

**Cour
Pénale
Internationale**



**International
Criminal
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

Public Redacted Version of "Yekatom Defence request for disclosure of any information in possession of the Registry of [REDACTED]", 19 January 2023, ICC-01/14-01/18-1728-Conf-Exp

With Confidential *Ex Parte* Annexes A to D only available to the Yekatom Defence, Prosecution and Ngaïssona Defence

And Confidential *Ex Parte* Annexes E and F only available to the Yekatom Defence

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 Yekatom Defence (“Defence”) hereby requests the Chamber to order the Registry to disclose to the Prosecution any information in their possession on [REDACTED] (respectively abbreviated as “Request” and [REDACTED]).
2. The Defence submits that information on [REDACTED] is potentially exculpatory, or at the very least material to its preparation, as i) this [REDACTED]¹; ii) there are strong suspicions that [REDACTED]; and, iii) [REDACTED] provided forged documents relied on by the Prosecution to support Count 29 that are liable to compromise the integrity of the ongoing proceedings.
3. In light of the apparent impasse in which the Defence finds itself following *inter partes* communications, and of the Prosecution’s indication that judicial intervention might be necessary at this point, the Defence argues that the intervention of the Chamber is necessary to order [REDACTED] to disclose to the Prosecution all identifying information in its possession, in relation to [REDACTED]. Such an order would allow the Prosecution to properly assess the documents transmitted and to subsequently provide to the Defence any documents that would fall under its disclosure obligation.

PROCEDURAL HISTORY

4. On [REDACTED], the Prosecution disclosed investigation report [REDACTED].²
5. In a correspondence dated 24 August 2022 (Annex A),³ the Prosecution indicated to the Defence that [REDACTED]. The Prosecution assessed that the

¹ [REDACTED].

² [REDACTED].

³ Annex A : Email from the Prosecution to the Defence dated 24 august 2022 at 15:38, page 3, section III 2).

documents in relation to [REDACTED] were not disclosable under article 67(2) or Rule 77 as they do not contain any indication regarding [REDACTED].

6. On [REDACTED], the Prosecution disclosed an investigation report which indicated that [REDACTED]⁴, [REDACTED].⁵ An analysis of call data records disclosed by the Prosecution,⁶ covering the period from 25 September 2020 to 27 June 2022, shows that [REDACTED] were in frequent contact with more than 60 calls recorded during this time frame.
7. On 8 September 2022, upon inquiry from the Defence, the Prosecution first indicated that [REDACTED], “[REDACTED] *nous ne considérons pas ce document comme étant nécessaire à la préparation de la Défense.*” It also specified that “*nous ne disposons pas d’information permettant de [REDACTED]* (Annex B).⁷
8. On 4 November 2022, following an additional disclosure request from the Defence, seeking a redacted version of [REDACTED], the Prosecution indicated that “[REDACTED] while refusing again to disclose the [REDACTED] (Annex C).⁸
9. On 9 November 2022, the Defence requested the Prosecution to inquire [REDACTED]. The Defence requested that [REDACTED].⁹
10. On 29 November 2022, the Prosecution responded that:

[REDACTED]¹⁰
11. On 30 November 2022, the Defence noted that this information was consistent with the information contained in the report [REDACTED] and that there were

⁴ [REDACTED].

⁵ [REDACTED]. Also, email from the Prosecution to the Defence dated 24 August 2022 (Annex A).

⁶ [REDACTED].

⁷ Annex B : Email from the Prosecution to the Defence dated 8 September 2022 18:49

⁸ Annex C : Email from the Prosecution to the Defence dated 4 November 2022 16:47

⁹ Annex D : Letter ARY-2022-0246 sent on 9 November 2022.

¹⁰ Annex D : Email from the Prosecution to the Defence dated 29 November 2022 09:40.

reasonable grounds to believe that “[REDACTED]; and at the very least, there exist sufficient grounds to pursue further inquiries into this reasonable possibility”. The Defence reiterated its request that the Prosecution

obtain [REDACTED]. Evidence that [REDACTED] would affect the credibility of a number of Prosecution witnesses relied on in support of Count 29, [REDACTED], and is this potentially exculpatory. (Annex D)¹¹

12. On [REDACTED], the Prosecution disclosed [REDACTED]¹² [REDACTED].

13. On the same day, and following multiple requests from the Defence to be provided with information on the circumstances of [REDACTED] does not mentioned it [REDACTED], the Prosecution also disclosed an investigator’s note describing the chain of custody of the document.¹³

14. On 14 December 2022, the Prosecution specified, in relation to the Defence’s 30 November 2022 inquiry, that [REDACTED] (Annex D)¹⁴

15. The same day, the Defence answered that

[REDACTED]¹⁵

16. On 15 December 2022, the Prosecution detailed that

having inquired with [REDACTED] pursuant to your earlier request regarding [REDACTED], we can convey that their response is negative. We further understand that, given the sensitivity of their work, [REDACTED] is unwilling to provide absent judicial intervention. This may be the preferred course for the Defence to obtain such information. We do not have it, not are we in a position to establish or confirm [REDACTED].(Annex D)¹⁶

¹¹ Annex D : Email from the Defence to the Prosecution dated 30 November 2022 09:49.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ Annex D : Email from the Prosecution to the Defence dated 14 December 2022 17:19.

¹⁵ Annex D : Email from the Defence to the Prosecution dated 14 December 2022 19:04.

¹⁶ Annex D : Email from the Prosecution to the Defence dated 15 December 2022 13:02.

SUBMISSIONS

17. The Defence will first argue that an intervention of the Chamber on the matter is necessary (A); it will then be submitted that the sought information on [REDACTED] is material to the preparation of the Defence (B); finally, it will be argued that no restrictions on disclosure of this information pursuant to Rule 81(4) are warranted (C).

A. An intervention of the Chamber on the matter is necessary

18. Article 54 (1) (a) of the Statute provides that the Prosecutor shall investigate incriminating and exonerating circumstances equally. Trial Chamber V(A) in the *Ruto & Sang* case found that this disposition entailed that “should it be determined that there are reasonable grounds to believe that information not in the Prosecution’s possession may be potentially exculpatory, Article 54(1)(a) of the Statute obligates the Prosecution to make reasonable efforts to obtain that information”.¹⁷

19. As detailed in the Procedural History section above, the Defence held numerous *inter partes* discussions with the Prosecution regarding [REDACTED].

20. However, as already submitted,¹⁸ it is the Defence’s case that [REDACTED]. [REDACTED].

21. Therefore as the Defence believes that [REDACTED].¹⁹ The Prosecution indicated to the Defence on 15 December 2022 that “given the sensitivity of their

¹⁷ Prosecutor v. Ruto & Sang, Decision on Joint Defence Application for Further Prosecution Investigation Concerning the Asylum Application Records of Certain Prosecution Witnesses, 11 December 2017, [ICC-01/09-01/11-1655-Red2](#), para. 32.

¹⁸ [REDACTED].

¹⁹ Annex D : Email from the Defence to the Prosecution dated 14 December 2022 19:04.

work, [REDACTED] is unwilling to provide absent judicial intervention. This may be the preferred course for the Defence to obtain such information”.²⁰

22. Article 64(6)(b) of the Statute provides that the Trial Chamber may, as necessary, “require the attendance and testimony of witnesses and production of documents and other evidence [...]”. It is also well established that a truth-seeking function is assigned to the Chamber, this function extending to the matter of use of evidence during the course of a trial.²¹

23. In light of the importance of the information related to the identity of [REDACTED], as detailed below, and of the Prosecution’s indication that judicial intervention is likely necessary to obtain from [REDACTED] the requested information, the Defence submits that the intervention of the Chamber is necessary at this point.

B. Identifying information on [REDACTED] is material to the preparation of the Defence

24. The Defence will present evidence that (i) there are grounds to believe that [REDACTED]; (ii) that [REDACTED] provided information and documents that are liable to compromise the integrity of the proceedings, in particular regarding [REDACTED]. The Defence will then demonstrate that the information sought from [REDACTED] is material to its preparation (iii).

i) On the reasonable possibility that [REDACTED]

25. Witness [REDACTED] indicated to the Prosecution [REDACTED]. He also indicated that another [REDACTED].²² The Defence first notes that [REDACTED];²³ [REDACTED].

²⁰ Annex D : Email from the Prosecution to the Defence dated 15 December 2022 13:02.

²¹ See as an example ICC-01/14-01/18-1597-Conf, para. 18.

²² [REDACTED].

²³ [REDACTED].

26. Moreover, it has been discovered that [REDACTED].²⁴ As detailed in paragraph 6 above, there is evidence of calls between [REDACTED] between 2020 and 2022. While the Prosecution indicates that [REDACTED],²⁵ which could explain the existence of contacts between those two individuals, the number of these calls (more than 60 calls during the timeframe described above) appears vastly excessive for such a relationship. In any event, the Defence sees no reason as to why [REDACTED] would have communicated, to such an extent, with [REDACTED].²⁶ [REDACTED].

27. [REDACTED]²⁷ [REDACTED].²⁸ [REDACTED].

ii) On the provision of information by [REDACTED] that is liable to affect the integrity of the proceedings

28. The Defence first notes that the individual [REDACTED].²⁹ As detailed by the Defence in previous submissions, [REDACTED]³⁰ [REDACTED]³¹. [REDACTED];³² [REDACTED].³³ [REDACTED].

29. On [REDACTED], [REDACTED] also provided Prosecution investigators [REDACTED].³⁴ After inquiries from the Defence, the Prosecution indicated regarding [REDACTED] that [REDACTED].³⁵ [REDACTED];³⁶ on the same day an investigation note was also disclosed regarding this document which confirms that (i) [REDACTED] was not aware of [REDACTED]; (ii) that the

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ Annex A : Email from the Prosecution to the Defence dated 24 August 2022 15:38.

³⁵ Annex C : Email from the Prosecution to the Defence dated 4 November 2022 16:47.

³⁶ [REDACTED].

name of [REDACTED] and finally: (iii) that [REDACTED].³⁷ [REDACTED],³⁸ [REDACTED].

30. This information is particularly troubling in light of the fact that [REDACTED] indicated [REDACTED]³⁹
31. In light of the above it can certainly be drawn the existence of a pattern, or at the very least a troubling recidivism from [REDACTED].
32. The provision by [REDACTED] of false information on [REDACTED], and of documents the contents of which are false and/or forged is liable to compromise the integrity of the proceedings, especially on Count 29 which is already afflicted by the submission of falsified documents, as demonstrated by the Defence during the cross-examination of P-2475 and confirmed through a recent Prosecution investigation.⁴⁰

iii) On the materiality of the sought information for the preparation of the Defence

33. The Defence notes that the Chamber previously found that [REDACTED], given the circumstances, were material to the preparation of the Defence within the meaning of Rule 77 of the Rules.⁴¹
34. The Defence submits that the information [REDACTED] is material to its preparation, given the existence of reasonable grounds to believe that [REDACTED].

³⁷ [REDACTED].

³⁸ See Annex F [REDACTED].

³⁹ [REDACTED].

⁴⁰ CAR-OTP-00000320-R01.

⁴¹ [REDACTED].

35. Indeed, as noted above, [REDACTED] manifestly provided incorrect information and false documents [REDACTED]. In addition, [REDACTED]⁴² [REDACTED].⁴³ [REDACTED].⁴⁴
36. In light of the fact that [REDACTED] already provided information that could jeopardize the integrity of the proceedings, [REDACTED]⁴⁵ the Defence argues that any information [REDACTED] is material to its preparation [REDACTED]. Should [REDACTED], further investigations would need to be conducted in order to verify who [REDACTED] has been in contact with and whether any further breach of the integrity of the proceedings might have occurred.
37. The fact that the Prosecution, [REDACTED]⁴⁶ [REDACTED] is a further factor justifying the disclosure to the Prosecution of any information regarding [REDACTED].
38. Moreover, it is recalled that the Defence contests that children who participated in the ESF demobilization ceremonies were child soldiers and/or part of Mr Yekatom's group.⁴⁷ In light of this line of defence, evidence that [REDACTED] would affect the credibility of a number of Prosecution witnesses relied upon in support of Count 29 and is potentially exculpatory.
39. In light of the above, the Defence respectfully requests the Chamber to order [REDACTED] to disclose to the Prosecution all information in their possession on [REDACTED]. This would include inter alia: full name and/or aliases, date and place of birth, phone number(s) used, any photographs of the individual, and any identifying documents provided by this person. This will enable the Prosecution to fulfill its disclosure obligation by transmitting to the Defence any

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ Annex D : Email from the Prosecution to the Defence dated 29 November 2022 at 09:40 : [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ See ICC-01/14-01/18-1305-Conf, para. 30.

information that would be exculpatory or material for the preparation of the defence.

C. The sought information does not fall under the Rule 81(4) disclosure exception

40. The Defence submits that no legal impediment exists to the [REDACTED] to the Prosecution, and subsequently to the Defence if it is found that the information falls under the disclosure obligation of the Prosecution.
41. First, it should be underlined that the material will first be provided to the Prosecution who will be in a position to determine if any information should be redacted pursuant to its Article 68 of the Statute obligation.
42. Second, as developed above there are reasonable grounds to believe that [REDACTED]. Therefore, should this be the case, the possibility that the disclosure of [REDACTED] raises a potential risk to the safety of [REDACTED] is non-existent, as the Defence is already in possession of [REDACTED] disclosed by the Prosecution.
43. Third, the Defence notes that the Chamber previously rejected redactions to the identifying information of [REDACTED] on the basis that it would be prejudicial to or inconsistent with the rights of Mr. Yekatom as this information [REDACTED]⁴⁸ The information sought in the present Request is crucial for Defence's investigation regarding the possibility that [REDACTED], which would potentially allow the Defence to challenge the credibility of Prosecution's witnesses and submitted items of evidence. Considering the importance of this information in relation to Count 29, the Defence submits that not disclosing the information sought would be disproportionate even if an objectively justifiable risk to the safety of the individual was found to exist.

⁴⁸ [REDACTED].

44. Consequently, the Defence request the Chamber to order to [REDACTED] to disclose all the identifying information in its possession on [REDACTED] to the Prosecution, without redaction.

CONCLUSION

45. As demonstrated above, identifying information of [REDACTED] is material for the preparation of the Defence, if not exculpatory, should it allow for a confirmation that [REDACTED]. The Defence is currently in a impasse as the Prosecution indicated that a judicial intervention was likely necessary in order to obtain more information on this matter [REDACTED].
46. Consequently, the Defence respectfully requests the Chamber to order [REDACTED] to transmit to the Prosecution all identifying information in their possession on [REDACTED]. Those information would inter alia comprises of full name or aliases, date and place of birth, phone numbers used, any photographs of the individual, and any identifying documents provided by this person.

CONFIDENTIALITY

47. The present Request is filed on a confidential *ex parte* basis corresponding due to the references to confidential information on witnesses, inter partes communication with the Prosecution and divulgation of potential lines of defence. A confidential redacted *ex parte* and confidential redacted version are being filed simultaneously. A public redacted version will be filed in due course.

RELIEF SOUGHT

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

ORDER the Registry to immediately disclose all information in their possession on [REDACTED] to the Prosecution as set out in paragraph 46 of the present Request.

RESPECTFULLY SUBMITTED ON THIS 21st DAY OF FEBRUARY 2023



Me Mylène Dimitri
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The Hague, the Netherlands