

**Cour
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**International
Criminal
Court**

Original: **English**

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

Date: **1 July 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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Lesser Redacted Version of the Public Redacted Version of the “Request
for an order concerning the cooperation of the Government of
[REDACTED]”, ICC-01/14-01/18-1492-Conf-Exp, 29 June 2022**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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☒ Legal Representatives of the Victims

V44

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☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
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☐ The Office of Public Counsel for Victims

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☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. Pursuant to Articles 57(3)(b) and 93(1)(i) of the Rome Statute (“Statute”) and Rule 116 of the Rules of Procedure and Evidence (“Rules”), the Defence for Mr Yekatom (“Defence”) respectfully requests the Chamber to seek the cooperation of [REDACTED] for the collection of evidence, as listed in Annex A, material to the proper preparation of Mr Yekatom’s defence (“Request”).
2. The Defence submits that the Request is relevant and specific, and that the intervention of the Chamber is necessary in light of the [REDACTED] authorities’ response to Defence requests for cooperation, in which they informed the Registry that their legislation does not foresee direct cooperation with a defence team.¹

II. PROCEDURAL BACKGROUND

3. On 23 May 2017,² 11 September 2018³ and 25 June 2020,⁴ respectively, the Prosecution submitted three requests for assistance to the [REDACTED] regarding material related to Facebook accounts including, *inter alia*, messages to and from the account(s), including their authors, dates, times, IP address(es), and content (“Prosecution RFAs”).
4. Between 31 May 2021 and 16 July 2021, the Prosecution disclosed 1,352 Facebook-related documents obtained from [REDACTED].⁵

¹ Letter ARY-2021-0184a to Counsel Support Services from the Yekatom Defence, with attachment ARY-2021-0184 (Letter addressed to the [REDACTED]) sent on 9 September 2021 at 11:40, available upon request; Letter ARY-2021-0188a to Counsel Support Services from the Yekatom Defence, with attachment ARY-2021-0188 (Letter addressed to the [REDACTED]) sent on 1 October 2021 at 11:46, available upon Request.

² See [CAR-OTP-2130-0259](#).

³ See [CAR-OTP-2130-0268](#).

⁴ See [CAR-OTP-2127-9187](#).

⁵ Trial Rule 77 Packages 48, 49, 50, 51 and 54.

5. On 20 September 2021, the Defence sent a letter addressed to [REDACTED] in the Netherlands to the Counsel Support Section requesting cooperation from the [REDACTED] authorities in obtaining documents from Facebook which are material to Mr Yekatom's defence preparation, including information regarding the Facebook accounts of P-2582, P-2620, P-2475 and P-2671 ("First Letter").⁶
6. On 22 September 2021, the Registry transmitted the First Letter via a *note verbale* addressed to the [REDACTED].⁷
7. On 1 October 2021, while awaiting a response to the First Letter, the Defence sent a letter addressed to the [REDACTED] requesting cooperation from [REDACTED] authorities in obtaining documents from Facebook that are material to the Defence's preparations, including information regarding the Facebook accounts of P-2018 and P-1974 ("Second Letter").⁸
8. On 5 October 2021, the Registry transmitted the Second Letter via a *note verbale* addressed to the [REDACTED].⁹
9. On 2 December 2021, the Defence was informed through the Registry that the [REDACTED] authorities had responded concerning the First Letter. The [REDACTED] authorities verbally indicated to the Registry that their national legislation, namely the [REDACTED], does not provide for cooperation directly with a defence team representing an accused before the ICC.¹⁰
10. On 19 January 2022, through *inter partes* correspondence, the Defence requested the Prosecution to confirm whether it was in possession of documents from the

⁶ The First Letter requested the same documents as the ones listed in the First table of Annex A

⁷ Note Verbale from the Registry to the [REDACTED] sent on 22 September 2021, available upon Request.

⁸ The Second Letter requested the same documents as the ones listed in the Second, Third Fourth and Fifth table of Annex A, except for those regarding [REDACTED].

⁹ Note Verbale from the Registry to the [REDACTED] sent on 5 October 2021, available upon Request.

¹⁰ See Annex B to the present Request.

Facebook accounts of any Prosecution witnesses yet to testify in the case, or the NGO *Enfants sans Frontières* (ESF) and/or its employees at the time of the charges.¹¹

11. On 7 February 2022, the Prosecution indicated to the Defence that it was not in possession of material from the Facebook accounts of remaining Prosecution witnesses;¹² and that it was not in possession of any Facebook account material in relation to ESF or any of their known employees (“Prosecution *Inter Partes* Response”).¹³
12. From 24 May 2022 to 1 June 2022, P-2475 testified before the Chamber, during which the Defence *inter alia* examined him in relation to publicly available Facebook account material, in relation to P-2582, P-2620, P-2671, P-2580, P-2018, and himself.

III. APPLICABLE LAW

13. Articles 57(3)(b), 61(11) and 64(6)(a) of the Statute empower the Trial Chamber to, upon request by the Defence, seek cooperation of a member state pursuant to Part 9 of the Statute “as may be necessary to assist the person in the preparation of his or her defence”.
14. Rule 116(1) of the Rules of Procedure and Evidence (the “Rules”) specify that the Chamber, when seeking cooperation, should be satisfied
 - (a) That such an order would facilitate the collection of evidence that may be material to the proper determination of the issues being adjudicated, or to the proper preparation of the person’s defence; and
 - (b) In a case of cooperation under Part 9, that sufficient information to comply with article 96, paragraph 2, has been provided.

¹¹ Email from the Yekatom Defence to the Prosecution sent on 19 January 2022, at 14:01 (Annex F).

¹² With the exception of [REDACTED], whose Facebook accounts are not relevant to the present Request.

¹³ Email from the Prosecution to the Yekatom Defence sent on 7 February 2022, at 13:13 (Annex F).

IV. SUBMISSIONS

15. The Defence requests the Chamber to seek the cooperation of the [REDACTED] authorities - on an urgent basis, and given that the concerned witnesses are expected to testify any time during the course of this year, with a compliance date of 1 September 2022¹⁴ - for the production of the following categories of material (collectively, "Sought Material"), from the Facebook accounts associated with P-2582, P-2620, P-2475, P-2671, P-2580, and P-2018, listed in Annex A:

- a) Subscriber Information, including names, birth dates, addresses, telephone numbers, and screen names;
- b) selected Messages to and from the accounts, including their dates, times, IP addresses, and content;
- c) Timeline posts by the user, including posts, photos, and videos, and including their dates, times, content, or other posts on their accounts;
- d) Status information; and,
- e) comments.

16. The Defence submits that the three criteria developed in the jurisprudence¹⁵ of (i) relevance, (ii) specificity, and (iii) necessity are met in relation to the Sought Material.

A. Relevance

17. The Request fulfils the relevance requirement under Rule 116(1)(a), in that the requested documents "may be 'material [...] to the proper preparation of [Mr Yekatom's] defence.'"¹⁶

¹⁴ See [ICC-01/14-01/18-1444-Conf-Red](#), para. 8, whereby the Prosecutor, for a similar request, requested urgent compliance with a one month period.

¹⁵ [ICC-01/14-01/18-1159-Conf](#), para. 6 ; *Ongwen* case, Trial Chamber: Decision on Defence Request for Deadline Extension and Cooperation from Uganda, 4 May 2018, ICC-02/04-01/15-1254, para. 7; *Banda and Jerbo*, Trial Chamber, Decision on "Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union, 4 July 2011, [ICC-02/05-03/09-170](#), paras. 15-16.

¹⁶ *Banda and Jerbo*, Trial Chamber, Decision on "Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union, 4 July 2011, [ICC-02/05-03/09-170](#), para. 23.

18. The Defence recalls that it is not obliged to lay bare its full strategy when seeking the assistance of the Chamber for a cooperation request, and that “substantiation as to what kinds of information the Defence seeks and why the persons concerned may have this information” is sufficient to meet this criterion.¹⁷ However, the sensitivity of the information sought arguably places a greater burden on the Defence to justify its Request; and as such, the Defence was conscientious in balancing its need to provide sufficient information to justify its Request, against its obligation to avoid unduly influencing the Chamber in relation to Prosecution witness in *ex parte* litigation.
19. The information sought is material to Mr Yekatom’s defence preparations in relation to a range of charges in these proceedings,¹⁸ and especially in relation to Count 29. Specifically, the Sought Material is relevant to the Defence’s case as regards the false claims made by alleged child soldier witnesses P-2475, P-2582, and P-2620 (and a relative of the latter, P-2671); as well as the Defence position as regards the fraudulent nature of the ESF child soldiers demobilisation programme, [REDACTED] P-2580 and P-2018, and their ongoing involvement in procuring witnesses and evidence in the context of these proceedings.
- i) Facebook material of alleged child soldier witnesses*
20. Table One of Annex A pertains to the Facebook accounts associated with alleged child soldier witnesses P-2475, P-2582, P-2620, as well as P-2671 (a relative of P-2620) (collectively, “Child Soldier Witnesses”).
21. As set out below, the Defence believes that these individuals have provided false information to the Prosecution and, in the case of P-2475, to the Chamber

¹⁷ *Prosecutor v. Ongwen*, Decision on Defence Request for Deadline Extension and Cooperation from Uganda, 4 May 2018, [ICC-02/04-01/15-1254](#), para. 9.

¹⁸ The Prosecution witnesses the subject of this Request collectively provide information in relation to three of the four ‘crime bases’ in these proceedings, as well as Mr Yekatom’s charged ‘essential contributions’; see [ICC-01/14-01/18-724-Conf-AnxA](#).

regarding their ages and involvement in Mr Yekatom's group; and further, that they have discussed and/or are having ongoing discussions regarding their participation in these proceedings.

22. As recently elicited before the Chamber, P-2475's claimed year of birth – 1999¹⁹ – is contradicted by a range of documentary evidence indicating that P-2475 was in fact born in 1994,²⁰ and as such, was in fact 19 years old at the time of the events.
23. In the same vein, during the testimony of P-2475, the Defence produced documentary evidence demonstrating that P-2582 was born in 1992²¹ – and not in 2001 as she has repeatedly claimed to Prosecution investigators²² – thus making her 21 years old at the time of the events.
24. The Defence has previously highlighted numerous contradictions between information provided by P-2620 in her victim application forms and her witness statements, relating to her date of birth, her alleged involvement in the Anti-Balaka, her identifying information, and her family members.²³ The Defence also notes that “an initial lack of clarity regarding the Witness's age” posed an “obstacle” for the Prosecution during its investigation in these proceedings.²⁴
25. Lastly, the evidence of P-2671 purportedly corroborating the account of P-2620 – [REDACTED] – is likewise unreliable, not least given P-2620 states that [REDACTED] in her victim application form.²⁵ Further, P-2671, [REDACTED],

¹⁹ [CAR-OTP-2110-0556-R04](#), para. 11; [CAR-OTP-2128-1197](#); [CAR-OTP-2128-1201](#); [CAR-OTP-2128-1202](#); [CAR-OTP-2128-1201](#); see also, ICC-01/14-01/18-T-133-CONF-FRA ET, p. 65, line 2 to p. 72, line 12.

²⁰ See ICC-01/14-01/18-T-133-CONF-FRA, p. 66-73; see also [CAR-D29-0013-0004](#), [CAR-D29-0014-0065](#), [CAR-D29-0016-0066](#), [CAR-D29-0016-0071](#).

²¹ Specifically, the Defence has tendered a baptism certificate, the receipt for the baptism certificate, and a photograph of the baptism registry – showing that P-2582's actual date of birth is [REDACTED] 1992; see, [CAR-D29-0013-0100](#), [CAR-D29-0013-0098](#) and [CAR-D29-0014-0068](#); see also, ICC-01/14-01/18-T-133-CONF-FRA, pp 49-50.

²² [CAR-OTP-2117-0605-R05](#), para. 12; [CAR-OTP-2126-0385-R02](#); [CAR-OTP-2126-0415](#).

²³ [ICC-01/14-01/18-1318-Conf](#), paras 36 to 44.

²⁴ [ICC-01/14-01/18-518-Conf](#), paras 25-27.

²⁵ [ICC-01/14-01/18-1318-Conf](#), paras 36-37.

claims [REDACTED] which does not accord with her claim that P-2620 was born on [REDACTED],²⁶ nor with the various other dates of birth that P-2620 appears to have provided in the context of these proceedings.²⁷

26. The Defence believes that the sought Facebook material will contain information corroborating the Defence's position as to the falsity of these various claims made by the alleged Child Soldier Witnesses. Defence investigations have demonstrated that these individuals have been using Facebook as a platform to post photographs and publish information, including critical biographical information, about themselves.
27. Indeed, P-2475 has posted information regarding his actual year of birth, i.e. 1994, to two Facebook accounts associated with him.²⁸ Likewise, on her Facebook account, P-2582 has provided her actual year of birth, i.e. 1992, consistent with baptism documents provided by the Defence.²⁹ P-2620 appears to have created a Facebook account under the name "[REDACTED]"³⁰ – which the Defence submits, corresponds to her real name, and illustrates that "[REDACTED]" is in fact a false name³¹ – and has posted photographs apparently corresponding to a photograph provided in P-2620's passport application.³² P-2620's association with the Facebook account of "[REDACTED]" is further evidenced by the fact that the latter is Facebook "friends" with a number of individuals associated with these proceedings, [REDACTED], [REDACTED].³³

²⁶ [CAR-OTP-2125-0348-R04](#), paras. 21.

²⁷ [ICC-01/14-01/18-1318-Conf](#), para. 42.

²⁸ [CAR-D29-0016-0071-R01](#); [CAR-D29-0016-0066-R01](#); see, *supra*, para. 22.

²⁹ [CAR-D29-0016-0060-R01](#); see, *supra*, para. 23.

³⁰ [CAR-D29-0015-0002](#), compare [CAR-D29-0016-0033](#), at 0034, see especially third photograph of last row ; see also, [REDACTED].

³¹ See also, [ICC-01/14-01/18-1318-Conf](#), paras. 36-37 and 41-43.

³² See [REDACTED], where [REDACTED].

³³ See, [CAR-D29-0016-0012](#) and [CAR-D29-0016-0035](#); see also, [REDACTED].

28. The alleged Child Soldier Witnesses also appear to have been using Facebook as a means to communicate among each other.
29. P-2475 and P-2582, and P-2475 and P-2620 [REDACTED],³⁴ as are P-2620 and [REDACTED], P-2671.³⁵
30. On a photograph [REDACTED], posted by a Facebook account linked with P-2671, “[REDACTED]” (P-2620) [REDACTED], [REDACTED]³⁶ – which is notable in light of the fact that, while P-2620 claims to [REDACTED] (a claim contested by the Defence),³⁷ nowhere in her evidence does she mention [REDACTED].
31. Further, shortly after the conclusion of P-2475’s testimony before the Court, changes were made to the Facebook account of “[REDACTED]”, i.e. the account associated [REDACTED] and discussed during his evidence:³⁸ specifically, all photos previously present and visible on this account, including those depicting [REDACTED], have been removed, and only two photographs (not depicting people) remain,³⁹ this is coupled with the fact that a comment made by P-2580⁴⁰ and specifically discussed with P-2475⁴¹ has also disappeared from P-2582’s Facebook page. The timing of these changes is highly suspicious to say the least, and would appear to indicate that [REDACTED].
32. Further, while P-2475 claimed to not know [REDACTED] or “[REDACTED]” despite being Facebook “friends” with the latter,⁴² further Defence investigations have uncovered [REDACTED] between Facebook accounts

³⁴ See [CAR-D29-0016-0035](#) and [CAR-D29-0016-0065](#).

³⁵ [CAR-D29-0016-0065](#).

³⁶ See, [CAR-D29-0016-0053](#).

³⁷ See, [CAR-OTP-2121-2567](#), paras. 31-33 and [CAR-OTP-2121-2578](#).

³⁸ [REDACTED].

³⁹ See Annex D and E, respectively [CAR-D29-0016-0084](#) and [CAR-D29-0016-0087](#).

⁴⁰ See [CAR-D29-0016-0078](#).

⁴¹ [REDACTED].

⁴² [REDACTED].

associated with P-2475 and P-2620. Specifically, “[REDACTED]” [REDACTED], [REDACTED] different occasions, once in [REDACTED] 2021 and once in [REDACTED] 2022, on photograph posted on the Facebook account that the Defence attributes to P-2475.⁴³ Indeed, after P-2475’s testimony, the Defence’s investigations led to the discovery of yet another Facebook account that the Defence attributes to P-2475 (under the name, [REDACTED]). The most recent post publicly available is dated [REDACTED] 2022 suggesting that this account was created around this date, i.e. just prior to P-2475’s testimony. Public information reveals that the account owner’s date of birth is [REDACTED] 1999 and that he currently lives in [REDACTED]. Besides the fact that this account is “friends” with numerous Central African Facebook users, it also appears to be “friends” with accounts attributed to [REDACTED], and displays many images with the [REDACTED] logo, just like other Facebook accounts of P-2475. Communications from and to this account is all the more important as it appears to be the most recent account of P-2475, and therefore an account which he could have used shortly before, during and after his testimony.

33. As the above demonstrates, Defence investigations into the extent of the alleged Child Soldiers Witnesses’ reliance on Facebook, both to publish and post information, and to communicate amongst each other, have so far proved of critical importance to the Defence’s efforts to uncover the various falsities provided by these individuals, both to the Prosecution and before the Chamber. Yet these investigations have necessarily been limited to Facebook material that is publicly accessible to the Defence. In the circumstances therefore, there are strong grounds to believe that the information accessed to date simply represents the tip of the iceberg, and that the Sought Material will contain further highly relevant information that will directly and materially impact the credibility of these witnesses’ claims regarding *inter alia* their actual ages, their

⁴³ See [CAR-D29-0016-0075](#); [CAR-D29-0016-0090](#).

actual familial relations, and their supposed involvement in Mr Yekatom's group.

34. In accordance with the above therefore, the Facebook material sought in relation to these witnesses relates to the period of [REDACTED] 2019 to [REDACTED] 2022, which corresponds to the period leading up to the witnesses' interviews with the Prosecution, up until a few days after the conclusion of P-2475's testimony.

ii) ESF [REDACTED]

35. Table Two in Annex A lists Facebook accounts associated with P-2580 and P-2018, ESF [REDACTED] who [REDACTED] ESF child soldier demobilisation programme [REDACTED] (collectively, "ESF [REDACTED]").
36. As previously submitted, it is the Defence's position that the demobilization programme was fraudulent in that, ESF [REDACTED] knowingly sought and secured the participation of individuals that were not child soldiers, were not part of Mr Yekatom's group, and/or had their ages falsified or reduced, with the aim of securing financial resources or support for the organization and its members.⁴⁴
37. P-2018 has also provided a statement and various documents to Prosecution investigators, in relation to the ESF programme, portraying a false image of authenticity and validity as regards the programme; and which by extension, can be understood as perpetuating the fraud and be considered as false evidence.⁴⁵

⁴⁴ See e.g., [ICC-01/14-01/18-1456-Conf](#), paras. 10-29, 32, and references cited therein.

⁴⁵ See, [ICC-01/14-01/18-1456-Conf](#), paras. 10-24, 32.

38. Further, evidence indicates that the ESF [REDACTED] have since taken an active role in procuring witnesses and documentary evidence in the context of these proceedings – presumably motivated by [REDACTED].
39. Specifically, in his capacity as Prosecution intermediary, P-2580 appears to have provided falsified documents to the Prosecution, and to have misled Prosecution investigators, in relation to the age of ESF programme participant and Prosecution witness P-2475.⁴⁶ In a similar vein, on two separate occasions, the Defence has informed the Prosecution of instances of conduct potentially amounting to witness interferences on the part of P-2580 – specifically, that he had contacted potential Defence witnesses in an apparent attempt to dissuade them from testifying.⁴⁷ The Chamber will also recall [REDACTED] allegation that P-2580 had been falsifying documents with the aim of having children join the ESF [REDACTED].⁴⁸
40. Further, according to [REDACTED], P-2018 was recruiting witnesses “for Mr Yekatom” (under false pretences) and was arranging meetings [REDACTED].⁴⁹
41. Defence investigations also have established that ESF-affiliated individuals, including P-2018, are Facebook “friends” [REDACTED].⁵⁰
42. Moreover, ESF-affiliated individuals also appear to have been in contact with P-2582. On [REDACTED] 2021, on a photograph of P-2582 posted to a Facebook account associated with her, [REDACTED], “[REDACTED]”.⁵¹ On [REDACTED] 2022, [REDACTED] on a photograph posted to a Facebook account associated with P-2582, “[REDACTED]”.⁵² Not only is it unclear as to

⁴⁶ See, [ICC-01/14-01/18-1456-Conf](#), paras 24-28 and references cited therein; [REDACTED].

⁴⁷ Email from the Defence to the Prosecution sent on 08 November 2021, at 15:59; Email from the Defence to the Prosecution sent on 19 May 2022, at 18:22 (both contained in Annex C).

⁴⁸ [REDACTED].

⁴⁹ See, [ICC-01/14-01/18-1456-Conf](#), para. 24 and references cited therein.

⁵⁰ See, [CAR-D29-0016-0004](#), at 0005 (accounts of [REDACTED] and [REDACTED]).

⁵¹ See, [CAR-D29-0016-0061](#); see also, [REDACTED].

⁵² See, [CAR-D29-0016-0078](#); see also, [REDACTED].

why [REDACTED] P-2582 in such a manner, with express reference to his affiliation to the Court, but the timing of this contact is also highly suspicious, occurring as it did on the eve of P-2475's testimony before the Chamber.

43. In a similar vein, while P-2475 denies having been in [REDACTED] in the context of his involvement in these proceedings, the fact remains that, following P-2475's interview with Prosecution investigators, [REDACTED] (and false) year of birth that P-2475 had provided during his interview.⁵³
44. As submitted above with respect to the alleged Child Soldier Witnesses, while Defence investigations into the Facebook material of the ESF [REDACTED] have been fruitful to a degree, the Defence's investigative capacity is nonetheless substantially limited by its inability to access non-public Facebook material in relation to these individuals. However, given the circumstances surrounding the fraudulent ESF programme, and the involvement of the ESF [REDACTED] in its perpetuation and on-going cover-up efforts; and given the nature of the ESF [REDACTED] reliance on and use of Facebook, there are reasonable grounds to believe that the Sought Material will contain further information that is material to the preparation of Mr Yekatom's defence as regards the strategy of ESF, the background of the alleged child soldiers recruited in the program, and the false information provided by ESF [REDACTED] intended to be relied upon by the Prosecution under Count 29.
45. As such, in respect of P-2018, Facebook material is sought for the period of [REDACTED] 2018 to [REDACTED] 2022, corresponding to the period when the witness was interviewed by the Prosecution, up until the conclusion of P-2475's testimony.⁵⁴ In respect of P-2580, Facebook material is sought for the period of [REDACTED] 2019 until [REDACTED] 2022, which corresponds to

⁵³ See *supra*, para. 22.

⁵⁴ P-2018: [REDACTED].

the period commencing from P-2580's screening by the Prosecution,⁵⁵ including the start of his [REDACTED] with the Prosecution on [REDACTED], up until the conclusion of P-2475's testimony.

B. Specificity

46. The Defence submits that the Request fulfils the specificity requirement in accordance with Rule 116(1)(b). According to the jurisprudence applicable to cooperation requests involving the production of documents, the requesting party should identify them "as far as possible and in addition be limited in number",⁵⁶ and that such requests,

must not be unduly onerous, in the sense that, a party cannot seek to obtain hundreds of documents, particularly when it is evident that the identification, location and scrutiny of such documents by the requested party would be overly taxing and not strictly justified by the exigencies of the trial.⁵⁷

47. As indicated in Annex A, and set out above,⁵⁸ the Defence seeks information limited to five specific categories of Facebook material, in relation to Facebook accounts affiliated with six individuals. In this sense, the present Request targets the production of specific documents for explicitly stated reasons and not merely a broad category of unidentified documents.
48. With regard to the messages to and from the selected accounts, the Defence seeks private conversations between all accounts associated to a witness, and all accounts associated to another witness, regardless as to whether the link between those accounts (i.e. via Friendship, comments, etc.) are publicly apparent. Indeed, the limited public information available to the Defence on

⁵⁵ [CAR-OTP-2117-0043-R01](#).

⁵⁶ *Banda and Jerbo*, Trial Chamber, Decision on "Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union, 4 July 2011, [ICC-02/05-03/09-170](#), para. 16.

⁵⁷ *Banda and Jerbo*, Trial Chamber, Decision on "Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union, 4 July 2011, [ICC-02/05-03/09-170](#), para. 16.

⁵⁸ See *supra*, para. 15.

Facebook does not necessarily reveal all links between the accounts. The fact that such links are not publicly apparent however does not preclude private Facebook communication between the alleged Child Soldier Witnesses and/or ESF [REDACTED], as Facebook enables account owners to make information demonstrating such links private and, in any case, it is possible to exchange with other users without being “friends” with them on the platform. This same logic justifies why the Defence seeks the conversation between all accounts associated with P-2620 and all accounts associated to P-2580, notwithstanding the fact that there is no publicly available information indicating that their accounts have been in contact.

49. The limited time periods for which this information is sought for each individual and the corresponding justification is set out above.⁵⁹ The Defence stresses that it has limited the time period to what is strictly necessary for its investigation in the current case, which will help the provider pinpoint the information and limit its size, thereby furthering the specificity of this Request. As it was done for the Prosecution,⁶⁰ for each Facebook ID, the information sought can be assembled into an e-document. Nor would the sought cooperation appear to be unduly burdensome for the [REDACTED] authorities, because as compared with the Prosecution RFAs, this Request is more targeted. The Defence also notes that the Request is as specific in its formulation as the Prosecution RFAs, which were duly and substantively responded to by the [REDACTED] authorities.

C. Necessity

50. The Defence submits that the intervention of the Chamber is necessary to obtain the sought documents.

⁵⁹ See, *supra*, paras. 34 and 45.

⁶⁰ See for example [CAR-OTP-2131-5988](#) and the evidence disclosed in Trial Rule 77 Packages 48, 49, 50, 51 and 54.

51. The requested documents all pertain to the social media corporation Meta Platforms, Inc., [REDACTED]. [REDACTED] is a State Party to the Rome Statute⁶¹ and has proven to be the competent authority to obtain the requested documents. Indeed, the Prosecution obtained information pertaining to the Facebook accounts of witnesses in the case through this authority.
52. The Defence, with the assistance of the Registry, transmitted two cooperation letters to the [REDACTED] in the Netherlands, the same channel used by the Prosecution. However, following the communication of the First and Second Letter to the [REDACTED] authorities, the latter indicated orally to the Registry that their national legislation does not foresee cooperation with a defence team as opposed to the Court or the Prosecution.⁶² The Registry, which had transmitted the First and Second Letter, indicated that the “only avenue” under the Statute was for the Defence to seize the Chamber in accordance with Article 57(3)(b).⁶³
53. The Defence then turned to the Prosecution; however, it was informed through the Prosecution *Inter Partes* Response that the Prosecution was not in possession of the documents/information listed in Annex A.
54. The Defence also notes P-2018, P-2680, and P-2582 are each scheduled to eventually testify before the Chamber,⁶⁴ further demonstrating that the intervention of the Chamber is appropriate at this stage.
55. As the requested documents are all material to the preparation of Mr Yekatom’s defence and all steps to obtain the sought cooperation from the State Party and the Prosecution have been exhausted, the Defence submits that the present request meets the necessity criterion.

⁶¹ [REDACTED] ratified the Rome Statute on [REDACTED].

⁶² Annex B.

⁶³ See Annex B to the present Request.

⁶⁴ Respectively, at #71, #73, and #75 of the most recent ‘Prosecution anticipated upcoming witness order’, circulated via email on 1 June 2022 at 17.06.

D. Other considerations

i) Sensitivity of the information and protocol

56. The Defence concedes that a reasonable expectation of privacy may *prima facie* exist in relation to the Sought Material. However, due to its potentially exculpatory nature, as well as the fact that it can be reasonably expected to (further) demonstrate that the individuals in question have brought false claims against Mr Yekatom in these proceedings – including via a degree of collusion – the present Request is justified and should be granted.⁶⁵
57. Moreover, due to its specificity and relatively limited scope, the Request strikes an appropriate balance between these competing interests.
58. In any event, the Defence recalls that it is bound by the *Protocol on the Handling of Confidential Information During Investigations And Contact Between A Party Or Participant And Witnesses of the Opposing Party or of a Participant*⁶⁶ and that like in past instances⁶⁷ it will duly abide by it and other applicable protocols.
59. The Defence further submits that P-2580's status as an Intermediary does not constitute an impediment to the present Request in the circumstances, given the limited and specific categories of information sought; and further, it should be recalled that his affiliation with ESF predates his employment with the Prosecution. Further, given the gravity of his apparent conduct, and its concomitant impact on the fairness of these proceedings, the fact that P-2580 is

⁶⁵ See limitations to the right to private life, European Convention on Human Rights, Article 8: "Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

⁶⁶ [ICC-01/14-01/18-156-AnxA](#).

⁶⁷ See for example Letter ARY-2020-0103 from the Defence to Victims and Witnesses Unit sent on 6 February 2020 at 16:03, available upon request.

or was a Prosecution intermediary should not outweigh the Defence's interest in fully shedding light upon his conduct.

60. Furthermore, should the Defence's case be fully accurate, the conduct of at least P-2018 and P-2580, is at the very least extremely problematic and improper.⁶⁸

ii) Equality of arms

61. The Defence submits that [REDACTED] refusal to cooperate directly with the Defence with regard to its request for Facebook material, has given rise to a potential violation of the principle of equality of arms, guaranteed under Article 67 of the Statute, "to ensure the [D]efence is placed insofar as possible on an equal footing with the [P]rosecution, in order to protect fully the right of the accused to a fair trial".⁶⁹
62. Indeed, the Defence notes that the Prosecution has enjoyed cooperation on the part of the [REDACTED] authorities with respect to the Prosecution RFAs. By way of example, in response to a Prosecution RFA sent to Facebook via [REDACTED] authorities on 25 June 2020, the Prosecution received material pertaining to "19 Facebook accounts comprising around 3000 conversations (containing over more than 25,000 pages), 1213 photographs, and 31 videos".⁷⁰
63. The Defence also recalls that extensive Facebook material – to which the presumption of privacy would also have *prima facie* applied – was obtained by the Prosecution on the extremely broad basis that the account holders in question were affiliated to the Anti-Balaka; that the Anti-Balaka was a criminal organization, and that these individuals would have communicated through Facebook on the common purpose of the Anti-Balaka.⁷¹

⁶⁸ [REDACTED].

⁶⁹ *Lubanga*, Trial Chamber, Decision on defence's request to obtain simultaneous French transcripts, 14 December 2007, [ICC-01/04-01/06-1091](#), para. 18.

⁷⁰ See, [ICC-01/14-01/18-1330-Conf](#), paras 8-9.

⁷¹ See [CAR-OTP-2127-9187](#), paras. 34-35.

64. As such, the sought intervention of the Chamber would act to ensure the fairness of these proceedings and the respect of Mr Yekatom's rights.

V. CONCLUSION

65. Further to the above, the Defence submits that the material sought in Annex A is material to the Defence and is ascertained with sufficient specificity; and further, that the intervention of the Chamber is necessary.

VI. CONFIDENTIALITY

66. Pursuant to Regulation 23 *bis* (1) and (2) of the Regulations of the Court, this response is filed *ex parte* available only to the Defence of Mr Yekatom as it refers to significant and substantive parts of the Defence's strategy.
67. Therefore *ex parte* classification of the present Request is justified by the need to protect the Defence's ongoing investigations, especially in light of possible interference by and involving Prosecution's witnesses in the current proceedings.⁷² The Prosecution is not prejudiced by the *ex parte* nature of these submissions as any material collected and/or already in the possession of the Defence, which the Defence intends to rely on as evidence, will be duly disclosed in accordance with the Initial Directions of the Conduct of the Proceedings.⁷³

VII. RELIEF SOUGHT

68. In light of the above, the Defence respectfully requests Trial Chamber V to:

ORDER the [REDACTED] Authorities to cooperate with the Court on an urgent basis, and with a compliance date of 1 September 2022;

⁷² [ICC-01/14-01/18-1441-Conf-Red2](#), para. 5.

⁷³ [ICC-01/14-01/18-631](#), para. 40.

REQUEST the [REDACTED] Authorities to collect, in electronic format,
the evidence, as listed in Annex A.

RESPECTFULLY SUBMITTED ON THIS 1ST DAY OF JULY 2025⁷⁴



Me Mylène Dimitri

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The Hague, the Netherlands

⁷⁴ The Defence thanks Legal Intern Mr. Jeremy Pizzi for his precious assistance in the drafting of this filing.