



Original: English

No. ICC-01/14-01/18

Date: 17 May 2024

Date of original: 23 February 2024

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-EDOUARD
NGAISSONA***

Public redacted version of

**Decision on the CLRV1 and Yekatom Defence Requests following the VWU
Report on V45-0001 and V45-0002**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2) and (6)(f), 67(1), 68(1) and 69(7) of the Rome Statute (the ‘Statute’), Rules 17, 18, 64(2) and 87 of the Rules of Procedure and Evidence, Regulation 24(5) of the Regulations of the Court, and Regulation 96 of the Regulations of the Registry, issues this ‘Decision on the CLRV1 and Yekatom Defence Requests following the VWU Report on V45-0001 and V45-0002’.

I. Procedural history

1. From 21 to 27 September 2023, dual status witnesses V45-0001 and V45-0002 testified before the Chamber (together, the ‘Witnesses’).¹
2. On 8 January 2024, following an order by the Single Judge,² the Victims and Witnesses Unit (the ‘VWU’) filed a report containing information about V45-0001 and V45-0002 (the ‘Report’). It informed the Chamber that, within the scope of its activities related to the risk assessment of the Witnesses and their inclusion in the Court’s protection programme (the ‘ICCPP’), ‘it has recently come across material of a potentially evidentiary nature in the case, notably, information concerning [the Witnesses’] identities’.³
3. In particular, the VWU indicated that it checked the Witnesses’ phones with their prior authorisation ‘in order to make an analysis of any indication of a threat’. In doing so, it found ‘several indications’ suggesting that V45-0001’s ‘real identity

¹ See **V45-0001**: Transcripts of hearings, 21 September 2023, ICC-01/14-01/18-T-245-CONF-ENG; 22 September 2023, ICC-01/14-01/18-T-246-CONF-ENG; **V45-0002**: Transcripts of hearings, 26 September 2023, ICC-01/14-01/18-T-247-CONF-ENG; 27 September 2023, ICC-01/14-01/18-T-248-CONF-ENG. See also Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence, 3 August 2023, ICC-01/14-01/18-2016-Conf (public redacted version notified on 6 September 2023, ICC-01/14-01/18-2016-Red), para. 30 and p. 22.

² The VWU sought the Chamber’s guidance regarding material it had discovered on the phones of the Witnesses, given that, as a neutral entity, ‘it is not supposed to disclose any material collected for the purpose of conducting its security assessments to any party or participant that can be used as evidence or to become part of any *inter partes* disputes’ (email from the VWU to the Chamber, 15 December 2023, at 16:26). The Single Judge, noting that the identity of V45-0001 and V45-0002 is disputed and taking into account the materiality of this issue, instructed the VWU to share this information with the parties and participants on the record (email from the Chamber, 21 December 2023, at 17:09).

³ Registry’s submission regarding material obtained by VWU in the course of the execution of its mandate, ICC-01/14-01/18-2290-Conf, paras 3, 6-7.

is [REDACTED] and not [REDACTED] as introduced to the VWU and the Chamber'. As to V45-0002, [REDACTED].⁴

4. However, the VWU noted that it cannot 'definitively state that a forensic examination of the two phones by a competent authority may not disclose further information that may be relevant to this matter', and it thus 'stands ready, upon order of the Chamber, to either keep the phones for a limited period of time or hand them over to a competent authority for forensic investigation'.⁵
5. On 16 January 2024, the Common Legal Representative of the Former Child Soldiers (the 'CLRV1') responded to the Report (the 'CLRV1 Response to the Report'). He requests that the Chamber (i) find the information collected by the VWU (the 'Information') inadmissible evidence under Article 69(7) of the Statute (the 'Article 69(7) Request'); and (ii) order the VWU to complete as a matter of urgency its security assessment of the Witnesses, and to implement protective measures as appropriate (the 'ICCPP Request').⁶
6. On 22 January 2024,⁷ the VWU filed its observations on the CLRV1 Response to the Report (the 'VWU Observations').⁸
7. On the same day, the Yekatom Defence responded to the CLRV1 Response to the Report (the 'Yekatom Defence Response to the CLRV1'). It takes no position on the ICCPP Request, but opposes the Article 69(7) Request. In addition, it

⁴ Report, ICC-01/14-01/18-2290-Conf, paras 9-14.

⁵ Report, ICC-01/14-01/18-2290-Conf, paras 14-15.

⁶ Response of the Common Legal Representative of the Former Child Soldiers to the Registry's Submissions (No. ICC-01/14-01/18-2290-Conf, dated 8 January 2024) and Urgent Request for an order to the VWU to complete the security risk assessment with respect to Witnesses CAR-V45-P-0001 and CAR-V45-P-0002 and implement protective measures as appropriate, ICC-01/14-01/18-2305-Conf-Exp, confidential *ex parte*, only available to the CLRV1 and the VWU (confidential redacted version notified the next day, ICC-01/14-01/18-2305-Conf-Red), paras 2, 46.

⁷ The Single Judge instructed the VWU to file observations on the CLRV1 Response to the Report by 22 January 2024 and shortened the participants' deadline to respond by the same date (email from the Chamber, 17 January 2024, at 12:13).

⁸ Victims and Witnesses Unit's Observations on the "Response of the Common Legal Representative of the Former Child Soldiers to the Registry's Submissions (No. ICC-01/14-01/18-2290-Conf, dated 8 January 2024) and Urgent Request for an order to the VWU to complete the security risk assessment with respect to Witnesses CAR-V45-P-0001 and CAR-V45-P-0002 and implement protective measures as appropriate" (ICC-01/14-01/18-2305-Conf), ICC-01/14-01/18-2320-Conf-Exp, confidential *ex parte*, only available to the CLRV1 (confidential redacted version notified on 26 January 2024, ICC-01/14-01/18-2320-Conf-Red).

requests that the Chamber order the forensic examination of the Witnesses' phones, 'as proposed by the VWU', and that all information discovered during said examination, relating to the matter of the identities of the Witnesses [REDACTED], be disclosed to the Yekatom Defence (the 'Forensic Examination Request').⁹

8. On 25 January 2024,¹⁰ the Ngaïssona Defence informed the Chamber that it does not intend to file a response to the Forensic Examination Request, and defers to the Chamber's discretion.¹¹
9. On 30 January 2024, the CLRV1 opposed the Forensic Examination Request (the 'CLRV1 Response to the Forensic Examination Request').¹²
10. On the same day, the Prosecution opposed the Forensic Examination Request (the 'Prosecution Response to the Forensic Examination Request').¹³
11. On 5 February 2024, the Yekatom Defence requested the Chamber's leave to reply to the Prosecution Response to the Forensic Examination Request (the 'Yekatom Defence Request for Leave to Reply').¹⁴
12. On the next day, the Prosecution opposed the Yekatom Defence Request for Leave to Reply (the 'Prosecution Response to the Yekatom Defence Request for Leave to Reply').¹⁵

⁹ Yekatom Defence Response to CLRV1 Response of 17 January 2024 to VWU Submissions (ICC-01/14-01/18-2305-Conf-Red), ICC-01/14-01/18-2321-Conf, paras 2-4, 29.

¹⁰ Following a request by the CLRV1, the Single Judge instructed the participants to file responses, if any, to the Forensic Examination Request by 30 January 2024 (respectively, email from the CLRV1, 23 January 2024, at 17:50; email from the Chamber, 24 January 2024, at 12:21).

¹¹ Email from the Ngaïssona Defence, 25 January 2024, at 21:18.

¹² Response of the Common Legal Representative of the Former Child Soldiers to the Defence's Request for a forensic examination of the CLR1 Witnesses' phones (No. ICC-01/14-01/18-2321-Conf), ICC-01/14-01/18-2335-Conf, paras 2, 29.

¹³ Prosecution's Response to the Yekatom Defence's request for the forensic examination of V45-P-0001's and V45-P-0002's mobile phones (ICC-01/14-01/18-2321), ICC-01/14-01/18-2336-Conf (notified on 31 January 2024), paras 1, 13.

¹⁴ Yekatom Defence Request for Leave to Reply to the "Prosecution's Response to the Yekatom Defence's request for the forensic examination of V45-P-0001's and V45-P-0002's mobile phones (ICC-01/14-01/18-2321)", 31 January 2024, ICC-01/14-01/18-2336-Conf, ICC-01/14-01/18-2345-Conf, paras 1, 7.

¹⁵ Prosecution Response to the "Yekatom Defence Request for Leave to Reply to the Prosecution's Response to the Yekatom Defence's request for the forensic examination of V45-P-0001's and V45-P-

II. Analysis

A. The Yekatom Defence Request for Leave to Reply

13. The Yekatom Defence seeks to address four ‘discrete new issues’ in response to the Prosecution’s submissions that the Forensic Examination Request fails to advance a sufficient legal basis and that it seeks to engage in further investigative actions that are collateral to these proceedings.¹⁶
14. The Chamber agrees that the Yekatom Defence could not have reasonably anticipated the issues it seeks to address. Nevertheless, the Chamber is not persuaded that the proposed reply would assist it in adjudicating the Forensic Examination Request. The Chamber does not require submissions on the legal basis for the forensic examination of the Witnesses’ phones or whether such investigative measures would be collateral to the proceedings. The Chamber therefore rejects the Yekatom Defence Request for Leave to Reply.

B. The Article 69(7) Request

15. At the outset, the Chamber finds the Article 69(7) Request to be premature, in light of the fact that no request for submission of the Information has been presented.
16. In any event, the Chamber is of the view that the first limb of Article 69(7) of the Statute is not met. Notably, it does not consider that the VWU breached its statutory duty or violated the Witnesses’ right to correspondence and private life,¹⁷ given that (i) the Witnesses specifically consented to the VWU accessing their phones,¹⁸ (ii) inquiring into the Witnesses’ identities was necessary and fell

0002’s mobile phones (ICC-01/14-01/18-2321), 31 January 2024, ICC-01/14-01/18-2336-Conf’ (ICC-01/14-01/18-2343-Conf), ICC-01/14-01/18-2347-Conf, paras 1, 13.

¹⁶ Yekatom Defence Request for Leave to Reply, ICC-01/14-01/18-2345-Conf, paras 2-5, 7. *See also* Prosecution Response to the Forensic Examination Request, ICC-01/14-01/18-2336-Conf, paras 1, 4-9, 12.

¹⁷ *See* CLRV1 Response to the Report, ICC-01/14-01/18-2305-Conf-Red, paras 2, 21-31.

¹⁸ *See* VWU Observations, ICC-01/14-01/18-2320-Conf-Exp, para. 5.

within its mandate under Regulation 96(3)(a) of the Regulations of the Registry;¹⁹ and (iii) the VWU acted in accordance with an order from the Single Judge.²⁰

17. In light of the above, the Chamber rejects the Article 69(7) Request.

C. The ICCPP Request

18. The Chamber notes the VWU's submissions that a decision on the Witnesses' referral will be issued shortly.²¹ It therefore does not consider it necessary to entertain the ICCPP Request, and rejects it.

D. The Forensic Examination Request

19. The Chamber takes note of the Yekatom Defence's submissions that a forensic examination of the Witnesses' phones would be in the interests of justice and the preservation of the integrity of the proceedings.²² The Chamber is also mindful of its truth-seeking function, as well as the rights of the accused and the privacy of the Witnesses.
20. However, after balancing the interests at stake and in light of the Information, the Chamber sees no need to further examine the Witnesses' phones. Accordingly, the Forensic Examination Request is rejected.
21. Furthermore, bearing in mind the reasoning above in paragraph 16 and in the absence of any procedural bars, and in order to enable the Chamber to rely on the Information in the context of its judgment deliberations, the Chamber considers it appropriate to recognise the formal submission of the Report *proprio motu*.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Yekatom Defence Request for Leave to Reply;

REJECTS the Article 69(7) Request;

¹⁹ See also Report, ICC-01/14-01/18-2290-Conf, para. 10; VWU Observations, ICC-01/14-01/18-2320-Conf-Exp, para. 9; email from the VWU to the Chamber and the CLR V1, 27 October 2023, at 15:04.

²⁰ See email from the Chamber, 21 December 2023, at 17:09.

²¹ VWU Observations, ICC-01/14-01/18-2320-Conf-Exp, paras 6-13.

²² Yekatom Defence Response to the CLR V1, ICC-01/14-01/18-2321-Conf, para. 23.

REJECTS the ICCPP Request;

REJECTS the Forensic Examination Request;

DECIDES to recognise as formally submitted the Report, ICC-01/14-01/18-2290-Conf. It further instructs the Registry to assign an ERN to the Report and to reflect the Chamber's decision on JEM; and

ORDERS the VWU, the CLRV1, the Yekatom Defence and the Prosecution to file public redacted versions of the Report, ICC-01/14-01/18-2290-Conf; the CLRV1 Response to the Report, ICC-01/14-01/18-2305-Conf; the VWU Observations, ICC-01/14-01/18-2320-Conf-Red; the Yekatom Defence Response to the CLRV1, ICC-01/14-01/18-2321-Conf; the CLRV1 Response to the Forensic Examination Request, ICC-01/14-01/18-2335-Conf; the Prosecution Response to the Forensic Examination Request, ICC-01/14-01/18-2336-Conf; the Yekatom Defence Request for Leave to Reply, ICC-01/14-01/18-2345-Conf; and the Prosecution Response to the Yekatom Defence Request for Leave to Reply, ICC-01/14-01/18-2347-Conf, respectively, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.

Judge Péter Kovács

Judge Bertram Schmitt

Presiding Judge

Judge Chang-ho Chung

Dated 17 May 2024

At The Hague, The Netherlands