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No.: ICC-01/14-01/18
Date: 27 January 2025

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 "*Requête de la Défense de M. Yekatom aux fins de protection de l'identité de certains témoins, non divulgation de déclarations au public, et autorisation d'expurgations dans les versions publiques de déclarations*" (ICC-01/14-01/18-2700-Conf)", 3 October 2024,
ICC-01/14-01/18-2716-Conf-Corr**

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

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☒ Counsel for the Defence
D29 and D30

☒ Legal Representatives of the Victims
V44 and V45

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

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I. INTRODUCTION

1. The Prosecution opposes the Yekatom Defence's « *Requête de la Défense de M. Yekatom aux fins de protection de l'identité de certains témoins, non divulgation de déclarations au public, et autorisation d'expurgations dans les versions publiques de déclarations* », ¹ in part.

2. Several requests regarding particular witnesses are speculative, unsubstantiated, or otherwise fail to meet the requisite criteria for withholding their identities and/or their submitted testimonies from the public altogether or subject to redaction and should be rejected. However, as noted below, the Prosecution limitedly opposes the relief sought in certain cases, and in others defers to the Chamber's disposition, subject to observations as may be appropriate.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, 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. Witnesses for whom the Prosecution opposes the Request

D29-6018

4. The Request is wholly speculative and insufficient to substantiate the non-divulgence of the witness's statement as sought.² Notably, insofar as P-2580 would presumably know the [REDACTED] of P-2475, he would be aware that they could *potentially* be witnesses against him in any potential formal inquiry. Yet, the Request

¹ See ICC-01/14-01/18-2700-Conf ("Request").

² ICC-01/14-01/18-2700-Conf, para. 37.

does not demonstrate any previous threat to or other interference with the witness. The failure to establish concrete grounds for the non-divulgence and redactions sought is dispositive of the Request. Although the Request fails to justify the relief requested, the Prosecution does not oppose the Chamber's imposition of such redactions that it deems necessary to enforce the protective measures that it has previously extended to other witnesses.

D29-6022

5. The Prosecution considers that the witness's participation in improper conduct,³ particularly one reflecting dishonesty, and his potential consequential exposure to consequences in a matter arising independently of the Court's jurisdiction, is not an appropriate to justify the non-divulgence of the witness's statement.⁴ The matter is not one that involves Rule 74, and no such application was ever made in this respect.⁵ Moreover, the witness's conduct is obviously already known to [REDACTED], who may well be under a duty to report the witness's misconduct to domestic authorities, in view of the apparent breach of his official function and professional obligations. The Request is speculative regarding the risk of intimidation or retaliation on the basis of the pending activities of the Central African Republic ("CAR") authorities regarding allegations concerning P-2580 and P-2638..

D29-6037

6. Here, once again, the Defence relies on speculation and unsubstantiated allegations. The Request advances nothing objective, either in respect of the assertions concerning a potential risk of reprisal and/or intimidation⁶ or as regards the potential

³ See ICC-01/14-01/18-2700-Conf, para. 76 [REDACTED].

⁴ See ICC-01/14-01/18-2700-Conf, para. 80.

⁵ See ICC-01/14-01/18-2700-Conf, para. 79.

⁶ See ICC-01/14-01/18-2700-Conf, para. 40.

impact of the divulgation of the witness's identity on her relationship with her family, on which the Request is silent as to its present nature.⁷

D29-6039

7. For the same reasons set out above regarding D29-6037, the Request fails. The Defence relies on speculation and conjecture. Indeed, there is no indication that the witness has been subjected to any inappropriate conduct by P-2580 or anyone else in respect of her ostensible position in respect of the case or cooperation with the Defence. Although the Request fails to justify the relief requested, the Prosecution does not oppose the Chamber's imposition of such redactions that it deems necessary to enforce the protective measures that it has previously extended to other witnesses.

D29-6046

8. As noted in respect of D29-6022, the Prosecution considers that the witness's participation in admitted unlawful activity and their potential legal or administrative exposure regarding a matter concerning conduct having nothing to do with the Court, does not justify the withholding of their identity or their statement.⁸ This is not a Rule 74 issue, and the Defence never made any such application. Further, the mere pendency of an investigation [REDACTED] into allegations concerning misconduct by P-2580 does not automatically or alone substantiate the asserted risk of physical harm to the witnesses as suggested.⁹ Nor, does the conjecture advanced concerning the potential impact on the witness's standing in the community justify the non-publication of the witness's testimony.¹⁰

⁷ See ICC-01/14-01/18-2700-Conf, para. 41.

⁸ See ICC-01/14-01/18-2700-Conf, para. 91, 94.

⁹ See ICC-01/14-01/18-2700-Conf, para. 92.

¹⁰ See ICC-01/14-01/18-2700-Conf, paras. 93, 94.

D29-P-6048

9. To the extent that P-2475's collaboration with the Court is already and obviously known by P-2580 – who is alleged to have engaged in intimidating conduct, the divulgation of the witness's statement poses no *additional* risk. [REDACTED], it is clear that P-2580 may easily have determined [REDACTED] identity by now. Thus, it is noticeable that the Request lacks any allegation of any prior threat or action toward the witness by *anyone*. In addition, the mere fact that the witness resides [REDACTED]¹¹ is not sufficient to justify the identity redactions or non-divulgation of the statement. Although the Request fails to justify the relief requested, the Prosecution does not oppose the Chamber's imposition of such redactions that it deems necessary to enforce the protective measures that it has previously extended to other witnesses.

D29-P-3015

10. The Request fails to advance any objective basis for the non-divulgation of the witness's identity. The witness's identification in video footage of [REDACTED] being subject to YEKATOM's ruthless discipline among his group of Anti-Balaka fighters, makes [REDACTED] a fact witness, not a mere third-party. The witness's desire not to be identified is, without more, not sufficient to justify the redactions sought. Although the Request fails to justify the relief requested, the Prosecution does not oppose the Chamber's imposition of such redactions that it deems necessary to enforce the protective measures that it has previously extended to other witnesses.

¹¹ See ICC-01/14-01/18-2700-Conf, paras. 26.

B. Witnesses for whom the Prosecution partially opposes the Request

D29-6011

11. The Prosecution opposes the non-divulgence of the witness's statement,¹² but considers that an appropriately redacted thereof version is feasible. Nevertheless, the Defence's claim of a 'strong risk' of intimidation and retaliation¹³ is not substantiated, nor does it emerge from a reasonable and objective assessment of the circumstances advanced. Although P-2580 knows [REDACTED],¹⁴ the Request is silent on any prior interaction suggestive of impropriety, notwithstanding the Defence's public claims about alleged 'fraud' by persons associated with the case and trial against YEKATOM's interests. And, as noted above, the mere pendency of an investigation into allegations of misconduct by P-2580 [REDACTED] does not *ipso facto* present a risk to potential witnesses adverse to him — it may just as easily ensure their protection.

D29-6024

12. The Prosecution opposes the non-divulgence of the witness's statement,¹⁵ but considers that an appropriately redacted version of the witness's statement is feasible. For the same reasons set out above, the Request fails. There is no concrete objective circumstance demonstrating the asserted "elevated" risk of retaliation and intimidation.¹⁶ Moreover, the requested protection relies on the same flawed reasoning put forward by the Defence regarding witness D29-6011.

¹² See ICC-01/14-01/18-2700-Conf, para. 106.

¹³ See ICC-01/14-01/18-2700-Conf, para. 105.

¹⁴ See ICC-01/14-01/18-2700-Conf, para. 103.

¹⁵ See ICC-01/14-01/18-2700-Conf, para. 102.

¹⁶ See ICC-01/14-01/18-2700-Conf, para. 101.

C. Witnesses for whom the Prosecution defers to the Chamber's discretion subject to observation as appropriate

*D29-6010, D29-6019, D29-6012 and D29-6027*¹⁷

13. The Prosecution defers to the Chamber's discretion without reservation as concerns these four witnesses.

D29-6013

14. The Prosecution observes that the claim that the witness's safety would be jeopardised and expose her to a risk of retaliation and intimidation if her identity were made known to the public,¹⁸ is without any plausible foundation and speculative.

D29-6017

15. The Prosecution considers that the Chamber having extended protective measures to the witness is not dispositive of the Defence request, particularly as concerns the non-divulgence of the witness's statement altogether.¹⁹

D29-6025

16. The Prosecution reiterates that the Chamber having extended protective measures to the witness is not dispositive of the Defence request, particularly as concerns the non-divulgence of the witness's statement.²⁰

¹⁷ Note that the reference D29-P-6024 appears at ICC-01/14-01/18-2700-Conf, para. 57.

¹⁸ See ICC-01/14-01/18-2700-Conf, para. 31.

¹⁹ See ICC-01/14-01/18-2700-Conf, para. 88.

²⁰ See ICC-01/14-01/18-2700-Conf, para. 109.

D29-6033

17. The Prosecution observes that the Request lacks any representation as to the nature of the current family relationship from which an inference may be drawn that revealing the witness's cooperation with the Defence would be detrimental.²¹ Still, to the extent there may be a practical family relationship to speak of, the claimed potential impact of an investigation [REDACTED] is entirely speculative. As noted, such an investigation could equally deter any prospective risk to the witness, as it could bring attention to or aggravate the circumstances related to the person of interest.

D29-6034

18. The Prosecution defers to the Chamber's discretion, but observes that the Request fails to advance plausible and concrete grounds for the assertion that the divulgence of the witness's identity would carry an immediate risk to her physical security.²² The assertion is purely speculative and predicated principally on [REDACTED] pending investigation of P-2638's alleged conduct. A similarity to D29-6025 – who was granted protective measures – does not automatically apply to D29-6034, whose situation must be assessed independently.

D29-6040

19. The Prosecution notes that the alleged risk of retaliation and intimidation (as advanced concerning D29-6045)²³ is wholly unsubstantiated. The Defence advances nothing "objective" or "concrete" in justification of the protection sought.

²¹ See ICC-01/14-01/18-2700-Conf, para. 52.

²² See ICC-01/14-01/18-2700-Conf, para. 83.

²³ See ICC-01/14-01/18-2700-Conf, paras. 60, 66.

D29-6043

20. The Prosecution observes that the Request contains no assertions as to the current nature of the family relationship from which to infer that revealing the witness's cooperation with the Defence would present any significant harm²⁴ To the extent that the Request is silent on the matter, the underlying inference is not adequately supported.

D29-6044

21. The Prosecution takes the same position as set out above regarding D29-6043.

D29-6045

22. The Prosecution observes that the claimed risk of retaliation and intimidation²⁵ is not objectively established.

D29-6047

23. The Prosecution takes the same position as set out above in respect of D29-6045.

D29-6049

24. The Prosecution takes the same position as set out above in respect of D29-6047.

D29-6050

25. The Prosecution observes that the Request fails to demonstrate a concrete risk to the witness. As noted, the mere pendency of an investigation [REDACTED] regarding allegations of misconduct, does not *ipso facto* augment or present a risk to the witness.

²⁴ See ICC-01/14-01/18-2700-Conf, para. 46.

²⁵ See ICC-01/14-01/18-2700-Conf, para. 60.

Moreover, as previously noted, the asserted involvement of P-2638 in a purported [REDACTED] to the witness presenting a document [REDACTED],²⁶ is manifestly speculative.

IV. CONCLUSION

26. For the reasons above, the Prosecution requests that the Chamber dispose of the Request as indicated above.

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 27th of January 2025
At The Hague, The Netherlands

²⁶ [REDACTED].