

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **1 March 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’s
request for the forensic examination of V45-P-0001’s and V45-P-0002’s
[REDACTED] (ICC-01/14-01/18-2321)”,
ICC-01/14-01/18-2336-Conf, 30 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. The Office of the Prosecutor (“Prosecution”) opposes the Yekatom Defence’s request for the Chamber to order the forensic examination of the [REDACTED] obtained from V45-P-0001 and V45-P-0002 (“CLR1 Witnesses”)¹ in principle. Although the Prosecution would have deferred to the Chamber’s discretion if the Request was properly substantiated, it clearly fails to advance a sufficient legal basis to justify a further forensic analysis on the CLR1 [REDACTED]. The Chamber should thus reject the Request.

2. The further forensic extraction and/or examination of the subject phones are furthermore unnecessary. The Defence (as are the Parties and Participants) is already aware of the material information contained [REDACTED], duly provided by the Registry in its “submission regarding material obtained by VWU in the course of the execution of its mandate” (“Registry Submission”).² Thus, additional investigation is not necessary, particularly in light of the countervailing statutory interests.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis* of the Regulations of the Court (“RoC”), this response 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

4. *First*, the forensic analysis requested requires a compelling basis justifying a further search of the CLR1 [REDACTED] to overcome the right against self-incrimination, and the right to privacy. A further forensic analysis on the CLR1

¹ The Yekatom Defence’s request was included in its ‘Response to CLRV1 Response of 17 January 2024 to VWU Submissions (ICC-01/14-01/18-2305-Conf-Red)’, ICC-01/14-01/18-2321-Conf, paras.4, 22-27. (“Request”)

² ICC-01/14-01/18-2290-Conf, paras. 11-14.

[REDACTED] must have a legitimate forensic purpose supported by reasonable grounds to believe that the information sought may be found in the area searched. It cannot simply be a fishing expedition. Moreover, the articulable grounds must be balanced with the witnesses' right against self-incrimination, recognised both under the Statute and as an international fair trial right, and their right to privacy.

5. To the extent that the CLR1 Witnesses were required to produce [REDACTED] in relation to the VWU's [REDACTED], there is no obligation on their part to do so for the purposes of a forensic examination in relation to an investigation bearing on potential criminal conduct. The requested order could result in the witnesses' being compelled to incriminate themselves. For instance, in the *Bemba et al case*, Trial Chamber VII rejected similar request for an order to direct the accused to produce potentially incriminating evidence, noting the Prosecution's failure to demonstrate that "such an order would not violate the rights of the accused '[n]ot to be compelled to testify or to confess to guilt and to remain silent' (Article 67(l)(g) of the Statute) and his right '[n]ot to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal' (Article 67(l)(i) of the Statute)."³ Here, the Defence patently fails to establish that the Request would not violate the rights of the two CLR1 Witnesses in a similar respect.

6. It is of no moment that a prior written consent was obtained by VWU regarding the verification and analysis of the [REDACTED].⁴ The content of the purported consent is unknown, as is the information provided to the witnesses. And, it is thoroughly unclear whether they were advised of the potential criminal nature of the

³ ICC-01/05-01/13-907, para. 14.

⁴ ICC-01/14-01/18-2320-Conf-Red, para. 5.

investigation being conducted or otherwise advised on the prospect of engaging Counsel.

7. In respect of the right to privacy, it is clear that this extends to the CLR1 Witnesses regarding the content of [REDACTED] – the extent of which can be determined by the Chamber through an assessment of all the relevant circumstances.

8. Even to the extent that the VWU has obtained written consent, these should not be invoked as a waiver of their rights to privacy – which must be explicit, and specifically ‘informed’.

9. *Second*, the necessity of any additional information is of limited value because (a) the information already provided is enough for the Chamber to assess the weight of the witness’s evidence; and (b) the further investigative actions are essentially collateral to these proceedings.

10. The Defence is already in possession of detailed information derived from VWU’s assessment of the contents of CLR1 Witnesses’ [REDACTED],⁵ indicating that (i) V45-P-0001 [REDACTED]⁶ and (ii) there is no conclusive information regarding V45-P-0002’s [REDACTED] following the VWU’s assessment of [REDACTED].⁷

11. There is no indication in the Request suggesting any likelihood that further forensic examination of the CLR1 [REDACTED] would reveal anything more than [REDACTED] of these two individuals. Thus, the Defence’s request for further analysis of [REDACTED] is unnecessary and amounts to a ‘fishing expedition’. This is also evident from the Defence’s suggestion to use search terms broadly extended to “additional telephones numbers attributed by the Defence to known contacts of P-0001 and P-0002, including other individuals of interest relevant to the broader evidence fabrication scheme in the context of Count 29; or specific timeframes of

⁵ ICC-01/14-01/18-2290-Conf, paras. 11-14.

⁶ ICC-01/14-01/18-2290-Conf, paras. 11-12.

⁷ ICC-01/14-01/18-2290-Conf, para. 14.

interest.”⁸ In addition, the Defence put forward several witnesses intended to corroborate its allegations regarding [REDACTED]; and the Registry’s Submission provides sufficient information on V45-P-0001’s [REDACTED].

12. Finally, the further investigative measures requested by the Defence are essentially collateral to these proceedings. The CLR1 Witnesses are not trial in this case. Thus, engaging in lengthy litigation and investigation on the matter, particularly where fundamental rights of privacy and self-incrimination are involved, is unnecessary given the limited value of the potential information to be revealed in respect of *this* case.

IV. CONCLUSION

13. For the above reasons, the Chamber should reject the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 1st day of March 2024
At The Hague, The Netherlands

⁸ Request, para. 25.