

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 May 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 'Prosecution's Request for the Appointment
of Duty Counsel pursuant to Rule 74' (ICC-01/14-01/18-1398-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

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Legal Representatives of Applicants

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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**

Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

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Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby responds to the 'Prosecution's Request for the Appointment of Duty Counsel pursuant to Rule 74' ('Request').¹
2. The Defence would not oppose the appointment of counsel to advise P-2475 on self-incrimination, pursuant to Rule 74.
3. Likewise, the Defence would not oppose the assignment of the Common Legal Representative of Victims ('CLR') to advise witness P-2582, pursuant to Rule 74 and the Chamber's Initial Directions,² on the understanding that any discussions between the CLR and P-2582 while the latter is under oath would be strictly limited to matters relevant to self-incrimination.
4. In this regard the Defence recalls that the Chamber has declined to allow the practice of 'witness preparation' in these proceedings.³ In so doing, the Chamber found *inter alia* that 'Witness Preparation has an inherent risk of rehearsing and distorting witnesses' evidence'; that '[s]uch risk exists regardless of any intention of the Calling Party to do so'; and that a calling party 'might indirectly convey its expectations about the witness's evidence to the witness and thereby inadvertently contaminate the witness's recollection of the events as they occurred'.⁴ While in the circumstances, the CLR would not *stricto sensu* constitute the 'calling party' for the purposes of the Initial Directions, it is submitted that the 'inherent risk' envisaged by the Chamber could conceivably arise in the context of any mid-testimony discussions between P-2582 and the CLR, should the Request be granted.

¹ [ICC-01/14-01/18-1398-Conf](#).

² [ICC-01/14-01/18-631](#), para. 38.

³ See, [ICC-01/14-01/18-677](#), paras 9-30.

⁴ *Ibid*, para. 21.

5. In the circumstances therefore, if the Chamber is minded to grant the Request, it is submitted that the Chamber should direct the CLRV to strictly limit any mid-testimony discussions with P-2582 to legal advice for the purpose of Rule 74(10).
6. 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 11TH DAY OF MAY 2022



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands