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

Date: 23 May 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 PROSECUTOR *v.* ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA**

Public

Public redacted version of "Prosecution Response to the "Yekatom Defence Request for Leave to Reply to the Prosecution's Response to the Yekatom Defence's request for the [REDACTED] (ICC-01/14-01/18-2321), 31 January 2024, ICC-01/14-01/18-2336-Conf" (ICC-01/14-01/18-2343-Conf)",
ICC-01/14-01/18-2347-Conf, 6 February 2024

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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 latest request for leave to reply.¹ The Request is meritless and impermissibly advances substantive submissions to supplement the Defence’s pending motion for the [REDACTED]² [REDACTED]. It should be summarily dismissed.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this document is filed as “Confidential” because it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

3. Contrary to the Request, all of the purported “four discrete issues”³ are in fact substantive arguments. Unfortunately, the Defence has once again sought to use the mechanism of a request for leave to reply in order to argue points that it could have anticipated and should have put forward in its Motion. As the Prosecution has stated on several occasions and the Chamber has previously noted, this alone is grounds to dismiss the Request.

4. Even considering its substance, the Request should be rejected. None of the arguments advanced identify any grounds for a reply. Indeed, as shown below, many are legally or factually incorrect.

5. *First*, as the Prosecution made clear in its response to the Motion,⁴ it opposes the [REDACTED] *principle*. This is because the Motion fails to advance a substantiated

¹ ICC-01/14-01/18-2345-Conf (“Request”).

² ICC-01/14-01/18-2321-Conf (“Motion”).

³ ICC-01/14-01/18-2345-Conf, para. 2.

⁴ ICC-01/14-01/18-2336-Conf, para. 1 (“Response”).

legal basis for any [REDACTED]. Contrary to the Defence's claim that the Prosecution is "apparent[ly] unwilling[] to obtain the information necessary to determine the nature and scope of potential violations [REDACTED],⁵ the Prosecution cannot countenance doing so on the legally deficient basis advanced in the Motion.

6. *Second*, the Statute guarantees the 'right to silence' for persons under investigation and accused alike. Contrary to the Defence's contentions,⁶ articles 55(1)(a) and 67(1)(g) subsume both testimonial evidence (*i.e.*, confessing guilt) *and* other forms of self-incrimination. This protection is at least implicated where an individual may be compelled to produce evidence which may tend to incriminate them, and thus requires a substantiated basis for any infringement.

7. As the Prosecution noted in its Response, it is unclear whether the [REDACTED]. The Motion does not assert any facts demonstrating that the [REDACTED]. It simply fails to establish this threshold element in regard to the [REDACTED] into a potential criminal offence, as the Defence has repeatedly made clear is the objective.⁷

8. *Third*, contrary to the Request,⁸ it is not because a [REDACTED] that the failure to otherwise properly secure the [REDACTED], let alone justifies compelling the even greater intrusion the Defence now seeks.

9. *Fourth*, the Chamber has before it sufficient information and evidence on which to assess the veracity of the [REDACTED].⁹

10. In this respect, there is no reasonable basis upon which to objectively conclude that (a) additional material could be found pursuant to a [REDACTED] (b) [REDACTED]; and (c) that whatever material might be found would in any way assist the Chamber in the determination of *this case*. This is because, as the Defence concedes,

⁵ See ICC-01/14-01/18-2345-Conf, para. 3(a).

⁶ See ICC-01/14-01/18-2345-Conf, para. 3(b) ([REDACTED]).

⁷ See ICC-01/14-01/18-2345-Conf, para. 3(a) ([REDACTED]).

⁸ See ICC-01/14-01/18-2345-Conf, para. 3(c).

⁹ *Contra* ICC-01/14-01/18-2345-Conf, para. 3(d).

“[t]o date, the scope of the material [REDACTED]”;¹⁰ and because it is entirely equivocal — as opposed to at least ‘probable’ — [REDACTED]. To overcome the [REDACTED], there must be at least some reasonable objective indication that [REDACTED]. The Defence fails to advance any plausible non-speculative assertions. Further, contrary to the Request, it is not for the Prosecution to “assess whether the material obtained [REDACTED],”¹¹ but for the Defence to establish that it is not, and that a further [REDACTED].

11. The Defence’s contention that the “repercussions of [REDACTED]”¹² highlights exactly why a further [REDACTED].¹³

12. Finally, the Defence’s attempt to draw a parallel between the [REDACTED]¹⁴ [REDACTED]. As the Defence is aware, [REDACTED]. Apart, the [REDACTED]¹⁵ [REDACTED], is readily distinguishable.

¹⁰ See ICC-01/14-01/18-2345-Conf, para. 3(d)(i).

¹¹ See ICC-01/14-01/18-2345-Conf, para. 3(d)(iii).

¹² See ICC-01/14-01/18-2345-Conf, para. 3(d)(ii).

¹³ See ICC-01/14-01/18-2345-Conf, para. 3(d)(ii).

¹⁴ See ICC-01/14-01/18-2345-Conf, para. 4.

¹⁵ See article 54(3)(f).

IV. CONCLUSION

13. For the reasons above, the Prosecution respectfully requests that the Request be summarily dismissed.

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

Karim A. A. Khan KC, Prosecutor

Dated this 23rd day of May 2024

At The Hague, The Netherlands