

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 March 2020**

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

**Prosecution's Response to the Yekatom Defence Request not to include Ex Parte
Evidentiary material in Record of the Proceedings (ICC-01/14-01/18-445)**

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. Trial Chamber V (“Chamber”) should reject the Yekatom Defence’s request not to include *ex parte* evidentiary material in the record of the proceedings (“Request”). *First*, the Request is moot, given that the full case record has already been transferred by the Presidency to the Chamber, pursuant to rule 130 of the Rules of Procedure and Evidence (“Rules”). *Second*, and in any event, the entirety of the case record should be before the Chamber for it to decide whether and to what extent it may regard such material in the exercise of its statutory functions.

II. SUBMISSIONS

A. The Request is moot

2. The Registry transferred the case record in these proceedings to the Presidency on 13 March 2020.¹ The record was further promptly transferred to the Chamber on 17 March 2020,² implementing the Presidency’s order, “pursuant to rule 130 of the Rules, to transmit the *full record* of the proceedings in the above mentioned case to Trial Chamber V”.³ Thus, the relief sought in the Request is moot or has effectively already been decided by the Presidency, and should be dismissed.

B. Transmitting *ex parte* evidentiary material as a part of the case record before a Chamber is appropriate

3. Should the Chamber consider the merits of the Request, it should be denied.

4. As the Presidency’s transmission order underscores, rule 130 contemplates the transmission of the full case record to the Trial Chamber. Indeed, the case record in its entirety should be placed at the Chamber’s disposal. It is for the Chamber to determine whether and how it may regard any *ex parte* evidentiary material before it,

¹ ICC-01/1401/18-449.

² ICC-01/1401/18-455.

³ ICC-01/14-01/18-451, p. 4 (emphasis added).

within the proper exercise of its discretion. The Defence's suggestion to the contrary is incorrect.⁴ Further, the Defence's suggestion that the exclusion of *ex parte* evidentiary material from transmission to a Chamber arises from the Chamber's Practice Manual, or the exceptional nature of such proceedings generally, is unavailing.⁵

5. The Chamber's access or exposure to such information is clearly not prejudicial or unfair to the Defence. The Chamber is comprised of professional judges, and the *ex parte* material may be necessary to the Chamber's ability to exercise its statutory functions effectively. This includes, *inter alia*, managing the continuity of the disclosure process in a manner that balances the rights of the Defence, the attendant burdens to the Parties, and the protection of victims and witnesses under article 68. There is no reason that a Chamber should be precluded from having at its disposal the means and information to make these important determinations, as it may deem appropriate.

III. CONCLUSION

6. For the above reasons, the Request should be rejected as moot or, in any event, should be dismissed on the merits.



Fatou Bensouda, Prosecutor

Dated this 18th day of March 2020
At The Hague, The Netherlands

⁴ ICC-01/14-01/18-445, para. 6 (referencing the *Al Hasan* case)

⁵ See ICC-01/14-01/18-445, paras. 7, 8.