

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **21 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***

Public with Confidential Annex A

**Public Redacted Version of Motion for Violation of Decision on
the Prosecution Request for Non-Standard Redaction, 20 October 2020**

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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INTRODUCTION

1. Counsel representing Mr. Alfred Rombhot Yekatom (the “Defence”) respectfully request a finding that the Prosecution has violated the *Decision on the Prosecution Request for Non-Standard Redaction* (“Decision”)¹ by maintaining redactions that were rejected by Trial Chamber V (the “Chamber”).
2. As a remedial measure, the Defence respectfully requests the Chamber to pronounce the violation and order that the Prosecution comply with the *Decision* and disclose the relevant documents to the Defence within 48 hours of the notification of a ruling on this request.

PROCEDURAL BACKGROUND

3. On 30 July 2020, the Prosecution requested for non-standard redactions for, *inter alia*, Witnesses P-[REDACTED], P-[REDACTED], and P-[REDACTED] pursuant to Rule 81(2). A confidential redacted version of the *Request* was made available to the Defence on 5 August 2020.²
4. On 13 August 2020, the Yekatom Defence responded to the *Request*, opposing it in its entirety.³
5. On 31 August 2020, following a request from the Prosecution to extend the initial deadline for disclosure of the material subject to the *Request*,⁴ the Chamber authorised the Prosecution to disclose the relevant material within one week of the issuance of the forthcoming decision with full reasons.⁵
6. On 30 September 2020, the Chamber issued its *Decision on the Prosecution Request for Non-Standard Redactions*, rejecting (1) the entire request regarding P-

¹ [ICC-01/14-01/18-684-Conf-Red.](#)

² [ICC-01/14-01/18-609-Conf-Red](#) (“Request”).

³ [ICC-01/14-01/18-623-Conf.](#)

⁴ [ICC-01/14-01/18-628-Conf-Red.](#)

⁵ Email decision dated 31 August 2020.

[REDACTED];⁶ (2) the request regarding a portion for P-[REDACTED];⁷ and (3) the request regarding a specific paragraph for P-[REDACTED].⁸

7. On 7 October 2020, the Prosecution released the documents subject to the *Decision* in its Pre-Trial INCRIM Package 53.⁹ This disclosure contained redactions for which the Chamber had denied the *Request* for those same redactions noted above relating to Witnesses P-[REDACTED], P-[REDACTED], and P-[REDACTED].
8. On 14 October 2020, the Defence sent an e-mail to the Prosecution pointing out that redactions rejected by the *Decision* are nonetheless maintained in the recent disclosure. It was then requested that the Prosecution re-disclose these documents by Monday, 19 October according to the *Decision* with redactions applied only where authorised.¹⁰
9. As of this writing on 20 October 2020, the Defence still has not heard back from the Prosecution.

ARGUMENT

10. The Prosecution's failure to disclose the documents *as ordered* is untenable and highly prejudicial to the Defence.
11. The paragraphs redacted from the recently disclosed documents encompass those where the non-standard requests were *specifically* rejected by the Chamber. These paragraphs were deemed disclosable because they contain information that is potentially exculpatory under Article 67(2) or material to the preparation of the defence under Rule 77, and their redaction would be

⁶ [ICC-01/14-01/18-670-Conf-Red](#), para. 58.

⁷ [ICC-01/14-01/18-670-Conf-Red](#), para. 29.

⁸ [ICC-01/14-01/18-670-Conf-Red](#), para. 38.

⁹ [ICC-01/14-01/18-676-Conf-Anx.](#) P-[REDACTED]: [REDACTED] (screening notes) and [REDACTED] (statement); P-[REDACTED]: [REDACTED] (statement), [REDACTED] and [REDACTED] (annexes), [REDACTED] (screening note); P-[REDACTED]: [REDACTED] (statement).

¹⁰ The email is reproduced in Confidential Annex A.

disproportionately prejudicial to the rights of the accused.¹¹

12. Mindful of the Chamber's direction, the Defence sought to resolve the issue *inter partes*, which it believed to be an error rather than a dispute. Even though the Defence and the Prosecution have been cooperating very well prior to the status conference on redaction disputes and held hours of *inter partes* discussions leading to the lift of numerous redactions, on this issue, however, the Defence regrets that the inquiry remains outstanding by the proposed response deadline of 19 October 2020 COB.
13. In light of the foregoing, the pronouncement of a violation is warranted as a sanction to uphold the procedural fairness. Besides the normal expectation to comply with a court order, the Prosecution should also be reminded that the failure at bar is particularly prejudicial to the right of the accused. By the very nature of the violation, the Defence could neither appraise the extent of prejudice or take any mitigating measures vis-à-vis the impending commencement of trial.
14. Whereas the Prosecution has been on notice about the timeline of the disclosure of the relevant documents since 11 September 2020,¹² the Defence contends that the Prosecution should be ordered to disclose all the documents, with the redactions rejected by the Chamber lifted, within 48 hours from the issuance of a ruling on this motion.

CONFIDENTIALITY

15. This motion and its Annex A are filed on a confidential basis as they refer to confidential filings and information that may lead to the identification of witnesses. A public redacted version will be filed forthwith.

¹¹ [ICC-01/14-01/18-670-Conf-Red](#), paras. 27-28, 37, 56-57.

¹² [ICC-01/14-01/18-648-Conf-Red](#), para 74.

RELIEF SOUGHT

16. In light of the above, the Defence respectfully requests the Trial Chamber to:
- FIND** the Prosecution violated its disclosure obligation; and
- ORDER** the proper disclosure of all documents subject to the *Decision* within 48 hours of the notification of a ruling on the present motion.

RESPECTFULLY SUBMITTED ON THIS 21st DAY OF OCTOBER 2020¹³



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¹³ The assistance of Legal Intern, Ms. Audrey Gagne Breton of Canada in the preparation of this motion is gratefully acknowledged.