

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 February 2024**

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 Request for Leave to Reply to the "Prosecution's
Response to Yekatom Defence Request for the Introduction of
CAR-D29-P-5010's recorded testimony pursuant to Rule 68(2) of the Rules",
ICC-01/14-01/18-2341-Conf**

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

Mr Karim Asad Ahmad Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Thomas Hannis
Mr Florent Pages-Granier

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Mr Richard Omissé-Namkeamaï

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Ms Marie O'Leary

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

1. Pursuant to Regulation 24(5) of the Regulations of the Court, the Defence for Mr. Alfred Rombhot Yekatom ("Defence") hereby seeks leave to file a brief reply to the "Prosecution's Response to Yekatom Defence Request for the Introduction of CAR-D29-P-5010's recorded testimony pursuant to Rule 68(2) of the Rules" ("Prosecution's Response").¹
2. Should leave be granted, the Defence intends to briefly reply to two new issues arising from the Prosecution's Response that could not have been anticipated at the time of the drafting of the original Defence request for submission of P-5010's prior recorded testimony pursuant to Rule 68(2) of the Rules.
3. The first issue warranting a reply relates to the Prosecution's serious allegation that the Defence is withholding the disclosure of statements provided by P-5010, an allegation founded on a flawed misinterpretation of P-5010's interview by their Office ("First Issue").²
4. The Defence submits that a reply is warranted as this assertion by the Prosecution is a serious allegation against the professional obligations of the Defence. Indeed, it is recalled that in previous submissions the Defence clearly stated that it *"has disclosed all signed and acknowledged statements of all of its witnesses appearing in the Defence List of Witnesses"*;³ and that the Chamber ruled that the Defence is expected to provide any witness statements that has been prepared.⁴
5. The Defence should be afforded an opportunity to reply to the First Issue and clarify that P-5010 was not presented with any draft statement by the Defence, nor did he provide any signed and acknowledged statements to the Defence.

¹ ICC-01/14-01/18-2341-Conf.

² ICC-01/14-01/18-2341-Conf, para. 10.

³ [ICC-01/14-01/18-2230](#), para. 5.

⁴ [ICC-01/14-01/18-2242](#), para. 8.

Moreover, the Defence intends to provide the Chamber with the necessary context to understand the extracted response provided by P-5010 when asked whether he had provided a statement to the Defence in order to demonstrate that the response was by no means "unequivocal".⁵

6. The sought reply is necessary as the Prosecution's incorrect assertion, which will be part of the public record, implies that (i) the Defence lied in its previous submissions and (ii) is knowingly disregarding a Chamber's order. In both situations, in addition to the infringement of the Code of Professional Conduct for Counsel,⁶ it is the professionalism of the Defence which is affected by the Prosecution's Response.
7. It is recalled that in a previous situation where the professionalism of the Defence was impacted by incorrect Prosecution's submissions, the Chamber granted a leave to reply "*out of fairness to the Defence and to set the record straight publically*".⁷ Given the seriousness of the Prosecution's accusations, a similar opportunity should be afforded to the Defence as regard to the First Issue identified.
8. The second issue warranting a reply relates to the Prosecution's Response apparent assertion that under Rule 68(2)(a), for the condition of the parties to have "had the opportunity to examine the witness during the recording" to be met, previous statements of a witness needs to be disclosed ("Second Issue").⁸ While the argument is moot in the present instance, as no such previous statement exists in the case of P-5010, the Defence nevertheless submits that the Prosecution's position unduly limits the scope of Rule 68(2)(a) contrary to both

⁵ Contra Prosecution's Response, para. 10. The Defence further recalls that it was prevented from intervening to rectify the apparent confusion which arose during the course of the Prosecution's examination of P-5010 as per the contact protocol.

⁶ See Article 24 (3) of the Code of Professional Conduct for Counsel which *inter alia* states that "Counsel shall not deceive or knowingly mislead the Court".

⁷ [ICC-01/14-01/18-1168](#), para. 6.

⁸ ICC-01/14-01/18-2341-Conf, para.7 and para. 10 which begins with the word "relatedly".

the plain language of the provision as well as Trial Chamber IX's direction in the Ongwen case.⁹

CONFIDENTIALITY

9. The present leave to reply is filed on a confidential basis corresponding to the classification of the Prosecution's Response. The Defence does not oppose the reclassification as public.

RELIEF SOUGHT

10. In light of the above, the Defence respectfully requests Trial Chamber V to:

GRANT the request for Leave to Reply as regard to the First and Second Issues.

RESPECTFULLY SUBMITTED ON THIS 2nd DAY OF FEBRUARY 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

⁹ *Prosecution v. Ongwen*, Decision on Defence Request to Submit the Prior Recorded Testimony of D-0036 and related documents pursuant to Rule 68(2)(a) of the Rules, 13 November 2019, [ICC-02/04-01/15-1665](#), para. 8 : « the Chamber finds that the opportunity to examine the witness must be a meaningful one, mirroring as far as possible the parties' right to question the witness during his or her testimony during the trial proceedings (emphasis added) ».