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**International
Criminal
Court**

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Date: **14 November 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 and B**

**Public Redacted Version of “Request for an order directing VWU to
provide a report”, 27 September 2023, ICC-01/14-01/18-2111-Conf**

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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I. INTRODUCTION

1. Pursuant to articles 64(2), 64(6)(b), 64(6)(d), 64(d)(f) and 64(9) of the Rome Statute ('Statute'), the Defence for Mr Alfred Rombhot Yekatom ('Defence') respectfully requests the Trial Chamber to direct the Victim and Witness Unit ('VWU') to provide it with a report detailing:
 - (i) all information in its possession of existing contact, including inadvertent contact, between witness P-2475 and former witnesses P-2582 and P-2620 (the 'Witnesses') before and after [REDACTED]; and
 - (ii) all steps taken to investigate and/or report any such contact between witness P-2475 and former witnesses P-2582 and P-2620 (the 'Witnesses') before and after [REDACTED] ('VWU Report').
2. This request follows completion of the Defence's review of Facebook communications [REDACTED] whereby it has become apparent that contact of a collusive nature between the Witnesses took place and that VWU would have been aware of such contact since early February 2022.
3. The existence of such contact goes to the very core of the Defence's prior submissions concerning repeated contamination and/or collusion between the Witnesses and that this contact occurred despite VWU protocols being in place.
4. The extent and circumstances in which this contact occurred, as well as the apparent failure on the part of VWU to adhere to its reporting obligations, goes directly to the Chamber's assessment of the credibility of the Prosecution's case concerning Count 29. Moreover, it concerns the Chamber's powers to determine whether any further measures are necessary in order to preserve the fairness and integrity of these proceedings.

II. SUBMISSIONS

A. Recent communications demonstrate the collusive nature of contact between the Witnesses, of which VWU had knowledge.

5. The Trial Chamber will recall that on 28 July 2022, it granted the request of the Defence,¹ for an order concerning the [REDACTED] seeking identified Facebook material.² The [REDACTED] complied with the Chamber's order on 6 March 2023,³ and communicated the sought Facebook material comprising approximately 22,000 pages and 1,700 audio/video files.
6. Having translated the material, and transcribed the audio/video files, the Defence has now had an opportunity to complete an initial review of the entirety of the material provided by the [REDACTED]. This review includes material depicting conversations from P-2620's Facebook account '[REDACTED]' as per the Defence's initial request.⁴
7. In this regard, and to assist the Chamber, the Defence annexes a series of Facebook communications, dated 4 February 2022, between former Prosecution witness [REDACTED] (P-2620) and an individual named [REDACTED] whom the Defence understands to be her partner ('4 February 2022 Communications' or 'Communications').⁵ These Communications consist of written and audio messages compiled in a table and appended as Annex B.⁶
8. A review of the 4 February 2022 Communications demonstrates: (i) the existence of direct contact between the Witnesses and their awareness of their

¹ ICC-01/04-01/18-1492-Conf-Exp; ICC-01/04-01/18-1492-Conf-Red.

² ICC-01/04-01/18-1531-Conf-Exp; ICC-01/04-01/18-1531-Conf-Red.

³ ICC-01/14-01/18-1531-Conf-Exp.

⁴ ICC-01/14-01/18-1492-Conf-Exp-AnxA, pages 2-3.

⁵ Annex A.

⁶ Extracts of communications have been provided for the purposes of this request and for ease of reference. However, the Defence is in a position to provide the entirety of the material obtained should the Trial Chamber require it to do so. Similarly, the Defence has provided internal draft transcriptions in relation to audio and video files, however the original files can be provided to the Trial Chamber upon request.

respective cooperation with the Court; (ii) that VWU would have been aware of this contact as of February 2022; and (iii) the collusive nature of the Witnesses' conduct for a fraudulent purpose.⁷

9. Notably, the 4 February 2022 Communications occurred on the very same day that P-2620 arrived at [REDACTED]. The Chamber will recall that P-2475, P-2620 and P-2582 [REDACTED], and that photographs indicate that they were in direct contact *in situ*.⁸ The same individuals communicated through multiple online social media platforms whilst P-2475 was testifying before the Court.⁹ Furthermore, after Counsel questioned P-2475 on his knowledge about P-2620 and after having shown her photographs of the latter, P-2475 called P-2620 from The Hague for a total of 2 hours and 39 minutes.¹⁰
10. Within the 4 February 2022 Communications, P-2620 makes references to one or multiple individual(s) assisting her [REDACTED]. She specifically describes an incident [REDACTED] where, one of the individuals accompanying her becomes aware of the fact that P-2620 is in possession of a prohibited personal phone.¹¹
11. It can be understood from P-2620's statements in the 4 February 2022 Communications that she violated several rules imposed and/or enforced by the accompanying person(s). This is summarised as follows:

- (i) restriction on carrying a private phone;

'[REDACTED]'.

- (ii) restriction of contact with specific individuals - in this case '[REDACTED]' and '[REDACTED]' (respectively P-2582 and P-2475); and

⁷ ICTR-2001-74-A, *Prosecutor v. François Karera*, Appeals Chamber, Judgment, 2 February 2009, para. 234.

⁸ ICC-01/14-01/18-1790-Conf-Exp, paras 47 and 48.

⁹ ICC-01/14-01/18-1790-Conf-Exp, paras 46, 49-50, 53 and 55.

¹⁰ See ICC-01/14-01/18-1790-Conf-Exp para. 53 fn. 61.

¹¹ [REDACTED].

'[REDACTED]'.

(iii) restriction of contact with family members

'[REDACTED]'.

12. Given P-2620's position as former dual status witness and [REDACTED], it is understood that the restrictive measures described above are related to her participation [REDACTED] and that the accompanying person(s) referred to by P-2620 in the conversation are VWU employees.
13. Considering the relations and contacts of P-2620 with both P-2582 and P-2475, as previously outlined by the Defence to the Chamber in hearings and through various filings, the Defence understands that the individuals '[REDACTED]' and '[REDACTED]' mentioned in the discussion are respectively P-2582 ([REDACTED]) and P-2475 ([REDACTED]).
14. This is further demonstrated in the 4 February 2022 Communications, in which P-2620 states *'[REDACTED]'*. This depicts, first, that these two individuals are indeed P-2582 and P-2475, as both are/were also [REDACTED]; and second, that at the very least, P-2620, P-2475 and P-2582 are aware of one another's cooperation with the Court.
15. During the 4 February 2022 Communications, P-2620 also directs her partner [REDACTED] to call '[REDACTED]' and '[REDACTED]' and tell them to block her on Facebook and WhatsApp, and to delete her phone number from their contact lists. P-2620 specifies that:

'[REDACTED]'.
16. The fact that P-2620 sought to contact P-2582 and P-2475 for the purposes of fabricating a common account of the circumstances under which they met, and requested P-2582 and P-2475 to remove any evidence showing contact between them, is undoubtedly collusion and/or contamination of the evidence before the

Chamber.¹² The closeness of association amongst the Witnesses is also evidenced by their creation of a '[REDACTED]' ([REDACTED]).¹³ This comprises an additional *indicia* illustrating the existence of collusion.¹⁴

17. P-2620's unwillingness to cooperate with the VWU and answer their questions is also highly revelatory.¹⁵ In this regard, the Defence highlights the following extract from the 4 February 2022 Communications whereby P-2620 states:

'[REDACTED]'.

18. It is evident from this extract that at the very least, VWU had knowledge of the fabricated nature of P-2620's account concerning the circumstances in which she met P-2475.
19. In this regard, it is understood from the 4 February 2022 Communications, that VWU had conducted an internal inquiry upon discovery of the prohibited personal telephone. P-2620 describes the fact that VWU had seized the phone and searched for information;¹⁶ had discovered photographs of P-2620 with P-2475¹⁷ as well as phone contacts between P-2620 and P-2582;¹⁸ and appear to have questioned P-2620 on her relationship with P-2475.¹⁹ Further, P-2620's concern that the VWU would contact P-2475 and P-2582²⁰ to ask for clarification would suggest that this course of action was potentially taken by the Unit. The Defence is not however aware as to which formal measures, if any, were undertaken by VWU to negate witness contamination amongst the Witnesses

¹² [REDACTED].

¹³ [REDACTED]

¹⁴ See e.g., ICC-01/04-01/07-3436-tENG, *Prosecutor v. Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 393.

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

[REDACTED] and what steps were taken, if any, to report any contamination to the Chamber after the fact.

20. Nonetheless, the Defence highlights the fact that the 4 February 2022 Communications occurred approximately four months prior to the testimony of P-2475. As such, having apparently been aware of the contact and seen the photographs, VWU had notice of the fact that, as of 4 February 2022, if not before, P-2620, P-2475 and P-2582 had been in contact, in person and by phone.²¹ The forfeiture of P-2620's phone and its search would necessarily have also revealed the extent of the connection between the Witnesses, as alluded to by P-2620's comment that '[REDACTED]'.²²

B. Provision of the VWU Report is necessary as it has an impact on proceedings

21. VWU's mandate in relation to [REDACTED].²³ In operating [REDACTED], VWU must adhere to the basic principles of neutrality and impartiality of the unit, in accordance with rule 18(b) of the Rules of Procedure and Evidence ('Rules').²⁴
22. The exercise of VWU's functions must also further conform with the Witness Familiarisation Protocol ('Protocol'), which explicitly acknowledges the risk of contamination amongst and between witnesses [REDACTED].²⁵ In particular, paragraphs 24 and 25 of the Protocol refer to the risk of contamination amongst witnesses [REDACTED] as to whether witnesses should travel or be

²¹ Supra., fn. 17 and 18.

²² [REDACTED].

²³ See also ICC-01/04-01/07-776 OA 7, Prosecutor v. Katanga, Judgment on the appeal of the Prosecutor against the "Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules" of Pre-Trial Chamber I, 26 November 2008, paras 73 – 79.

²⁴ ICC-01/04-01/07-776 OA 7, Prosecutor v. Katanga, Judgment on the appeal of the Prosecutor against the "Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules" of Pre-Trial Chamber I, 26 November 2008, para. 50 as submitted by the Registry.

²⁵ ICC-01/14-01/18-677-Anx1. See also ICC-01/14-01/18-677, para. 39.

accommodated jointly. Further, paragraph 25 of the Protocol directs VWU to remind witnesses travelling together “with appropriate regularity that they must not discuss their impending evidence with each other or anyone else. All witnesses are also reminded of their role in preserving their evidence and in avoiding any unnecessary exposure.”²⁶

23. The exercise of VWU’s function is not unchecked, and the Chamber remains the ultimate arbiter in relation to disagreements, concerns or breaches of conditions which concern the conduct of victims, [REDACTED]. For example, the Protocol explicitly refers to those cases ‘in which the accounts of witnesses overlap or there is a risk of evidence being tainted by contact during and after testimony’ and, directs VWU ‘in the event that the witnesses breach these conditions imposed by the Chamber, the matter shall be brought to the Chamber’s attention for review’.²⁷
24. This position is further supported by the Registry’s internal policies as addressed before Trial Chamber I in the *Abd Al Rahman* proceedings whereby the Registry expressly stated that it was its policy for VWU to “approach the Chamber if in receipt of corroborated information that could have an actual impact on the proceedings.”²⁸
25. This present request addresses circumstances where clear collusion and/or contamination of evidence took place amongst the Witnesses and that as of 4 February 2022 at the latest, VWU was made aware of: (i) breaches of the Witness Familiarisation Protocol; (ii) the fabricated nature of P-2620’s claims in relation to the manner in which she met P-2475 and (iii) apparent efforts amongst the Witnesses to coordinate their testimony before the Chamber. More pertinently,

²⁶ ICC-01/14-01/18-677-Anx1.

²⁷ ICC-01/14-01/18-677-Anx1, para. 36. See further, paras 25 and 35.

²⁸ ICC-02/05-01/20-995-Red, *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Decision on Defence’s Motion pursuant to Article 67(1)(e) of the Rome Statute, 18 July 2023, para. 25.

VWU appears to have had notice of the situation, four months prior to the testimony of P-2475 before this Chamber.

26. It is essential that the Chamber is provided with a comprehensive and accurate picture as to the extent of the collusive nature of the contacts between the Witnesses, and furthermore, the extent of VWU's internal investigations therein.
27. The fraudulent conduct of the Witnesses undoubtedly impacts the course of these proceedings. Notwithstanding the fact that such information would have been relevant to the Defence's cross-examination of P-2475,²⁹ the information is of significance to the Chamber's assessment of the credibility of the Prosecution's case in relation to Count 29. The Chamber is fully privy to the Defence's case in this regard and the fact that the conduct revealed within the 4 February 2022 Communications is by no means an isolated incident but rather goes towards demonstrating a consistent pattern of fraudulent contact amongst a wide network of Prosecution witnesses and CLRV witnesses. In this regard, the Defence maintains that there is a familial connection between a/20722/21 and P-2620,³⁰ noting that a/20722/21 is the son of [REDACTED]³¹ who in turn, is also the uncle of P-2620³² (i.e., a/20722/21 and P-2620 are first cousins).
28. Relatedly, the requested information is of direct relevance to the Chamber's ability to preserve the fair administration and integrity of these proceedings. In this regard, whilst it is the Prosecutor who is mandated to investigate any

²⁹ In particular, given P-2475's untruthful denials as to his contact and/or acquaintance with P-2582 and P-2620 see ICC-01/14-01/18-Conf-Exp, paras 53, 55; see also, ICC-01/14-01/18-T-133-CONF-FRA CT, 57:18.

³⁰ Although this was denied by a/20722/21, the Defence refers to its email dated 26 September 2023 at 09:23 titled "*Re: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001*" which sets out the overwhelming material in support of its position that [REDACTED] is in fact the father of a/20722/21.

³¹ CAR-D29-0013-0254; CAR-D29-0013-0256; CAR-D29-0013-0265; CAR-D29-0014-0157, p.0158; CAR-D29-0014-0152; CAR-D29-0013-0253-R01; CAR-D29-0013-0252.

³² CAR-OTP-2123-0071-R02; CAR-OTP-00000737-R01; CAR-OTP-2125-0348-R04, para. 19; CAR-OTP-00000069-R01; CAR-OTP-2119-0905.

instances of undue influencing of witnesses, this may very well be based on information communicated by a Chamber in accordance with rule 165(1) of the Rules.

29. The Defence further notes that there is no prejudice or indeed any compelling reason as to why VWU would not be in a position to provide the requested report to the Chamber.

CONFIDENTIALITY

30. Pursuant to regulation 23bis (2) of the Regulations of the Court, this motion is filed on a confidential due to references to confidential information on witnesses and State cooperation. A public redacted version will be filed in due course.

RELIEF SOUGHT

31. For the foregoing reasons, Defence respectfully requests that Trial Chamber V order VWU to provide it with a report detailing:
 - all information in its possession of existing contact, including inadvertent contact, between witness P-2475 and former witnesses P-2582 and P-2620 (the 'Witnesses') before and after [REDACTED]; and
 - all steps taken to investigate and/or report any such contact between witness P-2475 and former witnesses P-2582 and P-2620 (the 'Witnesses') before and after [REDACTED].

RESPECTFULLY SUBMITTED ON THIS 14th DAY OF NOVEMBER 2023



Me Mylène Dimitri
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