



Original: English

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

Date: 23 October 2024

TRIAL CHAMBER V

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Prosecution’s Response to “Yekatom Defence Motion for judicial order to use Prosecution good offices”(ICC-01/14-01/18-2669-Conf)”
ICC-01/14-01/18-2685-Conf, 10 September 2024,**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of Victims

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

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**

Other

I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the Yekatom Defence’s ‘Motion for judicial order to use Prosecution good offices’ (“Motion”).

2. The Motion is without any genuine substantive basis. It moreover, effectively relitigates the Chamber’s ruling on the applicable scope of article 54(1) in this case — a ruling for which the Yekatom Defence previously sought leave to appeal,¹ and which was rejected.² The Motion presents no new issues, wasting the Court’s valuable time and limited resources. The Chamber should thus dismiss it *with prejudice*.

II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(2) of the RoC, this submission is filed as “Confidential”, as it responds to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Prosecution reiterates that the proper mechanism for seeking information concerning the [REDACTED].³ That the Yekatom Defence refuses to accept the procedural norms established in the regulatory framework and the decisions of the Court does not thereby create a basis for the relief sought.

¹ ICC-01/14-01/18-2468-Conf.

² ICC-01/14-01/18-2519.

³ [REDACTED].

A. The Motion relitigates matters the Chamber has already substantively addressed

5. With previous efforts to [REDACTED], the Yekatom Defence now tries its luck with a new approach — once again, [REDACTED].⁴ However, the scope of the Chamber’s previous ruling — ‘the law of the case’ (as it were) — is preclusive.

6. The Defence’s attempt to reassert its continuing effort to obtain information related to [REDACTED]:

[REDACTED].⁵

It has further held:

[REDACTED]⁶

7. In this respect, it is telling that the Defence’s May 2024 request for partial reconsideration of the Chamber’s rejection⁷ of its demand for limited inspection of [REDACTED]⁸ raised no article 54(1) claim *vis-à-vis* the Prosecution. [REDACTED];⁹ [REDACTED].¹⁰ As noted, the Motion rehashes essentially the same narrative, testing out a different legal approach to see if it might take this time. However, the device is transparent, and the Chamber’s previous holdings extinguish the Defence’s claim in any case.

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ ICC-01/14-01/18-2500-Conf.

⁸ ICC-01/14-01/18-2496-Conf.

⁹ ICC-01/14-01/18-2406-Conf.

¹⁰ ICC-01/14-01/18-2460-Conf, para. 16 (“Exclusion Decision”).

B. No Standing

8. The Defence's assertion that it "has standing to move for the Sought Order, given Mr Yekatom's standing to seek *appropriate* relief for any issues that may detrimentally affect the fairness of the trial"¹¹ is similarly flawed — and moreover, circular. Clearly, a defendant may not obtain relief '*appropriately*' where he lacks standing to request it in the first place.

9. Here, there is no question that YEKATOM lacks standing for the "Sought Order" or that the [REDACTED].

10. It is incontestable that the Accused is not a Party or Participant in any prospective article [REDACTED].¹² [REDACTED].

11. Despite acknowledging the Accused's lack of standing, the Defence nevertheless persists in its attempt to reinvent its unsuccessful arguments to obtain information to which the Accused is not legally entitled.¹³ As shown below, its efforts are misguided.

C. Article 54(1) has been discharged

12. The Motion continues the Defence's repeatedly rejected submissions and attempts to further reargue the Exclusion Decision regarding the Chamber's reading and application of article 54(1) in this case.

13. As the Chamber has correctly observed, "[i]f the Prosecution becomes aware of *specific* exonerating evidence, it cannot ignore it, irrespective of the stage of the proceedings."¹⁴ [REDACTED].

¹¹ ICC-01/14-01/18-2669-Conf, para. 24.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ ICC-01/14-01/18-2519, para. 15.

14. Article 54(1) does not require the Prosecution to re-investigate the same exonerating circumstance solely because the Defence is not satisfied with either the manner in which it has exercised its discretion, or the course or outcome of a given investigation. However, this is in essence what the Motion seeks. The facts and circumstances which the Yekatom Defence claims “enlivens the Prosecution’s article 54(1) duties”¹⁵ [REDACTED].¹⁶

15. [REDACTED].¹⁷ [REDACTED],¹⁸ [REDACTED].

16. The Defence’s assertions to the contrary conflict with the Court’s jurisprudence and are, in any case, legally unsupported in the Motion. At their core, they are predicated solely on speculation and/or conjecture, neither of which imposes a further investigative obligation on the Prosecution pursuant to article 54(1). [REDACTED].

17. While article 54(1) may be triggered where an issue or claim is advanced in good faith, it does not oblige the Prosecution to take up an investigation at the Defence’s every whim — and moreover, well beyond the investigation stage.¹⁹ [REDACTED]²⁰ [REDACTED],²¹ [REDACTED].²²

18. [REDACTED]²³ [REDACTED]²⁴ [REDACTED]²⁵ [REDACTED].

¹⁵ ICC-01/14-01/18-2669-Conf, para. 25.

¹⁶ ICC-01/14-01/18-2460-Conf, para. 16 (emphasis added).

¹⁷ [REDACTED].

¹⁸ ICC-01/14-01/18-2669-Conf, para. 19.

¹⁹ ICC-01/14-01/18-2460-Conf, para. 27.

²⁰ ICC-01/14-01/18-2669-Conf, para. 6. Notably, the crimes charged against YEKATOM in this case arise from events transpiring five to six years earlier, in 2013 and 2014.

²¹ [REDACTED].

²² ICC-01/14-01/18-2669-Conf, para. 17.

²³ ICC-01/14-01/18-2669-Conf, para. 17.

²⁴ See ICC-01/14-01/18-2468-Red, paras. 4-6.

²⁵ ICC-01/14-01/18-2460-Conf, para. 16.

D. The pending investigation is not an ‘exonerating circumstance’

19. The claim that [REDACTED]²⁶ [REDACTED]. Rather, it is established by a substantial amount of evidence, both direct (including of insiders in his own Anti-Balaka group) and indirect, as readily inferable from all of the attendant circumstances. [REDACTED].

20. To be clear, the Yekatom Defence has all of the information and evidence to which it is entitled under the Court’s regulatory framework. [REDACTED].

IV. CONCLUSION

21. For the reasons above, the Prosecution requests the Chamber to reject the Motion in its entirety, and to dismiss it with prejudice.



Karim A. A. Khan KC, Prosecutor

Dated this 23th of October 2024
At The Hague, The Netherlands

²⁶ ICC-01/14-01/18-2669-Conf, para. 25.