

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **30 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

**with confidential *ex parte* Annexes A-D (available only to the Ngaïssona
Defence and the Prosecution) and confidential Annex E**

**Public Redacted Version of the "Corrected version of 'Confidential
redacted version of "Yekatom Defence Motion for Orders in relation to
withdrawn Prosecution witness P-2582" ICC-01/14-01/18-1789-Conf-Exp, 9
March 2023"', ICC-01/14-01/18-1789-Conf-Red-Corr, 14 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
Mr Thomas Hannis
Ms Anta Guissé
Mr Gyo Suzuki

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamaï
Ms 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**

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 files this motion for orders in relation to former Prosecution witnesses P-2582.
2. On 15 November 2022, the Prosecution informed the Chamber, the Parties, and the Participants in these proceedings that it 'no longer intends to call' five Prosecution witnesses – namely, P-0458, P-1416, P-1442, P-1490, and P-2582.
3. Further to subsequent Defence *inter partes* inquiries, the Prosecution declined to provide reasons for its withdrawal of P-2582. It also informed the Defence that it considered itself no longer bound by an obligation to disclose material relating to the credibility of P-2582 in light of her withdrawal; and it declined to commit to investigate exonerating circumstances in relation to her.
4. Given the manner in which P-2582 fits within the broader Prosecution case, the Prosecution's disclosure and investigative obligations should continue to apply, her withdrawal notwithstanding. The Prosecution's misconceived position in this regard gives rise to a very real risk that exculpatory and/or material information would not be collected and/or disclosed to the Defence, thus impacting the fairness of these proceedings. This risk is especially heightened given the Prosecution's [REDACTED]. The Prosecution should also be ordered to provide reasons for the withdrawal of P-2582 in the interests of justice and due transparency.

PROCEDURAL HISTORY

5. On 15 November 2022, the Prosecution informed the Chamber, the Parties, and the Participants of its intention to withdraw witnesses P-0458, P-1416, P-1442,

P-1490, and P-2582; no reasons or explanation for their withdrawal were provided.¹

6. On 14 December 2022, the Defence requested *inter partes* that the Prosecution provide reasons for the withdrawal of P-2582. The Defence also requested that the Prosecution agree to disclose exculpatory information regarding P-2582 on an ongoing basis; and to agree to investigate exonerating circumstances in respect of her, notwithstanding her withdrawal.²
7. On 16 December 2022, the Prosecution responded, declining to provide reasons for P-2582's withdrawal, or to disclose material relating to her credibility. It also did not commit to continue to investigate exonerating circumstances in respect of P-2582 specifically.³

APPLICABLE LAW

Article 54(1)(a) and (c) – Rome Statute

1. The Prosecutor shall:

(a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

[...]

(c) Fully respect the rights of persons arising under this Statute.

Article 67(1)(b) and (2) – Rome Statute

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

[...]

(b) To have adequate time and facilities for the preparation of the defence[.]

[...]

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which [...] may affect the credibility of prosecution evidence.

¹ See, Annex A, Email from Prosecution to Chamber, Parties and Participants of 15 November 2022 at 13:38.

² See, Annex A, Email from Defence to Prosecution of 14 December 2022 at 18:51.

³ See, Annex A, Email from Prosecution to Defence of 16 December 2022 at 15:12.

Rule 77 – Rules of Procedure and Evidence

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence[.]

SUBMISSIONS

A. The Prosecution should be ordered to disclose, on an ongoing basis, material and/or exculpatory information in relation to P-2582.

- i) *The withdrawal of P-2582 has no bearing on the Prosecution case as regards P-2582's alleged participation as a 'child soldier' within Mr Yekatom's group.*
8. As set out above, the Prosecution has taken the position that disclosure of material relating to P-2582's credibility does not 'fall within the scope of rule 77 of article 67(2)', following her withdrawal as a witness.
9. This position is misconceived. The mere fact that the Prosecution no longer intends to rely on P-2582 as a witness has little bearing, if any, on the Prosecution's broader case as regards P-2582.
10. First, the Prosecution has not withdrawn its allegation that P-2582 was in fact a former 'child soldier' member of Mr Yekatom's group; and it continues to rely on evidence purportedly underpinning this allegation.
11. For instance, four birth certificates in relation to P-2582 ('Birth Certificates') remain part of the trial record in these proceedings, having been tendered by the Prosecution in its 1 April 2022 bar table motion.⁴ The Birth Certificates were recognised as formally submitted,⁵ over express Defence objections arguing *inter alia* that the submission of birth certificates of Prosecution witnesses from the bar table was inappropriate and premature, [REDACTED]; and that the

⁴ ICC-01/14-01/18-1346-Conf, paras 23-24; documents at CAR-OTP-2126-0413, CAR-OTP-2126-0414, CAR-OTP-2126-0415, CAR-OTP-2126-0416.

⁵ ICC-01/14-01/18-1428, paras 10-14.

Birth Certificates should be instead be tendered through P-2582, following her appearance before the Chamber.⁶

12. Notably, in its submissions in support of the bar table motion, the Prosecution itself drew a distinction between, on the one hand, the probative value of the Birth Certificates with regard to the account of P-2582 specifically; and on the other, their probative value with regard to its broader case on Count 29. Specifically, the Prosecution argued that '[the birth certificates are [r]elevant to the determination of P-2582's age. [They are] [a]lso relevant to the recruitment and use of children, including under the age of 15, by YEKATOM and his Anti-Balaka Group during the Relevant Period.'⁷ Similarly, the Defence has previously argued that the Birth Certificates 'are not only intrinsically related to the witness's account, namely his or her age at the time of the charges, but they also form part of the elements of crime regarding Count 29.'⁸
13. Further, P-2582 was a participant in the [REDACTED] in 2014 [REDACTED].⁹ The [REDACTED], which contains information as to the names and purported ages of [REDACTED] participants, is cited in the Prosecution's Trial Brief as evidence in support of the allegation that [REDACTED].¹⁰
14. Given the Prosecution's ongoing reliance on the above-mentioned documentary evidence in relation to P-2582's alleged age and membership of Mr Yekatom's group, any information that would affect the credibility of said claimed age and/or membership would by extension affect the credibility of this documentary evidence, and would thus be subject to disclosure – P-2582's withdrawal notwithstanding.

⁶ ICC-01/14-01/18-1379-Conf, paras 13-23.

⁷ ICC-01/14-01/18-1346-Conf-Anx, pp 28-30, at Items #2-5.

⁸ ICC-01/14-01/18-1379-Conf, para. 15.

⁹ See, CAR-OTP-2071-0279, at 0280, #26.

¹⁰ [REDACTED].

15. In the same vein, this information would be material to defence preparations in respect of Count 29. It is the Defence's case that individuals featuring on the [REDACTED] (including those who are not Prosecution witnesses) were not in fact members of Mr Yekatom's group, and/or were in fact older than their age as indicated; and the Defence has presented evidence in this regard via its examination of Prosecution witnesses.¹¹ [REDACTED].¹² [REDACTED].¹³
16. Likewise, information affecting the credibility of P-2582's claimed age and/or membership of the group would also affect the credibility of other Prosecution witnesses – again, independently of P-2582's withdrawal as witness.
17. [REDACTED].¹⁴ [REDACTED].¹⁵ [REDACTED]¹⁶ [REDACTED]¹⁷ [REDACTED].¹⁸
18. Moreover, any information affecting the credibility of P-2582 generally should be considered exculpatory and subject to disclosure – not merely information directly affecting the credibility of her claimed age and/or membership of the group. P-2582 made extensive factual allegations in her interviews with the Prosecution; it is the Defence case's that these allegations are fabricated in their entirety. Information demonstrating that any of these broader allegations are unreliable would potentially taint her credibility as a whole – which necessarily includes the credibility of her claims as to her age and membership of the group. [REDACTED].¹⁹
19. In other words, her credibility cannot be neatly partitioned between those allegations that are (effectively) withdrawn, and those that remain part of the

¹¹ See e.g., ICC-01/14-01/18-T-131-CONF-FRA CT2, 56:2-82:4.

¹² [REDACTED]

¹³ [REDACTED]

¹⁴ [REDACTED]

¹⁵ [REDACTED]

¹⁶ [REDACTED]

¹⁷ [REDACTED]

¹⁸ [REDACTED]

¹⁹ [REDACTED]

Prosecution case (i.e. her age and membership): information affecting one aspect will potentially affect the others, as well as other witnesses' evidence, and would thus be subject to disclosure pursuant to Article 67(2). The fact that the Prosecution has provided no indication of which of P-2582's specific allegations, if any, it has withdrawn, only serves to demonstrate this.

ii) P-2582 is inextricably linked [REDACTED], [REDACTED].

20. As the Chamber is aware, it is the Defence's case that [REDACTED], in that its participants were not in fact child soldiers, were not part of Mr Yekatom's group and/or were not under the age of 15 during the events; and moreover, [REDACTED] were aware of the above.²⁰
21. In light of P-2582's participation in [REDACTED] therefore, any information affecting the credibility of P-2582's claimed age and/or membership of the group (and indeed, her credibility generally²¹), would affect the credibility of the evidence underpinning the Prosecution case as [REDACTED]; and would therefore be subject to disclosure pursuant to Article 67(2). In the same vein, it would be relevant to the Defence case in this regard and thus material to defence preparations.
22. [REDACTED].
23. [REDACTED],²² [REDACTED].²³[REDACTED].²⁴
24. [REDACTED].²⁵ [REDACTED].²⁶

²⁰ [REDACTED].

²¹ See *supra*, paras 18-19.

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

25. [REDACTED].²⁷ [REDACTED]²⁸ [REDACTED]²⁹ [REDACTED].³⁰
26. [REDACTED].³¹ [REDACTED].³²
27. [REDACTED].³³ [REDACTED].³⁴
28. [REDACTED].³⁵ [REDACTED].³⁶
29. [REDACTED].³⁷
30. [REDACTED];³⁸[REDACTED].³⁹
31. [REDACTED].⁴⁰ [REDACTED].⁴¹ [REDACTED].⁴²
32. [REDACTED], any information that might affect P-2582's credibility remains potentially exculpatory and therefore subject to disclosure, the Prosecution's withdrawal of P-2582 notwithstanding.
- iii) It can reasonably be assumed that the Prosecution is in possession of exculpatory and/or material information, or that such information will come into its possession.*
33. The Prosecution's misinterpretation of its disclosure obligations in respect of P-2582 is all the more concerning, given that it would appear highly likely that it is currently in possession (or will come into possession) of exculpatory information and/or information material to Defence preparations.

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

34. [REDACTED].⁴³ [REDACTED].

35. In this regard, the Defence notes that on [REDACTED] September 2022, Prosecution [REDACTED] carried out an investigation mission with the apparent aim of verifying the date of birth of Prosecution former 'child soldier' witness P-2475, in the baptism registry of the [REDACTED].⁴⁴ As the Chamber will recall, during its cross-examination of P-2475, the Defence had put to him photographic and other documentary evidence from this baptism registry, that contradicted his age as it appeared on a baptism certificate tendered by the Prosecution which, while ostensibly sourced from the same registry [REDACTED], itself exhibited clear signs of having been doctored.⁴⁵ The [REDACTED] September 2022 mission effectively confirmed that the information contained in the Prosecution's baptism certificate did not match the baptism registry, and by extension, confirmed the former's fraudulent nature.

36. [REDACTED].⁴⁶

37. [REDACTED].

38. [REDACTED].

iv) The Prosecution should be ordered to continue to investigate exonerating circumstances in respect of P-2582 specifically.

39. In *inter partes* correspondence, the Prosecution declined to commit to investigating exonerating circumstances in relation to P-2582, despite a specific request from the Defence to this effect.

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

40. It thus appears that the Prosecution intends to take a position of deliberate wilful blindness with respect to information affecting the credibility of P-2582, [REDACTED].
41. This position violates the Prosecution's statutory obligations, and gives rise to a real risk that exonerating information in relation to P-2582, [REDACTED]. While for its part, Defence investigations into the above continue, its resources and investigative powers remain extremely limited compared to those of the Prosecution.
42. [REDACTED]. It is the Prosecution which retains all discretion and control as regards the initiation and conduct of Article 70 investigations; the Chamber has no oversight powers in this regard.⁴⁷ As such, while the Prosecution is free to conduct [REDACTED] investigations under Article 70, said investigations are ultimately irrelevant to its duty to investigate P-2582 within the context of its Article 54(1) duties in these proceedings specifically. Likewise, said Article 70 investigations are ultimately irrelevant to the Chamber's overriding duty to ensure that these proceedings specifically are fair, expeditious, and conducted with full respect for the rights of Mr Yekatom – which necessarily involves ensuring that the Prosecution is duly executing its statutory duty to continue to investigate exonerating circumstances in respect of P-2582 specifically, and the full respect of its concomitant disclosure obligations.
43. In light of the above therefore, the intervention of the Chamber is required, so as to ensure that the Prosecution's misconception of its duties is rectified and to ensure that the irreparable prejudice is not occasioned to the fairness of these proceedings.

⁴⁷ See, *Prosecutor v Lubanga*, Decision on the request of the Defence in relation to investigations conducted pursuant to article 70 of the Statute, [ICC-01/04-01/06-3114](#), 17 June 2014, para. 19. The Defence notes that, in those proceedings, despite Trial Chamber I having expressly communicated to the Prosecutor, pursuant to Article 70 and Rule 165 of the Rules, its findings that certain Prosecution intermediaries and witnesses 'may have persuaded, encouraged, or assisted witnesses to give false evidence,' ultimately no Article 70 charges were brought against any of the individuals in question; see, para. 20.

B. The Prosecution should provide reasons for its withdrawal of P-2582.

i) The withdrawal of its witnesses is not an absolute prerogative of the Prosecution.

44. The withdrawal of Prosecution witnesses should not be considered an absolute prerogative of the Prosecution; and in certain circumstances, the Prosecution can and should be compelled to provide the reasons underpinning a decision to withdraw a witness.
45. First, the Defence notes that the Chamber has previously directed the Prosecution, albeit in the context of litigation regarding a Defence alibi notification, to 'file specific and motivated requests should the need arise' to amend the Witness List.⁴⁸ That direction, interpreted in the ordinary sense of its terms,⁴⁹ would imply that the Prosecution cannot simply unilaterally withdraw witnesses from its list.
46. To be clear, the Defence is not necessarily arguing here that the Prosecution cannot withdraw witnesses without the express leave of the Chamber. However, where the evidence of a witness is central to a given charge or to a Prosecution narrative – for instance, where that witness is a victim or eyewitness of a crime, or where that witness is an alleged co-perpetrator – it can be reasonably expected that a chamber, and more broadly, the interests of justice and due transparency, would require as a minimum that an explanation for their withdrawal be provided, as opposed to mere email notification to that effect.
47. The Defence notes that the Prosecution has filed formal notice of withdrawal of witnesses, along with reasons for said withdrawal, in previous proceedings before the Court; by way of example:

⁴⁸ ICC-01/14-01/18-911, para. 16.

⁴⁹ See also, ICTR, *Prosecutor v Karemera et al.*, [Decision on Submissions by Edouard Karemera and the Prosecutor on the List of Prosecution Witnesses for the Fifth Session and the Final List of Prosecution Witnesses](#), 12 June 2007, paras 19-22.

- in *Kenyatta*, where a witness's continuing objection to the disclosure of her identity;⁵⁰ where a witness had insurmountable security concerns;⁵¹ where a witness was unwilling to testify (notably, the Prosecution included the witness's reasons for said unwillingness);⁵² and where the Prosecution had assessed that a witness's evidence was no longer necessary to prove its case;⁵³
- in *Gbagbo & Blé Goudé*, where a Prosecution expert witness had indicated that he would be unable to produce an expert report;⁵⁴ and where the Prosecution had assessed that the evidence of another Prosecution expert witness was 'no longer required';⁵⁵ and,
- in *Ruto & Sang*, where the witness indicated that he no longer wished to cooperate with the Court and did not consent for his identity to be disclosed to the defence.⁵⁶

48. More broadly, there exist sound policy reasons to consider that the withdrawal of Prosecution witnesses (at least, without providing an explanation for said withdrawals) is not an absolute prerogative of the Prosecution.

49. Defence trial strategy and preparations are informed in large part by the Prosecution Witness List and List of Evidence, read together with the charging documents. Indeed, the Defence has spent a substantial part of its time and resources investigating the myriad allegations contained in the evidence of P-

⁵⁰ *Prosecutor v Kenyatta*, Prosecution communication of withdrawal of Witness 66, [ICC-01/09-02/11-874](#), 16 December 2013, paras 1-2.

⁵¹ *Prosecutor v Kenyatta*, Public redacted version of the 16 July 2013 Prosecution notification of withdrawal of witnesses, [ICC-01/09-02/11-773-Red](#), 16 July 2013, paras 4-7.

⁵² *Ibid.*, paras 8-9.

⁵³ *Ibid.*, para. 10.

⁵⁴ *Prosecutor v Gbagbo & Blé Goudé*, Prosecution Notice of Withdrawal of Witness P-0439 from the List of Witnesses, [ICC-02/11-01/15-160](#), 24 July 2015, paras 1-4.

⁵⁵ *Prosecutor v Gbagbo & Blé Goudé*, Prosecution's notice of withdrawal of expert witness P-062, [ICC-02/11-01/15-1022](#), 12 September 2017, paras 1-3.

⁵⁶ *Prosecutor v Ruto & Sang*, Public Redacted Version of "Prosecution withdrawal of witness P-[REDACTED]", 11 February 2016, ICC-01/09-01/11-597-Conf, [ICC-01/09-01/11-597-Red](#), 2 February 2017 ('Ruto & Sang Withdrawal Notice'), paras 3-4.

2582, and preparing for her eventual testimony; likewise, albeit to a lesser extent, the remainder of the Withdrawn Witnesses.

50. The inclusion of witnesses on the Witness List who are ultimately withdrawn therefore puts an unfair burden on the Defence; and the wasted expenditure of time and resources does injury to Mr Yekatom's statutory right to effective preparations.⁵⁷
51. By extension, the Prosecution gains an unfair advantage where the Defence spends its limited time and resources in investigating and preparing for such witnesses; this is the case whether or not this advantage is gained inadvertently or otherwise.⁵⁸
52. Allowing the Prosecution to simply withdraw witnesses at will, with no explanation, will inevitably lead to the inclusion in the Witness List of individuals upon whom the Prosecution's intention to rely has not crystallised; or even individuals upon whom the Prosecution has no genuine intention of relying.
53. Requiring the Prosecution to provide meaningful explanations for withdrawal of witnesses would thus incentivise the Prosecution to ensure that its final witness list is *bona fide* final; and by extension, would act to minimise any detrimental impact on Defence preparations and resources, and therefore the fairness of proceedings.
54. Lastly, the Prosecution bears the statutory responsibility to assist the Chamber to establish the truth.⁵⁹ Indeed, the Prosecution does not hesitate to argue that

⁵⁷ See also, ICTR, *Prosecutor v Bagosora et al.*, [Order for Reduction of Prosecutor's Witness List](#), 8 April 2003, paras 5-8.

⁵⁸ The Defence makes no suggestion that the Prosecution did not intend to rely on the Withdrawn Witness at the time of their inclusion on the Witness List.

⁵⁹ See, Article 54(1) and (3).

it is this very duty to establish the truth that underpins the evidence that it seeks to put before the Chamber.⁶⁰

55. However, this wider remit should cut both ways: if the Prosecution can claim that its case, and its underlying evidence, is put before the Chamber pursuant to this duty to assist the latter to establish the truth, then it would follow that where this promised evidence is withdrawn, a meaningful explanation should be provided. This is especially so, should that evidence have been withdrawn precisely because the Prosecution has assessed that it is in fact contrary to the truth and/or detrimental to its case.
56. In this regard, the basis of the Prosecution's refusal to provide reasons for withdrawal of P-2582, i.e. that 'the Prosecution's decisions as to how to present its case-in-chief are inherently strategic', is misplaced,⁶¹ reflects an unduly adversarial approach that is at odds with this special statutory responsibility of the Prosecution, and with the hybrid nature of proceedings at the Court.
 - ii) *The Prosecution should be ordered to provide reasons for its decision to withdraw P-2582.*
57. In *Ongwen*, Trial Chamber X held that the legal principles applicable to requests for late addition to the Prosecution list of evidence applied equally to corresponding requests in relation to its list of witnesses.⁶² Accordingly, for the purposes of the present request, it is respectfully submitted that the Chamber should be guided by an overarching consideration of whether the sought amendment causes 'undue prejudice to the procedural rights of the Defence'; and should consider the specific factor of the significance of the withdrawn

⁶⁰ See, where the Prosecution has sought late addition to its List of Evidence on the basis that the evidence in question would 'assist in the Chamber's determination of the truth', see e.g. ICC-01/14-01/18-1702-Conf, paras 3, 10.; ICC-01/14-01/18-1653-Conf, paras 3, 20; ICC-01/14-01/18-1394-Conf, paras 4, 20; ICC-01/14-01/18-1372-Conf, paras 3, 13; ICC-01/14-01/18-1330-Conf, paras 4, 28; ICC-01/14-01/18-1285-Conf, paras 5, 25.

⁶¹ See, Annex A, Email from Prosecution to Defence of 16 December 2022 at 15:12.

⁶² See, *Prosecutor v Ongwen*, Decision on Prosecution Request to Add Items to its List of Evidence, to include a Witness on its List of Witnesses and to Submit Two Prior Recorded Testimonies under Rule 68(2)(b) and (c), [ICC-02/04-01/15-600](#), 22 November 2016 ('Ongwen Decision'), paras 14 and 22.

witness in light of the charges brought against Mr Yekatom, and the rest of the available evidence.⁶³

58. As set out above, P-2582 was a witness of importance in the Prosecution case. She is cited on ten occasions in the Prosecution Trial Brief in support of multiple allegations, ranging from the presence and use of child soldiers within Mr Yekatom's group,⁶⁴ to Mr Yekatom's 'essential contributions' to the crimes;⁶⁵ to the charges of displacement, forcible transfer and deportation on the PK9-Mbaiki Axis.⁶⁶ More broadly, her evidence contains a wider array of prejudicial allegations, including in relation to other charged crimes and to Mr Yekatom's charged acts and conduct.⁶⁷ Her apparent involvement in the above-mentioned Count 29-related misconduct also gives rise to an obligation of due transparency regarding the reasons for her withdrawal.

59. [REDACTED].⁶⁸ [REDACTED]:

[REDACTED]⁶⁹

CONFIDENTIALITY

60. This Motion is filed on a confidential *ex parte* basis, as are Annexes A-D, available to the Ngaïssona Defence and the Prosecution only.

61. As argued in relation to the confidential *ex parte* status of previous submissions,⁷⁰ given that P-2582 (and P-2620) are participating victims in these proceedings, and the manner in which P-2582 is personally linked with upcoming Prosecution witnesses, as set out above;⁷¹ and in light of the spirit

⁶³ ICC-01/14-01/18-989-Conf, para. 5, citing *inter alia* Ongwen Decision, para. 14.

⁶⁴ See, ICC-01/14-01/18-723-Conf, fns [REDACTED].

⁶⁵ See, ICC-01/14-01/18-723-Conf, fns [REDACTED].

⁶⁶ See, ICC-01/14-01/18-723-Conf, fns [REDACTED].

⁶⁷ See, ICC-01/14-01/18-1306-Conf-Exp, paras 7-13.

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ See also, ICC-01/14-01/18-1393-Conf-Exp, paras 46-47.

⁷¹ See *supra*, paras 17, 22-31.

underlying the Decision on Protocols at Trial, including the aim of preventing the risk that a party might contaminate the witness's recollection by indirectly conveying its expectations of the witness's evidence, it is the Defence's position that restricted notification of this Motion is necessary to minimise the risk of potential influence on the witnesses' testimony (direct or indirect) via a participant in these proceedings.

62. Public and confidential redacted versions will be filed forthwith.

RELIEF SOUGHT

63. In light of the above, the Defence respectfully requests that Trial Chamber V:

FIND that the Prosecution's disclosure obligations pursuant to Rule 77 and Article 67(2) continue to apply to P-2582, her withdrawal notwithstanding;

FIND that the Prosecution's duty to investigate exonerating circumstances pursuant to Article 54(1) continues to apply with regard to P-2582;

ORDER that the Prosecution disclose exculpatory and/or material information in relation to P-2582 [REDACTED],

ORDER that the Prosecution provide reasons for its withdrawal of P-2582.

RESPECTFULLY SUBMITTED ON THIS 30th DAY OF MARCH 2023



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands