

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **28 October 2021**

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 'Prosecution's Response to
Yekatom's Motion for Finding of Disclosure Violation and for additional
remedies, ICC-01/14-01/18-1142-Conf', ICC-01/14-01/18-1149-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. James Stewart
Mr. Kweku Vanderpuye

Counsel for Mr. Yekatom

Me Mylène Dimitri
Mr. Thomas Hannis
Me Anta Guissé

Counsel for Mr. Ngaïssona

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

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**

Me Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

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 respectfully seeks leave to reply to the 'Prosecution's Response to Yekatom's Motion for Finding of Disclosure Violation and for additional remedies, ICC-01/14-01/18-1142-Conf' ('Response').¹
2. The Defence submits that a brief reply is warranted to address two issues that could not have been reasonably anticipated in the original Defence motion ('Motion').²
3. First, it is apparent from the Response that the Prosecution fundamentally misconceives its statutory obligations arising from Article 67(2) of the Statute.
4. Specifically, the Prosecution seeks denial of the Motion, claiming that P-2580's screening note ('Screening Note') is not subject to disclosure under Article 67(2) on the basis that i) it principally contains incriminating evidence,³ and ii) other witnesses have provided the same or similar information.⁴
5. Both of these positions are fundamentally mistaken as a matter of law.⁵
6. The Defence could not have reasonably anticipated that the Prosecution would predicate its Response on such a critical, multi-faceted misconception of its obligations under Article 67(2). In other words, while the Defence could have reasonably anticipated that the Prosecution might seek to contest, within the established legal framework, the exculpatory nature of the document, it could not have reasonably anticipated that the Prosecution would in fact be contesting the very contours of that legal framework itself. This is especially so – not to

¹ [ICC-01/14-01/18-1149-Conf](#).

² [ICC-01/14-01/18-1142-Conf](#).

³ See, [ICC-01/14-01/18-1149-Conf](#), paras 1-2, 7, 9-10, 12, 13-19, 21, 31-32.

⁴ See, [ICC-01/14-01/18-1149-Conf](#), paras 3, 10, 25-30.

⁵ See e.g., [Prosecutor v. Lubanga, Annex 2 to Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters, ICC-01/04-01/06-1311-Anx2, 24 April 2008](#), para. 94; [ICC-01/14-01/18-595](#), para. 21.

mention especially concerning – given that the Chamber has previously expressly reiterated the relevant law on this matter in these very proceedings.⁶

7. In addition, the Defence submits that it would be in the broader interests of justice to grant the sought leave. As is well-established before the Court, the rights and obligations arising under Article 67(2) are fundamental to the fairness of these proceedings.⁷ The Prosecution's position as set out in the Response therefore has implications for these proceedings that potentially extend beyond the specific evidence and remedies the subject of this litigation.⁸ Indeed, if the Prosecution has been applying its misconceived interpretation of Article 67(2) in its approach to disclosure in these proceedings to date, it would not be an exaggeration to suggest that the Response raises the spectre of a miscarriage of justice. In the circumstances therefore, the Defence should be granted the opportunity to address the Prosecution's *de facto* challenge to the established law on this fundamental matter.
8. It is also submitted that a brief reply would assist the Chamber in its determination of the Motion and thereby potentially expedite this litigation; and in any event, that the broader interests of justice would necessarily outweigh any impact to the expeditiousness of the proceedings that granting the sought leave might entail.
9. Second, in the Response, the Prosecution addresses the Defence request for an un-redacted version of the Screening Note by indicating that the sought information, 'contrary to the Defence allegation', already appears on the document in question.⁹ The implication of this Prosecution submission is that

⁶ [ICC-01/14-01/18-595](#), para. 21.

⁷ See e.g., [ICC-01/14-01/18-296](#), para. 12, fn. 11 and references cited therein.

⁸ The Response contains no less than 14 occurrences of the word 'incriminating' or 'incriminatory', itself aptly demonstrating i) the extent to which the Response is predicated on this erroneous interpretation of the Prosecution's obligations; and by extension, ii) the extent to which this misinterpretation is likely to have informed and underpinned the Prosecution's disclosure strategy to date.

⁹ [ICC-01/14-01/18-1149-Conf](#), para. 35.

the Defence was so lacking in basic diligence in preparing the Motion, such that it requested information that was obviously available to it.

10. As the Prosecution is perfectly aware, this implication is without factual basis. The Defence could not have been reasonably anticipated that the Prosecution would rely on a mischaracterisation of the disclosure history of the Screening Note in this manner.
11. The Defence therefore respectfully submits that it should be granted the opportunity to clarify the issues surrounding the timing and manner in which the Screening Note was disclosed, not least given that the Response will shortly be a matter of public record.
12. This request is filed on a confidential basis corresponding to the classification of the Motion. The Defence would not oppose its reclassification as public.

RELIEF SOUGHT

13. For the reasons set out above, the Defence respectfully requests that the Chamber:

GRANT leave to reply to the Response.

RESPECTFULLY SUBMITTED ON THIS 28th DAY OF OCTOBER 2021



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands