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PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM***

**Under Seal, *EX PARTE*,
only available to the Prosecutor and the Yekatom Defence**

**Request for leave to reply to “Under Seal, *EX PARTE* Redacted version of
‘Prosecution’s Observations on Alfred YEKATOM’s request
for partial lifting of a freeze on his assets, 9 of May, ICC-01/14-94’”**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor
[REDACTED]

Counsel for the Defence
[REDACTED]

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Unrepresented Applicants
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The Office of Public Counsel for Victims

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Further to the “Under Seal, *EX PARTE* Redacted version of ‘Prosecution’s Observations on Alfred YEKATOM’s request for partial lifting of a freeze on his assets, 9 of May, ICC-01/14-94’” (“Prosecution Response”) filed on 9 May 2019,¹ Counsel representing Mr. Alfred Rombhot Yekatom (“Defence”) hereby submit this:

Request for leave to reply “Under Seal, *EX PARTE* Redacted version of ‘Prosecution’s Observations on Alfred YEKATOM’s request for partial lifting of a freeze on his assets, 9 of May, ICC-01/14-94’”

(“Request for leave to reply”)

INTRODUCTION

1. Pursuant to Regulation 24(5) of the Regulations of the Court (“RoC”), the Defence respectfully seeks leave to reply to the Prosecution Response in respect of four issues.

APPLICABLE LAW

2. Regulation 24(5) of the Regulations of the Court prescribes that “[p]articipants may only reply to a response with the leave of the Chamber” and that “[u]nless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.” Although Regulation 24(5) does not expressly indicate when a reply is warranted (as opposed to indicating the scope of a reply), jurisprudence has consistently held that a reply may be appropriate: (i) “in respect of issues raised in the response which the replying participant could not reasonably have

¹ *Situation in the CAR II*, Under Seal, *EX PARTE* Redacted version of ‘Prosecution’s Observations on Alfred YEKATOM’s request for partial lifting of a freeze on his assets, 9 of May, ICC01/14-94’, 9 May 2019, ICC-01/14-94-US-Exp-Red (“Prosecution Response”).

anticipated”; and (ii) where it “would otherwise be necessary for the adjudication” of the matter.²

3. A request for leave to reply must explain the intended subject-matter of the reply to some extent. As the Appeals Chamber has held, a party seeking leave to reply must: (i) do more than “point [...] to issues” to which it wishes to reply, but must rather “demonstrate [...] why they are new and could not reasonably have been anticipated”;³ and (ii) “explain why a reply to the aforementioned issues is otherwise warranted.”⁴

SUBMISSIONS

4. Although the Defence requests⁵ were filed under seal on an ex parte basis in order to protect the personal situation and the financial circumstances of the family of Mr. Yekatom, the Chamber nevertheless deemed necessary to disclose some of the information contained therein on a confidential basis, as a necessary measure in order to allow the Prosecutor to provide observations on the matter.
5. The Prosecution Response filed on 9 May 2019 on a seal, ex parte, redacted basis raises four issues which require either a reply and/or additional submissions with a view to assisting the Chamber in pronouncing on the matter.

I. Issue 1

² *Ntaganda*, Decision on Mr. Ntaganda’s request for leave to reply, 17 July 2017, ICC-01/04-02/06-1994 (“*Ntaganda* Appeal Decision on Replies”), para 9.

³ *Ntaganda* Appeal Decision on Replies, para 13.

⁴ *Ntaganda* Appeal Decision on Replies, para 14.

⁵ Requête pour la levée partielle du gel des avoirs de M. Yekatom, 23 April 2019, ICC-01/14-01/18-181-US-Exp; Observations de la Défense de M. Yekatom suite à « Order for Additional Information », 25 avril 2019, ICC-01/14-01/18-184-US-Exp, 6 May 2019, ICC-01/14-01/18-187-US-Exp.

6. The Defence seeks leave to reply to the Prosecution's submissions that "to 'unfreeze' an asset to any extent, the burden should normally rest with the suspect minimally to establish its legitimacy".⁶
7. Whether or not Mr. Yekatom has the burden of establishing the legitimacy of his frozen assets – over and above the fact that these funds are deposited in a lawful account under his name – for the purpose of seeking partial lift thereof for the care of his children/bona fide third parties, is an issue on which the Chamber will benefit from further submissions.

II. Issue 2

8. The Defence seeks leave to reply to the Prosecution's submissions that:

Neither YEKATOM nor his family should be allowed to benefit from funds which may be a product of crimes the subject of the Court's warrant for his arrest, or the result of other illicit activities or crimes, irrespective of the amount sought.⁷
9. The Prosecution's argument that bona fide third parties can be precluded from gaining access to funds belonging to a suspect – thereby suffering serious prejudice – before such funds are actually forfeited⁸ could not be anticipated. It therefore requires further submissions.

III. Issue 3

10. The Defence seeks leave to reply to the Prosecution's submissions that "the Request fails to conclusively establish that [the frozen funds] are not a product of [Mr. Yekatom's] previous alleged crimes or any other illicit activities",⁹ on the basis that "[h]ere, clear evidence exists providing at least reasonable grounds to believe that YEKATOM extorted illegal 'tolls' and/or taxes".¹⁰

⁶ Prosecution Response, para 4.

⁷ Prosecution Response, para 5.

⁸ Article 77(2)(b).

⁹ Prosecution Response, para 5.

¹⁰ Prosecution Response, para 6.

11. It could not be anticipated that the Prosecution would dispute the Chamber's finding that:

[T]he evidence presented by the Prosecutor at this stage of the proceedings does not clearly establish reasonable grounds to believe that the [charging of illegal tolls and tax] described above amount to crimes against humanity, committed as part of a widespread and systematic attack against the civilian population, namely persecution (article 7(1)(h) of the Statute); and to war crimes, committed in the context of and associated with an armed conflict not of an international character, namely pillaging (article 8(2)(e)(v) of the Statute).¹¹

in order to oppose the unfreezing of Mr. Yekatom's assets for the benefit of bona fide third parties.

IV. Issue 4

12. The Defence seeks leave to reply to the Prosecution's submissions that "YEKATOM should not be allowed access to the frozen funds without demonstrating that he lacks other means to support his family, and/or that yet other means of doing so are unavailable".¹²
13. Mr. Yekatom has already addressed [REDACTED], in his declaration of means submitted to the Registry for the purpose of confirming his indigence status. However, it could not be anticipated that the Prosecution would refer to [REDACTED] as a possible source of income on the basis of allegations found in [REDACTED].¹³

CONCLUSION

14. The Defence considers that a reply focused on these four discrete issues will assist the Chamber in adjudicating the requested partial lift of the freeze imposed on Mr. Yekatom's assets.

¹¹ Warrant of Arrest for Alfred Yekatom, 11 November 2018, ICC-01/14-01/18-1-US-Exp, paras 18(d) and 18(e).

¹² Prosecution Response, para 7 (footnote omitted).

¹³ [REDACTED].

RELIEF SOUGHT

15. In light of the above, the Defence respectfully request the Pre-Trial Chamber to:

GRANT the leave to reply to the issues identified above.

RESPECTFULLY SUBMITTED ON THIS 13th DAY OF MAY 2019,

A handwritten signature in black ink, appearing to read 'StB' with a small flourish at the end.

Me Stéphane Bourgon *Ad.E.*

Counsel for Mr. Alfred Rombhot Yekatom