



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

Public

**Public redacted version of “Prosecution’s Response to “Yekatom Defence Notification of Potential Interference with Defence Investigations and Preparation”(ICC-01/14-01/18-2620-Conf),
ICC-01/14-01/18-2639-Conf , 19 August 2024**

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 disregard the Defence notification of potential interference with its investigations and preparations¹ *in limine*. The Notification has no legal character or effect under the Court’s regulatory framework. Moreover, the Yekatom Defence clearly lacks standing to submit it pursuant to Rule 165(1) of the Rules of Procedure and Evidence (“Rules”), or any other provision. Regrettably, the Notification comprises nothing more than yet another attempt by the Defence to advance and re-litigate arguments previously submitted in relation to its rejected effort to exclude evidence concerning Count 29.² In this respect, the Notification is a transparent artifice.

II. CONFIDENTIALITY

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

III. SUBMISSIONS

A. The Defence has no standing

3. *First*, the Defence lacks standing to submit the Notification pursuant to Rule 165(1). The Defence is not a Party or Participant in any prospective Article 70 proceedings, whether under the Court's jurisdiction or the equivalent national process.³ As this Chamber previously underscored,

¹ ICC-01/14-01/18-2620-Conf (“Notification”).

² Notification, paras. 4-5, 11-12. *See also*, ICC-01/14-01/18-2460-Conf, paras. 33-38.

³ ICC-01/14-01/18-2507-Conf, para. 6. *See also*, ICC-01/04-01/06-T-350-CONF-ENG, p. 17-18 (noting that, “[the Defence] should provide the Prosecutor with any relevant material so that he can make a decision under Rule 165(1), namely whether or not to initiate and conduct his own investigations. Possible continued intervention by the Defence may constitute interference with the collection of evidence for any future prosecution”).

“[...] 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 (emphasis added).”⁴

4. Even assuming *arguendo* that the Notification is simply intended to provide the Prosecution with information relevant to the Article 70 investigations — which is not the case — the Defence could have done so via *inter partes* communication, as it had previously.⁵

5. As the Defence is fully aware, on receiving its prior allegations regarding P-2580, the Prosecution acted diligently by [REDACTED] concerning the Defence’s assertions.⁶ Thus, it is clear that the objective of the Notification was not to provide information to the Prosecution on which it may act, but instead use it as a device to levy further unfounded and unsubstantiated allegations for ulterior reasons, such as that “the current inactivity by the Prosecution or the national authorities is allowing the continuation of commission of acts falling under article 70.”⁷ This rank speculation, particularly as it concerns investigative information to which the Defence concedes is not entitled,⁸ serves no discernible ‘notification’ purpose.

6. *Second*, the Defence has no standing to request or obtain any information regarding the progression of the Article 70 investigations.⁹ Requesting updates on the Article 70 investigations through a motion addressing potential interference with defence witnesses is procedurally improper. Instead, had the Defence *genuinely* sought such information, it should have [REDACTED]. However, as the Notification shows,

⁴ ICC-01/14-01/18-2507-Conf, para. 6. *See also*, ICC-01/04-02/06-1580-Red, para. 3 (noting that “The statutory scheme does not explicitly mandate a chamber to make any sort of binding ‘request’ on the Prosecution to initiate an Article 70 investigation”). *Contra*, Notification, para. 15 (asserting that “[...] the Chamber retains a supervisory role in these investigations [...]”).

⁵ Email from OTP to Trial Chamber V, dated 5 December 2023 at 11:32, Subject : [REDACTED]. *See also*, Notification, para. 15 (asserting that, “[...] [REDACTED]”).

⁶ ICC-01/14-01/18-2460-Conf, para. 37. *See also*, ICC-01/14-01/18-2306-Conf, para. 8 (noting that, “[...] the Prosecution also provided the Defence with a list of the allegations against P-2580 [REDACTED].”)

⁷ Notification, para. 16.

⁸ Notification, para. 12 (admitting 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.”)

⁹ ICC-01/14-01/18-2507-Conf, para. 6.

the Defence could not reasonably demonstrate and substantiate the three cumulative requirements of relevance, specificity, and necessity to found a request for judicial intervention, as outlined under Article 57(3)(b) and Rule 116(1).¹⁰

B. The Notification is unsubstantiated and speculative

7. Even assuming that the Defence had standing — which it does not — the factual assertions advanced in the Notification are purely speculative. The Defence has simply put forward conclusory arguments and not objectively identifiable grounds to believe that its witness and its investigations were even potentially interfered with.

i. Alleged confidentiality leak

8. Contrary to the Notification, there is no “ [REDACTED]. ”¹¹ The Defence does not establish that [REDACTED] ever saw any specific confidential document.¹² The Notification does not allow for such an inference. Moreover, there is no indication that the Defence verified with the witness that the document that she saw matched the description of the one bearing the evidence registration number(‘ERN’) shown to her during her interview.¹³ The serious allegations are mere conjecture, as any conclusion that the documents were connected to confidential materials in this case is unsubstantiated.

ii. Alleged involvement of P-2580 and P-2638

9. The Notification does not establish that [REDACTED]. Nothing indicates otherwise. *First*, the witness provided a generic identification of them as “

¹⁰ ICC-01/14-01/18-1531-Conf-Red, para. 3. *See also*, ICC-01/14-01/18-2192.

¹¹ Notification, para. 14.

¹² *Contra* Notification, fn.11 whereby the Defence speculates that the document presented to [REDACTED] was CAR-V45-00000013 based simply on the [REDACTED].

¹³ *See* CAR-D29-0009-0779 which contains the ERN stamp CAR-V45-00000013 on each page.

[REDACTED]’.¹⁴ *Second*, [REDACTED], either currently or in the past.¹⁵ The Defence attempts to substantiate its conclusion that the [REDACTED] from an unknown locality.¹⁶ On this information alone, the Defence openly speculates about the [REDACTED].

iii. Insufficient allegations of fact

10. It bears underscoring that invoking the prospect of Article 70 investigations should be done with caution. Article 70 offences are serious, and the evidence supporting any allegation must be at least reasonable. In contrast, the Defence’s assertions about possible witness interference are, insofar as they attempt to rope in P-2580 and P-2638, not rationally circumspect or founded. Instead, they are contrived in asserting interference with its investigations. Thus, its contention that [REDACTED] is baseless.¹⁷ For all anyone knows, [REDACTED].

C. The Notification is an attempt re-litigate the fabrication of evidence narrative

11. The Notification is yet another attempt to try to bolster the Defence’s fabrication scheme narrative¹⁸ regarding Count 29 — despite evidence to the contrary, not only provided to the Defence, but [REDACTED] investigations and interviews with Yekatom’s [REDACTED].¹⁹ It should be disregarded.

12. Nonetheless, to the extent that the that the Defence alleges potential interference with [REDACTED] in violation of Article 70, the Prosecution considers that, if of genuine concern, the Defence should promptly place the witness at its disposal in

¹⁴ Notification, para. 8.

¹⁵ *Contra* Notification, para. 8.

¹⁶ *Ibid.*

¹⁷ Notification, para. 12.

¹⁸ Notification, paras. 4-5, 11-12. *See also*, ICC-01/14-01/18-2460-Conf, paras. 33-38.

¹⁹ ICC-01/14-01/18-2313-Conf, paras. 32-64.

order to obtain additional and specific information, rather than decline the same for 'strategic reasons' as was done in November 2021.²⁰

IV. CONCLUSION

13. For the reasons above, the Prosecution requests the Chamber to reject the Defence notification of potential interference of with its investigations and preparation in its entirety.



Karim A. A. Khan KC, Prosecutor

Dated this 14th of October 2024
At The Hague, The Netherlands

²⁰ Note, Yekatom Defence email to the Prosecution, dated 24 November 2021, at 18:30 (acknowledging the Prosecution's disengagement with P-2580 and declining the request for information "as it would involve divulging information going to defence strategy and investigations") (available on request).