

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **22 March 2023**

**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**

**Public Redacted Version of the “Yekatom Defence Observations further to the “Registry’s Observations on the Prosecution’s “Request for leave to add one item to the List of Evidence (ICC-01/14-01/18-1702-Conf)”, ICC-01/14-01/18-1794-Conf, 13 March 2023”**

**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 Mame Mandiaye Niang  
Mr Kweku Vanderpuye

**Counsel for Mr. Yekatom**

Ms Mylène Dimitri  
Ms Anta Guissé  
Mr Thomas Hannis  
Mr Jason Antley  
Mr Florent Pages-Granier

**Counsel for Mr. Ngaissona**

Mr Geert-Jan Alexander Knoops  
Ms Marie-Hélène Proulx  
Mr Richard Omissé-Namkeamäi

**Legal Representatives of Victims**

Mr Dmytro Suprun

Mr Abdou Dangabo Moussa  
Ms Elisabeth Rabesandratana  
Mr Yaré Fall  
Ms Marie-Edith Douzima-Lawson  
Ms Paolina Massidda

**Legal Representatives of Applicants**

**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**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

## INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom (“Defence”) hereby provides observations following the notification of the Registry’s Observations on the Prosecution’s “Request for leave to add one item to the List of Evidence (ICC-01/14-01/18-1702-Conf)” on 13 March 2023 (“Registry’s Observations”).<sup>1</sup>
2. As the Defence Response to the Prosecution’s “Request for leave to add one item to the List of Evidence”<sup>2</sup> is impacted by the Registry’s Observations, the Defence submits the present observations to assist the Chamber during its deliberation on the Prosecution’s Request.

## PROCEDURAL HISTORY

3. On 15 December 2022, the Prosecution filed its “Request for leave to add one item to the List of Evidence” relating to CAR-OTP-00000637, a contact list extracted from a phone belonging to [REDACTED] (“Prosecution Request”).<sup>3</sup> A Public Redacted Version was notified on the same day.<sup>4</sup>
4. On 17 February 2023, the Defence argued in its Response to the Prosecution Request (“Defence Response”)<sup>5</sup> that multiple failures in the collection and handling of [REDACTED] phone impacted the authenticity of its data which should lead to the rejection of the Prosecution Request. A Public Redacted Version was notified on the same day.<sup>6</sup>
5. On 7 March 2023, the Chamber ordered the Registry to provide observations on the following points in relation to the Prosecution Request and [REDACTED] phone : (i) the detailed chain of custody of the relevant phone between March and November 2022 ; (ii) the dates on which the Prosecution had access to the

---

<sup>1</sup> ICC-01/14-01/18-1794-Conf.

<sup>2</sup> ICC-01/14-01/18-1702-Conf and ICC-01/14-01/18-1747-Conf respectively.

<sup>3</sup> ICC-01/14-01/18-1702-Conf.

<sup>4</sup> ICC-01/14-01/18-1702-Red.

<sup>5</sup> ICC-01/14-01/18-1747-Conf.

<sup>6</sup> ICC-01/14-01/18-1747-Red.

phone and the scope thereof; and (iii) if applicable, whether the phone was accessed or searched prior to 20 July 2022.<sup>7</sup>

6. On 13 March 2023 the Registry's Observations were notified, providing a chronology of the multiple accesses to [REDACTED] phone.<sup>8</sup>

### **OBSERVATIONS**

7. Far from clearing up matters, the Registry's Observations creates more obfuscation around the handset seized [REDACTED]. There are at least a further four critical failures identified in the Observations, made by both the Registry and Prosecution, all of which should call into question the integrity and reliability of the handset, and any data extracted from it.

#### *i) First Issue*

8. At the outset, the Registry's Observations fail to provide any information as to how the handset was stored or handled by [REDACTED] authorities and the Registry between [REDACTED]. Indeed, the Defence is not privy to how the handset was received or treated by the Registry before it was given to the Court Management Section (was it stored in a Faraday bag? was it accessed or downloaded by [REDACTED] authorities?); this information being apparently only contained in [REDACTED].<sup>9</sup> Any (mis)handling that occurred by the [REDACTED] authorities or the Registry will necessarily impact the handset (or the later forensic copy).
9. This nearly month-long period of potentially unfettered access must be taken into account when considering the integrity of the handset, and any data extracted from it.

---

<sup>7</sup> Email from the Chamber to the Registry dated 7 March 2023 15:18.

<sup>8</sup> ICC-01/14-01/18-1794-Conf.

<sup>9</sup> [REDACTED].

*ii) Second Issue*

10. As set out in the Registry's Observations the handset was accessed by the Prosecution on 8 July 2022.<sup>10</sup> The Defence finds it regrettable that this consultation was omitted from both the Prosecution Request and of the *inter partes* communications which only mention an inspection on 20 July 2022.<sup>11</sup>
11. The Defence reiterates that the Prosecution's repeated failures to follow best forensic practice critically undermines the reliability of any data extracted from the handset. The Registry's observations starkly depict how the Prosecution's failures are so fundamental as to completely remove the ability to validate the integrity of the handset.
12. As the Defence previously articulated, the best practice is to not inspect electronic devices before making forensic copies.<sup>12</sup> The risk of the changing data is too great, as each interaction with a device will inevitably lead to changes. A forensic copy provides a backstop that enables parties to go back and inspect the data before such changes. Unfortunately, this is not possible in this instance, leading to the complete inability of the Trial Chamber to ensure itself of the handset data's integrity or reliability.
13. Prior to making a forensic copy on 20 July 2022, the Prosecution chose to 'consult' the handset for more than five hours on 8 July 2022. Handling the handset prior to making a forensic copy completely removes the ability to guarantee the forensic integrity of the data on the phone, or of the extracted forensic copy. By choosing to ignore best practice, the Prosecution removed the ability of the Trial Chamber to satisfy itself that the phone data is reliable.

---

<sup>10</sup> ICC-01/14-01/18-1794-Conf, para. 9.

<sup>11</sup> See Annex A of the Ngaissona Response to the Prosecution Request, ICC-01/14-01/18-1748-Conf-AnxA, pages 5-6, email from the Prosecution dated 13 January 2023 17:38.

<sup>12</sup> See ICC-01/14-01/18-1747-Red, para. 28.

14. In the original Defence Response it was argued that the Prosecution could only demonstrate that [REDACTED] phone, and its content, has not been changed or damaged from 20 July 2022 following the creation of a forensic copy.<sup>13</sup> The new information contained in the Registry's Observations of a five hours consultation of the handset by the Prosecution prior to the creation of a forensic copy<sup>14</sup> dramatically impacts the Defence Response as there can no longer be any assurance that the content of the phone was not inadvertently modified during the manipulation of the handset.

*iii) Third and Fourth Issues*

15. The Prosecution handled the phone a further four times in between making a forensic copy on 20 July 2022 and extracting the data from the handset on 16 November 2022. The Prosecution had previously disclosed its inspections on 19 October and 11 November 2022;<sup>15</sup> which contributed to the Trial Chamber requesting further clarity as to the chain of custody. The Registry's Observations reveal a further two inspections of the handset.
16. The first, on 21 July 2022, apparently required the phone to be 'turned on and inspected'.<sup>16</sup> Handling the handset in this way would have further taken it away from the forensic copy, which is crucial in light of the Cellbrite extraction of the handset (rather than the already-compromised forensic copy) in November 2022.
17. Second, the Registry's Observations also reveal that the Prosecution consulted the hard drive containing the forensic copy, but not the handset, on 20 October 2022.<sup>17</sup>

## **CONCLUSION**

---

<sup>13</sup> ICC-01/14-01/18-1747-Conf, paras 27-29.

<sup>14</sup> ICC-01/14-01/18-1794-Conf, paras 10-11.

<sup>15</sup> See Chain of Custody Metadata of the photographs of [REDACTED] phone disclosed in Trial Other 21 02 February 2023.

<sup>16</sup> ICC-01/14-01/18-1794-Conf, para. 12.

<sup>17</sup> ICC-01/14-01/18-1794-Conf, para. 15.

18. Finally, it has only been through the dogged submissions of the Defence that any of these issues have come to light. In every filing and letter, further interactions with the handset come to light, casting doubt on the Prosecution's handling of such sensitive data. The Registry's Observations are particularly telling in this regard, as the Prosecution 'consultations' in July were not previously known. The Defence is also concerned about how the Registry's Observations stop on 11 November but the Cellbrite extraction took place on 16 November.<sup>18</sup> This creates obvious questions around the completeness of the Registry's logs, which is all the more existential given their role in holding and supervising exhibits.

### **CONFIDENTIALITY**

19. The present observations are filed on a confidential basis corresponding to the classification of the Registry's Observations and due to references to [REDACTED]. A public redacted version is being filed simultaneously.

### **RELIEF SOUGHT**

20. The Defence respectfully requests Trial Chamber V to take into consideration the present observations, in conjunction with the 10 February 2023 Defence Response, when assessing the opportunity of the 15 December 2022 Prosecution Request.

**RESPECTFULLY SUBMITTED ON THIS 22<sup>nd</sup> DAY OF MARCH 2023**



Me Mylène Dimitri  
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

---

<sup>18</sup> See Chain of Custody Metadata of CAR-OTP-00000637 on Nuix.