

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **25 January 2024**

**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 Annexes A and B**

**Public Redacted Version of the “Yekatom Defence Request for Disclosure  
in respect of former Prosecution intermediary P-2580”, 13 December 2023,  
ICC-01/14-01/18-2257-Conf**

**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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**Unrepresented Victims**

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**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

## INTRODUCTION

1. Pursuant to article 67(2) and rule 77, the Defence for Mr Alfred Rombhot Yekatom ('Defence') respectfully requests that the Chamber order the Prosecution to disclose i) all information [REDACTED] ('Prosecution Request'), [REDACTED], and any further accompanying documents relating to the Prosecution investigation with regard to P-2580's misconduct; and ii) the conclusions of the Prosecution's investigation report in relation to the same (collectively 'Sought Information').
2. This request is filed pursuant to the Chamber's email direction of 12 December 2023, instructing the Defence to file its 10 December 2023 email disclosure request on the record.<sup>1</sup>

## SUBMISSIONS

3. First, it is the position of the Defence that the Sought Information is necessary for a full understanding of the potential impact that [REDACTED] the Prosecution Request may have on the safety, security and well-being of Defence witnesses; and in the same vein, on the Defence's ability to call witnesses in the same conditions as the Prosecution, pursuant to Mr Yekatom's statutory right enshrined in article 67(1)(e).
4. [REDACTED].
5. [REDACTED];<sup>2</sup> [REDACTED]. The Defence notes that the Prosecution will have been aware of this fact since 17 November 2023 (i.e. eleven days prior to [REDACTED]) via the Defence's filing of its final witness list.<sup>3</sup>

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<sup>1</sup> See, Email from TC V to Parties and participants, 12 December 2023 at 17:06; and Email from Defence to TC V, Parties and participants, 10 December 2023 at 14:09.

<sup>2</sup> [REDACTED].

<sup>3</sup> ICC-01/14-01/18-2212-Conf-AnxA, pp 1, 5 and 9.

6. In the circumstances, [REDACTED]. In this regard, the Defence notes here its regret that the Prosecution waited eight days after having been invited by the Chamber to notify the Defence [REDACTED] (setting aside the unjustifiable *ex parte* seizing of the Chamber in the first place); and further, that it elected to do so only once [REDACTED] – again, all in full knowledge [REDACTED].
7. In any event, the Prosecution’s ‘reassurance’ [REDACTED] is thus misleading.<sup>4</sup> This ‘reassurance’ should also be assessed against the apparent failure of the Prosecution to notify VWU prior to [REDACTED]. In this regard, the very fact that the Prosecution thought it appropriate to seize the Chamber *ex parte* in respect of the Prosecution Request, unjustifiably keeping the Defence in the dark as regards a matter that could very likely detrimentally impact Defence witnesses and the Defence case, exhibits a deeply worrying disregard towards its statutory obligation to conduct its investigations in full respect of Mr Yekatom’s fair trial rights pursuant to article 54(1)(c). In this regard, the Prosecution’s ‘reassurances’ have precisely the opposite effect.
8. The Defence has consulted with the Court’s Victim and Witnesses Unit (VWU) on 6 and 9 December 2023, and intends to refer at least three Defence witnesses to VWU as a direct result of the limited information that the Prosecution has disclosed to date in respect of the Request.
9. VWU has indicated that [REDACTED] may realistically have an impact on their psychological state and well-being, and that there is a high probability that their physical and psychological safety and security may thus be affected; [REDACTED]. In this regard, the Defence notes that VWU referrals request forms are required *inter alia* ‘to be completed in as detailed a manner as possible’; require responses ‘as complete and factual as possible’; and are to be

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<sup>4</sup> See, Email from Prosecution to TC V, Parties and participants, 5 December 2023 at 11:32.

supported by documents in respect of the source(s) of potential threats to referred witnesses.<sup>5</sup>

10. The Sought Information is thus necessary to ensure that any and all potential risks arising from [REDACTED] can be properly assessed and, where applicable, acted upon in consultation with VWU, so as to ensure that the Defence's ability to call witnesses in support of its case is not compromised. The Sought Information would thus have a material effect on Defence preparation, pursuant to rule 77.
11. The Defence further submits that the Chamber's article 68(1) duty to 'take appropriate measures to protect the safety, physical and psychological well-being' of witnesses further militates in favour of ordering disclosure of the Sought Information.<sup>6</sup>
12. Any suggestion that the Sought Information could be provided directly to VWU, thereby bypassing the Defence, should be dismissed. It cannot be controversial that information regarding Defence witnesses – their personal backgrounds, circumstances, links, etc. – to which only the Defence is privy, is necessary for VWU to properly assess these witnesses' potential exposure to risk arising from [REDACTED]. It is for this very reason that Parties are assigned the responsibility for referring their witnesses to VWU for the purposes of protection. In this regard, the Defence is uniquely placed to assist VWU in its determination of the potential risk(s) that arise from [REDACTED]. It is therefore only through collaboration with the Defence that VWU, thus armed with as much information as possible, can take measures to ensure the safety, security and well-being of Defence witnesses.

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<sup>5</sup> See, Annex A, pp 1, 15.

<sup>6</sup> At least in respect of the transmitted information sought at (i); see *supra*, para. 1.

13. It is also regrettable that in *inter partes* exchanges, the Prosecution has elected to withhold the Sought Information on the spurious and inconsequential basis of a disagreement as to the threshold of Prosecution disclosure obligations within article 67(2) and rule 77.<sup>7</sup> The Prosecution's strategic considerations should not be allowed to take precedence over potential risk to the safety, security and well-being of Defence witnesses, nor over potential prejudice to Mr Yekatom's statutory right to obtain attendance of witnesses.
14. Second, the Defence respectfully submits that the Sought Information is potentially exculpatory, pursuant to article 67(2).
15. As the Chamber is aware, it is the Defence's position that P-2580 is among a number of individuals who have conspired to engage in a wide range of potential article 70 conduct in the context of these proceedings, and particularly in respect of Count 29, including interference with both Prosecution and Defence witnesses and fabrication of evidence ('Conspiracy').
16. In this regard, a Defence Motion for exclusion of evidence based *inter alia* on the misconduct of P-2580 and his co-conspirators is currently before the Chamber ('Exclusion Motion'), which motion is predicated in large part on the position that the Prosecution's lack of investigative diligence, including specifically in relation to the measures taken (or not taken) by Prosecution in respect of P-2580's misconduct, has cast substantial doubt on the reliability of the impugned fabricated evidence elicited *inter alia* from Prosecution witnesses, per article 69(7)(a).<sup>8</sup> In this respect, the Sought Information, which relates directly to the ongoing matter of the Prosecution's diligence vis-à-vis its statutory

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<sup>7</sup> Email from Prosecution to Defence, 7 December 2023 at 14:35. Noting the Prosecution claim of 'gratuitous mischaracterisations of the Prosecution's position' on the part of the Defence, made in its email to the Chamber, Parties and participants of 11 December 2023 at 13:47, the *inter partes* exchange in question is hereby annexed to this filing; see, Annex B.

<sup>8</sup> See, ICC-01/14-01/18-2240-Conf, paras 68-84, 86-87, 104-105, 117-121, 128, 134-138.

investigative duties, thus ‘may clearly affect the credibility’ of the impugned fabricated evidence, and is thus subject to disclosure.

17. Third, the Defence further submits that the Sought Information is material to Defence preparation, pursuant to rule 77. As is clear from the Defence’s final list of witnesses, the Defence intends to call multiple witnesses who will provide testimony on the Conspiracy, including in respect of P-2580’s role therein.<sup>9</sup>
18. The inter-related matters of i) P-2580’s misconduct, and ii) the extent of measures taken/not taken by the Prosecution in respect thereof, are thus very much live issues in these proceedings; and the Sought Information has a ‘direct connection to both matters. It is therefore material to defence preparation, including in accordance with the definition of rule 77 ‘materiality’ that has been repeatedly adopted by the Prosecution in these proceedings.<sup>10</sup>
19. The Defence notes that rule 81(1) and/or (2) disclosure restrictions do not apply in the circumstances, [REDACTED]; and given that there would be no prejudice caused by disclosure [REDACTED].<sup>11</sup>
20. Lastly, the Defence notes that the Prosecution refers to the Defence having ‘withheld’ information regarding instances of P-2580’s interference with Defence witnesses, which were brought to the attention of the Prosecution in November 2021 and May 2022.<sup>12</sup>
21. The Defence firmly rejects the Prosecution’s attempt to shift the blame for the years-long and wide-ranging pattern of witness interference and evidence

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<sup>9</sup> See, ICC-01/14-01/18-2212-Conf-AnxA; see also, ICC-01/14-01/18-2213-Conf.

<sup>10</sup> ICC-01/14-01/18-2070, paras 6, 16, citing *Prosecutor v Al Hassan*, Public Redacted Version of Decision on Defence request for disclosure of material related to Mr Al Hassan’s arrest and detention in Mali, [ICC-01/12-01/18-859-Red](#), 5 January 2021, para. 10; or ICC-01/14-01/18-1555-Red, paras 11-12, citing *Prosecutor v Ongwen*, Decision on Defence Request for Remedies in Light of Disclosure Violations, [ICC-02/04-01/15-1734](#), 22 April 2020, para. 22.

<sup>11</sup> See, Annex B.

<sup>12</sup> See, ICC-01/14-01/18-2240-Conf-AnxB, pp 3-4.

fabrication that P-2580 was able to engage in effectively unchecked. That the Prosecution has elected to do so in circumstances where this potentially criminal conduct was committed by a Prosecution intermediary is particularly perverse.

22. The Defence's determination not to disclose the identities of potential Defence witnesses at such an early stage in the proceedings<sup>13</sup> was the result of a careful weighing of the potential consequences of each course of action on Mr Yekatom's fair trial rights. It was not unreasonable for the Defence to have considered that the Prosecution's jurisdiction over article 70 matters, and its quasi-unlimited investigative powers and duties, would act to ensure that potentially criminal acts of witness interference on the part of its own intermediary would be investigated and penalised where appropriate. Indeed, the only thing for which the Defence might be blamed is the confidence that it placed in the Prosecution to competently, efficiently, and effectively investigate P-2580's criminal misconduct; and to take meaningful steps to ensure that P-2580 could no longer attempt to compromise the integrity of these proceedings.

### CONFIDENTIALITY

23. This request is filed on a confidential basis due to the confidential nature of the subject-matter of the Prosecution Request. Annexes A and B are classified as confidential as they respectively constitute a VWU internal document and *inter partes* correspondence. A public redacted version of the request will be filed forthwith.

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<sup>13</sup> Specifically, the Prosecution appears to be blaming the Defence for not having disclosed the identities of potential Defence witnesses 24 months and 18 months before the Defence final witness list disclosure deadline.



**RELIEF SOUGHT**

24. In light of the above, the Defence respectfully requests that the Chamber:

**ORDER** that the Prosecution disclose the Sought Information.

**RESPECTFULLY SUBMITTED ON THIS 25<sup>th</sup> DAY OF JANUARY 2024**

A handwritten signature in blue ink, appearing to read 'Mylène Dimitri'.

Me Mylène Dimitri  
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands