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**International
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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**

Public

Public Redacted Version of the “Response of the Common Legal Representative of the Former Child Soldiers to the ‘Yekatom Defence Request for disclosure of specific material and information related to Count 29 in possession of the Registry’” (No. ICC-01/14-01/18-1983-Conf, dated 17 July 2023)

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative”) hereby files his response to the “Yekatom Defence Request for disclosure of specific material and information related to Count 29 in possession of the Registry” (the “Defence Request” or the “Request”).¹

2. At the outset, the Legal Representative takes issue with the fact that while seeking access to his clients’ application forms, the Defence for Mr Yekatom (the “Yekatom Defence” or the “Defence”) did not include the Legal Representative in the relevant *inter partes* consultations. As a matter of good practice and courtesy, the Defence should have first raised its request with the Legal Representative. Instead, the Defence addressed the issue with the Prosecution and the VPRS without informing the Legal Representative, and in breach of both the A-B-C victims’ participation scheme and the disclosure regime as adopted in the present case.

3. With regard to the merits of the Defence Request, the Legal Representative submits that it is ill-founded and should be dismissed in its entirety. There is no legal basis for the VPRS to transmit to either the Prosecution or the Defence the application forms of the participating victims, except the ones with dual status. In addition, the Defence fails to show how the sought information is material for its preparation or its disclosure to the Defence is in the interest of justice. On the contrary, the Request runs against the victims’ participation scheme as adopted by Trial Chamber V (the “Chamber”) in the present proceedings and is infringing upon the Court’s duty to ensure the safety, security, well-being, dignity and privacy of victims.

II. PROCEDURAL BACKGROUND

4. On 23 June 2022, the Yekatom Defence submitted a request to amend the victims’ application procedure adopted by the Chamber, asking for “*the transmission*

¹ See the “Yekatom Defence Request for disclosure of specific material and information related to Count 29 in possession of the Registry”, [No. ICC-01/14-01/18-1959-Conf](#), 4 July 2023. A public redacted version was filed on 2 November 2023 as [No. ICC-01/14-01/18-1959-Red](#) (the “Defence Request”).

by the Registry of all Group A victims applications of alleged former child soldiers admitted to participate in the proceedings".²

5. On 5 July 2022, the Legal Representative filed his response to said request,³ to which the Defence was authorised to reply.⁴

6. On 27 September 2022, the Chamber issued the "Decision on the Yekatom Defence Request for an Amendment of the Victim Application Procedure", rejecting the Defence application in full.⁵

7. On 9 March 2023, the Defence filed another request for disclosure to the Prosecution of any information in possession of the Registry in relation to Count 29,⁶

² See the "Yekatom Defence Request for the Amendment of the Victim Application Procedure", [No. ICC-01/14-01/18-1478-Conf-Exp](#), 23 June 2022, with confidential and *ex parte* annex A ", [No. ICC-01/14-01/18-1478-Conf-Exp-AnxA](#) and confidential *ex parte* annex B, [No. ICC-01/14-01/18-1478-Conf-Exp-AnxB](#), only available to the Legal Representative, the Registry and the Defence. A confidential redacted version, [No. ICC-01/14-01/18-1478-Conf-Red](#), and a public redacted version, [No. ICC-01/14-01/18-1478-Red2](#) were filed on 24 June 2022.

³ See 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'", [No. ICC-01/14-01/18-1498-Conf-Red](#), 5 July 2022. A public redacted version, [No. ICC-01/14-01/18-1498-Red](#), was filed on 4 October 2022.

⁴ See the "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", [No. ICC-01/14-01/18-1539-Red](#), 3 October 2022. See also 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' (Trial Chamber V, Single Judge), [No. ICC-01/14-01/18-1532-Conf-Exp](#), 28 July 2022; and the "Public Redacted Version of 'Yekatom Defence Request for Leave to 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-ConfExp', 7 July 2022", [No. ICC-01/14-01/18-1500-Red](#), 7 July 2022.

⁵ See the "Decision on the Yekatom Defence Request for an Amendment of the Victim Application Procedure" (Trial Chamber V), [No. ICC-01/14-01/18-1586-Red](#), 27 September 2022.

⁶ See the "Public Redacted Version of "Yekatom Defence request for disclosure of any information in possession of the Registry of [REDACTED]", 19 January 2023, ICC-01/14-01/18-1728-Conf-Exp", [No. ICC-01/14-01/18-1728-Red](#), 21 February 2023.

which the Chamber partially rejected.⁷ The Chamber recalled that [REDACTED].⁸ The Chamber further found that [REDACTED].⁹

8. On 11 April 2023, the Registry filed its Seventh Periodic Report on the Victims Admitted to Participate in the Proceedings,¹⁰ confirming that to date, a total of 286 victims of the crime of enlistment of children under the age of 15 years and their use to participate actively in hostilities have been admitted as participating victims at the trial stage.¹¹

9. On 4 July 2023, the Defence filed its Request.¹²

III. CLASSIFICATION

10. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the present submissions are filed confidential following the classification chosen by the Defence. A public redacted version will be filed in due course.

IV. SUBMISSIONS

1. Preliminary observations

11. The Defence requests the Chamber to order the VPRS to transmit to the Prosecution the victim application forms of all the former child soldiers admitted to participate in the proceedings, who provided a document signed by [REDACTED] and who were in contact when filling-in the forms with [REDACTED], so that the Prosecution can then *disclose* the sought information¹³ and assess whether the identity of any of the concerned victims is disclosable under rule 77 of the Rules of Procedure

⁷ See the "Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29" (Trial Chamber V), [No. ICC-01/14-01/18-1828-Conf](#), 4 April 2023.

⁸ *Idem*, para. 3.

⁹ *Ibid.*

¹⁰ See the "Seventh Periodic Report on the Victims Admitted to Participate in the Proceedings", [No. ICC-01/14-01/18-1835](#), 11 April 2023.

¹¹ *Idem*, para. 19.

¹² See the Defence Request, *supra* note 1.

¹³ *Idem*, paras. 24 and 30.

and Evidence (the “Rules”).¹⁴ The Defence indicates that it had previously addressed the same request to the Prosecution and the VPRS, and that both declined it.¹⁵

12. By engaging in *inter partes* consultations with the Prosecution and the VPRS, the Defence effectively sought access to information linked to the identity of all concerned participating victims as contained in their application forms. The Legal Representative takes issue with the fact that when seeking access to his clients’ application forms, the Defence did not include the Legal Representative in the relevant *inter partes* consultations.

13. In fact, the Defence deliberately attempted to access said application forms without even informing the Legal Representative. Had the Defence succeeded, the Legal Representative would have learnt – only *post factum* – about the transmission of his clients’ applications to the Prosecution and their subsequent disclosure to the Defence. The involvement of the Legal Representative in the *inter partes* consultations was necessary: not only because they directly pertained to the interests of his clients, but also because such involvement would have permitted to solve the issue without seeking the Chamber’s intervention – which is the *rationale* of any *inter partes* consultations. As a matter of good practice and courtesy, the Defence should have first raised its request with the Legal Representative. Instead, the Defence addressed the Prosecution and the VPRS without informing the Legal Representative, and in breach of both the A-B-C victims’ participation scheme and the disclosure regime as adopted in the present case. In this regard, rather than inviting the Legal Representative, the Defence included in its *inter partes* consultations with the Prosecution and the VPRS, the Defence for Mr Ngaïssona although the latter is not concerned by Count 29.

¹⁴ *Idem*, para. 45.

¹⁵ *Idem*, paras. 8-11.

2. Observations on the Defence Request

14. The Legal Representative submits that the Defence Request is ill-founded and must be dismissed in its entirety.

A. There is no legal basis for the VPRS to transmit either to the Prosecution or the Defence the application forms of the participating victims, except the ones with dual status

15. As attempted before with *inter partes* consultations, the Defence requests that the VPRS transmits the sought information and the application forms of the concerned victims to the Prosecution. However, it fails to explain on which legal basis this transmission should be made. Indeed, under the A-B-C victims' participation scheme as established in the present proceedings, neither the Prosecution nor the Defence are meant to be provided with the application forms under categories A and B, but only with those under category C to be able to make their respective observations.¹⁶ In so far as the application forms of the participating victims fall with category A, they shall not be transmitted to the Parties – except for a very limited number of dual status individuals. Unless ordered by the Chamber and only under compelling reasons, there is no legal basis for the VPRS to provide either the Prosecution or the Defence with the application forms of the participating victims other than with dual status. As previously recalled by the Chamber, [REDACTED].¹⁷

16. The Defence requests the transmission to the Prosecution not only of the sought information but also of the application forms of the concerned victims. Once transmitted, said applications would be in the Prosecution possession with the ensuing obligation to disclose to the Defence any other information deemed as falling under rule 77 of the Rules. This would go far beyond the provision of limited information related to [REDACTED] and the involvement of [REDACTED] in the filling-in of

¹⁶ See, *inter alia*, the "Decision on the Yekatom Defence Request for an Amendment of the Victim Application Procedure", *supra* note 5, para. 8.

¹⁷ See the "Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29", *supra* note 7, para. 3.

victim application forms. In addition, the Defence expressly envisages the possibility for the Prosecution to disclose the identity of victims – following the review of said applications.¹⁸

17. Accordingly, with the present Request, the Defence is attempting to circumvent the A-B-C victims' participation regime and undermine its scope and objective, namely: to balance the interest of the Defence in reviewing, and if deemed necessary contesting the admission of victims to participate, against the safety, physical and psychological well-being, dignity and privacy of the victims – to ensure that victim participation is meaningful and the proceedings are fair.¹⁹

B. The sought information and application forms are not material for the Defence's preparation

18. The Legal Representative recalls the constant jurisprudence of the Court according to which victims' application forms (i) are "*administrative in nature*" and collected to "*provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings pursuant to Rule 89 of the Rules*",²⁰ as such, (ii) they are "*not provided for the purpose of allowing the defence to gather information that may be important for the preparation of its case*".²¹

¹⁸ See the Defence Request, *supra* note 1, para. 45.

¹⁹ See the "Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled "Decision establishing the principles applicable to victims' applications for participation" (Appeals Chamber), [No. ICC-01/14-01/21-171 OA2](#), 14 September 2021 (the "*Said Judgment*"), para. 81.

²⁰ See the "Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011" (Trial Chamber III), [No. ICC-01/05-01/08-2012-Red](#), 9 February 2012, para. 100. See also the "Decision on matters relating to the participation of victims during the trial" (Trial Chamber VI), [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 14, referring to Situation in Uganda, "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, 10 August 2007" (Pre-Trial Chamber II), [No. ICC-02/04-101](#), para. 13. See also the "Trial Judgment" (Trial Chamber IX), [No. ICC-02/04-01/15-1762-Red](#), 4 February 2021, para. 424.

²¹ See the *Said Judgment*, *supra* note 19, para. 51.

19. Despite its assurances regarding the limited nature of the sought information and the non-infringement of the Court's obligation to ensure the security of victims²² - the Defence, with its allegations against [REDACTED] and [REDACTED], is in fact attempting to investigate on the participating victims²³ regardless whether they are dual status individuals or not. The Defence speculates as to hypothetical fraudulent intentions, which however it failed to demonstrate. The Defence argues in this regard that [REDACTED] who signed the "*attestation de reconnaissance*" for certain participating victims would have intentionally "*fabricated*" said documents.²⁴ To support its claim, the Defence refers to the testimony of [REDACTED].²⁵ However, said testimony merely tells that [REDACTED].²⁶

20. To prove the alleged fraud scheme put in place by [REDACTED], the Defence notes that the respective "*attestation de reconnaissance*" were signed a few days apart.²⁷ However, rather than going to the proof of an alleged plan to fabricate documents, it appears that the dates point to the period of time during which the respective victim applications forms were collected.

21. It is not clear from the Defence's submissions, which conduct has to be considered fraudulent in this context. As previously noted by the Legal Representative, the process of establishing identification documents in the CAR is essentially declaratory-based because of the absence of a systematic and centralised countrywide database,²⁸ and this along with a number of other factors inevitably

²² See the Defence Request, *supra* note 1, paras. 41 and 43-44. See also article 68(1) of the Statute.

²³ *Idem*, para. 36 and 44: "*the Defence does not oppose the application of redactions, at this stage, to this information*" (Emphasis added). See also the "Public Redacted Version of" Yekatom Defence request for disclosure of any information in possession of the Registry of [REDACTED]", 19 January 2023, ICC-01/14-01/18-1728-Conf-Exp", *supra* note 6, and the related "Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29", *supra* note 7.

²⁴ See the Defence Request, *supra* note 1, paras. 15-24.

²⁵ *Idem*, para. 18.

²⁶ *Ibid.* See also [REDACTED].

²⁷ See the Defence Request, *supra* note 1, para. 19.

²⁸ See 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'", *supra* note 3, paras. 37-39.

contribute to the proliferation of identification documents bearing different personal data.²⁹

22. As previously noted, identification documents are often lacking in the CAR³⁰ and – since victims are required to provide such a document for the purpose of applying to participate in the proceedings before the Court – they take the necessary steps to obtain a valid document only when they are in the very process of filling in their application and in the area where they reside. Contrary to the Defence’s allegations in this regard, the similarities in the referred documents, far from proving a fraud scheme are rather illustrative of the way identification documents are obtained in the CAR: on a declaratory basis, [REDACTED].³¹

23. At the time, [REDACTED], a/65196/19 and [REDACTED] all resided in the same area and were all assisted in filling-in their application forms during the same period. For the purpose of the application process they all sought identification documents before a local authority which was accessible to them. Incidentally, the Legal Representative recalls that a/65196/19 application to participate was rejected by the Chamber as falling outside of the temporal scope of the case,³² said individual is therefore not a victim participating in the proceedings, and it is submitted that the Defence’s request for access to personal data of this individual must be rejected for this reason alone.

24. The Defence alleges that [REDACTED] would have been involved in fabricating documents for the participating victims³³ and that P-1974, P-2018, P-2580 and P-2638 would all have “engaged in misconducts of varying degrees of gravity”.³⁴ However, it falls short to explain how the accuracy of identification documents related

²⁹ *Idem*, paras. 37-41.

³⁰ *Idem*, paras. 37-38.

³¹ [REDACTED]

³² See the “Decision on Victims’ Participation in Trial Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-738](#), 23 November 2020, para. 47.

³³ See the Defence Request, *supra* note 1, paras. 15-23.

³⁴ *Idem*, paras. 25-30.

to participating victims who are not dual status individuals, or the process of collecting their applications forms, can go to prove or disprove the charges against Mr Yekatom under Count 29, or more generally how said documents are relevant in that regard.

25. As recalled above,³⁵ “unlike evidence collected to support or challenge the substantive criminal charges in the case, the application forms are administrative in nature and [...] are intended to serve a limited purpose: to provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings pursuant to rule 89 of the Rules”,³⁶ and that they are “not provided for the purpose of allowing the defence to gather information that may be important for the preparation of its case”.³⁷ While the Defence is free to lead its investigation in the way it deems more appropriate, that should not involve infringing on the victims’ participation regime as adopted by the Chamber. The Defence repeated attempts to lead a fishing expedition through the bulk of victim application forms are inapposite and should not be permitted.

26. The Defence’s argument on the necessity to access the sought information in light of the reparations proceedings³⁸ is also misguided and in any case, premature at this stage. Indeed, the reparations phase would only be triggered by a conviction, and thus at the present stage there is no ground to scrutinise the victims’ dossiers against any standard higher than a *prima facie* one, on the purported interests of future hypothetical reparations proceedings.

27. In this regard, the Legal Representative respectfully draws the attention of the Chamber on the impact such recurring requests from the Defence have on the well-being of his clients, further exacerbating their anxiety and fear. All former child soldiers participating in the proceedings are vulnerable individuals and they have all

³⁵ See *supra*, para. 18.

³⁶ See, *inter alia*, the “Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011”, *supra* note 20, paras. 100-101.

³⁷ See the *Said* Judgment, *supra* note 19, para. 51.

³⁸ See the Defence Request, *supra* note 1, paras. 37-38.

expressed concerns in relation to their security, with particular regard to the provision of their identifying information to the Defence.³⁹

28. In light of the above, the Legal Representative submits that the Defence fails to show how the sought information is material for its preparation, or how its disclosure to the Defence is in the interest of justice. The Defence Request not only fails to find any support in the Court's legal framework and jurisprudence, but also runs against the victims' participation scheme and the disclosure regime as adopted by the Chamber in the present proceedings and the Court's duty to ensure the safety, security, well-being, dignity and privacy of the victims.

V. CONCLUSION

29. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to reject the Defence Request in its entirety.



Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 6th day of November 2023
At The Hague, The Netherlands

³⁹ See 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'", *supra* note 3, para. 15.