

**Cour
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**International
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Court**

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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 Annex A

Public Redacted Version of “Urgent Yekatom Defence Request for Reports
from Victims and Witnesses Unit regarding Statement Corrections”

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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INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom (“Defence”) hereby respectfully requests Trial Chamber V to direct the Victims and Witnesses Unit (“VWU”) to produce and provide to the Calling Party a report detailing the circumstances in which corrections are made to a witness statement during the familiarisation process (“Request”), the modalities of which will be detailed below.

PROCEDURAL HISTORY

2. On 29 August 2022, the Prosecution provided Parties and Participants via email¹ with P-1339’s corrected statement² per the *Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial* (“Protocol”).³
3. On 2 September 2022, during his testimony, P-1339 denied having made certain corrections to his statement, while recognizing others were made in his presence.⁴ The Presiding Judge ordered the VWU to clarify the circumstances under which the corrections were made.⁵
4. On 2 September 2022, VWU responded that the witness was assisted by two different interpreters, one on the first day and one on the second day, and informed Parties and Participants that the interpreter who assisted the witness on the first day made some corrections to the statement on the witness’ behalf and based on the witness’ instructions, as per usual practice.⁶
5. On 4 September 2022, the Prosecution replied, stating that while witnesses should be assisted with corrections where necessary, it “believed that VWU

¹ Annex A, email from the Prosecution to Parties and Participants dated 29 August 2022 at 10:23.

² [CAR-OTP-00000015-R01](#). The witness made 56 corrections and two additions to his witness statement comprised of 124 paragraphs.

³ [ICC-01/14-01/18-677-Anx1](#).

⁴ Transcript of 2 September 2022, ICC-01/14-01/18-T-152-ENG (RT), p. 51, lines 14-21.

⁵ Transcript of 2 September 2022, ICC-01/14-01/18-T-152-ENG (RT), p. 53, lines 7-11.

⁶ Annex A, email from VWU to Parties and Participants dated 2 September 2022 at 17:20.

should provide some indication of the same, [as] this would promote the efficiency of the proceedings, facilitate the Parties' and Participants' respective examinations, and avoid confusion".⁷

6. On 5 September 2022, VWU provided Parties and Participants with further information which included explanations provided to VWU by interpreters. The interpreter who assisted the witness on the first day confirmed that he was the one that applied all corrections, at the request of the witness. This interpreter also provided explanations given to him by the witness regarding certain corrections. The interpreter present on the second day confirmed that the witness applied some corrections himself with the guidance of the interpreter on the spelling of certain words. The email received also indicated that VWU undertook to work with the Language Services Section ("LSS") responsible for interpretation services "to make sure that corrections made by interpreters are clearly indicated as such in the future".⁸

APPLICABLE LAW

Article 64 – Rome Statute

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:

(a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;

[...]

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

[...]

(f) Rule on any other relevant matters.

[...]

Article 67 – Rome Statute

⁷ Annex A, email from the Prosecution to Parties and Participants dated 4 September 2022 at 14:10.

⁸ Annex A, email from VWU to Parties and Participants dated 5 September 2022 at 12:14.

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:

[...]

(e) To examine, or have examined, the witnesses against him or her [...] The accused shall also be entitled to [...] present other evidence admissible under this Statute [...]

SUBMISSIONS

7. Paragraph 85 of the Protocol establishes that “VWU provides the witness with the statement as provided by the entity calling the witness to enable the witness to refresh his/her memory”.
8. While the Defence recognizes VWU’s important role and is grateful for its facilitation of the familiarisation process, it considers that the current practices are not sufficient to ensure Mr Yekatom’s right to an expeditious trial, his right to effective defence preparation, and his right to examine witnesses brought against him. Further details regarding the familiarisation process are necessary to ensure due respect of these statutory rights. In light of what happened during P-1339’s testimony, the Defence requests that specific information be recorded in a report and provided to the Calling Party, and later to all Parties and Participants.
9. *First*, the Defence requests that when a witness is assisted by an interpreter, the report should clearly indicate, for each correction, whether the witness applied it him- or herself, or with the assistance of an interpreter.
10. *Second*, it should also be required that the witness affixes his or her signature next to each correction, indicating their approval. The signature of the witness on his or her statement offers a certain guarantee in the event where he or she might attempt to suggest that a given correction was made unilaterally by the interpreter, without the approval or knowledge of the witness. Thus, the Request would not only reduce any ambiguities arising from corrections, but

also promote judicial economy and expeditiousness, as it would act to eliminate the need for assisting interpreters to give evidence to clarify such ambiguities.

11. *Third*, the Defence requests that any comments made by a witness to the interpreter relative to corrections made to their statement that cannot be directly reflected by the correction be noted in the report. These comments should be reflected in the correction process as they concern the substance of the evidence.
12. Following the familiarisation process, the report would then be transmitted along with the corrected statement, from VWU to the Calling Party, and eventually to all Parties and Participants, as provided by the Protocol.
 - A. The current correction procedure impedes on Mr Yekatom's right to a fair trial
 - i) *The Defence's Request is necessary to ensure Mr Yekatom's right to examine the witnesses against him*
13. The Defence considers that ordering VWU to provide the above-mentioned information is well within the purview of the rights of Mr Yekatom enshrined by article 67(1)(e) of the Rome Statute ("Statute"), which codifies his right to examine witnesses against him and to raise evidence admissible under the Statute.
14. To this end, it is within the rights of Mr Yekatom that information relating to the context in which corrections have been made during the familiarisation process be rendered available to him as they potentially relate to the substance of the testimony and/or the credibility of the witness.
15. By way of example, the Defence notes the situation that transpired from P-1339's testimony:

- At paragraph 67 of his statement, P-1339 claimed that on 5 December 2013, the Anti-Balaka received white armbands and white headbands in order to identify them.⁹
- Following the familiarisation process, P-1339 made modifications to the same paragraph, [REDACTED],¹⁰ and explaining to the assisting interpreter: [REDACTED].¹¹
- However, during his live testimony, P-1339 spontaneously mentioned on two occasions that [REDACTED].¹²
- When asked about his corrections by the Prosecution, P-1339 then changed his response, stating that [REDACTED].¹³
- During the Defence's examination, P-1339 mentioned [REDACTED].¹⁴ When shown his corrected statement, the witness then [REDACTED].¹⁵ P-1339 also [REDACTED] regarding the correction to paragraph 67 after Counsel for the Defence read the report provided by VWU.¹⁶

16. In itself, this incident appears to simply relate to a change of colour but was of significance to the Defence's examination. Indeed, this event was a recurring theme addressed in the Defence's examination, as shown by several questions put to the witness in this respect.¹⁷ Furthermore, P-1339's account of the 5 December 2013 events is highly disputed by the Defence and is of utmost

⁹ [CAR-OTP-2041-0741-R03](#), at 0751, para. 67.

¹⁰ [CAR-OTP-00000015-R01](#), at 000014, para. 67.

¹¹ Annex A, email from VWU to Parties and Participants dated 5 September 2022 at 12:14.

¹² Transcript of 2 September 2022, ICC-01/14-01/18-T-152-ENG (RT), p. 81, lines 3-5 and p. 87, lines 12-15.

¹³ Transcript of 2 September 2022, ICC-01/14-01/18-T-152-ENG (RT), p. 92, line 15, to p. 93, line 3.

¹⁴ Transcript of 13 September 2022, ICC-01/14-01/18-T-159-ENG (RT), p. 71, lines 12-14.

¹⁵ Transcript of 13 September 2022, ICC-01/14-01/18-T-159-ENG (RT), p. 71, line 22, to p. 72, line 17 and p. 74, lines 12-18.

¹⁶ Transcript of 13 September 2022, ICC-01/14-01/18-T-159-ENG (RT), p. 75, line 11, to p. 76 line 9.

¹⁷ Transcript of 14 September 2022, ICC-01/14-01/18-T-160-ENG (RT), p. 74 line 19, to p. 76 line 10 and p. 55, line 8 to p. 59, l. 22.

importance for its case. The Defence stresses the importance of the information provided by VWU, without which it would have been impossible to effectively counter P-1339's claim that he did not ask the interpreter to make the correction. Moreover, it allowed the Defence to directly challenge P-1339's credibility by proving numerous inconsistencies and contradictions raised by the latter's testimony as set out above.

17. In light of the above example, it is clear that comments made by witnesses to interpreters explaining motivations behind certain corrections are material to the Defence's preparation. They can be used during examination to show possible inconsistencies affecting witnesses' credibility and to challenge claims of a misunderstanding.
18. The Defence is cognisant that this information is not only material to the non-calling Party's preparation, but to all Parties involved in the examination, and further, is relevant to the Chamber's determination of the truth. Furthermore, other Parties and Participants acknowledge some shortcomings in the familiarisation process. Both VWU and the Prosecution have expressed their openness to henceforth indicate to Parties and Participants whether corrections are applied by interpreters.¹⁸
19. Witnesses' comments to VWU or to the interpreters assisting them while revising their statement are important, as those explanations, which constitute a declaration on an element they thought was important enough to bring a correction to, are part of their statement, as further developed below.¹⁹
20. Moreover, the Defence considers that its Request falls well into the scope of the Chamber's prerogatives, as article 64(6)(f) of the Statute provides that in

¹⁸ Annex A, email from VWU to Parties and Participants dated 5 September 2022 at 12:14; email from the Prosecution to Parties and Participants dated 4 September 2022 at 14:10.

¹⁹ See paras. 25 to 30, below, for further details on this topic.

performing its functions during the course of a trial, the Trial Chamber may rule on any other relevant matters. It will also allow the Chamber to have an additional tool at its disposition to better understand each witness' recollection of events and to assess the credibility of his or her evidence, as part of the Chamber's truth-seeking function.

ii) The Defence Request will ensure the protection of the right to an expeditious trial

21. Articles 64(2) and 64(3)(a) of the Statute ensure the right to a fair and expeditious trial and conduct of the proceedings.
22. The Defence considers the opacity of the current process regarding whether corrections are applied by witnesses themselves or by interpreters impedes the prompt conduct of proceedings. The expeditiousness of Mr Yekatom's trial is of even greater significance considering the importance of testimonies in this case. The Defence contends that its Request would save already limited examination time during and outside of hearings.
23. During P-1339's testimony, for instance, hearing time was spent on clarifying whether P-1339 made the corrections to his witness statement himself, and on receiving additional information provided by interpreters who assisted the witness. The Defence also notes that several emails were exchanged between VWU and Parties and Participants to this end as provided by Annex A, which also comprises an avoidable use of time for those involved.
24. As recognized by the Presiding Judge during P-1339's testimony²⁰, the Defence notes that a similar situation has previously arisen where hearing time was spent on clarifying whether Witness P-2658 applied corrections himself or with the help of an interpreter, with emails exchanged on this matter between Parties and Participants.²¹ This resulted in the Presiding Judge going through all 63 of

²⁰ Transcript of 2 September 2022, ICC-01/14-01/18-T-152-ENG (RT), p. 53, lines 9-11.

²¹ Email from the Prosecution to Parties and Participants dated 20 June 2022 at 12:17.

the corrections made during the familiarisation process²² after clarifying with the witness whether the corrections were applied by himself or an interpreter.²³ The Presiding Judge even requested the witness to recall the familiarisation process to determine how corrections were applied.²⁴ Since the incident with P-1339 was not an isolated nor exceptional one, the Defence stresses that its Request is justified and necessary to avoid this type of situation re-occurring in the future.

B. Witnesses' explanations to their corrections are "exceptional" circumstances and should be understood as part of their witness statement

25. The Defence is not proposing an amendment to the Protocol. Instead, noting that according to the Protocol, "[t]he VWU is under no duty to monitor or record anything that is said by the witness during this process unless something exceptional occurs [emphasis added]",²⁵ the Defence submits that any explanations provided by a witness regarding corrections made to their statement constitute "exceptional" circumstances, thereby justifying that this information be recorded and brought to the attention of all Parties and Participants.
26. The Defence notes that those additions are beneficial to all Parties and Participants, as they provide additional contextual or substantive information regarding the testimony of the witness.
27. A witness statement is a "record of questions put to witnesses by the prosecution and of the answers given".²⁶ When a witness comments on the modifications made to his or her initial declaration, those comments are part of the answers given and constitute an addition to the initial statement, just as

²² Transcript of 20 June 2022, ICC-01/14-01/18-T-134-CONF-ENG (CT), p. 36, lines 5-25 and p. 38, line 5, to p.51, line 1.

²³ Transcript of 20 June 2022, ICC-01/14-01/18-T-134-CONF-ENG (CT), p. 38, lines 10-20.

²⁴ Transcript of 20 June 2022, ICC-01/14-01/18-T-134-CONF-ENG (CT), p. 52, line 7, to p. 53, line 9.

²⁵ *Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial*, para. 90.

²⁶ *Prosecutor v. Niyitegeka*, [Judgement](#), 9 July 2004, ICTR-96-14-A, para. 33.

much as the modifications themselves. Indeed, the SCSL has found that any statement or declaration made by a witness in relation to an event he or she witnessed, or relating to matters about which he or she can give evidence, which is recorded in any form by an official in the course of an investigation, falls within the meaning of a witness statement.²⁷ Therefore, a witness' explanations of his or her corrections should be understood as an integral part of the correction that is recorded, and by extension, part of the statement itself.

28. The Chamber has previously recalled well-established principles around the disclosure of witness statements. Regarding the extent of a witness statement, the Chamber held that :

[it] is of the view that 'statements made by [...] witnesses' within the meaning of Rule 76(1) of the Rules are made only when those witnesses are questioned about their knowledge of the case in the course of an investigation, and only once they accept or adopt it as their own knowledge.²⁸

29. Moreover, the Chamber has noted that Rule 111 of the Rules of Procedure and Evidence "mandates that 'a record' of the 'formal statements' made by any person who is questioned in connection with an investigation or with proceedings, be made and signed."²⁹ The witnesses' signature on the report would hence reflect their acknowledgement that their comments are an integral part of the statement.

30. As part of the statement, comments made by the witness regarding their corrections allow effective defence preparation and examination of witnesses. To this end, the Chamber has previously cited the *Banda and Jerbo* case, in holding that

'[d]isclosure serves to inform the accused person of the prior statements and likely future testimony of the witnesses against him or her, thereby enabling him or her to prepare and to conduct his or her defence'. The Chamber considers that prior statements show how the witness's version of events has evolved [...]. Thus, the

²⁷ *Prosecutor v. Brima et al.*, [Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigator's Notes Pursuant to Rules 66 and/or 68](#), SCSL-04-16-T, 4 May 2005, para. 16.

²⁸ [ICC-01/14-01/18-539](#), para. 18.

²⁹ [ICC-01/14-01/18-539](#), para. 10.

Chamber considers that its understanding adequately secures the accused's rights by enabling him to access the statements which reflect the witness's knowledge of the case (as confirmed by the witness)[.]³⁰

CONCLUSION

31. The lack of information regarding whether witnesses independently apply corrections to their statement or are assisted by an interpreter negatively impacts the rights of Mr Yekatom to effective Defence preparation, to examine witnesses brought against him, to present admissible evidence as provided by the Statute, and to a fair and expeditious trial. It is therefore imperative that henceforth, VWU provide to the Calling Party a report indicating whether corrections are applied by witnesses themselves or with the help of an interpreter, and any comments made by witnesses during the familiarisation process that cannot be directly reflected by corrections.

CONFIDENTIALITY

32. Pursuant to Regulation 23 *bis* (1) of the Regulations of the Court, this Request is filed confidential as it contains reference made therein to confidential evidence. Annex A is also filed on a confidential basis as it references confidential correspondences between Parties and Participants. A public redacted version of the Request will be filed forthwith.

URGENCY

33. The Defence files this Request on an urgent basis, and respectfully requests that this matter be treated in an expedited manner, so as to ensure that, if the request is granted, the sought directions can be issued prior to the initiation of the familiarisation process(es) in relation to the witnesses who will testify in the

³⁰ [ICC-01/14-01/18-539](#), para. 19.

upcoming evidentiary block, currently scheduled to commence on 17 October 2022.

RELIEF SOUGHT

34. In light of the above, the Defence respectfully requests the Trial Chamber to:

ORDER the Victims and Witness Unit to disclose to the Calling Party a report, as part of the familiarisation process, containing :

- (a) an indication of whether any corrections made to a statement were applied by the witness him- or herself, or with the help of an interpreter;
- (b) the witness's signature next to each correction made to its statement, and;
- (c) all comments made by the witness to the interpreter relative to corrections made to his or her statement, that cannot be directly reflected by the correction.

RESPECTFULLY SUBMITTED ON THIS 27th DAY OF SEPTEMBER 2022³¹



Me Mylène Dimitri
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³¹ The Defence thanks Legal Interns Ms. Alexandra Baer and Ms. Léa-Marie Gagnon for their precious assistance in the drafting of this filing.