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**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 23 March 2022

**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 YEKATOM AND  
PATRICE-ÉDOUARD NGAÏSSONA**

**Confidential  
With Confidential Annex A**

**Reply of the Common Legal Representative of the Former Child Soldiers to the  
Defence's Response No. ICC-01/14-01/18-1305-Conf dated 7 March 2022**

**Source:** Office of Public Counsel for Victims (CLR1)

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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 Patrice-Édouard Ngaïssona**

Mr Geert-Jan Alexander Knoops

**Legal Representatives of the Victims**

Mr Dmytro Suprun

**Legal Representatives of the Applicants**

Mr Abdou Dangabo Moussa  
Ms Marie Édith Douzima Lawson  
Mr Yaré Fall  
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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
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Ms Paolina Massidda  
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**The Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

## I. SUBMISSIONS<sup>1</sup>

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative” or “CLR1”) submits that the allegations made by the Defence of Mr. Alfred Yekatom (the “Yekatom Defence”) against the Legal Representative in its Response<sup>2</sup> to the Request to Maintain Redactions<sup>3</sup> under the heading “Preliminary Issue: the conduct of the CLR1 and Prosecution” emanate from: (i) the Yekatom Defence’s misapprehension of the applicable procedure governing the disclosure of the victim application forms of dual status individuals as set out in the present case; and (ii) the Prosecution’s oversight of being in possession of the full and unredacted versions of P-2582’s and P-2560’s victim application forms since 15 January 2021. In the Legal Representative’s view, a proper reading of the applicable procedure as applied to the factual background will, in itself, be sufficient to show that the Yekatom Defence’s allegations are misguided and fully unfounded. Nevertheless, the Legal Representative will briefly demonstrate below that at all stages he acted in full compliance with the applicable procedure and exercised due diligence during the course of *inter partes* consultations.

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<sup>1</sup> The Procedural Background is provided in Annex A to the present submissions.

<sup>2</sup> See the “Yekatom Defence Response to ‘Confidential Redacted Version of the “Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620”, [No. ICC-01/14-01/18-1305-Conf](#), 7 March 2022 (the “Defence’s Response” or “Response”).

<sup>3</sup> See the “Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals”, [No. ICC-01/14-01/18-1290-Conf-Exp](#), 22 February 2022. A confidential redacted version was filed on the same date as [No. ICC-01/14-01/18-1290-Conf-Red](#) (the “Request to Maintain Redactions”).

**A. On the applicable procedure governing the disclosure of the victim application forms of dual status individuals as set out in the present case**

2. On 8 October 2020, the Trial Chamber V (the “Trial Chamber”) adopted the Decision on Protocols which included the Dual Status Protocol and the Redaction Protocol.<sup>4</sup>

3. In the Redaction Protocol, the Trial Chamber held that it is incumbent on the Prosecution to “*apply redactions to the victim application forms and related material of Dual Status Witnesses as necessary in consultation with their legal representative, [...] ensure that redactions applied to the victim application forms are consistent with the ones applied to the witness statements disclosed to the Defence, [...] [and] consult the LRV before applying or lifting redactions in victim application forms and related material*”.<sup>5</sup>

4. In an email correspondence on 4 January 2021 (the “Guidance”), the Trial Chamber further clarified that it was incumbent on the Registry to provide the Prosecution with the unredacted applications of dual status individuals to enable the Prosecution to effect disclosure pursuant to its statutory disclosure obligations and in line with the Dual Status Protocol and the Redaction Protocol.<sup>6</sup> In compliance with this Guidance, the Victims Participation and Reparation Section (the “VPRS”) provided the Prosecution with the full and unredacted versions of P-2582’s and P-2620’s victim application forms.<sup>7</sup>

5. The Legal Representative submits that the applicable procedure governing the disclosure of the victim applications of dual status individuals has been set by the Trial Chamber in a clear and unambiguous manner, and leaves no doubt as to the parties’

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<sup>4</sup> See the “Decision on Protocols at Trial”, [No. ICC-01/14-01/18-677](#), 8 October 2020; “Annex 2 to the Decision on Protocols at Trial”, [No. ICC-01/14-01/18-677-Anx2](#), 8 October 2020 (the “Dual Status Protocol”); and “Annex 3 to the Decision on Protocols at Trial”, [No. ICC-01/14-01/18-677-Anx3](#), 8 October 2020 (the “Redaction Protocol”).

<sup>5</sup> See the Redaction Protocol, *supra* note 4, para 9.

<sup>6</sup> See the Email correspondence from the Trial Chamber to the parties and participants on 4 January 2021 at 15:35.

<sup>7</sup> See the Email correspondence from the VPRS to the Prosecution on 15 February 2022 at 17:41.

and participants' respective duties and responsibilities. While the Yekatom Defence may not be aware as to the exact date the VPRS effectively transmitted the full and unredacted versions of P-2582's and P-2620's victim application forms to the Prosecution, it ought to have referred to the applicable Protocols, the Trial Chamber's Guidance, and the Prosecution's recent acknowledgment of such a transmission in January 2021,<sup>8</sup> which was notified to the Yekatom Defence three days before the Defence's Response was filed. Instead, the Yekatom Defence opted to allege that the Legal Representative had violated the Redaction Protocol and engaged in delay tactics without properly consulting the applicable procedure and the procedural background in the first place.

**B. On the Legal Representative's alleged failure to provide the Prosecution with unredacted versions of P-2582's and P-2620's victim application forms and his alleged violation of the applicable procedure**

6. As outlined above in the applicable procedure, it is the responsibility of the Registry, and not the Legal Representative, to provide the Prosecution with the full and unredacted versions of P-2582's and P-2620's victim application forms, and the Registry (in the present instance the VPRS), effectively complied with this. Accordingly, the Yekatom Defence's submissions on the Legal Representative's alleged failure to provide the Prosecution with unredacted victim application forms of the individuals concerned and his alleged violation of the applicable procedure in this regard, are without merit. To make it clear, under the applicable procedure as set out by the Trial Chamber, the Legal Representative has no duty to provide the Prosecution with unredacted victim application forms of dual status individuals.

7. On 18 November 2019 and 5 March 2020, the Legal Representative provided the Prosecution's investigators with redacted versions of P-2620's and P-2582's victim application forms respectively, on a courtesy basis to assist them with their interviews

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<sup>8</sup> See the Email correspondence from the Prosecution to the parties and participants on 4 March 2022 at 18:53.

with the relevant victims. The Prosecution has denied being in possession of the unredacted victim application forms of the individuals concerned since the course of *inter partes* consultations.<sup>9</sup> In an effort to facilitate an expeditious resolution of the Defence Requests for lifting redactions directed to the Prosecution,<sup>10</sup> on 15 February 2022 the Legal Representative provided the Prosecution with lesser redacted versions of the relevant victim application forms to enable the Prosecution to discharge its obligations under paragraph 9 of the Redaction Protocol in consultation with himself.<sup>11</sup> This, however, cannot serve as a basis to place on the Legal Representative any burden or duty to provide to the Prosecution any lesser redacted or unredacted versions of victim application forms; nor can it serve to reverse the parties' and participants' respective responsibilities under the applicable procedure as set out by the Trial Chamber. It is worth noting in this regard, that at no stage did the Prosecution ever request the Legal Representative to provide it with the lesser redacted or unredacted victim application forms at hand.

8. In conclusion, the Legal Representative submits that the Yekatom Defence's submissions on the Legal Representative's alleged failure to provide the Prosecution with unredacted versions of P-2592's and P-2620's victim application forms does not conform to the applicable procedure as set out, and are fully unfounded given that the full and unredacted victim application forms of the relevant individuals were *already* in the Prosecution's possession, as the VPRS adhered to the Guidance promptly in January 2021.

### **C. On the Legal Representative's alleged failure to address the substance of the two Defence Requests for lifting redactions**

9. As outlined above in the applicable procedure, it is incumbent on the Prosecution, and not on the Legal Representative, to apply or lift redactions in the

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<sup>9</sup> See the Email correspondence from the Prosecution to the Defence on 11 February 2022 at 12:59.

<sup>10</sup> See the Defence's Response, *supra* note 2, paras. 7-8 and 11-12.

<sup>11</sup> See the Email correspondence from the CLR1 to the Prosecution on 15 February 2022 at 11:00.

victim application forms of dual status individuals - but this process must be done in *consultation* with the Legal Representative.<sup>12</sup> The Legal Representative stands by his position already expressed during the course of *inter partes* consultations.<sup>13</sup> He reiterates that in the current phase of the proceedings, the 'disclosing party' within the meaning of the Redaction Protocol is the Prosecution, and accordingly, any request by the 'receiving party' for lifting redactions in the victim application forms of dual status individuals has to be addressed directly to the 'disclosing party'.<sup>14</sup> Consequently, under the applicable procedure, the Legal Representative has no duty and was not in a position to deal with the substance of the two Defence requests for lifting redactions in any of the ways suggested by the Yekatom Defence.<sup>15</sup> Proceeding in any of those ways would be a breach of the Redaction Protocol. Accordingly, the Legal Representative invited the Yekatom Defence to address its two requests to the Prosecution directly.

10. Regarding the specific Yekatom Defence's contention that the Legal Representative was allegedly delayed in seizing the Trial Chamber,<sup>16</sup> besides taking issue with the language used by the Yekatom Defence,<sup>17</sup> the Legal Representative recalls that under the Redaction Protocol, he may only seize the Trial Chamber following consultations with the Prosecution and should the dispute not be resolved on the application or lifting of redactions in the victim application forms.<sup>18</sup> The lack of mutual agreement on the matter became apparent on 16 February 2022,<sup>19</sup> and the Legal Representative seized the Trial Chamber with his Request to Maintain Redactions on 22 February 2022. Therefore, it cannot be reasonably argued that the Legal

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<sup>12</sup> See the Redaction Protocol *supra* note 4, para. 9

<sup>13</sup> See the Email correspondence from the CLR1 to the Defence on 20 January 2022 at 09:13; and the Email correspondence from the CLR1 to the Defence on 15 February 2022 at 11:23.

<sup>14</sup> *Idem.* See also the Redaction Protocol, *supra* note 4, paras. 6 and 9.

<sup>15</sup> See the Defence's Response, *supra* note 2, para. 21.

<sup>16</sup> *Idem.*

<sup>17</sup> In this regard, the Legal Representative notes that he has been described as "*send[ing] the Defence on what was effectively a fool's errand*" and has engaged in "*regrettable conduct*". See the Defence's Response, *supra* note 2, paras. 21-22.

<sup>18</sup> See the Redaction Protocol, *supra* note 4, para. 10.

<sup>19</sup> See the Email correspondence from the Prosecution to the CLR1 on 16 February 2022 at 14:51.

Representative did not exercise due diligence in seizing the Trial Chamber in a timely manner.

**D. On the Legal Representative's alleged failure to duly cooperate as part of *inter partes* consultations.**

11. As outlined above, the applicable procedure governing the disclosure of victim application forms of dual status individuals in the present case clearly determines *who* is due to do *what* and *when*, which in turn delineate the extent and scope of the *inter partes* consultations referred to in the Redaction Protocol.

12. As submitted above, under the applicable procedure, the Legal Representative has no duty to provide the Prosecution with either redacted or unredacted victim application forms of dual status individuals; and at the present stage of the proceedings, he has no duty and is not in a position to address the substance of any Yekatom Defence request for the lifting of redactions in said forms. Although not obliged to, but in the spirit of cooperation, the Legal Representative provided the Prosecution with redacted versions of P-2582's and P-2620's victim application forms to assist in its investigations, and with lesser redacted versions thereof as part of *inter partes* consultations to facilitate the Prosecution in dealing with the Yekatom Defence requests for lifting redactions.

13. The Legal Representative wishes to emphasise that – as illustrated from the procedural background – he has consistently complied with the applicable procedure in the present case and with the provisions of the Code of Professional Conduct for counsel (the “Code”) to act fairly, in good faith and courteously *vis-à-vis* other parties, and to facilitate fair and expeditious proceedings.<sup>20</sup> The Legal Representative also recalls that said provisions of the Code shall equally apply to all counsel practising before the Court. In this regard, he is of the view that counsel should exercise a

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<sup>20</sup> See article 24(5) and article 27 of the Code of Professional Conduct for Counsel, [No. ICC-ASP/4/Res.1, 2011](#) which respectively provide that “[c]ounsel shall represent the client expeditiously with the purpose of avoiding unnecessary expense or delay in the conduct of the proceedings” and “[i]n dealing with other counsel and their clients, counsel shall act fairly, in good faith and courteously”.



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particular diligence when making serious allegations against another counsel and, regardless of the nature of a dispute, is expected to always adhere to courteous language.

## II. CLASSIFICATION

14. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, this Reply and Annex A are filed confidentially since they refer to submissions and *inter partes* correspondence which are likewise classified as confidential. A public redacted version will be filed in due course.

## III. RELIEF SOUGHT

15. For the foregoing reasons, the Legal Representative respectfully requests the Trial Chamber to:

**DENY** the Yekatom Defence Request to find that the Legal Representative has violated the Redaction Protocol;

**DENY** the Yekatom Defence Request to order the Legal Representative to provide unredacted victim application forms of dual status individuals to the Prosecution; and

**GRANT** the Legal Representative's Request to Maintain Redactions in its entirety.

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**RESPECTFULLY SUBMITTED**

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a period at the end.

Dmytro Suprun  
Common Legal Representative of the Former Child Soldiers

Dated this 23<sup>rd</sup> Day of March 2022

At The Hague, The Netherlands