

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **28 May 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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public redacted version of "Urgent Yekatom Defence Request for partial reconsideration of 'Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU", 17 May 2024, ICC-01/14-01/18-2500-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor

Mr Karim Asad Ahmad Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Gyo Suzuki

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

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

Ms Marie O'Leary

**States' Representatives
REGISTRY**

Amicus Curiae

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

SUBMISSIONS

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby respectfully requests that Trial Chamber V partially reconsider its 'Decision on the Yekatom Defence Request for a Limited Inspection of Material' ('Decision').¹
2. Specifically, the Defence seeks reconsideration of the Chamber's decision to instruct the Victim and Witnesses Unit ('VWU') to return to Common Legal Representative of the Former Child Soldiers ('CLR1') witnesses V45-0001 and V45-0002 their mobile phones, initially provided to VWU for the purposes of its threat and risk assessment following the protection referrals of these witnesses ('Phones').²
3. As the Chamber is aware, VWU found 'several indications' on the phone of CAR-V45-P-0001 suggesting that he had testified under a false identity; [REDACTED].³
4. The Chamber is also aware of the evidence indicating that both V45-0001 and V45-0002 are co-conspirators in a systematic witness interference and evidence fabrication scheme, in which scheme P-2638 and former Prosecution and Registry intermediary [REDACTED] (P-2580) have played central roles;⁴ and further, of the evidence that the respective misconduct of P-2580 and V45-P-0002 in the context of these proceedings is intertwined.⁵
5. The Chamber is also aware that the Prosecution has [REDACTED].⁶

¹ ICC-01/14-01/18-2496-Conf.

² See, ICC-01/14-01/18-2290-Conf, paras 9-11.

³ Ibid, paras 11-13.

⁴ As set out in ICC-01/14-01/18-2240-Conf; see especially therein, paras 10-11, 25-26.

⁵ See e.g., ICC-01/14-01/18-2406-Conf, paras 14-17.

⁶ See, Email from Prosecution of 30 November 2023 at 14:50, and Email from Trial Chamber V of 29 April 2023 at 16:31.

6. In the circumstances, returning the Phones to V45-0001 and V45-0002 would result in the irreversible loss and/or destruction of critical forensic evidence of potential criminal conduct, including conduct falling within the Court's jurisdiction pursuant to article 70, engaged in by P-2580, P-2638, V45-0001 and V45-0002.
7. [REDACTED]. In this regard, the Defence notes that the Chamber has recently 'fiercely' condemned potential article 70 conduct and expressly encouraged the Prosecution 'to assess, and where relevant, investigate the allegations raised by the Defence',⁷ which would include the misconduct of P-2580, P-2638, V45-0001 and V45-0002.⁸
8. The Defence further notes that [REDACTED].⁹ It would thus be prudent to ensure that evidence of potential criminal conduct currently in the possession of the Court, is not lost and destroyed, [REDACTED].
9. Further, the loss and destruction of evidence of the systematic witness interference and evidence fabrication scheme within the context of on-going proceedings would inherently affect Mr Yekatom's fair trial rights, given that this scheme underpins a substantial part of the evidence and witnesses being brought against him. [REDACTED].¹⁰
10. Given the above, the Defence thus respectfully submits that in order to prevent an injustice,¹¹ it is necessary that the Chamber partially reconsider its Decision, and to order VWU to retain possession of the Phones [REDACTED]. In this

⁷ ICC-01/14-01/18-2460-Conf, para. 57. See also, para. 36 ([REDACTED])

⁸ As set out in the Defence's Request for the Exclusion of Fabricated Evidence; see, ICC-01/14-01/18-2240-Conf.

⁹ See Rome Statute, [REDACTED].

¹⁰ Whilst the CLRV raised its request for the return of the Phones in a response, the Defence did not seek leave to reply at the juncture in light of the fact that it did not oppose the return of the Phones to V45-0001 and V45-0002 following inspection as requested; see ICC-01/14-01/18-2406-Conf.

¹¹ See, ICC-01/14-01/18-2182, para. 8.

regard, the Defence recalls the Prosecution's primary obligations as set out in Rule 165 and its continuing supervisory role to this effect.¹²

11. The Chamber is empowered to order that VWU retain possession of the Phones. Under article 64(2) and (6), the Chamber has the overarching duty to ensure a fair trial and is empowered to issue rulings on 'any relevant matters' to that end. The sought orders, necessary to ensure that forensic proof of a widespread evidence fabrication scheme is not turned over to (and subsequently destroyed by) individuals who are themselves implicated in that scheme, would thus fall squarely within the Chamber's remit. The Chamber's role as envisaged in rule 165(1), with regard to the communication of information on which an article 70 prosecution may be initiated and/or conducted, can also be understood to underpin the sought reconsideration and order.
12. This request is filed urgently, given the irreversible effect of implementing the Decision for which partial reconsideration is sought.
13. This request is filed confidentially, on the basis of the classification of the Decision.

RELIEF SOUGHT

14. In light of the above, the Defence respectfully requests that Trial Chamber V:

PARTIALLY RECONSIDER the Decision; and,

ORDER VWU to retain possession of the Phones [REDACTED].

RESPECTFULLY SUBMITTED ON THIS 28th DAY OF MAY 2024

¹² See also [REDACTED].



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands