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No. ICC-01/14-01/18

Date: 6 April 2023

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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of

**Decision on the Yekatom Defence Request for Orders in relation to Withdrawn
Witness P-2582**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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(2) and (6)(c) and (e), 67(2) and 68 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of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Yekatom Defence Request for Orders in relation to Withdrawn Witness P-2582’.

I. Procedural history and submissions

1. On 15 November 2022, the Office of the Prosecutor (the ‘Prosecution’) informed the Chamber that it intends to withdraw several witnesses scheduled to be called by the Prosecution, including P-2582.¹
2. On 21 December 2022, the Chamber declared the Prosecution’s request to introduce P-2582’s prior recorded testimony under Rule 68(3) of the Rules moot.²
3. On 8 March 2023, the Yekatom Defence requested that the Chamber (i) find ‘that the Prosecution’s obligations pursuant to Rule 77 and Article 67(2) continue to apply to P-2582, her withdrawal notwithstanding’; (ii) find ‘that the Prosecution’s duty to investigate exonerating circumstances pursuant to Article 54(1) continues to apply with regard to P-2582’; (iii) order the Prosecution ‘to disclose, on an ongoing basis, material and/or exculpatory information in relation to P-2582’; and (iv) order the Prosecution to ‘provide reasons for its withdrawal of P-2582’ (the ‘Request’).³
4. Specifically, the Yekatom Defence submits that the fact that the Prosecution no longer intends to rely on P-2582 as a witness ‘has little bearing, if any, on the

¹ Email from the Prosecution, 15 November 2023, at 13:38.

² Nineteenth Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1647, P-2083, P-2082, P-2625, P-2582, P-1442 and P-1558, ICC-01/14-01/18-1712-Conf.

³ Corrected version of ‘Yekatom Defence Motion for Orders in relation to withdrawn Prosecution witness P-2582’, 14 March 2023, ICC-01/14-01/18-1789-Conf-Exp-Corr, confidential *ex parte*, only available to the Yekatom Defence, the Ngaïssona Defence and the Prosecution (with confidential *ex parte* Annexes A to D, only available to the Yekatom Defence, the Ngaïssona Defence and the Prosecution) (original version notified on 8 March 2023; confidential redacted version notified on 9 March 2023; corrected confidential redacted version notified on 14 March 2023, ICC-01/14-01/18-1789-Conf-Red-Corr; and public redacted version of the corrected version notified on 30 March 2023, ICC-01/14-01/18-1789-Red-Corr-Red), para. 63.

Prosecution's broader case as regards P-2582'.⁴ Moreover, the Prosecution has 'not withdrawn its allegation that P-2582 was in fact a former "child soldier" member of Mr Yekatom's group; and [that] it continues to rely on evidence purportedly underpinning this allegation.'⁵ Furthermore, the Yekatom Defence contends that in light of P-2582's participation [REDACTED]⁶ any information affecting the credibility of P-2582, 'would affect the credibility of the evidence underpinning the Prosecution case [REDACTED]; and would therefore be subject to disclosure pursuant to Article 67(2)'.⁷

5. On 20 March 2023, the Prosecution responded to the Request, requesting the Chamber to dismiss it 'in its entirety' (the 'Response'), submitting that it has no basis in the Court's statutory framework.⁸

II. Analysis

6. The Chamber 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.⁹
7. The Chamber notes that under the statutory framework, the calling party retains a broad discretion to organise its presentation of evidence¹⁰ and that it is the calling party's prerogative to withdraw witnesses in the exercise of this discretion. Accordingly, the Chamber considers that there is no general obligation to provide reasons for the withdrawal of witnesses by the calling party.
8. As regards the Prosecution's disclosure obligations, the Chamber notes that, under the statutory framework, they continue to apply regardless of P-2582's withdrawal, to the extent that the information affects the credibility of other

⁴ Request, ICC-01/14-01/18-1789-Red-Corr-Red, para. 9.

⁵ Request, ICC-01/14-01/18-1789-Red-Corr-Red, para. 10.

⁶ Request, ICC-01/14-01/18-1789-Conf-Red-Corr, para. 20.

⁷ Request, ICC-01/14-01/18-1789-Conf-Red-Corr, para. 21.

⁸ Prosecution's response to "Corrected version of 'Confidential redacted version of 'Yekatom Defence Motion for Orders in relation to withdrawn Prosecution witness P-2582' ICC-01/14-01/18-1789-Conf-Exp, 9 March 2023", ICC-01/14-01/18-1806-Conf.

⁹ 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, ICC-01/14-01/18-551-Red), para. 25.

¹⁰ See also Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, ICC-01/14-01/18-685, paras 23-24.

Prosecution evidence or otherwise falls under Article 67(2) of the Statute and/or Rule 77 of the Rules. In this regard, the Chamber notes that the Prosecution acknowledges the same.¹¹

9. Accordingly, the Chamber trusts that the Prosecution will continue to fully comply with its disclosure obligations, including in relation to its obligation to investigate exonerating circumstances.
10. Moreover, the Chamber notes that, given P-2582's withdrawal, the Chamber need not assess her credibility, and that it will take the Yekatom Defence's submissions in this regard into account during its deliberations on the judgment, to the extent that they may relate to the assessment of other evidence on the record.
11. In light of the above, the Chamber considers the remainder of the remedies sought in the Request to be unnecessary.
12. Accordingly, the Chamber rejects the Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

ORDERS the Prosecution to file a public redacted version of the Response, ICC-01/14-01/18-1806-Conf, within one week of notification of the present decision.

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

¹¹ Response, ICC-01/14-01/18-1806-Conf, para. 7.



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 6 April 2023

At The Hague, The Netherlands