

ANNEX 6
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Version

From: Trial Chamber V Communications
Sent: 13 November 2023 11:17
To: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; OTP CAR IIB; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Order on Yekatom Defence Request for Extension of Page Limits

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the request for an extension of page limit below.

He instructs the participants to provide their responses, if any, by Wednesday 15 November 2023, COB.

Kind regards,

TC V

From: [REDACTED]
Sent: 13 November 2023 10:47
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V45 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; D29 Yekatom Defence Team [REDACTED]; V44 LRV Team [REDACTED]
Subject: Request for extension of page limits - Request for the exclusion of evidence of P-2475, P-2018, P-1974, P-0001 and P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,
Dear all,

The Defence for Mr. Yekatom kindly requests an extension of page limits in accordance with regulation 37(2) in respect of its forthcoming 'Request for the exclusion of evidence of P-2475, P-2018, P-1974, P-0001 and P-0002' ('Exclusion Request').

The Defence considers that an extension of up to 80 pages is exceptionally necessary in light of the distinct nature of the request for the exclusion of fabricated evidence concerning Count 29. The Defence submits that such evidence was gathered by the Prosecution as a result of its investigative failures which amounts to violations of articles 54 and 67 of the Statute.

In particular, the extension will allow the Defence to provide the requisite elaboration on:

- the exceptional scale of the conspiracy amongst and between at least 14 individuals who colluded with one another with the intent to falsify evidence to be used (and that has been used) against Mr. Yekatom,

- the large body of documentary and testimonial evidence which demonstrates proof of the fabricated evidence,
- the contours of the Prosecution's investigative powers and duties under the statutory framework, and
- the specific instances and circumstances in which the Prosecution failed to execute its investigative obligations.

The current 20-page limit will undoubtedly hinder the clarity of the Defence's arguments and the substantiation of how the article 69(7) standard is met and the criteria fulfilled. This includes the Defence's submissions setting out the causal link between the cited violations and the evidence gathered by the Prosecution as well as demonstrating that the fabricated evidence is substantially unreliable, and its exclusion is required by the Chamber in order to preserve the integrity of these proceedings.

The Defence emphasises that the request is critical to the rights of Mr Yekatom and assures the Trial Chamber that it will provide direct and concise argumentation to bring together, for the first time, all the evidence as elicited either in cross-examination and/or review of the Prosecution's disclosure, and gathered in the course of Defence investigations, including Facebook evidence collected by the Defence following the Chamber's granting of its cooperation request to Ireland (ICC-01/14-01/18-1531-Conf-Red);, in a single comprehensive request. The Defence will also for the first time, present a thorough overview of the investigative failures dating back to the Prosecution's initial investigative leads in 2018.

The introduction of falsified evidence as a result of investigative shortcomings in these proceedings is undoubtedly an alarming matter with substantial repercussions. The Defence recalls in this regard substantive parallels with the Lubanga case noting further that in those proceedings, the Defence was granted an extension of 100 pages to set out its arguments concerning the fabrication of evidence through the use of intermediaries and the Prosecution's failure to verify the evidence collected by intermediaries (see ICC-01/04-01/06-2690-Red2 fn. 1).

Finally, the Defence considers that an extension of page limits would serve the interests of all parties and participants in these proceedings as it will allow for a complete understanding of the full scope of the Defence's submissions noting in particular the seriousness of the arguments therein. A single motion, in contrast to several requests for exclusion per identified witness, will therefore facilitate responses and expedite proceedings. Accordingly, the Defence would not oppose the extension of page limits for the remaining parties and participants in response to the Exclusion Request.

Kind regards

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