

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **25 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**

**Consolidated Request for Leave to Reply to Responses to the 'Request for  
the Exclusion of Fabricated Evidence'**

**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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**REGISTRY**

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Mr Philipp Ambach

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 Yekatom Defence 'Request for the Exclusion of Fabricated Evidence' (ICC-01/14-01/18-2240-Conf)',<sup>1</sup> and the 'Response of the Common Legal Representative of the Former Child Soldiers to the Yekatom Defence's "Request for the Exclusion of Fabricated Evidence"'.<sup>2</sup> If granted, the Defence intends to file a succinct consolidated reply to both the Prosecution Response and CLR1 Response.
2. In this regard, the Defence has identified four 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 'Request for the Exclusion of Fabricated Evidence'.<sup>3</sup>
3. These issues are:
  - a. The existence of so-called 'substantial non-impugned evidence [which] supports Count 29' is to be considered as part of the assessment conducted at the end of trial in accordance with article 74.<sup>4</sup> It is not a consideration for the admissibility assessment of material which is subject to the Exclusion Request in accordance with article 69(7), particularly where a substantial majority of the material cited by the Prosecution has not been submitted into evidence.<sup>5</sup> The admissibility assessment of article 69(7)(a) is not a holistic endeavour of all material in the Prosecution's possession. ('First Issue').<sup>6</sup>

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<sup>1</sup> ICC-01/14-01/18-2313-CONF ('Prosecution Response').

<sup>2</sup> ICC-01/14-01/18-2314-CONF ('CLR1 Response').

<sup>3</sup> ICC-01/14-01/18-2240-CONF ('Exclusion Request').

<sup>4</sup> Prosecution Response, para. 3 and paras 31 to 64.

<sup>5</sup> See for example Prosecution Response, paras 39 to 50 concern P-2013 and P-1792 neither of whom were relied on by the Prosecution in the presentation of its case.

<sup>6</sup> The Defence further submits that there are several factual inaccuracies of the material cited within paragraphs 39 to 63 of the Prosecution's Response concerning P-2084, P-5015, P-1962, P-0808, P-0888, P1339 and P-1839. Should leave be granted, the Defence intends to address these mischaracterisations in its reply.

- b. The purpose of excluding material under article 69(7)(b) is not limited to the four walls of the courtroom. It sets a standard for the international community to observe and comply with in relation to the exclusionary rule and further, serves as a warning for not only Court entities and organs but external actors whose violations of the Statute and/or internationally recognised human rights touch on ICC proceedings. Contrary to the Prosecution's position,<sup>7</sup> the drafters of the Rome Statute accounted for the professionalism of the judges in its inclusion of article 69(7). ('Second Issue').
- c. The Prosecution's narrow interpretation of the causal link voids the Trial Chamber's power, under article 69(7), to determine whether or not, or indeed at which stage, fabricated evidence can be withdrawn from the proceedings. The plain language of article 69(7) does not state that the fabricated material must have been 'procured unlawfully' or 'obtained through unlawful means' and as such, there is no requirement that the violation must be directed at serving an ulterior illegal purpose.<sup>8</sup> When taken to its logical conclusion, the Prosecution's interpretation of the causal link between the alleged violation and the evidence gathered, would mean that it would be impossible for a Trial Chamber to exclude false evidence under article 69(7) collected by a defunct investigation and submitted before it. This is despite the fact that under the same statutory framework, the same evidence or conduct would be punishable under article 70. ('Third Issue').
- d. Article 69(7) does not qualify the type of material to be excluded and extends to oral and sworn statements.<sup>9</sup> The fact that false evidence was

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<sup>7</sup> Prosecution Response, para. 3 and paras 65 to 73.

<sup>8</sup> *Contra* Prosecution Response, para. 25 ('As the Request does not substantiate that the Prosecution's alleged omissions were directed at unlawfully procuring the Impugned Evidence, or were used as an unlawful means of obtaining it, it does not satisfy the Defence's burden to establish the Prosecution's 'violation' of the Statute for article 69(7) purposes').

<sup>9</sup> *Contra*, Prosecution Response, para. 27 and CLR1 Response, para. 24.

provided under oath does not preserve the in-court testimony – as evidenced by the existence of article 70 – and on the contrary, further demonstrates the existence of a continuing violation of the Statute as well as serious breaches of professional and ethical standards before the Court.<sup>10</sup> ('Fourth Issue' collectively 'Four Issues').

4. A focused reply on the identified Four Issues would provide necessary clarification of the legal and factual arguments put forward by the Prosecution and the CRL1 to allow for a full determination of the Exclusion Request as it stands. The Exclusion Request is not a request for the dismissal of Count 29 – it solely concerns the fabricated evidence which stands before this Chamber and which constitutes an affront to the standards to be set by this Court.
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 Four Issues.

**RESPECTFULLY SUBMITTED ON THIS 25<sup>th</sup> DAY OF JANUARY 2024**



Me Mylène Dimitri  
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

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<sup>10</sup> Code of Conduct for the Office of the Prosecutor (5 September 2013), rule 63(a); Code of Professional Conduct for counsel (ICC-ASP/4/Res.1), article 24(3) and article 25(1).