



Original: English

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

Date: 3 October 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Prosecution’s Response to “Confidential Redacted
Version of ‘Yekatom Defence Request for the Amendment of the Victim
Application Procedure’, (ICC-01/14-01/18-1478),
24 June 2022””, ICC-01/14-01/18-1501, 7 July 2022**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby responds to the YEKATOM Defence Request for the Amendment of the Victim Application Procedure (“Request”).¹ The Request is unsubstantiated and should be dismissed.

2. The Request advances no grounds warranting the amendment of the victim application procedure (“Procedure”). *First*, the Procedure does not require modification as it is both in conformity with the Court’s legal framework and the most efficient way of processing victims’ applications. *Second*, the Defence has failed to establish that the current victim application procedure is prejudicial to, or inconsistent with, the rights of the accused to a fair trial. *Third*, the requirements set by the Appeals Chamber in the *Said* case are not met.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this document is filed as “confidential”, as it responds to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. The victim application procedure does not require modification

4. The Procedure does not require amendment in this case. *First*, designating the Registry to assess victim applications based on clear guidelines outlined by the Chamber, which retains ultimate authority over the procedure,² is the most efficient

¹ ICC-01/14-01/18-1478-Conf-Red.

² Chambers Practice Manual (2022), para. 96(x), “Barring a clear and material error in the Registry’s assessment of Groups A and B, the Chamber taking into account the Registry’s assessments will ultimately decide. While the Registry’s conclusions may be of assistance, it is for the Chamber to ultimately authorise or reject an applicant to participate in the proceedings”.

and appropriate way to process them.³ The Registry, as opposed to the Defence, is well-versed in carrying out these kinds of assessments regularly, such as in the *Ntaganda*,⁴ *Al Hassan*,⁵ *Ali Kushayb*,⁶ and *Said*⁷ cases. Moreover, the Procedure is consistent with the applicable law before the Court⁸ and is unambiguously reflected in the Chambers Practice Manual.⁹

5. *Second*, modifying the Procedure would undermine judicial economy. It would unnecessarily duplicate the review and assessment of all alleged former child soldiers victim applications in Group A, and potentially require the Chamber to adjudicate mere disagreements or inconsistent views regarding these applications. This is unnecessary, as the assessments are already subject to the Chamber's oversight. Additionally, the current A-B-C system is more efficient, as it allows the Parties and the Chamber to focus on a limited number of applications – those that pose assessment problems – thereby saving valuable time and resources.

B. The Defence fails to establish that the Procedure is prejudicial or inconsistent with a fair trial

6. The Defence's argument that "[victims'] 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" is inapposite. The Procedure does not relate to questions pertaining to the guilt or innocence of the Accused. Instead, it only aims at determining whether the procedural status of 'victim' should be granted to

³ ICC-01/04-02/06-449, para. 32. *See also*, ICC-01/14-01/18-141, para. 45.

⁴ ICC-01/04-02/06-449, para. 25.

⁵ ICC-01/12-01/18-37-tENG, para. 60.

⁶ ICC-02/05-01/20-259, para. 34.

⁷ ICC-01/14-01/21-56.

⁸ ICC-01/14-01/21-171 OA2, paras. 83-84, ICC-01/04-02/06-449, para. 25, ICC-01/12-01/18-37-tENG, para. 60, ICC-02/05-01/20-259, para. 34.

⁹ Chambers Practice Manual (2022), para. 96.

applicants.¹⁰ Moreover, the Statute prescribes and limits the role of victims and their representatives in the proceedings, carefully balancing the relative interests and the fairness of the trial as a whole. Thus, as the Defence concedes, victim applications are a procedural mechanism to participate in proceedings,¹¹ not more. They are “not provided for the purpose of allowing the defence to gather information that may be important for the preparation of its case.”¹² The proposed amendment would effectively turn the Procedure into a discovery device, and establish an extra-regulatory threshold or hurdle — particularly, in view of article 68 considerations — operating to undermine the meaningful participation of victims in the Court’s proceedings.

C. The requirements set by the Appeals Chamber in the *Said* case are not met

7. Contrary to the Request¹³, the Appeals Chamber in the *Said* case did not set out any criteria for the modification of the Procedure. The Appeals Chamber held that:

“[i]n 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. In such cases, the safety and well-being of the victims may be more appropriately safeguarded by implementing necessary redactions to the victims’ applications prior to their transmission to the parties.”¹⁴

8. Even assuming *arguendo* that the Appeals Chamber had set out the criteria for the modification of the Procedure — which it did not — the Defence has failed to meet them or substantiate their application in this case. Moreover, contrary to the Request,¹⁵ the current number of alleged child soldier victims is 243, which is by no means a low

¹⁰ ICC-02/05-110, para. 6.

¹¹ Request, para. 23.

¹² ICC-01/14-01/21-171 OA2, para. 51.

¹³ Request, para. 26.

¹⁴ ICC-01/14-01/21-171 OA2, para. 82 (emphasis added).

¹⁵ Request, paras. 13-17.

figure.¹⁶ This figure is comparable to the 284 former child soldier victims admitted to participate in the *Ntaganda* case.¹⁷

9. Further, the Defence's contention that "the number of potential alleged [child soldier] victims involved in our case is expected to remain small as it does not revolve around the allegation of systematic enrolment of child soldiers",¹⁸ is unavailing. In citing the Prosecution's Trial Brief,¹⁹ the Defence's assertion is incorrectly predicated on the thesis that YEKATOM's demobilisation of 153 child soldiers in August 2014 somehow delimits the extent of the Anti-Balaka's victimisation of children. However, YEKATOM's participation in and contribution to the victimisation of children by the Anti-Balaka cannot be divorced from the practice of the group *as a whole* — hence, the significance of Alfred NGAYA's presence as a representative of the National Coordination at the August 2014 MBAIKI ceremony.²⁰ Moreover, the Defence's contention incorrectly presumes that the 153 children demobilised in 2014²¹ necessarily comprise the universe of children actually enlisted in YEKATOM's group within the charged period. The evidence in this case does not support that assumption. Rather, it demonstrates exactly the systematic nature of the Anti-Balaka's victimisation of children.²²

¹⁶ ICC-01/14-01/18-1391. *See also*, ICC-01/14-01/18-1498-Conf-Red, para. 27.

¹⁷ ICC-01/04-02/06-2659, para. 234.

¹⁸ Request, paras. 16.

¹⁹ *See* Request, paras. 16, fn. 17.

²⁰ CAR-OTP-2093-0010, at 0034, paras. 130, 134-139.

²¹ *See* CAR-OTP-2128-1373.

²² *See* ICC-01/14-01/18-T-139-CONF-FRA, p. 35-37 (P-1962 [REDACTED] a list of 300 children associated with the Anti-Balaka in BODA) , l. 22-22. *See also*, CAR-OTP-2075-0602 at 0632 ("Au total 2,807 enfants ont été démobilisés en 2014 (2158 garçons et 649 filles), et la majorité d'entre eux (84 pour cent provenaient des milices Anti-Balaka (2,354 Anti-Balaka, 439 ex-Seleka)"). *See also*, ICC-01/14-01/18-1428, paras. 16-18 and ICC-01/14-01/18-1346-Conf-Anx, p. 6-15, entries 1-15, p. 26, entries 2-3.

IV. CONCLUSION

10. For the above reasons, the Request should be rejected in its entirety.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 3rd day of September 2022

At The Hague, The Netherlands