

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

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

Date: **19 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**With confidential Annexes A, E, F, H, I, J, K and L;
and confidential Ex Parte annexes B, C, D, G, M, N only available to the
Yekatom Defence, the Ngaissona Defence, the Prosecution, the Victims
Participation and Reparations Section and the Victims and Witnesses Unit**

**Public Redacted Version of “Yekatom Defence Request to issue a Judicial
Order for the Registry to disclose information in relation to Count 29”, ,
ICC-01/14-01/18-1790-Conf-Exp, 9 March 2023**

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 hereby requests the Chamber to order the Registry to disclose administrative information in its possession on individuals [REDACTED], including but not limited to [REDACTED] and [REDACTED].
2. Given that [REDACTED] and [REDACTED], both of whom are/were [REDACTED], have provided the Court with falsified documents and false information, the information sought is necessary for the Defence to understand the extent of the apparently ongoing fraud and misconduct that is affecting the proceedings on Count 29.
3. Further, the Defence requests that the Registry be ordered to disclose contact information in relation to [REDACTED] (P-2475), [REDACTED] and [REDACTED] in the possession of the Victim and Witness Unit ('VWU'). The Defence submits that the numerous contacts and content of communications between these three individuals evidence the existence of collusion.

PROCEDURAL HISTORY

4. In September 2019, the process of implementing the required protection measures for P-2475 was completed by VWU.¹
5. [REDACTED].²
6. On 24 May 2022, following the reception of the 'Statement Sign in Form and Notes Statement Reading of P-2475',³ which indicated P-2475 had been in possession of his witness statements for a period of four days, i.e. from 19 to 23 May 2022, the Defence contacted the Prosecution, and in turn the VWU,

¹ P-2475's statement was disclosed on 16 September 2019 in disclosure package INCRIM 25; See ICC-01-14-01/18-353-Conf-anx, page 3.

² [REDACTED].

³ CAR-OTP-2135-3160.

inquiring whether the Familiarisation Protocol ('Protocol') was duly followed for this witness.

7. On 30 May 2022, VWU responded to the Defence. It acknowledged that a 'clear deviation' of the Protocol occurred during P-2475's familiarisation process: specifically, explaining that following his first day of statement-reading on 19 May (which took place at his hotel for COVID-19 testing-related reasons), P-2475 had 'asked to read his statement from his hotel' on 20 May, as he 'did not feel well enough' to continue reading the statement at the Court; and further, that '[d]ue to the slow reading, and some health issues the witness continued to read his statement on the following days [in his hotel]. On the 23 [May] the witness needed to consult a medical practitioner due to health complaint which also delayed the process.'⁴
8. Between 24 May 2022 and 1 June 2022, P-2475 testified under oath before the Chamber.
9. On 29 June 2022, the Defence requested the Chamber to order the [REDACTED] to cooperate with the Court and assist the Defence in obtaining material related to Facebook accounts pertaining to individuals [REDACTED].⁵ The Prosecution opposed the request in its entirety.⁶
10. On 28 July 2022, the Chamber issued a decision granting the Defence's request, and ordered the Registry to transmit the cooperation request [REDACTED].⁷
11. [REDACTED].⁸
12. [REDACTED].⁹

⁴ Email sent by the VWU to the Defence on 30 May 2022 at 11:22. See annex A.

⁵ ICC-01/14-01/18-1492-Conf-Exp.

⁶ ICC-01/14-01/18-1538-Conf.

⁷ ICC-01/14-01/18-1531-Conf-Exp.

⁸ [REDACTED].

⁹ [REDACTED].

13. On 14 February 2023, after numerous *inter partes* communications with the Prosecution involving the VPRS and following a Defence request,¹⁰ [REDACTED].¹¹
14. On 17 February 2023, [REDACTED].¹² [REDACTED].
15. On 27 February 2023, through *inter partes* communication, the Defence contacted the VPRS requesting to be provided with information concerning (i) [REDACTED]; (ii) administrative information regarding [REDACTED]; and (iii) any other [REDACTED] in the context of these proceedings.¹³
16. On 28 February 2023, the VPRS advised the Defence to direct its request to the Chamber.¹⁴
17. On 3 March 2023, the Defence received a response to its request [REDACTED] along with the entirety of the Facebook material sought and informed the Chamber and the Registry accordingly.¹⁵

APPLICABLE LAW

18. Article 54(1)(a) of the Rome Statute states :

The Prosecutor shall (...) [i]n order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally.

19. Article 64(6)(b) provides that “the Trial Chamber may, as necessary require (...) the production of documents and other evidence”.

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ Email sent by the Defence to VPRS on 27 February 2023 at 18:24.

¹⁴ Email sent by the VPRS to the Defence on 28 February 2023 at 09:24.

¹⁵ Letter received by the Defence on 2 March 2023, Ref 132/6/1092/22.

SUBMISSIONS

A. The sought information is material to the preparation of the Defence

i) Administrative information concerning [REDACTED]

20. The Defence respectfully requests the Chamber to order the VPRS to disclose information in their possession concerning :

(1) the identity of any [REDACTED];

(2) the number of participating victims (group A) [REDACTED] contacted and/or identified on behalf of the VPRS; and

(3) [REDACTED] employment conditions with the Registry including (i) administrative information on [REDACTED] : exact employment title (as the VPRS mentioned that he never acted as intermediary for their section ¹⁶), contract information, timesheets, signed declaration, intermediary briefing speaking notes, dates of employment; (ii) assignment and/or mission order; (iii) mission reports and/or notes of meeting; (iv) correspondence between [REDACTED] and his focal point within the VPRS; (v) identity of other individuals employed by the [REDACTED] who cooperated with [REDACTED] during his employment period, particularly individuals [REDACTED]; and (vi) number of participating victims (group A) [REDACTED] identified on behalf of the VPRS.

21. As set out below, key individuals related to [REDACTED] (witnesses as well as intermediaries hired by the Registry and the Prosecution) [REDACTED]. As previously demonstrated by the Defence, [REDACTED], [REDACTED],

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

provided falsified documents and false information submitted as evidence in this case. The information sought in the present request is material for an understanding of the extent of this fraudulent activity and its impact on Count 29.

[REDACTED]

22. The information disclosed in the Registry Report revealed that [REDACTED].¹⁷

23. In this regard, the Defence notes in particular that neither the [REDACTED]. In the Defence's view, this would suggest that [REDACTED].

24. It also appears from his [REDACTED].¹⁸

25. Further, the phone number appearing [REDACTED] is the same as that attributed by the Prosecution [REDACTED].¹⁹ The Defence regrets that, despite that fact it specifically requested that the Prosecution verify whether the '[REDACTED]',²⁰ it ultimately required the Chamber's intervention to obtain this confirmation.

26. It is also worth mentioning that according to [REDACTED]; as the Chamber is aware, [REDACTED].²¹

27. This evidence strongly corroborates the Defence's position that the [REDACTED].

28. The Chamber will recall that [REDACTED],²² and is the same individual who provided the OTP with false information and falsified documents concerning *inter alia* [REDACTED].²³

¹⁷[REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ ICC-01/14-01/18-1728-Conf-Exp, para. 9.

²¹ CAR-OTP-2123-0057-R03, para. 16.

²² CAR-OTP-2135-4183-R01, para. 5.

²³ [REDACTED].

29. In sum therefore, in addition to being a [REDACTED].

30. [REDACTED].²⁴

31. Out of [REDACTED] Prosecution witnesses initially scheduled to testify on [REDACTED],²⁵ [REDACTED].

32. [REDACTED].²⁶

[REDACTED]

33. [REDACTED].²⁷ [REDACTED].²⁸ [REDACTED].²⁹ [REDACTED].³⁰

34. Further, evidence indicates that [REDACTED] is [REDACTED]. Indeed, [REDACTED] claimed to be a 'family friend' of [REDACTED] and contacted him ahead of his interview with the Prosecution.³¹

35. Concerning [REDACTED], it appears [REDACTED]. Notably, [REDACTED].³²

[REDACTED]

36. Prosecution witness [REDACTED] also applied for [REDACTED]. To the Defence's understanding, [REDACTED] was not hired as [REDACTED] but was registered [REDACTED].³³ Notably, [REDACTED] is listed in [REDACTED].

37. It also transpires from Investigation reports that, while they were first approached by Prosecution investigators and utilized as sources for leads,

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED]

³² Annex B.

³³ [REDACTED].

[REDACTED] and [REDACTED] have been in contact to discuss [REDACTED] to suggest to the Prosecution.³⁴

[REDACTED]

38. Further, at least [REDACTED]. They were tasked with various missions in relation [REDACTED].

39. [REDACTED],³⁵ [REDACTED]³⁶ [REDACTED].³⁷ [REDACTED].³⁸ [REDACTED].³⁹

40. As raised by the Defence in court, [REDACTED] and [REDACTED] have also been recently in contact. [REDACTED] notably [REDACTED];⁴⁰ [REDACTED].⁴¹

41. As already brought to the Chamber's attention, evidence in this case shows that [REDACTED], thereby compromising the integrity of the proceedings.

42. Call data records covering the period from [REDACTED], with more than [REDACTED].⁴²

43. Following the testimony of P-2475 before the Court, [REDACTED].⁴³ The Prosecution also informed [REDACTED].⁴⁴

44. Nonetheless, and worryingly, it appears that [REDACTED] activities with [REDACTED] have not ceased. The Defence was informed through its

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED]

investigations that [REDACTED] is still involved in activities with the Court, notably [REDACTED].⁴⁵

45. This information is material to Defence preparations. There is mounting evidence of [REDACTED] involvement in potentially criminal evidence fabrication and witness interference in the context of these proceedings. The Sought Information is necessary to fully understand the potential extent to which these individuals have been involved [REDACTED], both formally and informally. Given that [REDACTED], the Sought Information will also allow a more comprehensive understanding of the manner in which these individuals have influenced and affected, both directly and indirectly Prosecution investigations, and by extension, the Prosecution case currently being presented before the Chamber.⁴⁶

ii) Information concerning inadvertent contacts and/or meetings between P-2475, [REDACTED]

46. As already submitted, the Defence has reasons to believe that P-2475, [REDACTED], current and former Prosecution witnesses are currently and/or have been in frequent contact after [REDACTED].⁴⁷ More particularly and as set out below, it appears that those individuals would have been in contact during the period of P-2475's testimony before the Court, which appears to indicate collusion.

47. It appears from Facebook material that P-2475, [REDACTED] have been [REDACTED].⁴⁸

48. Facebook material [REDACTED] corroborate the Defence's position. On [REDACTED], [REDACTED] posted two photographs within an interval of

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ ICC-01/14-01/18-1492-Conf-Exp.

⁴⁸ [REDACTED].

only few seconds.⁴⁹ On the first photograph, [REDACTED], [REDACTED], [REDACTED], and a [REDACTED] that the Defence believes to [REDACTED]. On the second photograph, [REDACTED] appears with P-2475. Details apparent in both photographs, such as the clothes they are wearing and their background, indicate that they were taken at the same time. This would appear to suggest that P-2475, [REDACTED].

49. Moreover, recent Defence open source investigations show that P-2475⁵⁰ and [REDACTED]⁵¹ [REDACTED].⁵²

50. The Chamber will recall that during his testimony before the Court, P-2475 mentioned that he read and re-read his statement in his hotel room between the 19 and 22 May 2022, without any supervision from any staff of the Court.⁵³ When asked if he had access to his mobile phone in his hotel room, P-2475 confirmed that he “was provided a telephone where [he] was coming from, and they proposed to give [him] another telephone, which is what [he] used”.

51. One video posted by P-2475 on his Tiktok accounts after his arrival in The Hague, notably posted during the period of his extended familiarisation process and his testimony before the Chamber, confirms that P-2475 had [REDACTED] in his hotel room.⁵⁴ P-2475 was therefore able to access the internet, social media platforms, and messaging and video calling applications during the entire period of his familiarisation process and testimony, all while having his witnesses statements at his disposal.⁵⁵

52. Notably, in the period during which P-2475 retained possession of his witness statement (per his request) and was reading and rereading it in his hotel room,

⁴⁹ [REDACTED]; **P-2475's** [REDACTED] : Annex E; **P-2475** : Annex F; [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² Annex G.

⁵³ ICC-01/14-01/18-T-131-CONF-ENG, page 36, ln 19 to page 37, ln 3; see also *supra*, paras 6-7.

⁵⁴ Annex H.

⁵⁵ See para.7

on account of his being too unwell to attend the Court premises for the familiarisation and statement-reading procedure (and immediately thereafter), P-2475 was posting videos of himself lip-syncing to music;⁵⁶ putting on different outfits;⁵⁷ exercising in what appears to be the hotel gym⁵⁸ and dancing in his hotel room.⁵⁹

53. Finally, the Chamber will also recall that during his questioning by the Defence on 1 June 2022, P-2475 maintained that [REDACTED].⁶⁰ Yet, private Facebook material indicates that on the same day, between 7:42 pm to 10:16 pm – i.e. merely a few hours after those questions were put to him by Defence Counsel – P-2475 called [REDACTED] three times, for a total duration of approximately 2.5 hours.⁶¹ [REDACTED].⁶²

54. The Defence respectfully submits not only that P-2475 perjured himself before the Court, as there is little doubt [REDACTED], strongly suggests the existence of collusion between these two Prosecution witnesses.

55. In the same vein, [REDACTED].⁶³

56. The Protocol states that, when arranging for witnesses to travel jointly to the seat of the Court, regard shall be had to ‘the risk of contamination of the witness’ evidence’.⁶⁴ The Defence understands that similar precaution thus should necessary have been taken [REDACTED].

57. In light of the above, the Defence respectfully requests the Chamber [REDACTED].

⁵⁶ Annex I. [REDACTED].

⁵⁷ Annex J. [REDACTED].

⁵⁸ Annex K. [REDACTED].

⁵⁹ Annex L. [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ ICC-01/14-01/18-677-Anx1, para. 24.

58. The Defence also requests the Chamber to order the VWU to disclose:

- (i) any information in its possession of existing contact(s), including inadvertent contact, between P-2475, [REDACTED];
- (ii) all instances to the knowledge of the VWU and if any, of inadvertent contact(s) occurred between P-2475, [REDACTED]; and
- (iii) any information that P-2475, [REDACTED].

59. Finally, the Defence respectfully requests the Chamber to order the VWU to disclose a report concerning the circumstances surrounding the provision of P-2475's statements during his familiarisation process in The Hague. The report should include any information in possession of the VWU confirming that P-2475 had at his disposal two mobile phones and clarifying whether his communications through mobile applications were limited or not during the relevant period of time as well as during his testimony. The Defence recalls that such a request was made by the Prosecution in relation to P-2841.⁶⁵

B. Intervention of the Chamber is necessary

60. As detailed in the Procedural History above, the Defence has previously contacted the Registry seeking to obtain the sought information; the Registry responded that the most conducive way to do so would be to address the request to the Chamber.

61. In light of the importance of the evidence gathered in relation to key individuals related to Count 29 as described in the paragraphs above, and given the consequences that this flawed backdrop could have on the fairness of the current proceedings, the Defence submits that the intervention of the Chamber is necessary.

⁶⁵ CAR-OTP-2130-4076-R01.

62. The sought information is crucial to understand the extent of the apparent witnesses' collusion arising from the contacts and links between witnesses [REDACTED]. It is respectfully submitted that this undoubtedly falls under the truth-seeking mandate conferred to the Chamber.

63. To the extent that the identifying information of [REDACTED] is already known to the Defence no Rule 81(4) concerns would appear to arise from this request. In any event the Defence submits that information sought in this request is critical for Defence investigations and preparation in relation to Count 29 and the ongoing misconduct involving [REDACTED]. As such, non-disclosure of the information would be disproportionate even if an objectively justifiable risk to the safety of any individuals was found to exist.

CONFIDENTIALITY

64. The present Request is filed on a confidential *ex parte* basis due to the references to confidential information on witnesses, inter partes communication with the Registry and divulgence of potential lines of defence. The *ex parte* classification is justified by the need to protect ongoing Defence investigations, especially in light of possible interference by and involving Prosecution's witnesses in the current proceedings.

RELIEF SOUGHT

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

ORDER the Registry to immediately disclose all information in their possession as set out in paragraphs 20, 57, 58 and 59 of the Request.

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF APRIL 2023



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