

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No. **ICC-01/14-01/18**
Date of original: **17 January 2024**
Date: **12 February 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of

**Decision on the Yekatom Defence Request for Disclosure in respect of former
Prosecution intermediary P-2580**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64, 67(2), 68 and [REDACTED] of the Rome Statute (the ‘Statute’) and Rule 77 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Yekatom Defence Request for Disclosure in respect of former Prosecution intermediary P-2580’.

I. Procedural history and submissions

1. On 13 December 2023,¹ the Yekatom Defence (the ‘Defence’) submitted a request for disclosure in respect of former Prosecution intermediary P-2580 (the ‘Request’). Specifically, it requests the Chamber to order the Office of the Prosecutor (the ‘Prosecution’) to disclose (i) ‘all information [REDACTED]’ (the ‘[REDACTED] Information’ and the ‘[REDACTED]’, respectively), and (ii) ‘the conclusions of the Prosecution’s investigation report in relation to the same’ (the ‘Prosecution Conclusions’; jointly, the ‘Sought Information’).²
2. It submits that the Sought Information is (i) necessary ‘for a full understanding of the potential impact that the [REDACTED] 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’; (ii) potentially exculpatory pursuant to Article 67(2) of the Statute and (iii) material to the preparation of the Defence pursuant to Rule 77 of the Rules.³
3. On 20 December 2023, the Prosecution responded to the Request (the ‘Response’). It submits that the Request should be denied, arguing, *inter alia*, that it is ‘overly broad and fails to demonstrate the specific need for the disclosure

¹ The Single Judge notes that the Yekatom Defence initially submitted its ‘Yekatom Defence Urgent Request for disclosure in respect of P-2580’ via email (*see* email from the Yekatom Defence, 10 December 2023, at 14:09), in which it also sought that the ‘deadlines to respond be shortened as appropriate’. The Prosecution responded to the email request on 11 December 2023, at 13:47, submitting, *inter alia*, that it should be formally filed on the record. On 12 December 2023, the Single Judge instructed the Yekatom Defence to ‘file its request formally on the record’ and stated that ‘[he] sees no need to shorten the response deadlines in this instance’ (*see* email from the Chamber, 12 December 2023, at 17:06).

² Yekatom Defence Request for Disclosure in respect of former Prosecution intermediary P-2580, ICC-01/14-01/18-2257-Conf (with confidential Annexes A and B).

³ Request, ICC-01/14-01/18-2257-Conf, paras 3, 14, 17.

sought’ and ‘[i]n any event, all material information regarding this matter has already been disclosed to the Defence, or is otherwise in its possession or control’.⁴

II. Analysis

4. The Single Judge recalls the applicable law in relation to the Prosecution’s disclosure obligations under Article 67(2) of the Statute and Rule 77 of the Rules.⁵ In particular, he recalls, as held by the Appeals Chamber, that the assessment of whether an object is material to the preparation of the defence will depend upon the specific circumstances of the case.⁶
5. In principle, documents exchanged between the Prosecution and [REDACTED] are *per se* not disclosable.⁷ The Single Judge notes in this respect that the [REDACTED]. While this confidentiality is not absolute, it must be demonstrated that there is a specific need in order to lift it.⁸ In the present context, it must thus be demonstrated whether the Sought Material contains potentially exculpatory material under Article 67(2) of the Statute or is material for the preparation of the Defence pursuant to Rule 77 of the Rules.
6. While mindful of the ongoing litigation concerning P-2580,⁹ the Single Judge reminds the Defence, at the outset, that this litigation does not automatically

⁴ Prosecution’s Response to the Yekatom Defence’s “Request for Disclosure in respect of former Prosecution intermediary P-2580” (ICC-01/14-01/18-2257-Conf), ICC-01/14-01/18-2275-Conf, para. 1.

⁵ See e.g. Decision on the Yekatom Defence Motion for Disclosure of Prior Statement of Witness P-0801, 15 June 2020, ICC-01/14-01/18-551-Conf (public redacted version notified the same day), para. 25; Decision on the Ngaïssona Defence Request for Disclosure of Reports related to Seizure of Digital Materials from P-0889, 30 May 2022, ICC-01/14-01/18-1438-Conf (public redacted version notified on 30 September 2022, ICC-01/14-01/18-1438-Red) (the ‘30 May 2022 Decision’), paras 6-9.

⁶ See Appeals Chamber, *The Prosecutor vs. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus against the decision of Trial Chamber IV of 23 January 2013 entitled “Decision on the Defence’s Request for Disclosure of Documents in the Possession of the Office of the Prosecutor”, 28 August 2013, ICC-02/05-03/09-501 OA 4, para. 39. See also 30 May 2022 Decision, ICC-01/14-01/18-1438-Red, para. 9 and the jurisprudence cited therein.

⁷ See also Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [REDACTED].

⁸ See also Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Mr Bemba’s preliminary application for reclassification of filings, disclosure, accounts, and partial unfreezing of Mr Bemba’s assets and the Registry’s Request for guidance, 18 October 2018, ICC-01/05-01/08-3660-US-Exp only available to the Registry (public redacted version notified on 20 November 2018), para. 16.

⁹ See Request for the Exclusion of Fabricated Evidence, 5 December 2023, ICC-01/14-01/18-2240-Conf (with confidential Annexes A-C and public Annex D).

render every item related to this individual potentially exculpatory or material to the preparation of the Defence. Rather, the Defence must demonstrate a specific need. In this instance, the Single Judge is of the view that the Defence failed to do so for the following reasons.

7. First, the Single Judge notes that the Defence seeks to be provided with *all* information [REDACTED] documents relating to the Prosecution investigation with regard to P-2580's misconduct', as well as the Prosecution Conclusions.¹⁰ This request is overly broad and unspecific. The Defence fails to demonstrate how all of the requested information, in bulk, would fall under Article 67(2) of the Statute or Rule 77 of the Rules.
8. Second, the Single Judge observes that the Prosecution already provided a list of the [REDACTED] Material¹¹ and disclosed the relevant items to the Defence.¹² Third, the Prosecution also provided the Defence with a list of the allegations against P-2580 [REDACTED].¹³ The Defence is therefore in fact in possession of the content of both the [REDACTED] Material and the Prosecution Conclusions.
9. Fourth, the Single Judge finds the Defence's submissions regarding the impact of [REDACTED] on the safety, security and well-being of its witnesses and on Mr Yekatom's rights under Article 67(1)(e) of the Statute speculative and misplaced. He notes that it lies in the nature of this Court, which only prosecutes the gravest crimes and most responsible perpetrators, that [REDACTED]. It is also not unusual that being involved in such criminal proceedings may impact on an individual's well-being in one way or the other.
10. Moreover, the Single Judge notes that the Prosecution confirmed that it did not [REDACTED] that certain individuals are in fact Defence witnesses.¹⁴ Rather, it [REDACTED] merely indicate the names of Defence witnesses, without [REDACTED] with the Court.¹⁵ Given the nature of these documents, as well as

¹⁰ Request, ICC-01/14-01/18-2257-Conf, para. 1.

¹¹ See Response, ICC-01/14-01/18-2275-Conf, para. 9.a., nn 8-9, listing items [REDACTED].

¹² Response, ICC-01/14-01/18-2275-Conf, para. 8.

¹³ Response, ICC-01/14-01/18-2275-Conf, paras 9-13.

¹⁴ Response, ICC-01/14-01/18-2275-Conf, para. 11.

¹⁵ [REDACTED].

the roles of these individuals, this neither appears to be out of the ordinary nor could it have been avoided.

11. In light of the above, it is neither conceivable how the Defence witnesses are particularly at risk by virtue of any [REDACTED], nor how not receiving the entirety of the Sought Information would prevent Mr Yekatom from calling witnesses in the same conditions as the Prosecution, or violate his rights under Article 67(1)(e) of the Statute.
12. In any case, the Single Judge is of the view that the available information regarding the content and nature of [REDACTED] enables the Victims and Witnesses Unit (the 'VWU') to conduct its assessment on the safety, security and well-being of the Defence witnesses as per its usual practice. Therefore, the Single Judge also sees no reason for further disclosure from a witness protection point of view. Nonetheless, he notes that the VWU may approach the Defence or the Chamber, as needed, should it require further information or wish to raise concerns about the witnesses' interests protected under Article 68 of the Statute.
13. In light of the above, the Single Judge rejects the Request.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request; and

ORDERS the Yekatom Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2257-Conf, and the Response, ICC-01/14-01/18-2275-Conf, respectively, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt

Single Judge

Dated this 12 February 2024

At The Hague, The Netherlands