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**International
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Date: **4 November 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
*THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Yekatom Defence Response to “Prosecution’s Request for Leave to Add
Seven Items to the List of Evidence”, ICC-01/14-01/18-1144-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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I. INTRODUCTION

1. The Defence for Mr Yekatom (“Defence”) opposes the request of the Office of the Prosecutor (“Prosecution”) seeking leave from Trial Chamber V (“Chamber”) to add seven documents to its List of Evidence (“LoE”).¹
2. The Defence argues that the Prosecution lacks to demonstrate good cause in requesting this late addition to its LoE and that, even if limited, this request causes a prejudice to the Defence.

II. PROCEDURAL BACKGROUND

3. On 16 July 2020, the Chamber ordered the Prosecution to provide its LoE to the parties by 9 November 2020.²
4. On 9 November 2020, the Prosecution filed its *List of Witnesses and Evidence*.³
5. On 16 April 2021, the Prosecution requested leave to add six Yahoo email threads to its LoE arguing *inter alia* that the relevant items were only obtained after the disclosure deadline set by the Chamber.⁴ The Chamber granted the requests finding *inter alia* that the late addition of the material to the LoE was mainly due to the fact that the Prosecution received the material after the time limit to file the List.⁵
6. On 29 June 2021, the Prosecution sought leave from the Chamber to include two medical records to its LoE arguing similarly that despite their efforts, the documents were obtained subsequent to the deadline.⁶ Leave was granted on the same basis as its previous request.⁷

¹ [ICC-01/14-01/18-1144-Conf](#) (‘the Request’); Public redacted version: [ICC-01/14-01/18-1144-Red](#).

² [ICC-01/14-01/18-589](#), para. 14.

³ [ICC-01/14-01/18-724-Conf-AnxC](#).

⁴ [ICC-01/14-01/18-958-Conf](#); Public redacted version: [ICC-01/14-01/18-958-Red](#).

⁵ [ICC-01/14-01/18-989-Conf](#).

⁶ [ICC-01/14-01/18-1042-Conf](#); Public redacted version: [ICC-01/14-01/18-1042-Red](#).

⁷ [ICC-01/14-01/18-1080-Conf](#).

7. On 28 September 2021, the Prosecution sought authorisation to add four annexes of witness P-0306's statement, claiming that the items were not timely added to its LoE because of "an administrative oversight linked to the unique nature of this witness's security situation".⁸ The Defence opposed the Prosecution request on the basis of the lateness of the request and the failure of the Prosecution to demonstrate that an administrative oversight could be characterised as a good cause for this addition.⁹
8. On 29 September 2021, the Single Judge granted the Prosecution's request; notably, he considered that this oversight error was unfortunate and should be avoided and instructed the Prosecution to thoroughly review its LoE for completeness.¹⁰
9. On 22 October 2021, the Prosecution filed its request for Leave to Add Seven Items to the LoE.¹¹
10. On 2 November 2021, the Prosecution sought leave to add four documents, none of which were included on the LoW, to its List of examination for witness P-2843 ('2 November Request').¹²
11. On 3 November 2021, the Chamber ordered the Prosecution to file a request to add the four documents to its List of Evidence, 'should this be its intended course of action'.¹³

III. APPLICABLE LAW

12. According to the jurisprudence of the Court, a request to add documents into the LoE is not a request for extension of time under regulation 35 of the

⁸ Email sent by the Prosecution 28 September 2021 at 17:37.

⁹ Email sent by the Yekatom Defence on 28 September 2021 at 17:57.

¹⁰ Email sent by Trial Chamber V on 29 September 2012 at 10:00.

¹¹ [ICC-01/14-01/18-1144-Conf](#); Public redacted version: [ICC-01/14-01/18-1144-Red](#).

¹² Email sent by the Prosecution on 2 November 2021 at 14:16.

¹³ Email from Trial Chamber V of 3 November 2021 at 14:52.

Regulations. However, the Chamber must “determine in the concrete circumstances 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”. In making this decision the Chamber considers factors including “the extent to which the requested addition is opposed by the Defence, the time when the addition is sought, the nature and amount of the material concerned, the intended purpose for the Prosecution’s requested reliance on such material as well as its prospective significance in light of the charges brought against the accused and the rest of the available evidence”.¹⁴

IV. SUBMISSIONS

13. The Defence concedes that the prejudice arising from the late Prosecution request is likely limited as the documents were already disclosed to the parties and the witness are not scheduled to testify in the coming months.
14. That being said, the Defence submits that the Prosecution has failed to provide a sufficient explanation for the late request to add the seven documents to the LoE.
15. In the Request, the Prosecution seeks to rely on the fact that the seven items were subject to a delayed disclosure order and that they could not have been disclosed by the disclosure deadline.¹⁵ This argument cannot be sustained, because the Decisions referenced in the Request only permitted the Prosecution to delay disclosure of the identity and complete statement of witness P-2620 and P-2582 – initially by 9 November 2020, and subsequently, until the full implementation of the protective measures for P-2620 and P-2582.

¹⁴ [ICC-01/14-01/18-989-Conf](#), para. 5.

¹⁵ [ICC-01/14-01/18-1144-Conf](#), para. 4 referring to [ICC-01/14-01/18-648-Conf-Red](#), [ICC-01/14-01/18-693-Conf-Red](#) and [ICC-01/14-01/18-752-Conf-Red2](#).

16. In other words, the Chamber's delayed disclosure orders did not preclude the addition of these documents to the LoE, pending disclosure; the Prosecution conflates these distinct obligations in seeking to justify its late amendment request.
17. Moreover, as had been done for statements of P-2620 and P-2582 (as well as the transcripts of P-0306, also the subject of a delayed disclosure order) the Prosecution could have nonetheless disclosed redacted versions of the seven documents within the deadline and incorporated them in the LoE. Proceeding this way would have allowed the Defence to be notified of the Prosecution's intention to rely on those documents during trial.
18. In any event, while the Defence also concedes that 'administrative oversight', in some circumstances, and to a degree, might justify a request to amend the LoE in the interests of reasonable flexibility, it nonetheless respectfully submits that the excuse should not be repeatedly relied on in, nor accepted for, successive such requests.
19. In this respect, this particular 'administrative oversight' should be seen in the context of similar Prosecution requests as set out in the procedural background above. Also highly relevant in this regard is pending litigation further to the *Defence motion for finding of disclosure violation*, in which the Defence seeks, as a remedy for disclosure violation as alleged, a thorough review of the Prosecution's evidentiary database and the production of an evidence search report.¹⁶ The Prosecution submission in response to that motion, i.e. that '[a]lthough imperfect, there are no serious or systemic deficiencies in the Prosecution's disclosure [...] processes', should be seen in the context of this Request, as well as those set out above.¹⁷

¹⁶ [ICC-01/14-01/18-1142-Conf](#), paras 4 to 37; Public redacted version: [ICC-01/14-01/18-1142-Red](#).

¹⁷ [ICC-01/14-01/18-1149-Conf](#), para. 33.

20. The Defence thus raises its concerns at this stage as regards what appears to be a pattern of disclosure and notice-related violations emerging as this trial proceeds. As such, given the critical nature of the deadline for the List of Evidence and the fair trial principles underlying it,¹⁸ the Defence submits that the Request should be denied.

V. RELIEF SOUGHT

21. In light of the above, the Defence respectfully requests Trial Chamber V to:
- REJECT** the Prosecution's request.

RESPECTFULLY SUBMITTED ON THIS 4th DAY OF NOVEMBER 2021



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¹⁸ See, [ICC-01/14-01/18-403-Conf-Corr](#), para. 24 ; Public redacted version : [ICC-01/14-01/18-403-Red-Corr](#).