

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **14 October 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**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 the “Yekatom Defence Notification of
Potential Interference with Defence Investigations and Preparation”, 8
August 2024, ICC-01/14-01/18-2620-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
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Thomas Hannis

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

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

I. INTRODUCTION

1. The Defence for Mr. Alfred Rombhot Yekatom ('Defence') respectfully notifies Trial Chamber V and the Prosecution of potential interference of Defence witnesses in the course of its investigation.

II. APPLICABLE LAW

2. Article 70 of the Statute reads as follow:

Article 70

Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
 - a) Giving a false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
 - b) Presenting evidence that the party knows is false or forged;
 - c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
 - d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
 - e) Retaliating against an official of the Court on account of duties performed;
 - f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

III. SUBMISSION

3. On 13 April 2023, the Prosecution disclosed information received from VPRS on individuals associated with the NGO *Enfants Sans Frontières* and who collaborated

with the Registry. VPRS specified that [REDACTED] (P-2580) and [REDACTED] (P-2638) have acted as focal points for the Registry in [REDACTED].¹

4. By way of context, a few days before the Defence's Request for the Exclusion of Fabricated Evidence,² and after the notification of the First Defence Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)³ and delayed disclosure request⁴ detailing how on different levels and in different capacities [REDACTED] (P-2580) and [REDACTED] (P-2638) have fabricated evidence, the Prosecution informed the Chamber [REDACTED] in relation to Prosecution intermediary [REDACTED] (P-2580).⁵
5. In April 2024, following a series of filings by the Yekatom Defence alleging a scheme of evidence fabrication, the Prosecution informed the Chamber that, [REDACTED] (P-2638) [REDACTED].⁶
6. On 30 April 2024, the Defence requested that the Prosecution kindly confirm [REDACTED].⁷ To date, the Defence has not received a response nor any update by the Prosecution.
7. On 21 June 2024, the Defence disclosed, to all parties and participants, the statement of witness [REDACTED] (D29-P-6050), [REDACTED]. In her statement, D29-P-6050 explains, inter alia, that CAR-V45-00000013 features a number of discrepancies and that she has never seen the vaccination form nor does she know an individual named [REDACTED]. It is recalled that CAR-V45-00000013 was disclosed by the CRLV1 on 23 January 2024⁸ and subsequently introduced via a bar

¹ CAR-OTP-00001381.

² ICC-01/14-01/18-2240-Conf.

³ ICC-01/14-01/18-2213-Conf, the request aimed at submitting 20 prior recorded testimony concerning the veracity of the information provided by former child soldiers as relied on by the Prosecution and the Common Legal Representative of Victims of the Former Child ('CLRV1') as well as the fabrication of evidence sourced and orchestrated by intermediaries and witnesses in these proceedings in relation to Count 29.

⁴ ICC-01/14-01/18-2161-Conf-Exp-Corr.

⁵ Email from OTP to Trial Chamber V, 30 November 2023 at 14:50, [REDACTED].

⁶ Email from OTP to Trial Chamber V, 16 April 2024 10:13 AM, [REDACTED].

⁷ Email from Yekatom Defence to Trial Chamber V and OTP, 30 April 2024 18:24 PM, [REDACTED].

⁸ ICC-01/14-01/18-2340 and ICC-01/14-01/18-2340-Conf-AnxI.

table,⁹ in order to purportedly demonstrate that V45-P0001 was born on [REDACTED] and that he was [REDACTED]. The Defence thereby introduced P-6050's statement in order to contest the reliability and veracity of the CLRV1's reliance on CAR-V45-00000013 and the alleged identity of P-0001 as presented by the CLRV1.¹⁰

8. On [REDACTED], witness [REDACTED] (D29-P-6050) completed the certification of her statement. During the readback procedure at the field office, she reported that [REDACTED] (i.e. [REDACTED]), requesting her to [REDACTED] from [REDACTED] (CAR-V45-00000013)¹¹ was authentic and originated from [REDACTED]. She refused to comply, [REDACTED] [REDACTED]. To date, the Defence has not been made aware of any inadvertent contact *vis-à-vis* its witness by the parties and participants to this case.
9. The Defence recalls that [REDACTED] (P-2638) was at some point the [REDACTED]¹² and that [REDACTED] (P-2580) is currently the '[REDACTED]'.¹³
10. The Defence also recalls that according to witness [REDACTED] (D29-P-6040) an individual whom he identified on a picture of [REDACTED] (P-2580) visited [REDACTED] and introduced himself as being the [REDACTED],¹⁴ requesting the drafting of an [REDACTED] (i.e CAR-V45-00000020) for "[REDACTED]". This statement is however subject to a pending Rule 68 (2) request to which the Prosecution objected.¹⁵

⁹ ICC-01/14-01/18-2428-Conf.

¹⁰ See ICC-01/14-01/18-2541-Conf, paras. 45 to 48. See also ICC-01/14-01/18-2449-Conf, paras. 15 to 19.

¹¹ The Defence notes that D29-P-6050 mentioned during her certification "[REDACTED]" which would correspond to CAR-V45-00000013. The fact that the document presented is indeed CAR-V45-00000013 is corroborated, as mentioned below, by the fact that [REDACTED], which correspond to pages 001 and 003 of CAR-V45-00000013 on which the detail of [REDACTED] is missing.

¹² **P-6025** : ICC-01/14-01/18-T-263-CONF-FRA ET, from [13:01:29] to [13:01:46].

¹³ CAR-D29-0009-0722-R01, para. 17; See also CAR-D29-0016-0171.

¹⁴ CAR-D29-0009-0788-R01.

¹⁵ ICC-01/14-01/18-2601-Conf.

11. In its Decision on the Yekatom Defence's Request to Exclude Allegedly Fabricated Evidence, the Chamber acknowledged and discussed the Defence's notification regarding interference with its investigation.¹⁶
12. The Defence emphasizes that Article 70 proceedings and related investigations are the sole responsibility of the Prosecutor or the national authorities, with no role for the Defence in these processes.¹⁷ Although the Defence has been informed that the Prosecution conducted investigations [REDACTED], it has not been apprised of any developments or whether the Prosecution has [REDACTED] additional documents or information. While the individuals [REDACTED] have fabricated evidence against Mr. Yekatom, the Defence remains in the dark regarding whether [REDACTED]. This lack of action is concerning, as it leaves the possibility to the offenders to continue interfering and fabricating evidence in this case. It is likely that the impact of such interference extends far beyond what has been reported.
13. The Defence is also not privy to whether or not the intermediaries are still employed by the Registry or whether or not their intermediary contract has been formally terminated.
14. This notification is provided because the information it contains is relevant to the investigation conducted by the Prosecution [REDACTED]. Namely, that there is a reasonable inference to be drawn from the short timing between the disclosure of P-6050's statement, on 21 June 2024, and the [REDACTED] were seemingly in possession of confidential documents in these proceedings. As set out above, the Defence remains concerned that in the absence of any notification of inadvertent contact, there appears to be a potential leak of confidentially.

¹⁶ ICC-01/14-01/18-2460-Red, para. 43.

¹⁷ ICC-01/14-01/18-2507-Conf, para. 6 : Moreover, it notes that the Defence is not a party or participant in respect of any prospective proceeding under Article 70 of the Statute. The Chamber also considers that it is the Prosecution's prerogative to determine whether to investigate offences falling under the said provision, as well as [REDACTED], as opposed to the Defence or the Chamber.

15. Indeed, notwithstanding that the initiation and conduct of investigations into Article 70 offenses fall exclusively within the purview of the Prosecution, the Chamber retains a supervisory role in these investigations, ensuring that allegations of interference are communicated to the Prosecution pursuant to Rule 165(1) and that such interference does not compromise the accused's fair trial rights under Article 64(2) of the Statute. While the Defence is not privy to the details or developments of the Article 70 investigation initiated and conducted by the Prosecution [REDACTED], nor aware of whether the Prosecution intends to [REDACTED], the Defence submits this notification pursuant to Rule 165(1). This allows the Prosecution to conduct the investigation based on information provided by any reliable source, including the Defence, especially given that the [REDACTED] was based on several email complaints made by the Defence to the OTP regarding P-2580's conduct.¹⁸

16. Moreover, the responsibility for Article 70 investigations remains with the Prosecution at all times, particularly when the offenses are ongoing.. The Defence also raises serious concerns that the current inactivity by the Prosecution [REDACTED] is allowing the continuation of commission of acts falling under article 70.

IV. CONFIDENTIALITY

17. This Notification is filed on a confidential basis as it refers to protected witnesses and confidential information. A public redacted version of the Request will be filed forthwith.

¹⁸ Email from OTP to Trial Chamber V, dated 5 December 2023 at 11:32, Subject : RE: [REDACTED].

RESPECTFULLY SUBMITTED ON THIS 14th DAY OF OCTOBER 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands