

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/14-01/18**  
Date: **14 February 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 *PROSECUTOR v. ALFRED YEKATOM AND  
PATRICE-EDOUARD NGAÏSSONA***

**Public**

**Public redacted version of “Prosecution’s Response to the “Yekatom Defence Request for Disclosure of P-2580’s Phone Call Recording with the Prosecution” (ICC-01/14-01/18-2294)”, ICC-01/14-01/18-2317-Conf, 22 January 2024**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the “Yekatom Defence Request for Disclosure of P-2580’s Phone Call Recording with the Prosecution”<sup>1</sup> (“Request”). The Defence is already in possession of all the material information in question, which was duly disclosed by the Prosecution in the form of an Investigation Report.<sup>2</sup> The original recording of the Prosecution’s [REDACTED] 2023 phone conversation with P-2580 (“Recording”) itself would have no material effect on the preparation of the Defence. Thus, the Request should be dismissed.

## II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis* of the Regulations of the Court (“RoC”), this Request is filed as “Confidential”, as it responds to a filing of the same designation and contains information that may not be made public. A public redacted version will be submitted as soon as practicable.

## III. SUBMISSIONS

3. *First*, the Prosecution has already provided an Investigation Report containing all material information contained in the Recording. This was duly disclosed on 17 November 2023.<sup>3</sup> Thus, the disclosure of the Recording itself is not warranted here because Rule 77 of the Rules of Procedure and Evidence (“Rules”) does not require disclosure of the same information in another form, where the form itself will not provide additional assistance to the Defence, or have any “material effect” on the Defence’s preparation.<sup>4</sup> As Trial Chamber I held in the *Lubanga* case, such information

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<sup>1</sup> ICC-01/14-01/18-2294-Conf.

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

<sup>3</sup> See Trial Rule 77 package 117 of 17 November 2023.

<sup>4</sup> See ICC-01/04-01/06-2147, paras. 23-24.

*“does not, therefore, fall into the scope of the disclosure obligations under Rule 77 of the Rules.”*<sup>5</sup>

4. The assertions that additional elements of the Recording, such as P-2580’s “tone and all the nuances of his words (or lack of)”<sup>6</sup> and “exact words exchanged with [him]”<sup>7</sup> are material to the Defence’s preparation are speculative and unpersuasive. Moreover, disclosure of the Recording would not resolve any supposed “ambiguity as to the specific interventions and witnesses understood to be denied by P-2580 [during the call]”<sup>8</sup> raised by the Defence. As is clear from the Investigation Report, the purpose of the call in question was to confirm with P-2580 (i) [REDACTED]; and (ii) [REDACTED].<sup>9</sup> As such, no references were made to any specific victims or witnesses during the brief conversation between the investigators and P-2580.

5. *Second*, the Request fails to explain why P-2580’s credibility is material to this case. The Defence’s claim that “the very phrasing in which P-2580 purported to deny the interventions put to him, as well as the tone and manner in which he responded [] is material to the assessment and credibility of P-2580’s response”<sup>10</sup> lacks merit. Whether P-2580 lied to the Prosecution or not during the call in question is irrelevant to the case as such, particularly given that the call was for the express purpose of [REDACTED].<sup>11</sup> As such, the purpose of the call was not to evaluate P-2580’s

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<sup>5</sup> ICC-01/04-01/06-2147, para. 24 (emphasis added); *see also* ICC-01/14-01/18-2306-Conf, para. 6, where the Chamber states that “ongoing litigation concerning P-2580 [] does not automatically render every item related to this individual potentially exculpatory or material to the preparation of the Defence”.

<sup>6</sup> ICC-01/14-01/18-2294-Conf, para. 5.

<sup>7</sup> ICC-01/14-01/18-2294-Conf, para. 5.

<sup>8</sup> ICC-01/14-01/18-2294-Conf, para. 16; *see also* para. 22.

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

<sup>10</sup> ICC-01/14-01/18-2294-Conf, para. 19.

<sup>11</sup> *See* CAR-OTP-2135-4188, at 4190, para. 18.

involvement in, or credibility, in relation to [REDACTED], which explains the brevity of P-2580's response, as referenced in the Investigation Report.<sup>12</sup>

6. It is furthermore unclear how lack of access to "the tone and manner in which [P-2580] responded" to the investigators during his brief conversation with them would [REDACTED].

7. *Last*, the Defence's contention that there is a "double standard" between the Prosecution's approach to P-1847 and P-2580 is flawed. While the former is a *witness*, whose credibility will need to be assessed by the Chamber for the purposes of its final deliberations, the latter is *not a witness* and has provided no evidence to the Court in these proceedings.

#### IV. CONCLUSION

8. For the above reasons, the Chamber should dismiss the Request, as the Defence is already in possession of the material in question, and no further Prosecutorial obligation arises under the Court's regulatory framework.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 14<sup>th</sup> day of February 2024  
At The Hague, The Netherlands

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<sup>12</sup> [REDACTED].