

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 8 January 2024

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 & PATRICE-EDOUARD NGAÏSSONA***

Confidential

Request for leave to reply to "Prosecution Response to the 'Fourth Defence Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)' (ICC-01/14-01/18-2267-Conf)", 21 December 2023, ICC-01/14-01/18-2280-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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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

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Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

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**Victims Participation and Reparations
Section**

1. Pursuant to regulation 24(5) of the Regulations of the Court ('RoC'), the Defence for Mr. Yekatom ('Defence') seeks leave to file a brief reply to the "Prosecution Response to the 'Fourth Defence Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b) (ICC-01/14-01/18-2267-Conf)" ('Response').¹
2. The Defence has identified three discrete issues which would warrant a reply as they either concern new issues which could not have been reasonably anticipated by the Defence, and/or require a limited reply which is necessary for the determination of the 'Fourth Defence Request for the Formal Submission of the Prior Recorded Testimony pursuant to Rule 68(2)(b)' ('Request').²
3. These issues are:
 - a. The plea of alibi means the physical impossibility of the presence of the accused at the scene of the offence by reason of his/her physical presence at another location as per the disclosure obligations pursuant to Rule 79(a) of the Rules of Procedure and Evidence. It does not extend to the alleged area of control of an accused's group as claimed in the Response³ (Issue 1).
 - b. The manner in which the Prosecution has pleaded its case in relation to Mr. Yekatom's individual criminal responsibility concerning the alleged offences in Bossongo does not trigger the Defence's disclosure obligations pursuant to rule 79(a).⁴ At no point, including within the Response itself,⁵ has the Prosecution plead, or cited to any evidence, that

¹ ICC-01/14-01/18-2280-Conf.

² ICC-01/14-01/18-2267-Conf.

³ Response, paras. 6-7.

⁴ Mr. Yekatom is charged as an indirect co-perpetrator in relation to the alleged offences committed in Bossongo (and indeed across the PK9-Mbaiki Axis) see ICC-01/14-01/18-403-Corr-Red, para. 140.

⁵ Noting in particular lack of citations in support of the Prosecution's assertion that "[t]he Document Containing the Charges and the Decision on the Confirmation of Charges is clear, in that YEKATOM is alleged to have been among his Group during the course of their commission of the charged crimes along the PK9 – MBAIKI Axis,

Mr. Yekatom was physically present in Bossongo at the relevant period and that this is a material fact in its case (Issue 2).

- c. Reliance on materials – including prior statements – which have either not been formally submitted by the Prosecution⁶ or improperly submitted by the Prosecution,⁷ would be unduly prejudicial if used to preclude the Request at this stage of the proceedings (Issue 3) (collectively ‘Three Issues’).
4. A focused reply on the identified Three Issues would provide necessary clarification of the legal and factual arguments put forward by the Prosecution and would allow for a proper determination of the Request.
5. In accordance with regulation 23bis(1) of the RoC, this request is filed on a confidential basis as it concerns filings of the same designation. The Defence does not object to the public reclassification of this filing.

RELIEF

6. For the foregoing reasons, the Defence respectfully requests the Trial Chamber to grant the request for leave to reply in respect of the Three Issues.

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF JANUARY 2024

wherein BOSSONGO lies” see Response, para 7. See also Response, para. 4 and fn. 6 – at no point does the referenced material specifically refer to Mr. Yekatom’s physical presence in Bossongo.

⁶ See Response, para. 4 and fn. 6 in particular concerning CAR-OTP-2072-1068-R01(P-1839) and CAR-OTP-2059-0361(P-1666) noting that the Prosecution’s reference to ICC-01/14-01/18-403-Corr-Red, fns. 303-304 is cumulative in that it only refers to CAR-OTP-2072-1068-R01(P-1839) and CAR-OTP-2014-0729-R01, at 740).

⁷ The Defence recalls that the Trial Chamber has previously rejected the Prosecution’s formal submission of CAR-OTP-2014-0729-R01, at 740 from the bar table on the basis that it is testimonial in nature and “includes interpretations and attributions by the drafter in the context of providing information to the Prosecution” see ICC-01/14-01/18-2179, para. 16.



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