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No. **ICC-01/14-01/18**  
Date: **31 January 2024**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF  
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public**

**Decision on the Yekatom Defence Consolidated Request for Leave to Reply to  
Responses to the ‘Request for the Exclusion of Fabricated Evidence’**

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

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**Judge Bertram Schmitt**, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, having regard to Regulations 24(5) and 34(c) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Yekatom Defence Consolidated Request for Leave to Reply to Responses to the “Request for the Exclusion of Fabricated Evidence”’.

1. On 5 December 2023, the Yekatom Defence (the ‘Defence’) filed its ‘Request for the Exclusion of Fabricated Evidence’ (the ‘Request’).<sup>1</sup> It requests the Chamber to exclude, pursuant to Article 69(7) of the Statute, the evidence of (i) certain witnesses called by the Office of the Prosecutor (the ‘Prosecution’), including associated items; (ii) two witnesses called by the Common Legal Representative of the Former Child Soldiers (the ‘CLR1’), including associated items; and (iii) items related to two withdrawn Prosecution witnesses, which have already been formally submitted.<sup>2</sup>
2. On 19 January 2024,<sup>3</sup> the Prosecution opposed the Request (the ‘Prosecution Response’).<sup>4</sup>
3. On the same day, the CLR1 opposed the Request (the ‘CLR1 Response’).<sup>5</sup>

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<sup>1</sup> ICC-01/14-01/18-2240-Conf (with confidential Annexes A-C and public Annex D).

<sup>2</sup> Request, ICC-01/14-01/18-2240-Conf, paras 5, 153; ICC-01/14-01/18-2240-Conf-AnxC.

<sup>3</sup> On 8 December 2023, the Prosecution filed a request pursuant to Regulation 35 of the Regulations for an extension of time to respond to the Request until 19 January 2024 (*see* Prosecution’s Request for Variation of Time Limit pursuant to Regulation 35, ICC-01/14-01/18-2251, paras 1, 11). The CLR1 and the Common Legal Representatives for the Victims of Other Crimes (the ‘CLR2’) supported the request and requested an equivalent extension of time to respond (*see*, respectively, email from the CLR1, 11 December 2023, at 08:36; email from the CLR2, 11 December 2023, at 08:47.) The Defence indicated that it did not oppose the request (*see* Yekatom Defence Response to ‘Prosecution’s Request for Variation of Time Limit pursuant to Regulation 35’ (ICC-01/14-01/18-2251-Conf), 11 December 2023, ICC-01/14-01/18-2254, para. 2). On 14 December 2023, the Single Judge granted an extension until 19 January 2024 and noted that it also applied to the other participants (*see* Decision on the Prosecution Request for Extension of Time to Respond to Yekatom Defence’s Request to Exclude Evidence, ICC-01/14-01/18-2261).

<sup>4</sup> Prosecution Response to the Yekatom Defence ‘Request for the Exclusion of Fabricated Evidence’ (ICC-01/14-01/18-2240-Conf), ICC-01/14-01/18-2313-Conf.

<sup>5</sup> Response of the Common Legal Representative of the Former Child Soldiers to the Yekatom Defence’s “Request for the Exclusion of Fabricated Evidence”, ICC-01/14-01/18-2314-Conf.

4. On 25 January 2024, the Yekatom Defence requested leave to reply to the Prosecution Response and the CLR1 Response (the ‘Request for Leave to Reply’). Concretely, it seeks to reply to the following four issues:<sup>6</sup>

a. The existence of so-called ‘substantial non-impugned evidence [which] supports Count 29’ is to be considered as part of the assessment conducted at the end of trial in accordance with article 74. It is not a consideration for the admissibility assessment of material which is subject to the Exclusion Request in accordance with article 69(7), particularly where a substantial majority of the material cited by the Prosecution has not been submitted into evidence. The admissibility assessment of article 69(7)(a) is not a holistic endeavour of all material in the Prosecution’s possession. (‘First Issue’).

b. The purpose of excluding material under article 69(7)(b) is not limited to the four walls of the courtroom. It sets a standard for the international community to observe and comply with in relation to the exclusionary rule and further, serves as a warning for not only Court entities and organs but external actors whose violations of the Statute and/or internationally recognised human rights touch on ICC proceedings. Contrary to the Prosecution’s position, the drafters of the Rome Statute accounted for the professionalism of the judges in its inclusion of article 69(7). (‘Second Issue’).

c. The Prosecution’s narrow interpretation of the causal link voids the Trial Chamber’s power, under article 69(7), to determine whether or not, or indeed at which stage, fabricated evidence can be withdrawn from the proceedings. The plain language of article 69(7) does not state that the fabricated material must have been ‘procured unlawfully’ or ‘obtained through unlawful means’ and as such, there is no requirement that the violation must be directed at serving an ulterior illegal purpose. When taken to its logical conclusion, the Prosecution’s interpretation of the causal link between the alleged violation and the evidence gathered, would mean that it would be impossible for a Trial Chamber to exclude false evidence under article 69(7) collected by a defunct investigation and submitted before it. This is despite the fact that under the same statutory framework, the same evidence or conduct would be punishable under article 70. (‘Third Issue’).

d. Article 69(7) does not qualify the type of material to be excluded and extends to oral and sworn statements. The fact that false evidence was provided under oath does not preserve the in-court testimony – as evidenced by the existence of article 70 – and on the contrary, further demonstrates the existence of a continuing violation of the Statute as well as serious breaches of professional and ethical standards before the Court. (‘Fourth Issue’ collectively ‘Four Issues’).

5. On 29 January 2023, the Prosecution responded to the Request for Leave to Reply.<sup>7</sup>
6. According to Regulation 24(5) of the Regulations, ‘a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated’.

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<sup>6</sup> Consolidated Request for Leave to Reply to Responses to the ‘Request for the Exclusion of Fabricated Evidence’, ICC-01/14-01/18-2326-Conf, para. 3 (footnotes omitted).

<sup>7</sup> Prosecution Response to the Yekatom Defence ‘Consolidated Request for Leave to Reply to Responses to the ‘Request for the Exclusion of Fabricated Evidence’ (ICC-01/14-01/18-2326-Conf), ICC-01/14-01/18-2331-Conf.

7. The Single Judge does not consider the Four Issues to be new issues that the Defence could not reasonably have anticipated. Moreover, and noting that the Four Issues largely pertain to matters of legal interpretation, the Single Judge is of the view that the Chamber does not require additional submissions at this stage. Similarly, the Chamber is also able to assess the alleged ‘factual inaccuracies of the material cited within paragraphs 39 to 63 of the Prosecution’s Response concerning P-2084, P-5015, P-1962, P-0808, P-0888, P1339 [sic] and P-1839’<sup>8</sup> without further submissions from the Defence.
8. Accordingly, the Single Judge rejects the Request for Leave to Reply.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**REJECTS** the Request for Leave to Reply;

**RECLASSIFIES** the Request for Leave to Reply, ICC-01/14-01/18-2326-Conf and the Prosecution’s response thereto, ICC-01/14-01/18-2331-Conf, to public;

**ORDERS** the Defence, the Prosecution and the CLR1, respectively, to file public redacted versions of the Request, ICC-01/14-01/18-2240-Conf, the Prosecution Response, ICC-01/14-01/18-2313-Conf, and the CLR1 Response, ICC-01/14-01/18-2314-Conf, within two weeks of notification of this decision.

Done in both English and French, the English version being authoritative.



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**Judge Bertram Schmitt**  
**Single Judge**

Dated 31 January 2024

At The Hague, The Netherlands

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<sup>8</sup> See Request for Leave to Reply, ICC-01/14-01/18-2326-Conf, para. 3.a., n. 6.