

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **23 June 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**

**With Confidential *Ex Parte* Annex A et B only available to the Yekatom  
Defence, the Registry and the Common Legal Representatives of Victims of the  
Former Child Soldiers**

**Public Redacted Version of 'Yekatom Defence Request for the Amendment  
of the Victim Application Procedure', 23 June 2022, ICC-01/14-01/18-1478-  
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:**

**The Office of the Prosecutor**

Mr Karim Asad Ahmad Khan  
Mr Kweku Vanderpuye

**Counsel for Mr. Yekatom**

Ms Mylène Dimitri  
Mr Thomas Hannis  
Ms Anta Guissé  
Ms Yousra Lamqaddam

**Counsel for Mr. Ngaïssona**

Mr Geert-Jan Alexander Knoops  
Mr Richard Omissé-Namkeamaï  
Ms Marie-Hélène Proulx

**Legal Representatives of Victims**

Mr Dmytro Suprun

**Legal Representatives of Applicants**

Mr Abdou Dangabo Moussa  
Ms Elisabeth Rabesandratana  
Mr Yaré Fall  
Ms Marie-Edith Douzima-Lawson  
Ms Paolina Massidda

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation / Reparation)**

**The Office of Public Counsel for  
Victims**

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

Mr Xavier-Jean Keïta

**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**

## **INTRODUCTION**

1. The Defence for Mr. Alfred Rombhot Yekatom (“Defence”) hereby respectfully requests Trial Chamber V (“Chamber”) to amend Section E of the victim application procedure adopted by Pre-Trial Chamber II in its “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”<sup>1</sup> and maintained by the Chamber in its “Order Scheduling First Status Conference”<sup>2</sup> in this case as to order the transmission by the Registry of Group A victims applications of alleged former child soldiers admitted to participate in the proceedings.
2. The Defence contends that in light of the highly contested nature of the evidence related to the age of alleged child soldiers in the course of this Trial, serious concerns remain on the reliability of their applications as participating victims in these proceedings. The transmission of victims’ applications of alleged former child soldiers who have been admitted to participate in the proceedings and classified in Group A under the A-B-C Approach would allow the Defence to exercise its right to provide proper observations and contest their status as victims in this Trial when deemed necessary.

## **PROCEDURAL HISTORY**

3. On 5 March 2019, the Pre-Trial Chamber II established the procedure for the processing of victims’ applications opting for the A-B-C Approach.<sup>3</sup>
4. On 19 March 2020, the Chamber confirmed that the victim application procedure adopted by Pre-Trial Chamber II would remain in place.<sup>4</sup>

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<sup>1</sup> [ICC-01/14-01/18-141](#), paras 39-45.

<sup>2</sup> [ICC-01/14-01/18-459](#), para. 8(iv).

<sup>3</sup> [ICC-01/14-01/18-141](#), paras 29-38.

<sup>4</sup> [ICC-01/14-01/18-459](#), para. 8(iv).

5. On 11 December 2020, the Chamber issued its “Second Decision on Victims’ Participation in Trial Proceedings (Group A)”<sup>5</sup> in which it directed the Registry to report every four months on different issues regarding the admission of victims to participate in the proceeding, including the number of participating victims and the number of victims represented by each team of Common Legal Representatives of Victims (“CLRV”).
6. On 11 April 2022, the Registry transmitted its latest report, the public redacted version of the “Fourth Periodic Report on the Victims Admitted to Participate in the Proceedings” (“Registry’s Report”).<sup>6</sup>

### **APPLICABLE LAW**

7. Rule 89(1) of the Rules of Procedure and Evidence (“Rules”) states:

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. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

8. Under Rule 91 of the Rules, a Trial Chamber has the discretion to modify a previous ruling under Rule 89 of the Rules.
9. Article 68(1) of the Rome Statute (“Statute”) states:

The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health,

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<sup>5</sup> [ICC-01/14-01/18-765](#), para. 9.

<sup>6</sup> [ICC-01/14-01/18-1356-Red](#).

and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial

10. Any decision related to the process of victim's applications "must be case-specific, based on objective information and the result of a proper balancing of all of the interests at stake"<sup>7</sup>. The Chamber's decision cannot be prejudicial to the accused or inconsistent with his rights and has to be coherent with the Chamber's obligation to ensure the fairness and expeditiousness of the proceedings.<sup>8</sup>

## **SUBMISSIONS**

11. On 14 September 2021, the Appeals Chamber in its "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"<sup>9</sup> in the *Said* case ruled on the compatibility of the A-B-C Approach with Rule 89(1) of the Rules and the statutory legal framework.
12. The right of the Parties to be provided with copies of victims' applications is limited by the Court's obligation to protect the safety, physical and psychological well-being, dignity and privacy of victims under Article 68 of the Statute. As stated by the Appeal Chamber:

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<sup>7</sup> *Prosecutor v Mahamat Said Abdel Kani*, 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 Judgment, 14 September 2021, [ICC-01/14-01/21-171](#), ("Judgment on the appeal of Mr Mahamat Said Abdel Kani"), para. 65.

<sup>8</sup> *Id.*, para. 64, 82.

<sup>9</sup> *Id.*

One way for the Court to comply with the requirement of transmission under rule 89(1) of the Rules while observing its duty to protect victims under article 68(1) of the Statute, “would be for the Registry to transmit the applications to the parties in redacted form, after having carried out an individual assessment of each victim application.”<sup>10</sup>

13. The Appeals Chamber considered that “in cases where the number of victims’ applications is expected to remain low, the interest of the suspect or accused in receiving copies thereof and replying thereto may outweigh the benefits gained by the implementation of the A-B-C Approach.”<sup>11</sup>
14. The Defence current request is strictly circumscribed to victims’ applications of alleged former child soldiers who have been admitted to participate in the proceedings and classified in the Group A under the A-B-C Approach.
15. Based on the Registry’s latest Report in April 2022, a total of 161 alleged 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, including 83 alleged victims previously admitted to participate at pre-trial stage.<sup>12</sup>
16. The number of alleged child soldiers victims in this case is expected to remain low at this stage of the procedures as we are reaching the end of the Prosecution’s presentation evidence, which is the exceptional cut-off date set by the Chamber for transmission of victim applications to participate at trial.<sup>13</sup> Although the Chamber previously held that the crime charged under Count 29 involves a high number of victims<sup>14</sup>, there a significant lower number of alleged

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<sup>10</sup> *Prosecutor v Mahamat Said Abdel Kani*, Judgment on the appeal of Mr Mahamat Said Abdel Kani, para. 59.

<sup>11</sup> *Prosecutor v Mahamat Said Abdel Kani*, Judgment on the appeal of Mr Mahamat Said Abdel Kani, para. 82.

<sup>12</sup> [ICC-01/14-01/18-1356-Red](#), para. 18.

<sup>13</sup> [ICC-01/14-01/18-589](#), para.20.

<sup>14</sup> [ICC-01/14-01/18-585](#), para. 32.

victims in this case in comparison to other cases. In *Lubanga* case, “2,451 and 5,938 children [were found to] have served in the UPC’s ranks in the relevant time frame.”<sup>15</sup> Similarly, in the *Ntaganda* case, 284 former child soldiers were admitted as participating victims.<sup>16</sup> The number of potential alleged victims involved in our case is expected to remain small as it does not revolve around the allegation of systematic enrollment of child soldiers.<sup>17</sup>

17. The conduct of individual assessment of their applications for the purpose of transmission to the Parties would not undermine meaningful victim participation and affect the expeditiousness of the proceedings in this case as the number of alleged victims involved remains low and strictly limited.<sup>18</sup>
18. The Defence respectfully submits that current circumstances in these ongoing proceedings warrant the exceptional amendment of the victim application procedure adopted regarding the transmission of victim applications of alleged child soldiers classified in the Group A. Serious concerns were raised on [REDACTED] and documents relied on to establish the age of alleged child soldiers that were materially older at the time of the events<sup>19</sup>. These elements are crucial to the assessment of their status as participating victims in this Trial.
19. The Defence request is case-specific and based on objective information, namely the following: the finding of birth certificates of at least four victims admitted to participate in the proceedings that do not qualify as being under 15 years old

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<sup>15</sup> *Prosecutor v Lubanga*, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, 18 July 2019, [ICC-01/04-01/06-3466-Red](#), para. 119.

<sup>16</sup> *Prosecutor v Bosco Ntaganda*, Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), para. 234.

<sup>17</sup> See [ICC-01/14-01/18-723-Conf](#), para. 487. The Prosecution in its Trial Brief claims that 153 children from Mr Yekatom’s group were demobilized during a demobilisation ceremony in PISSA. See also ICC-01/14-01/18-T-131-CONF-FRA 46:10-14. [REDACTED].

<sup>18</sup> *Prosecutor v Mahamat Said Abdel Kani*, Judgment on the appeal of Mr Mahamat Said Abdel Kani, paras. 60, 62, 70.

<sup>19</sup> See ICC-01/14-01/18-T-133-CONF-FRA ET, 73 :9-11.

during the period covered by the charges<sup>20</sup>; the baptism certificate, the baptism receipt and the baptism registry demonstrating [REDACTED], was 21 years old during the period covered by the charges<sup>21</sup>; and [REDACTED] CLRV of the Former Child Soldiers (“CLRV1”). Thus, the Defence submits respectfully that the proposed amendment is case specific, based on objective information and that the balance of the interests at stake militates in favor of granting the Defence’s request.

20. Through an email exchange with the CLRV1 following a clarification request (Annex A)<sup>22</sup>, it was revealed that four individuals who were inadvertently in contact with the Defence were represented by the CLRV1. However, prior to being informed that these four individuals were in fact dual status witnesses, i.e. clients of CLRV1 and Defence witnesses, the Defence obtained from them their respective birth certificates.<sup>23</sup> All four birth certificates indicate that these individuals had between 15 years old and 21 years old during the period covered by the charges. Therefore, this would disqualify them from being admitted as former child soldiers victims. The admission in the proceedings of these individuals as participating victims raises doubts on the admission of other ineligible victims.

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<sup>20</sup> [REDACTED].

<sup>21</sup> [CAR-D29-0013-0100](#); [CAR-D29-0013-0098](#); [CAR-D29-0014-0068](#). [REDACTED].

<sup>22</sup> Email from the Common Legal Representative for Victims of the Former Child Soldiers to the Yekatom Defence on 24 May 2022, at 17.15.

<sup>23</sup> [REDACTED].



21. Additionally, the Defence was also informed that [REDACTED].<sup>24</sup> [REDACTED] (Annex B).<sup>25</sup> [REDACTED].<sup>26</sup> [REDACTED].<sup>27</sup> [REDACTED].<sup>28</sup> [REDACTED].<sup>29</sup>
22. The extent [REDACTED] in the process of collecting victims' applications of alleged child soldiers and the reliance [REDACTED] to establish their age are crucial information to assess their applications to participate in these proceedings, and thus for the Defence to make consequent observations on their status in this Trial.
23. The Defence submits respectfully that it is in the interest of Mr. Yekatom's rights to a fair trial to have access to these applications to be able to challenge their status as participating victims, as well as in the interest of justice to ensure the non-fraudulent nature of the admission process of victim in the proceedings. Although applications of victims are "a procedural mechanism to participate in proceedings" unlike evidence usable to challenge or support substantive criminal charges<sup>30</sup>, they remain significant throughout the proceedings. The possibility for these admitted victims to be called before the Chamber by the CLRV1 during the proceedings further militates for the transmission of their applications. To date, the Defence has spent substantial resources in gathering birth certificates, which is a highly time-consuming investigative exercise, with the aim of contesting the status of individuals who have or will be presented in

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<sup>24</sup> Email from the Common Legal Representative for Victims for Child Soldiers to the Yekatom Defence on 24 May 2022, at 17.15.

<sup>25</sup> [REDACTED].

<sup>26</sup> ICC-01/14-01/18-T-133-CONF-FRA ET, 72:29-73:8.

<sup>27</sup> Email from the Common Legal Representative for Victims for Child Soldiers to the Yekatom Defence on 24 May 2022, at 17.15.

<sup>28</sup> ICC-01/14-01/18-T-133-CONF-FRA ET, 68:14-74:4 ; [CAR-OTP-2128-1203-R03](#).

<sup>29</sup> ICC-01/14-01/18-T-133-CONF-FRA ET, 75:13-15.

<sup>30</sup> *Prosecutor v Mahamat Said Abdel Kani*, Judgment on the appeal of Mr Mahamat Said Abdel Kani, paras. 50, 51. See also *The Prosecutor v. Bosco Ntaganda* Decision on victims' participation in trial proceedings, 6 February 2015, [ICC-01/04-02/06-449](#), para. 36. See also *The Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, [ICC-01/05-01/08-2012-Red](#), para. 100.

this case as 'child soldiers'. If however, statements of CLRV1 witnesses are only disclosed shortly in advance of their appearance - for instance, as occurred in the *Al Hassan* proceedings, few weeks in advance - the Defence would be unable to meaningfully investigate these individuals.<sup>31</sup> As such, being granted access at this stage to the applications for victims of CLRV1 would allow Mr. Yekatom to properly and meaningfully exercise his right to have the time and facilities to contest their evidence if and when they are called as witnesses by CLRV1. On the contrary, their appearance before the Chamber without the Defence being able to meaningfully investigate on their highly contested status as alleged victims beforehand, i.e., their age and collect documents, would be prejudicial to the fairness of these proceedings.

24. The Defence further submits that the fact that there are individuals falsely claiming to be 'child soldiers', presumably with the aim of securing undue financial and/or otherwise material benefit, negatively impacts the integrity of the proceedings as a whole. More broadly, this conduct - which amounts to nothing less than fraud - is detrimental to the work of the Court, as well as its standing. The Court's reputation, especially in the CAR, where the Court has undertaken extensive outreach efforts, would suffer should word of this fraudulent activity spread, which it inevitably would. While these broader considerations are not necessarily directly relevant to Mr Yekatom's interests, it is respectfully submitted that they are nonetheless relevant considerations for the Chamber, and militate in favour of granting the request.
25. Lastly, the Defence acknowledges the Chamber's obligation to ensure safety, physical and psychological well-being, dignity and privacy of victims. The Defence remains vigilant to comply rigorously with the "Protocol on the

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<sup>31</sup> See *Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Annex A to the Decision on the conduct of proceedings, 6 May 2020, [ICC-01/12-01/18-789-AnxA](#), para. 24.

Handling of Confidential Information and Contact with Witness”<sup>32</sup> and accordantly communicated with the CLRV1 on every occasion raising doubts on contacts with possible represented victims.<sup>33</sup>

## **CONCLUSION**

26. In light of the above, the Defence believes that the requirements set by the Appeals Chamber in the *Said* case are met. The Defence respectfully requests the transmission of Group A victims applications of alleged former child soldiers already admitted to participate in the proceedings, as well as any eventual application falling under the same qualification on a rolling basis in the week following the Chamber’s decision to admit their applications.

## **CONFIDENTIALITY**

27. The Request is filed on a confidential *ex parte* basis as it refers to information related to the Defence’s strategy and confidential information communicated by the CLRV1. For the same reasons, the Annex A and B are filed on a *ex parte* basis. Further, pursuant to Article 27 of the Code of Professional Conduct for counsel, the Annex A should be restricted as it refers to confidential correspondence between counsels. A confidential redacted version and a public redacted version of the Request will be filed forthwith.

## **RELIEF SOUGHT**

28. In light of the above, the Defence respectfully requests Trial Chamber V to:
- AMEND** section E “Transmission and Procedure for the Admission of Applications” of the victim application procedure established in the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” to order the Registry to transmit on a rolling basis all applications

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<sup>32</sup> [ICC-01/14-01/18-677-Anx5](#).

<sup>33</sup> Yekatom Defence emails of 3 November 2021 at 17.33, 23 May 2022 12:59, and 31 May 2022 17:59.

classified in Group A of alleged victims of the crime of enlistment of children under the age of 15 years and their use to participate actively in hostilities in the week following the Chamber's decision admitting their applications; and

**ORDER** the Registry to transmit to the Defence all 161 victims applications of alleged child soldiers already admitted to participate in the proceedings classified in Group A.

**RESPECTFULLY SUBMITTED ON THIS 23th DAY OF JUNE 2022**



Me Mylène Dimitri  
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands