.

8. The medical records of [REDACTED]. (CAR-OTP-2121-2578) similarly tend to corroborate her evidence that she was under the age of 15 at the relevant time. P-2620's evidence is that [REDACTED].in YEKATOM's Group.¹⁴ That her [REDACTED].¹⁵ would place her presence in that Group well within the range of the charges, i.e., between December 2013 and August 2014,¹⁶ when she was under the age of 15.

iii. *Reliance on the documents causes no undue prejudice to the Defence*

9. The addition of these three documents to the LoE does not cause any undue prejudice to either Accused. There can be no undue prejudice to the Defence where the documents were disclosed in a timely manner, they are limited in volume (four pages in total), the witness is not expected to testify imminently, and the Accused will have an opportunity to address them fully during the course of the trial.

¹² See ICC-01/14-01/18-403-Corr-Red, p. 105.

¹³ See first statement at CAR-OTP-2123-0057, at 0063, para. 39; at 0066, para. 66. See also second statement at CAR-OTP-2121-2567, at 2569, para. 11, and the evidence of other witnesses P-2671: CAR-OTP-2125-0348, at 0350, paras. 12 and 21; and P-0365: CAR-OTP-2122-9042, at 9046, paras. 21-24.

¹⁴ See first statement at CAR-OTP-2123-0057, at 0066, para. 66; second statement at CAR-OTP-2121-2567, at 2571-2572, paras. 27, 31.

¹⁵ See CAR-OTP-2121-2578, at 2578.

¹⁶ See ICC-01/14-01/18-403-Corr-Red, p. 105.

B. Documents related to P-2582 (four items)¹⁷

i. *Background*

10. The four documents consist of:

- CAR-OTP-2126-0413: a photo of P-2582's brother, [REDACTED].original birth certificate, provided by P-2582's mother to investigators on 21 January 2020;¹⁸
- CAR-OTP-2126-0414: a photo of P-2582's brother, [REDACTED].original birth certificate, provided by P-2582's mother to investigators on 21 January 2020;¹⁹
- CAR-OTP-2126-0415: a photo of P-2582's original birth certificate, provided by P-2582's mother to investigators on 21 January 2020;²⁰ and
- CAR-OTP-2126-0416: a photo of P-2582's sister, [REDACTED].original birth certificate, provided by P-2582's mother to investigators on 21 January 2020;²¹

ii. *The documents are relevant and have significant probative value*

11. The four documents will assist the Chamber in its truth-seeking function, with respect to ascertaining the age of P-2582 for the purpose of Count 29 as confirmed by Pre-Trial Chamber II.²² The witness's birth certificate corroborates her evidence that she was under the age of 15 while in YEKATOM's Group.²³ Her siblings' birth

¹⁷ CAR-OTP-2126-0413, CAR-OTP-2126-0414, CAR-OTP-2126-0415, CAR-OTP-2126-0416.

¹⁸ See investigation report at CAR-OTP-2126-0385.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² See ICC-01/14-01/18-403-Corr-Red, p. 105.

²³ See CAR-OTP-2117-0605, at 0608, paras. 21-25; at 0610, para. 32. See also the evidence of P-2018: CAR-OTP-2071-0259, at 0274, para. 107 and 21.

certificates further corroborate the order of their birth and thereby P-2582's evidence of her age. They are therefore of significant probative value.

iii. *Reliance on the documents causes no undue prejudice to the Defence*

12. The addition of these four documents to the LoE does not cause any undue prejudice to either Accused. The documents were timely disclosed and are only four pages in total, the witness is not expected to testify imminently, and the Accused will have an opportunity to address them fully during the course of the trial.

IV. CONCLUSION

13. For the above reasons, the Prosecution requests that the Chamber grant leave for the addition of the Items to the LoE. The Items are of significant probative value, and their addition would neither infringe the fair and expeditious conduct of the proceedings, nor cause undue prejudice to either Accused.

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

Karim A. A. Khan QC, Prosecutor

Dated this 25nd day of October 2021

At The Hague, The Netherlands