

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **4 September 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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Confidential

**Yekatom Defence Response to 'Prosecution's Request for the Submission
of Rebuttal Evidence' (ICC-01/04-01/18-2657)**

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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1. On 27 August 2024, the Prosecution filed a request for the submission of evidence either in rebuttal, pursuant to the Initial Directions on the conduct of proceedings or, in the alternative, in accordance with Articles 64(6)(d) and 69(3) of the Rome Statute.¹ The tendered evidence concerns various documentary material which the Prosecution states 'reflects improper contact and/or influence by the Defence and persons linked to the Accused as regards Prosecution witnesses'.² In seeking leave to introduce the tendered evidence, the Prosecution asserts that it 'bears on the Chamber's assessment of the Targeted Witnesses' testimony, particularly in respect of any evidence they provide favourable to the Accused'.³
2. The Defence for Mr. Yekatom ('Yekatom Defence') does not seek to intervene on the merits of the Prosecution's Request nor the substance of the allegations therein and defers to the Chamber's discretion in this regard. In doing so however, the Yekatom Defence provides this response without prejudice to any further submissions following a clearer understanding of the scope of the Prosecution's reliance on the proposed evidence insofar as it concerns Mr. Yekatom.
3. In this regard, it is necessary to note that throughout the Request, there is repeated use of the terms 'Defence' and 'Accused' without any clear reference at the outset as to the scope of these terms or the fact that it does not pertain to Mr. Yekatom.⁴ This lack of clarity is highly prejudicial to the rights of Mr. Yekatom and must be corrected at the earliest juncture.

¹ ICC-01/14-01/18-2657-Conf ('Request').

² Request, para. 1.

³ Request, para. 3. The Targeted Witnesses as referred to by the Prosecution concern: P-0888, P-0992, P-1193, P-1847, P-2673, P-2841 and P-2843 see Request, para. 6.

⁴ Whilst the Defence does not intend to respond to the Prosecution's more recent request to submit CAR-D30-0024-0032 as rebuttal evidence, it notes that this request is equally unclear in the use of the terms 'Defence' and 'Accused' see ICC-01/14-01/18-2666-Conf.

4. First, given the seriousness of the allegations raised within the Request and the potential Article 70 implications, it is necessary to correct the record to ensure that there is no implied inference that Mr. Yekatom or his Defence are alleged to have been involved in the improper conduct as alleged in the Request. Whilst the Yekatom Defence notes that the Request is currently classified as confidential, it is the Prosecution's intention to file a public redacted version 'as soon as practicable'.⁵ Without clarification for the public, these serious allegations, which are at risk of being wrongly attributed to Mr. Yekatom and his Defence, will be in the wider public domain and without any adequate recourse for Mr. Yekatom.
5. Second, and more substantively, the Request at present is also unclear as to the intended scope in which the Prosecution is alleging that the evidence of the targeted Prosecution witnesses is unreliable. For example, the Prosecution asserts that the proposed evidence is 'appropriate and necessary for the Chamber to assess and weigh the credibility of Prosecution witnesses [...] and especially the Targeted Witnesses in particular as concerns any evidence potentially favourable to the Accused or otherwise inconsistent with their prior statements adverse to the Accused's interests (emphasis added)'.⁶
6. Whilst Mr. Yekatom is tried jointly in these proceedings, it remains incumbent on the Trial Chamber to consider the case against each accused separately.⁷ Efforts, intentional or otherwise,⁸ to malign and smear Mr. Yekatom and his case without any basis whatsoever have no place in any criminal proceedings not least before this Court and should be promptly stamped out.

⁵ Request, para. 4.

⁶ Request, para. 17.

⁷ Rule 136. See also e.g. IT-95-14/2, Prosecutor v. Kordić, Trial Judgment, 26 February 2001, para. 17.

⁸ The Defence notes with concern the Prosecution's apparent approach to Article 66 as reflected in its baseless and unnecessary submissions in ICC-01/14-01/18-2668-Conf. See also unnecessary mention of Mr. Yekatom for the purposes of any rebuttal request in fn. 32 of ICC-01/14-01/18-2666-Conf.

7. As such, should the Request be permitted, the underlying evidence and any conclusions to be drawn from the evidence, should not be relied on against Mr. Yekatom or in a manner which is prejudicial to Mr. Yekatom insofar as it concerns: (i) any arguments raised by the Yekatom Defence concerning the credibility of the 'targeted witnesses' as relied upon by the Prosecution, and/or (ii) concerns any favourable testimony to Mr. Yekatom even where it is inconsistent with prior statements of the witness in question and in particular raised during the course of examination by the Yekatom Defence. Any alternative position would effectively mean that Mr. Yekatom's right to have examined the 'targeted witnesses' is unjustifiably withdrawn.⁹
8. This response is filed on a confidential basis as it responds to a filing of the same designation. The Yekatom Defence does not oppose the public reclassification of this filing.

RELIEF SOUGHT

9. In light of the above, the Yekatom Defence respectfully requests Trial Chamber V to take account of the present submissions and otherwise defers to the Chamber's discretion.

RESPECTFULLY SUBMITTED ON THIS 4th DAY OF SEPTEMBER 2024



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⁹ In this regard, the Defence draws parallels with prior submissions concerning P-1847 see in particular, ICC-01/14-01/18-2126-Red, paras. 101 to 102.