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

Date: 24 January 2024

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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

Public redacted version of "Prosecution's Response to the Yekatom Defence's
"Request for Disclosure in respect of [REDACTED]", ICC-01/14-01/18-2275-Conf,
20 December 2023

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should deny the Yekatom Defence’s request¹ for the disclosure of “all information” [REDACTED] in respect of the Prosecution’s [REDACTED], and “the conclusions of the Prosecution’s investigation report” (“Request”).² The Request is overly broad and fails to demonstrate the specific need for the disclosure sought. In any event, all material information regarding this matter has already been disclosed to the Defence, or is otherwise in its possession or control.

2. The Defence’s claim that the information sought is “necessary for a full understanding” of its “potential impact” on the [REDACTED] and the Accused’s article 67(1)(e) rights is misguided. Contrary to what is suggested by the Defence, the Prosecution has not identified [REDACTED]. The information provided [REDACTED]. It bears recalling in this regard that the Defence [REDACTED].

3. For the sake of clarity, the Prosecution has summarised below the nature of its [REDACTED] and the limited information [REDACTED].

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential” because it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

¹ [REDACTED].

III. SUBMISSIONS

A. The Request is overly broad and unjustified

5. The Defence's bulk request for "all information"³ regarding the Prosecution's Request to be disclosed is overly broad. A request for disclosure should not be a 'fishing expedition'.⁴

B. The Request fails to demonstrate why disclosure of "all information" is necessary

6. The Defence fails to demonstrate why it is entitled to the disclosure of "all information" [REDACTED].⁵ [REDACTED].⁶ The Defence's assertion that the sought information – whose exact boundaries remain undefined – is [REDACTED] and the Accused's article 67 (1)(e) is conclusory and speculative. It does not satisfy the requisite criteria for the disclosure sought.

7. The Defence's entitlement to disclosure does not extend to matters of mere interest, but solely comprises information that falls squarely within the ambit of rule 77 and/or article 67(2).⁷

³ [REDACTED].

⁴ [REDACTED]; *see also* ICC-01/05-01/08-632, para. 26 ("the Chamber rejects the defence submission that the prosecution has an obligation to provide the defence with all the material relating to an issue that is in its possession, to enable the accused to analyse it and to assess for himself whether or not it is relevant to the submissions he wishes to advance. The prosecution does not have the obligation of 'handing the defence the keys to the warehouse' in this way"). *See also* ICC-01/11-01/11-392-Red-Corr, para. 40 and ICC01/05-01/13-1658, para. 5.

⁵ *See e.g.*, ICC-01/11-01/11- 392-Red-Corr, para. 40 (noting that disclosure requests must be "specific enough both in terms of what is sought by the Defence and *the reasons why disclosure of the [...] material appears necessary*") (emphasis added).

⁶ ICC-01/12-01/18-768-Red, para. 6.

⁷ *See* ICC-01/05-01/08-3100, para. 11 ("the prosecution's disclosure obligation under the materiality prong of Rule 77 of the Rules is broad but *not unlimited*"); ICC-01/14-01/18-1438-Red, para. 9; ICC-02/05-03/09- 501, para. 38; *see* [REDACTED].

C. All material information has already been disclosed

8. As described below, all material information regarding this matter has already been disclosed to the Defence in any event. [REDACTED].

D. The nature of the request to the [REDACTED]

9. On [REDACTED], following [REDACTED] and an investigation into this matter, the Prosecution [REDACTED]:

a. [REDACTED]⁸ [REDACTED];⁹ and

b. [REDACTED].

i. [REDACTED]

10. The Prosecution provided [REDACTED]. All material information [REDACTED] concerning this allegation, including any relevant documents [REDACTED],¹⁰ have already been disclosed to the Defence.

11. Contrary to the Defence's suggestion,¹¹ the Prosecution did not [REDACTED]. Although [REDACTED]¹² communicated [REDACTED], this is perfectly normal given the nature of the document and the fact that they are respectively (identified therein as) [REDACTED]. However, at no time did the Prosecution disclose [REDACTED]. Nor, is there any conceivable reason to believe [REDACTED] will jump to this

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

conclusion – especially given the scope of the allegation. [REDACTED]¹³
[REDACTED].

12. Further, the Defence's arguments regarding the potential effect on the [REDACTED]. Notably, [REDACTED]. Moreover, they are bound by the provisions of [REDACTED]. The Request unfairly suggests that the [REDACTED] to undermine the Defence in this case, an assumption on which the Defence relies and for which there is no tenable basis.

ii. [REDACTED]

13. In regard to the allegation of [REDACTED], the Prosecution provided to [REDACTED] a summary of the [REDACTED] concerning [REDACTED] and the [REDACTED] thereafter. It is important to note that the Defence [REDACTED] or [REDACTED] when requested by the Prosecution. All of the material information in this summary was either provided by the Defence to the Prosecution [REDACTED], or has already been the subject of disclosure.

14. The Defence's contentions are unsubstantiated and unavailing. In all, the Request is overly broad, unnecessary, and speculative.

¹³ [REDACTED].

IV. CONCLUSION

15. For the foregoing reasons, the Prosecution requests that the Chamber deny the Defence Request.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 24th day of January 2024
At The Hague, The Netherlands