

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **21 April 2022**

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 Response to the Ngaïssona 'Defence Request for
Disclosure of Reports related to Seizure of Digital Materials from P-0889'
(ICC-01/14-01/18-1354-Conf), 8 April 2022**

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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(Participation / Reparation)**

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1. The Defence for Mr Yekatom ("Defence") supports the "Ngaïssona Defence Request for Disclosure of Reports related to Seizure of Digital Materials from P-0889" ("Request").¹
2. The Defence fully supports the Ngaïssona Defence argument that the Prosecution misinterprets its obligation of disclosure. The Prosecution's unduly narrow interpretation of Rule 77, and its repeated and misplaced reliance on a single Trial Chamber X decision from the *Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* case ("*Al Hassan case*")², has implications that affect the broader fairness of the trial.
3. *First*, in addition to the reference made by the Ngaïssona Defence to the Appeals Chamber Judgment in *Lubanga* finding that "the term 'material to the preparation of the defence' must be construed broadly and refers to all objects relevant for the preparation of the defence"³, the Yekatom Defence underlines that in that same Appeals Judgment, the Appeals Chamber specifically rejected the Trial Chamber Decision that evidence to be disclosed under Rule 77 must "relate to a live issue in the case".

If the Impugned Decision is read in this way, objects are not material to the preparation of the defence if "[a]ny evidence on this subject will not undermine the Prosecution case and ... does not support any defence or line of argument to be relied on by the accused. Put otherwise, this area of evidence has not been demonstrated to relate to a live issue in the case and it is not one that could assist the accused" (see above, paragraph 56). Thus, according to the Trial Chamber's view, only material that relate to issues which would either directly undermine the "Prosecution case" or support a line of argument of the defence are material to the preparation of the defence.

The Appeals Chamber finds that the Trial Chamber interpreted rule 77 of the Rules of Procedure and Evidence too narrowly because it excluded

¹ [ICC-01/14-01/18-1354-Conf](#).

² [ICC-01/12-01/18-859-Red](#), paras 9-10.

³ [ICC-01/14-01/18-1354-Conf](#), para. 19.

objects which, while not directly linked to exonerating or incriminating evidence, may otherwise be material to the preparation of the defence.⁴

4. *Second*, this Appeals Chamber Judgment has also been endorsed by other chambers.⁵
5. *Third*, while the Prosecution refers to a Decision issued by Trial Chamber IX in the *Ongwen* case to support its position that “a showing of materiality requires a relationship between the items sought and the charges in the case or a live issue”⁶ the Defence respectfully submits that this Decision is distinguishable from the case at hand. In *Ongwen*, the Defence had argued that material from a Ugandan Human Rights Commission database should have been disclosed earlier under Rule 77 because the material from this commission was used by the defence in cross-examination and was mentioned in witness testimony. The Trial Chamber indicated that because some material came from this commission was relevant, it does not mean that all material is and that all material becomes subject to disclosure under Rule 77. This is, in the Defence view, the reason why Trial Chamber X indicated that, in this instance, “without anything further such as a direct connection to the charges or a live issue in the case”, it would not be material. More importantly and contrary to the Prosecution’s submissions, there was no implication by Trial Chamber X that such a connection was ever meant to be a general requirement for establishing Rule 77 materiality in every case. In any event, the Ngaïssona disclosure request is confined to the Extraction Reports and investigative note⁷ linked to P-0889 and not to all extraction reports and investigative notes in the Prosecution’s holding.

⁴ *Prosecutor v. Lubanga*, Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008, 10 July 2008, [ICC-01/04-01/06-1433](#), paras 76–77.

⁵ [ICC-01/04-01/06-2147](#), para. 17 ; [ICC-02/05-03/09-443](#), para. 14

⁶ [ICC-01/14-01/18-1368-Conf](#), para. 21.

⁷ [ICC-01/14-01/18-1354-Conf](#), para. 21.

6. It is respectfully submitted that the Chamber should rule on the standard of materiality under Rule 77, and the Prosecution's undue reliance on the *Al Hassan* decision, so as to provide clarity on the matter and prevent any further disclosure misinterpretation in this regard.
7. This response is filed on a confidential basis corresponding to the classification of the Request. The Defence does not oppose the reclassification as public.

RESPECTFULLY SUBMITTED ON THIS 21ST DAY OF APRIL 2022⁸



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⁸ The swift assistance of the OPCD with the legal research of this response at a time where the Defence was overwhelmed with tight deadlines and trial preparation is gratefully acknowledged.