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

**Date: 8 July 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 YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public**

**Decision on the Yekatom Defence Request to Amend the  
Witness Familiarisation Protocol**

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

**Counsel for Patrice-Edouard Ngaïssona**

Geert-Jan Alexander Knoops  
Richard Omissé-Namkeamai  
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**

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**Registrar**

Peter Lewis

**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 Ngaissona*, having regard to Articles 64(2) and (3)(a) of the Rome Statute, issues this ‘Decision on the Yekatom Defence Request to Amend the Witness Familiarisation Protocol’.

## **I. Procedural history**

1. On 8 October 2020, the Chamber adopted the ‘Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial’ (the ‘Protocol’), which stipulates in paragraph 88 that the Victims and Witnesses Unit (the ‘VWU’) ‘will keep record of the dates when the [witness’s prior] statements were provided to the Unit, made available to the witness and, if applicable, returned to the party’ (the ‘Practice’).<sup>1</sup>
2. On 23 September 2021, following a request by the Yekatom Defence,<sup>2</sup> the Chamber clarified that the Protocol does not require the VWU to provide the participants with information related to the dates and times when the statements are provided to the witness in the context of the familiarisation process (the ‘Clarification’).<sup>3</sup>
3. On 30 May 2022, during P-2475’s testimony, the Chamber became aware of a deviation from the Practice in the context of P-2475’s witness familiarisation (the ‘Incident’).<sup>4</sup> On 3 June 2022, as instructed by the Chamber,<sup>5</sup> the VWU provided its explanations for the Incident, acknowledging that a ‘clear deviation’ from the Protocol had occurred during P-2475’s familiarisation.<sup>6</sup> On 6 June 2022, the Chamber expressed its concerns in this regard and noted that it expects the VWU to review its internal workings, in order to ensure strict adherence with the Protocol in place and to improve its communication with the Chamber going

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<sup>1</sup> Annex 1 to the Decision on Protocols at Trial, ICC-01/14-01/18-677-Anx1.

<sup>2</sup> Email from the Yekatom Defence, 14 September 2021, at 15:56. *See also* the Prosecution’s response sent as per email on 15 September 2021, at 14:12.

<sup>3</sup> Email from the Chamber, 23 September 2021, at 16:58.

<sup>4</sup> Transcript of hearing, ICC-01/14-01/18-T-131-CONF-FRA, p. 34, line 5 - p. 36, line 22.

<sup>5</sup> Email from the Chamber, 2 June 2022, at 14:02.

<sup>6</sup> Email from the VWU, 3 June 2022, at 11:33.

forward.<sup>7</sup> On the same day, the VWU apologised and confirmed that the departure from the Practice was an isolated and unauthorised incident and that steps have been taken to avoid such errors in the future.<sup>8</sup>

4. On 10 June 2022, the Yekatom Defence requested that the Chamber (i) amend paragraph 88 of the Protocol (the ‘Amendment Request’), and (ii) order the VWU to ‘review records of provision of statement to witnesses and report any deviation from the [...] Protocol’ (the ‘Reporting Request’ and, jointly, the ‘Request’).<sup>9</sup>
5. On 20 June 2022, the Ngaïssona Defence indicated that it fully joins and supports the Request.<sup>10</sup>
6. On 22 June 2022, the Office of the Prosecutor (the ‘Prosecution’) responded to the Request, requesting the Chamber to reject it.<sup>11</sup>
7. On the same day, the Registry filed<sup>12</sup> its observations to the Request (the ‘Registry Observations’).<sup>13</sup> It does not oppose the Amendment Request and proposes an additional amendment to the paragraph in question.<sup>14</sup> With respect to the Reporting Request, it submits that to its knowledge ‘no further anomalies were reported’ and that it is ‘currently reviewing the information available in relation to the witnesses who have already testified’.<sup>15</sup>

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<sup>7</sup> Email from the Chamber, 6 June 2022, at 10:27.

<sup>8</sup> Email from the VWU, 6 June 2022, at 12:53.

<sup>9</sup> Yekatom Defence Request for Amendment of the “Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial” (ICC-01/14-01/18-677-Anx1) and related matters, ICC-01/14-01/18-1451, paras 1-3, 27.

<sup>10</sup> Email from the Ngaïssona Defence, 20 June 2022, at 19:09.

<sup>11</sup> Prosecution’s Response to “Yekatom Defence Request for Amendment of the “Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial” (ICC-01/14-01/18-677-Anx1) and related matters” (ICC-01/14-01/18-1451), 10 June 2022, ICC-01/14-01/18-1472 (the ‘Prosecution Response’), paras 1, 12.

<sup>12</sup> After the VWU provided its observations on the Request by email (*see* email from the VWU, 15 June 2022, at 18:29), the Single Judge instructed it to file them, and any further observations it may have on the matter, on the record, by 23 June 2022 (*see* email from the Chamber, 16 June 2022, at 14:51).

<sup>13</sup> Registry’s Observations on the “Yekatom Defence Request for Amendment of the ‘Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial’ (ICC-01/14-01/18-677-Anx1) and related matters” (ICC- 01/14-01/18-1451), ICC-01/14-01/18-1473-Conf.

<sup>14</sup> Registry Observations, ICC-01/14-01/18-1473-Conf, para. 12.

<sup>15</sup> Registry Observations, ICC-01/14-01/18-1473-Conf, para. 13.

8. On 23 June 2022, the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly, the ‘CLR V’) asked the Chamber to reject the Request.<sup>16</sup>

## II. Analysis

9. The Chamber notes that the Request essentially seeks to re-litigate the Clarification in light of the Incident.
10. While the Chamber agrees that the Incident was unfortunate, it does not consider that it necessitates reconsideration of the Clarification or an amendment of the Protocol. First, the Chamber notes that paragraph 3 of the Protocol<sup>17</sup> already obliges the VWU to follow the Protocol with all witnesses and – conversely – to request or at least inform the Chamber of any deviation therefrom. Second, the Chamber notes the isolated and exceptional nature of the Incident. The VWU acknowledged the deviation from the Practice, apologised and explained the exceptional circumstances leading to it.<sup>18</sup> Third, the Chamber notes that the VWU confirmed that no further deviations from the Practice are currently known, but that it is nonetheless currently reviewing its records in relation to witnesses who already testified.<sup>19</sup> Fourth, the Chamber notes that the VWU is reviewing its internal workings with regard to the Practice, in order to prevent any future recurrence of the Incident.<sup>20</sup>
11. With regard to the Yekatom Defence’s arguments that P-2475’s account was no longer spontaneous but rather based on ‘memorisation’,<sup>21</sup> the Chamber further

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<sup>16</sup> Common Legal Representatives’ Joint Response to the “Yekatom Defence Request for Amendment of the ‘Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial’ (ICC-01/14-01/18-677-Anx1) and related matters”, ICC-01/14-01/18-1476 (the ‘CLR V Response’), para. 28.

<sup>17</sup> This paragraph reads: ‘Unless ordered otherwise, the VWU will apply the protocol to all witnesses called to testify before the Court’ (emphasis added).

<sup>18</sup> Emails from the VWU, 3 June 2022, at 11:33 and 6 June 2022, at 12:53.

<sup>19</sup> Registry Observations, ICC-01/14-01/18-1473-Conf, para. 13.

<sup>20</sup> Email from the VWU, 6 June 2022, at 12:53; Registry Observations, ICC-01/14-01/18-1473-Conf, para. 13.

<sup>21</sup> Request, ICC-01/14-01/18-1451, paras 15-17.

notes that the Yekatom Defence was able to test the witness on this and other matters during its examination,<sup>22</sup> and in fact did so extensively.<sup>23</sup>

12. For these reasons, the Chamber sees no reason to amend the Protocol. It is confident that the VWU will adhere to the Practice, and bring any deviations therefrom promptly to the attention of the Chamber and the participants. Accordingly, it rejects the Amendment Request.
13. As regards the Reporting Request, the Chamber notes that the VWU is already in the process of reviewing the information available in relation to the witnesses who have already testified. The Chamber trusts that the VWU will report to the Chamber and the participants if further deviations to the Practice are found. In the absence of specific indications that the Protocol has not been complied with in relation to particular witnesses, the Chamber does not consider any further action necessary at this point.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Request; and

**ORDERS** the Registry to file a public redacted version of the Registry Observations, ICC-01/14-01/18-1473-Conf, within one week of notification of the present decision.

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



**Judge Bertram Schmitt**

**Presiding Judge**



**Judge Péter Kovács**



**Judge Chang-ho Chung**

Dated 8 July 2022

At The Hague, The Netherlands

<sup>22</sup> See also Prosecution Response, ICC-01/14-01/18-1472, paras 6, 9; CLRV Response, ICC-01/14-01/18-1476, para. 24.

<sup>23</sup> See transcripts of hearings, 30 May 2022, ICC-01/14-01/18-T-131-CONF-ENG, p. 28, line 19 *et seq*; 31 May 2022, ICC-01/14-01/18-T-132-CONF-ENG and 1 June 2022, ICC-01/14-01/18-T-133-CONF-FR, p. 3, line 14 to p. 75, line 24.