

**Cour
Pénale
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**International
Criminal
Court**

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Date: **3 October 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public Redacted Version of 'Yekatom Defence Reply to the 'Response of the Common Legal Representative of the Former Child Soldiers to the "Yekatom Defence Request for the Amendment of the Victim Application Procedure"', 4 July 2022, ICC-01/14-01/18-1498-Conf-Exp', 8 August 2022, ICC-01/14-01/18-1539-Conf-Exp

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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INTRODUCTION

1. Pursuant to Regulation 24(5) of the Regulations of the Court and the *Decision on the Yekatom Defence Request for Leave to Reply to the CLRV1 (former child soldiers) Response to the 'Yekatom Defence Request for the Amendment of the Victim Application Procedure'* ('Decision')¹ the Defence for Mr. Alfred Rombhot Yekatom ('Defence') hereby replies to the '*Response of the Common Legal Representative of the Former Child Soldiers to the "Yekatom Defence Request for the Amendment of the Victim Application Procedure"*'² ('Response').
2. The Defence respectfully replies to the three issues arising from the Response of the Common Legal Representative of the Former Child Soldiers ('CLR1'). The Defence replies to the CLR1's position regarding the appropriate assessment of victims applications in the context of inconsistencies found in identification documents in CAR;³ to its characterisation of [REDACTED];⁴ and to the number of former child soldier victims admitted to participate in the proceedings.⁵

PROCEDURAL HISTORY

3. On 23 June 2022, the Defence submitted the *Yekatom Defence Request for the Amendment of the Victim Application Procedure* ('Request')⁶, seeking amendment of the victim application procedure to allow the transmission to the Defence of Group A victims applications of alleged former child soldiers admitted to participate in the proceedings.

¹ [ICC-01/14-01/18-1532-Conf-Exp.](#)

² [ICC-01/14-01/18-1498-Conf-Exp.](#)

³ [ICC-01/14-01/18-1498-Conf-Exp.](#), paras. 37-41.

⁴ [ICC-01/14-01/18-1498-Conf-Exp.](#), paras. 34-36, 41.

⁵ [ICC-01/14-01/18-1498-Conf-Exp.](#), para. 27.

⁶ [ICC-01/14-01/18-1478-Conf-Exp.](#)

4. On 4 July 2022, the CLR1 submitted the Response, seeking denial of the Request.
5. On 7 July 2022, the Yekatom Defence sought leave to reply to the CLR1 Response identifying three issues that were demonstrably new and which could not have been anticipated ('Leave to Reply').⁷
6. On 12 July 2022, the CLR1 responded to the Leave to Reply seeking its dismissal.⁸
7. On 28 July 2022, the Chamber granted the Defence's Leave to Reply.

APPLICABLE LAW

8. Regulation 24(5) of the Regulations of the Court

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

9. Rule 89(1) of the Rules of Evidence and Procedure

In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber.

SUBMISSIONS

10. Within its Request, the Defence raised concerns as to the integrity of the process by which victims application forms are collected for admission as former child soldier victims within the current proceedings.

⁷ [ICC-01/14-01/18-1500-Conf-Exp.](#)

⁸ [ICC-01/14-01/18-1507-Conf-Exp.](#)

A. The purported 'issues with ID documents in the CAR since the 2013 conflict'⁹

11. Within its Request, the Defence expressed genuine concerns regarding the current assessment of victims' eligibility for participation. The Defence gave its reasons for such concerns specifically indicating that it has evidence potentially showing the ineligibility of four admitted victims, along with evidence consisting of three identifying documents of P-2582 again showing her potential ineligibility, and finally that it had serious reasons to believe that [REDACTED].¹⁰
12. In their response, the CLR1 mischaracterised the Defence's concerns stating that "the Defence alleges [REDACTED]".¹¹ Indeed, nowhere in its Request did the Defence state that the sole explanation for the discrepancies between the evidence adduced by the Defence and the victims' applications would be [REDACTED].
13. The Defence's position is that [REDACTED],¹² is a reason for concern *in addition* to the concerns raised by the discrepancies found. Furthermore, the Defence is fully aware of the different roles attributed to the VPRS and CLR1, which has no bearings on its concerns and ensuing Request.
14. In addition, while not addressing the Defence's concerns in its Response, the CLR1 raised two new concerns: (i) their view on the manner in which identification documents are assessed and weighed and; (ii) their position that the CAR identification documents adduced as evidence by the Defence cannot be relied upon as a basis to challenge a victim's eligibility.

⁹ [ICC-01/14-01/18-1498-Conf-Exp](#), paras. 37-41.

¹⁰ [ICC-01/14-01/18-1478-Conf-Exp](#), paras. 19, 21.

¹¹ [ICC-01/14-01/18-1498-Conf-Exp](#), para. 37.

¹² [ICC-01/14-01/18-1498-Conf-Exp](#), para. 35.

15. *First*, the Pre-Trial Chamber II has set the way in which discrepancies in an applicant's form should be treated:¹³

Should the Registry identify discrepancies in the information in the applications and the identification provided, the Chamber considers, as have other Chambers of the Court, that a certain degree of flexibility must be shown. Minor discrepancies **which do not call into question the overall credibility** of the information provided by the applicant may be accepted.¹⁴

16. The CLR1's argument that there is a state of "disarray" relating to identification documents in CAR which in their view explains the "proliferation of identification documents with different personal data thereon",¹⁵ is alarming to the extent that the CLR1's argument that this context should justify a leniency which goes beyond what was decided by the PTC II.
17. This is shown by the CLR1 position that "the Defence does not explain why the information contained in the baptism records [of P-2582] should be given more weight vis-à-vis the information contained in a birth certificate or the attestation de reconnaissance."¹⁶
18. Indeed, the fact that the Defence adduced evidence showing that P-2582 [REDACTED] at the time of the events certainly amounts to showing an important discrepancy which calls into question the credibility of the information provided by the applicant.¹⁷ Therefore, contrary to the CLR1's views,¹⁸ and despite the context in CAR, the mere fact that the question arises as to which of the irreconcilable identifying documents "should be given more weight" – *i.e.* which of the document is authentic – prevents this application

¹³ Endorsed on 19 March 2020 by the Chamber in its "Order Scheduling First Status Conference", 19 March 2020, [ICC-01/14-01/18-459](#), para. 8 (iv).

¹⁴ [ICC-01/14-01/18-141](#), para. 33 [emphasis added].

¹⁵ [ICC-01/14-01/18-1498-Conf-Exp](#), para. 39.

¹⁶ [ICC-01/14-01/18-1498-Conf-Exp](#), para. 41.

¹⁷ [ICC-01/14-01/18-141](#), para. 33.

¹⁸ See [ICC-01/14-01/18-1498-Conf-Exp](#), para. 41: "This is particularly important in light of the prevailing administrative practices in the CAR which indicate that inconsistencies in the proof of identity documents for Central Africans – and accordingly those of the former child soldier victims – may exist due to reasons other than the speculative allegation that [REDACTED]"

from falling within the category of applicants “who clearly qualify as victims”.¹⁹

19. *Second*, and just as concerning, the CLR1 argues that the discrepancies exposed by the Defence as to the date of birth of four participating victims cannot “raise doubts as to these victims’ eligibility to participate”.²⁰
20. The Defence obtained the documents enabling it to establish the age of those [REDACTED].²¹
21. The position of the CLR1 that there should be no [REDACTED] despite this evidence is simply untenable. Leaving aside the allegations that the victims were formerly part of an armed group, which the Yekatom Defence contests, the mere fact that some of the participating victims may have falsified their age in order to participate in these proceedings calls into question the integrity of the victim application process, at the very least into the eyes of those individuals who were clearly under 15 years old at the relevant time²².
22. Again, the context in CAR which renders it difficult for applicants to submit formal identification has already been taken into account by the PTC II in determining the scope of which documents are accepted to prove an applicant’s identity²³ and which level of inconsistency was acceptable.²⁴ The CLR1’s position is a clear departure from it.

¹⁹ [ICC-01/14-01/18-141](#), para. 41(i).

²⁰ [ICC-01/14-01/18-1498-Conf-Exp](#), para. 40.

²¹ See Email from the Defence to the Chamber on 2 June 2022, at 13.22.

²² Again, the Defence does not concede that participating victims were members of Mr. Yekatom’s group but the argument is now limited to the age.

²³ See particularly [ICC-01/14-01/18-141](#), para. 23, whereby the PTC II “accepts the documents considered to be valid for establishing the identity of applicants and those presenting an application on their behalf by the Pre-Trial Chamber and Trial Chamber in the Bemba Case as listed in the Registry’s Report on Documents as Proof of Identity” and para. 33 where it specified “where it is not possible for an applicant to obtain or provide the documents required for establishing his or her identity, he or she may submit a statement signed by two credible witnesses attesting to the applicant’s identity and stating, if applicable, the relationship between the victim and the person acting on his or her behalf. The statement must be accompanied by proof of the identity of the two witnesses”.

²⁴ [ICC-01/14-01/18-141](#), para. 34.

23. *Third*, the CLR1 assertion that national identity cards have been suspended since 2013 is incorrect.²⁵ CLR1 supports its position by quoting an outdated report of 2017, while in reality this suspension is no longer valid²⁶ as national identity cards are currently being issued by CAR authorities.²⁷ For example, the Defence submitted the national identity card of [REDACTED]²⁸ issued on [REDACTED].²⁹ This is in addition to the issuance of [REDACTED].³⁰

B. The issue of the CLR1's characterisation of [REDACTED].³¹

24. Within their Response CLR1 claim that they are “not aware of any instances [REDACTED].”³²

25. This most surprising posture by the CLR1 is not only bluntly ignoring the unequivocal communications addressed to them by the Defence, but it is also an indication that CLR1 appears to have failed to take any measures to verify the Defence’s allegations with regards to [REDACTED].

26. Indeed, on 23 May 2022, the Defence through *inter partes* correspondence notified the CLR1 that [REDACTED].³³

27. The CLR1 responded that [REDACTED].³⁴

28. On 31 may 2022, the Defence requested further information [REDACTED].³⁵

²⁵ [ICC-01/14-01/18-1498-Conf-Exp](#), para. 38.

²⁶ The report relied upon by the CLR1 dates from July 2017.

²⁷ See for example *RFI*, « RCA: le gouvernement interpellé sur un contrat attribué à la société Al Madina », 30 November 2019, < <https://www.rfi.fr/fr/afrique/20191130-centrafrique-deputes-interpellent-gouvernement-contrat-almadina> > (consulted on 26 July 2022); *Radio Ndeke Luka* « Centrafrique : tarifs différentiels pour la carte nationale d'identité ? », 6 May 2022, < <https://www.radiondekeluka.org/actualites/societe/38628-centrafrique-tarifs-differentiels-pour-la-carte-nationale-d-identite.html> > (consulted on 26 July 2022).

²⁸ See [CAR-D29-0015-0029](#).

²⁹ See Email from the Defence to the Chamber on 2 June 2022, at 13.22.

³⁰ See [REDACTED].

³¹ [ICC-01/14-01/18-1498-Conf-Exp](#), para. 34.

³² [ICC-01/14-01/18-1498-Conf-Exp](#), para. 34.

³³ Email from the Defence to the CLR1 sent on 23 May 2022, at 12.59.

³⁴ Email from the CLR1 to the Defence sent on 24 May 2022, at 17.15.

29. On 10 June 2022, the CLR1 indicated that [REDACTED].³⁶
30. No further correspondence as to CLR1's inquiry into the matter of [REDACTED] was received to date.
31. Further, [REDACTED]³⁷ [REDACTED]³⁸ [REDACTED].
32. Finally, when notified of the Request, the CLR1 were further informed [REDACTED].³⁹ [REDACTED]⁴⁰ [REDACTED].
33. In light of this, the CLR1 cannot in the same breath [REDACTED]⁴¹ and repeatedly qualifying the Defence concerns as "purely speculative."⁴²
34. The fact that the Defence's concerns could be proved to be unfounded – despite the information it received and the evidence adduced at trial – does not discharge the CLR1 of verifying [REDACTED]. Not only did the CLR1 specifically told the Defence it would look into the matter, but also, the Defence considers that any officer of the court should ensure the integrity of the proceedings [REDACTED].

C. The issue of the CLR1's reliance on the number of alleged former child soldiers admitted to participate in the proceedings

35. The Defence takes note that there are now 243 former child soldier victims admitted to participate in the proceedings as indicated in the Response.⁴³

³⁵ Email from the Defence to the CLR1 sent on 31 May 2022, at 17.59.

³⁶ Email from the CLR1 to the Defence sent on 10 June 2022, at 16.51.

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [ICC-01/14-01/18-1478-Conf-Exp-AnxB](#).

⁴⁰ [REDACTED].

⁴¹ [ICC-01/14-01/18-1498-Conf-Exp](#), para. 34.

⁴² [ICC-01/14-01/18-1498-Conf-Exp](#), para. 3.

⁴³ [ICC-01/14-01/18-1498-Conf-Exp](#), para. 27.

36. This number was not otherwise available to the Defence.
37. The latest public redacted version of the Registry report indicated 161 former child soldier victims admitted to participate,⁴⁴ prior to which the other registry reports indicated a number of 73 in April 2021,⁴⁵ 87 in August 2021,⁴⁶ and 133 in December 2021.⁴⁷
38. Also, the Defence has yet not been made privy to the estimations initially made by the Registry as to how many former child soldiers victims were expected to be eligible to participate in the proceedings.⁴⁸
39. Finally, considering the charges against Mr. Yekatom⁴⁹ and the evidence in the case, the Defence was genuine in submitting that it *expected* the number of former child soldier victims admitted to participate to remain low, and is surprised of this sudden increase following the last Registry report which is casting yet another concern as to the admission process of participating victim.

CONFIDENTIALITY

40. This current request is filed on a confidential *ex parte* basis corresponding to the classification of the Request and the Response. A public redacted version will be filed forthwith.

⁴⁴ [ICC-01/14-01/18-1356-Red](#), para. 18.

⁴⁵ [ICC-01/14-01/18-952](#), para. 22.

⁴⁶ [ICC-01/14-01/18-1085](#), para. 22.

⁴⁷ [ICC-01/14-01/18-1209](#), para. 19.

⁴⁸ [ICC-01/14-01/18-470-Conf-AnxIII-Red](#), para. 12.

⁴⁹ See [ICC-01/14-01/18-723-Conf](#), paras. 483-487 where the Prosecution did not ascertain an estimated number of alleged child soldiers under Count 29 except for the demobilisation ceremony in Pissa where it argues that there were “at least 15 children under the age of 15 years at the time of their demobilisation.”

RELIEF SOUGHT

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

GRANT the Request.

RESPECTFULLY SUBMITTED ON THIS 3rd DAY OF OCTOBER 2022

A handwritten signature in blue ink, appearing to read 'Mylène Dimitri'.

Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands