

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23 December 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

**Yekatom Defence Response to the “Common Legal Representatives’
request to establish a procedure for informing crime-based witnesses
about the possibility to apply to participate in the proceedings as victims”,
ICC-01/14-01/18-1698, 13 December 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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INTRODUCTION

1. The Defence for Mr. Yekatom (“Defence”) hereby responds to the Common Legal Representatives of the Victims of Other Crimes and the Common Legal Representative of the Victims Former Child Soldiers (“CLR”) request to establish a procedure for informing crime-based witnesses about the possibility to apply to participate in the proceedings as victims (“Request”).¹
2. The Defence does not oppose the CLR Request, however, should it be granted, the Defence suggests the following amendments: i) any victim’s application form generated by a witness should be immediately provided to the Prosecution; and, ii) for upcoming witnesses, information about the possibility to become participating victims should be done at the earliest opportunity before their testimony.

PROCEDURAL HISTORY

3. On 13 September 2019, Pre-Trial Chamber II issued its “Decision on Motion for Disclosure of Witnesses with Dual Status” which indicated that “the Prosecutor must obtain and provide the Defence with the victim application forms of dual status victim-witness individuals”.²
4. On 10 November 2020, the Prosecution filed its final List of Witnesses, divided in several categories, including categories for crime base witnesses.³
5. On 13 December 2022, the CLR filed its request to establish a procedure for informing crime-based witnesses about the possibility to apply to participate in the proceedings as victims.⁴

¹ [ICC-01/14-01/18-1698](#).

² [ICC-01/14-01/18-339](#), para. 11.

³ [ICC-01/14-01/18-724](#) and its annex ICC-01/14-01/18-724-Conf-AnxA.

⁴ [ICC-01/14-01/18-1698](#).

SUBMISSIONS

6. The Defence does not oppose the CLRV Request, it however submits in the present response amendments to the procedure suggested by the CLRV. The first amendment relates to the provision of any new victim's application form generated by witnesses to the Prosecution and the Defence (I). The second amendment relates as to when a crime-based witness who has yet to testify should be informed of their right to become a participating victim (II).

I. On the provision to the Defence and Prosecution of any new victim application form

7. The Defence recalls that on 13 September 2019, Pre-Trial Chamber II considered that "victim application forms of dual status victim-witness individuals may contain exculpatory information or information material to the Defence", recalled that "pursuant to article 54(1)(a) of the Statute, the Prosecutor has an obligation to investigate incriminating and exonerating circumstances equally" and concluded that "in order to properly discharge her statutory obligations, the Prosecutor must obtain and provide the Defence with the victim application forms of dual status victim-witness individuals".⁵

8. The presence of exonerating information or information material to the preparation of the Defence in victim application forms has concretely materialised in the present case. Indeed, the Chamber previously found that the Prosecution violated its disclosure obligation by not disclosing to the Defence a complete victim application form in light of its content.⁶ The Chamber also found that information contained in victim application form, such as the identity of intermediaries, was material to the preparation of the Defence pursuant to Rule 77 of the Rules.⁷

⁵ [ICC-01/14-01/18-339](#), para. 11.

⁶ [ICC-01/14-01/18-1566-Red-Corr](#), paras 5-7.

⁷ [ICC-01/14-01/18-1578-Red](#), paras 28-29.

9. In light of the important information that victim's application forms may contain, it is submitted that the procedure suggested by the CLRV should be amended to ensure that the rights of Mr. Yekatom are fully respected. Should the CLRV procedure be adopted, the Defence requests that the Chamber include an order for the Registry to immediately disclose to the Prosecution, upon reception and without delay, un-redacted versions of victim's application form completed by a witness. Due to the advancement of the proceedings, an emphasis should also be made on the necessary swift review and disclosure of all victim's application forms of witnesses by the Prosecution to the Defence, with any redaction applied if necessary.⁸

II. On the information of witnesses who are yet to testify

10. In its Request the CLRV suggests that for upcoming crime-based witnesses who may qualify as victims "the Presiding Judge inform them, immediately after completion of their testimony, of the possibility to apply as victims in the proceedings".⁹
11. The Defence recalls that on 10 November 2020 the Prosecution notified the Parties and Participants of its Final List of Witnesses. This list classified witnesses in diverse categories, including that of "crime-based", and included for each witness a summary of their expected testimony.¹⁰ Moreover, as acknowledged to some extent by the CLRV, "the harm personally suffered by crime-based witnesses can be already anticipated from the account provided in their written statements";¹¹ it can also be noted that in those written statements the Prosecution informed their witnesses about the existence of the Victims'

⁸ See [ICC-01/14-01/18-339](#), paras 10, 12.

⁹ [ICC-01/14-01/18-1698](#), para. 28.

¹⁰ See ICC-01/14-01/18-724-Conf-AnxA.

¹¹ [ICC-01/14-01/18-1698](#), para. 19.

Participation and Reparation Section (“VPRS”) and of the possibility to receive reparations.¹²

12. In light of the above, the Defence argues that CLRV’s assertion that “the extent of victimisation suffered only becomes fully apparent when they are asked specific questions during their testimony”¹³ is not universal for all witnesses. The suggested CLRV’s procedure to the effect that the Presiding Judge would inform witnesses about the possibility to apply to participate as victims in the proceedings only after their testimony is deficient. Indeed, this proposal by the CLRV would not allow the Defence to be in possession of any victim’s application form of dual status witnesses who are yet to testify until the end of the Prosecution’s case.
13. However, as developed in the previous section, victim’s application forms may contain information that is either exonerating or material for the preparation of the defence. Should such information be present, their possession by the Defence at the time of its examination of the dual status victim-witness is crucial in order to ensure the full respect of Mr. Yekatom’s right to examine witnesses against him. It is also in the interest of justice, and of the truth-seeking function of the Chamber, that collection of any victim’s application form of upcoming witnesses to be conducted as soon as possible, and preferably before the testimony of said witnesses.
14. Further, the proposed amendment would be in the interests of expeditiousness and economy. Should exculpatory and/or material information contained in a victim’s application form only come into the possession of the Defence after the conclusion of a witness’s testimony, this could give rise to the need for the

¹² See as an example P-1823 : CAR-OTP-2063-0369-R02, para. 45; see also P-1528 : CAR-OTP-2048-0757-R05, para. 69 : “I was informed that individuals, who according to the judges, qualify as victims will be entitled to participate in future Court proceedings and potentially to receive reparations. I was informed of the existence of the Victims' Participation and Reparation Section and its function, as well as of the procedure for applications. I consent to my personal data being shared with the Victims' Participation and Reparation Section.”

¹³ [ICC-01/14-01/18-1698](#), para. 19.

witness to be recalled for further examination on the basis of this information. In the same vein, the CLRV's proposed procedure effectively envisages provision of information that, as highlighted by PTC II, is potentially material and/or exculpatory, on a rolling basis, up to the conclusion of the testimony of the last *viva voce* Prosecution witness. Again, providing such information at such an advanced stage of the proceedings may very well result in delays to the conclusion of the Prosecution's presentation of evidence, should this information give rise to the need for urgent defence investigations. Adopting the proposed amendment would minimise the risks of such avoidable delays, entailed by the CLR-proposed procedure.

15. The Defence stresses that it does not oppose a witness being exceptionally informed after his or her testimony of their right to apply as a participating victim should new information arise during the hearing. However, when it is predictable that a witness may benefit from dual-status, they should be informed at the earliest opportunity.
16. Consequently, as the CLRV is already in possession of relevant and detailed information on the upcoming witnesses who may qualify as participating victims, the Defence proposes that the CLRV suggested procedure be amended. The Defence requests, in any procedure that would be put in place, the Chamber to i) order an immediate *bona fide* review by CLRV of the witnesses who are yet to testify, for the purposes of identifying any remaining potential dual-status victim-witnesses; ii) order CLRV to transmit the list of potential upcoming witnesses that would qualify as victims to VPRS; iii) order VPRS to liaise with the selected upcoming witnesses to inform them about the possibility to apply as participating victims; and, iv) direct VPRS to complete the victim's application form as soon as possible and, in any event, at the latest during the reading of all previous statements by the witness during the familiarisation process.

RELIEF SOUGHT

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

AMEND any procedure set in place pursuant to the CLRV Request with the amendments suggested in paragraphs 9 and 16; and

ISSUE the orders set out in paragraph 16 of this response.

RESPECTFULLY SUBMITTED ON THIS 23rd DAY OF DECEMBER 2022



Me Mylène Dimitri
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