



Original: English

**No. ICC-01/14-01/18
Date: 5 November 2021**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Yekatom Defence Request for Leave to Reply to the Prosecution
Response to the Motion for Finding of Disclosure Violation**

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V (the ‘Single Judge’ and ‘Chamber’, respectively) of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Regulations 24(5) and 34(c) of the Regulations of the Court, issues this ‘Decision on the Yekatom Defence Request for Leave to Reply to the Prosecution Response to the Motion for Finding of Disclosure’.

1. On 20 October 2021, the Yekatom Defence (the ‘Defence’) filed a motion for the finding of disclosure violation and for additional remedies (the ‘Defence Motion’).¹
2. On 28 October 2021, the Chamber received the Office of the Prosecutor’s (the ‘Prosecution’) response to the Defence Motion (the ‘Prosecution Response’).²
3. On 29 October 2021, the Chamber received the Defence’s application for leave to reply to the Prosecution Response (the ‘Request for Leave to Reply’).³ The Defence identifies two issues in relation to the Prosecution Response which it argues ‘could not have been reasonably anticipated’ in the Defence Motion and for which it contends it should be authorised to reply.⁴
4. In the Request for Leave to Reply, the first issue raised by the Defence is that the Prosecution misconceives its statutory obligations by claiming that P-2580’s screening note (the ‘Screening Note’) is not subject to disclosure under Article 67(2) of the Rome Statute (the ‘Statute’) on the basis that (i) ‘it principally contains incriminating evidence, and (ii) other witnesses have provided the same or similar information’ (the ‘First Issue’).⁵ The second issue raised pertains to ‘the timing and manner in which the Screening Note was disclosed’ and that the

¹ Motion for Finding of Disclosure Violation and for additional remedies, ICC-01/14-01/18-1142-Conf (with confidential Annex A, ICC-01/14-01/18-Conf-AnxA) (public redacted version notified 21 October 2021).

² Prosecution’s Response to YEKATOM’s Motion for Finding of Disclosure Violation and for additional remedies, ICC-01/14-01/18-1142-Conf, 28 October 2021, ICC-01/14-01/18-1149-Conf (the ‘Prosecution Response’).

³ 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, 29 October 2021, ICC-01/14-01/18-1152-Conf (the ‘Request for Leave to Reply’).

⁴ Request for Leave to Reply, ICC-01/14-01/18-1152-Conf, paras 2-11.

⁵ Request for Leave to Reply, ICC-01/14-01/18-1152-Conf, paras 3-4, 6-7; *See also* Prosecution Response, ICC-01/14-01/18-1149-Conf, paras 3, 10, 25-30.

Prosecution relied on a mischaracterisation of its disclosure history in its response to the Defence's request for an un-redacted version of the Screening Note (the 'Second Issue').⁶

5. The Single Judge does not consider it necessary to receive further submissions on legal matters already addressed by the Chamber in previous decisions. In this regard, he recalls that where a statement 'contains incriminatory information [this] is not a reason to disregard any potentially exculpatory factor(s) contained therein, including those that may affect the credibility of prosecution evidence'.⁷
6. However, the Single Judge considers that out of fairness to the Defence and to set the record straight publically, the Chamber will be assisted by the Defence's submissions on the Second Issue identified in the Request for Leave to Reply.
7. The Single Judge therefore orders the Defence to file a single reply addressing the Second Issue identified in the Request for Leave to Reply.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

PARTLY GRANTS the Request for Leave to Reply as set out above in paragraph 6;

ORDERS the Defence to file its reply by 10 November 2021; and

ORDERS the Prosecution and Defence to file public redacted versions of the Prosecution Response and the Request for Leave to Reply within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.

⁶ Request for Leave to Reply, ICC-01/14-01/18-1152-Conf, paras 9-10.

⁷ Decision on the Yekatom Defence Request Concerning Disclosure Violation and Disclosure of Exculpatory Material, 22 July 2020, ICC-01/14-01/18-595, para. 21.

A handwritten signature in black ink, appearing to read 'Bertram Schmitt', is positioned above a solid horizontal line.

Judge Bertram Schmitt

Single Judge

Dated 5 November 2021

At The Hague, The Netherlands