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**Cour
Pénale
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**International
Criminal
Court**



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

Date: 25 June 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Confidential

**Prosecution's Response to Yekatom Defence's "Request for Leave to Reply to
Prosecution's Response to the 'Yekatom Defense Request for the Formal
Submission of Open-source Evidence from the Bar Table'"**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Trial Chamber V ("Chamber") should reject the YEKATOM Defence's Request for leave to reply¹ to the Prosecution's Response.² The Request lacks merit and improperly introduces substantive arguments to support the Defence's pending motion for the formal submission of open-source evidence from the bar table,³ without prior authorisation from the Chamber. Thus, the Request should be summarily dismissed.

II. CONFIDENTIALITY

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

III. SUBMISSIONS

3. *First*, the Defence has advanced extensive substantive submissions on its "position with respect to its alibi defence" and the relevance of CAR-D29-0002-0123⁴ before leave to do so has been granted. Thus, it violates Regulation 24(5) of the RoC by circumventing judicial authorisation. This alone is grounds to reject the Request *in limine*.

4. *Second*, the proposed "discrete point"⁵ on which the Defence seeks leave to reply does not relate to a new issue raised in the Response which it could not have

¹ ICC-01/14-01/18-2539-Conf ("Request").

² ICC-01/14-01/18-2534-Conf ("Response").

³ ICC-01/14-01/18-2516.

⁴ Request, paras. 2-4.

⁵ Request, para. 4.

reasonably anticipated.⁶ Nor is it “necessary for the adjudication”⁷ of the formal submission of CAR-D29-0002-0123. In any case, it is not material.⁸

5. The Defence attempts to bolster its defective Request⁹ by labelling the Prosecution’s position it disagrees with as a “misrepresent[ation]”.¹⁰ As such, the Request fails to meet the requirements for leave to reply.

IV. RELIEF SOUGHT

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



Karim A. A. Khan KC, Prosecutor

Dated this 25th of June 2024

At The Hague, The Netherlands

⁶ Regulation 24(5) of the RoC. The Prosecution notes that the YEKATOM Defence informed on 18 September 2023, of its intention not to summon any witnesses listed in the alibi notice.

⁷ ICC-01/04-02/06-1813, para. 8.

⁸ The Prosecution notes that YEKATOM is charged under the relevant counts as a principal perpetrator and with materially contributing the crimes charged. As such, his absence at the scene of the crime (*strictu sensu*) does not diminish the basis for his criminal responsibility for the commission of crimes by elements under his command and control which, in fact, may be accomplished by virtue of that absence. *See also, Prosecutor v. Zlatko Aleksovski*, Judgment, Case No IT-95-14/1-T, 25 June 1999, para. 80, *Prosecutor v. Mucić et al*, Judgement, Case No. IT-96-21-T, 16 November 1998, para. 769-770.

⁹ *See* ICC-01/04-02/12-296-tENG, (noting that, a reply “may not be used to strengthen the arguments previously advanced”).

¹⁰ Request, para. 2.