

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **6 October 2020**

TRIAL CHAMBER V

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

**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 pursuant to Rule 81(4)
for delayed disclosure of the identity and materials related to Prosecution
Witness P-0306" (ICC-01/14-01/18-668-Conf-Red)**

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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**Victims Participation and Reparations
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom ("Defence" and "Mr. Yekatom", respectively) respectfully responds to the *Prosecution's Request pursuant to Rule 81(4) for delayed disclosure of the identity and materials related to Prosecution Witness P-0306* ("the Request").¹ The Defence defers and supports to the Ngaïssona Defence as Witness P-0306 does not seem to concern Mr. Yekatom but mainly Mr. Ngaïssona.

RELEVANT PROCEDURAL HISTORY

2. On 16 July 2020, the Trial Chamber issued its *Decision Setting the Commencement Date of the Trial*, ordering the Prosecution to, *inter alia*, disclose the evidence related to witnesses listed on the Preliminary Witness List immediately and, at the latest, by 31 August 2020.² The Chamber further ordered that final disclosure be provided by 9 November 2020.³
3. On 24 August 2020, the Prosecution filed a request seeking leave from the Chamber to delay the disclosure of the identity and statement of P-0306, 45 to 60 days prior to his testimony ("Regulation 35 Request").⁴
4. On 26 August 2020, Yekatom Defence filed a response in which it indicated that it would defer to and support the position of the Ngaïssona Defence on this issue.⁵ Nevertheless, the Defence added that should the Prosecution's submission be accepted by the Chamber, it respectfully requested that the witness P-0306 be called at the beginning of the Prosecution's case.⁶
5. On 3 September 2020, the Trial Chamber instructed the Prosecution by e-mail to file a redacted version of P-0306's statement by 7 September 2020. A

¹ [ICC-01/14-01/18-668-Conf-Red](#).

² [ICC-01/14-01/18-589](#), para. 11.

³ [ICC-01/14-01/18-589](#), para. 10.

⁴ [ICC-01/14-01/18-628-Conf-Red](#), paras. 21-23.

⁵ [ICC-01/14-01/18-629-Conf](#).

⁶ [ICC-01/14-01/18-629-Conf](#), para.22.

confidential redacted version of the decision was notified to the Defence on 11 September 2020.⁷ The Chamber further instructed the Prosecution to file a request under rule 81(4) for the delayed disclosure of P-0306 identity and statements.

6. On 3 September 2020, through *inter partes* exchanges, the Prosecution communicated with the Ngaisonna and Yekatom defence teams requesting an extension of the deadline for the disclosure of P-0306's redacted statements to 14 September 2020. The Yekatom Defence deferred to the Ngaisonna Defence decision on the matter. An agreement was reached whereby the Prosecution would release at least 150 pages of transcript on September 7, and every three days thereafter at least 150 pages until the September 14 deadline.⁸
7. On the 7, the 10 and 14 September 2020, the Prosecution disclosed Pre-Trial INCRIM package 48,⁹ Pre-Trial INCRIM package 49¹⁰ and Pre-Trial INCRIM package 50¹¹ containing the redacted transcripts of witness P-0306.
8. On 29 September 2020, pursuant to Rule 81(4), the Prosecution filed a request to delay the disclosure of the identity and the materials related to Witness P-0306, up to 45-60 days prior to his testimony.¹²

ARGUMENT

9. In its Regulation 35 Request, the Prosecution specified that the statement of P-0306's interview related to Mr. Ngaisonna.¹³ No mention was made that this witness related or referred to Mr. Yekatom or his alleged elements in any way.

⁷ [ICC-01/14-01/18-648-Conf-Red.](#)

⁸ All email correspondence on this matter can be made available upon request.

⁹ [ICC-01/14-01/18-644.](#)

¹⁰ [ICC-01/14-01/18-647.](#)

¹¹ [ICC-01/14-01/18-653.](#)

¹² [ICC-01/14-01/18-668-Conf-Red.](#), para.18.

¹³ [ICC-01/14-01/18-628-Conf-Red.](#), paras. 10-11.

10. The Defence, according to the rule 81(4), understands and concedes that the transcripts may be partially redacted, in order not to reveal any information that would allow the identification of the witness and potentially jeopardize his or her security.
11. Upon receiving the disclosure of P-0306's redacted statement, the Defence conducted a careful review and noticed that no mention is made of Mr. Yekatom or his alleged elements.
12. While the Defence is not privy to the entirety of the substance of the statement of P-0306 due to the redactions applied, the Defence nevertheless assumes that the redactions applied do not concern Mr. Yekatom, his alleged elements or charged events related to him. This assumption is further reinforced by the fact that Mr. Ngaïssona's name is mentioned several times in the non-redacted parts of the statements and the absence of any mention of Mr. Yekatom in the summary of the expected testimony of P-0306 provided by the Prosecution.¹⁴
13. Thus, the Defence trusts that if there been any pieces of information concerning Mr. Yekatom, it would not have been redacted or, had it been so for security reasons, the Prosecution, in fairness, would have notified the Defence as such. The Defence therefore considers that the statements of the witness do not concern Mr. Yekatom.

CONCLUSION

14. Given that the evidence of Witness P-0306 appears to relate principally to Mr. Ngaïssona, in order not to duplicate arguments before the Chamber, the Yekatom Defence defers to, and supports, the position on this issue to be taken by the Ngaïssona Defence.

¹⁴ [ICC-01/14-01/18-642-Conf-AnxA](#), item n°20.

CONFIDENTIALITY

15. This response is filed confidentially to conform to the *Request*. The Trial Chamber is requested to issue a public redacted decision and order the parties to file public redacted versions of their pleadings.

RESPECTFULLY SUBMITTED ON THIS 6TH DAY OF OCTOBER 2020¹⁵



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¹⁵ The assistance of Legal Intern, Ms. Camille Gillain in the preparation of this response is gratefully acknowledged.