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**No. ICC-01/14-01/18
Date: 30 October 2023**

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 Yekatom Defence's Request for Disclosure from the Registry

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

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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)(c) and (e), 67(2) and 68 of the Rome Statute (the ‘Statute’), and Rules 77, 81(1) and (4) and 84 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Yekatom Defence’s Request for Disclosure from the Registry’.

I. Procedural history

1. On 4 July 2023, the Yekatom Defence (the ‘Defence’) requests that the Chamber order the Victims Participation and Reparations Section (the ‘VPRS’) to provide certain information surrounding (i) the individuals admitted as participating victims of ‘the crime of enlistment of children under 15 years’ (the ‘Victims’) and (ii) the victim application form of applicant a/65196/19 (the ‘Application’) (the ‘Request’).¹ In this regard, it pointed out that the Registry indicated that there are a total of 285 Victims so far at the trial stage.²
2. As per the Request, the first part of the information sought from the VPRS concerns a person called [REDACTED] (the ‘Individual’), who may have signed a document titled ‘*attestation de reconnaissance*’ for certain Victims and applicant a/65196/19 (the ‘First Request’); the second part concerns the purported contact between certain witnesses [REDACTED] and the Victims (the ‘Second Request’).
3. The Defence further requests that the Chamber order the Office of the Prosecutor (the ‘Prosecution’) to assess and disclose the information sought above as per its statutory disclosure obligations.³

¹ Yekatom Defence Request for disclosure of specific material and information related to Count 29 in possession of the Registry, ICC-01/14-01/18-1959-Conf, paras 1, 24, 30.

² Request, ICC-01/14-01/18-1959-Conf, para. 7 *referring to* Sixth Periodic Report on the Victims Admitted to Participate in the Proceedings, 12 December 2022, ICC-01/14-01/18-1695 (with one confidential *ex parte* annex, available only to the Registry and the Common Legal Representatives of Victims, ICC-01/14-01/18-1695-Conf-Exp-Anx), para. 19.

³ Request, ICC-01/14-01/18-1959-Conf, p. 13.

4. On 17 July 2023, the Common Legal Representative of the Former Child Soldiers (the ‘CLR V1’) responded that the Request should be rejected in its entirety (the ‘Response’).⁴

II. Analysis

5. At the outset, the Chamber recalls that the disclosure regime established by the statutory framework is imposed on the Prosecution alone and not applicable to the Registry. It further recalls that a judicial order for the Registry to provide information to the participants on operational matters must remain exceptional and is discretionary in nature.⁵
6. The Chamber also recalls the applicable law in relation to the Prosecution’s disclosure obligations under Article 67(2) of the Statute and Rule 77 of the Rules, as well as the restrictions on disclosure pursuant to Rule 81(1) of the Rules.⁶ In particular, it recalls, as held by the Appeals Chamber, that the assessment of whether an object is material to the preparation of the defence will depend upon the specific circumstances of the case.⁷

a. The First Request

7. As part of the First Request, the Defence states that the Individual signed documents used as proofs of identity attached to the victim application forms of

⁴ 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”, ICC-01/14-01/18-1983-Conf.

⁵ Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29, 4 April 2023, ICC-01/14-01/18-1828-Conf (the ‘4 April 2023 Decision’), para. 3.

⁶ Decision on the Yekatom Defence Request for Disclosure, 9 May 2023, ICC-01/14-01/18-1862-Conf-Exp (confidential *ex parte*, only available to the Yekatom Defence, the Prosecution, and the Registry) (the ‘9 May 2023 Decision’), para. 3 *referring, inter alia*, to Decision on the Ngaïssona Defence Request for Disclosure of Reports related to Seizure of Digital Materials from P-0889, 30 May 2022, ICC-01/14-01/18-1438-Conf (public redacted version notified on 30 September 2022, ICC-01/14-01/18-1438-Red) (the ‘30 May 2022 Decision’), paras 6-9 *with references cited therein*; Decision on the Common Legal Representative of the Former Child Soldiers Request to Maintain Redactions to Identifying and Contact Information of Intermediaries mentioned in Victim Application Forms, 21 September 2022, ICC-01/14-01/18-1578-Conf (public redacted version notified the same day, ICC-01/14-01/18-1578-Red), paras 23-26 *with references cited therein*.

⁷ See 30 May 2022 Decision, ICC-01/14-01/18-1438-Red, para. 9 *with references cited therein*.

P-2582 and P-2620 (the ‘Dual Status Witnesses’).⁸ It adds that he may have also signed a similar document forming part of the Application.⁹

8. The Defence alleges that the Individual ‘created’ these documents for the purpose of establishing the identity of certain individuals who claim to have been part of Mr Yekatom’s group; and that these documents ‘contain suspicious elements that cast doubt on their reliability and veracity’.¹⁰
9. The Defence requests the Chamber to order the VPRS to:
 - (i) indicate how many of the 285 Victims ‘attach an identifying form signed by [the Individual]’;
 - (ii) provide to the Prosecution the victims’ application forms that are accompanied by ‘a document created by [the Individual] as identifying information’;
 - (iii) confirm that ‘the “*attestation de reconnaissance*” used in [the Application] was created by [the Individual]’; and
 - (iv) if it was, ‘provide a lesser redacted version of [the Application], with the name of [the Individual] visible’.¹¹
10. When arguing for the materiality of the information requested as part of the First Request, the Defence argues that the information is relevant ‘when it comes to appreciating the reliability and accuracy of information contained in the [victim application] forms, and more broadly to the evidence in the case’.¹² It further submits that the information requested from the VPRS would allow it to assess the extent to which the Individual provided documents to other alleged ‘child soldiers’ and ‘would advance the Defence’s investigations into the forgery of identification documents in relation to Count 29’.¹³ In particular, ‘the attestation

⁸ Request, ICC-01/14-01/18-1959-Conf, paras 15-24.

⁹ Request, ICC-01/14-01/18-1959-Conf, para. 21 *referring to* ICC-01/14-01/18-687-Conf-Anx7-Red.

¹⁰ Request, ICC-01/14-01/18-1959-Conf, para. 15, 18, 23; *see also* paras 16-17 where the Defence notes the differences in information contained in P-2620’s statement and the document signed by the Individual; and para. 19 where the Defence notes the differences between documents concerning P-2582.

¹¹ Request, ICC-01/14-01/18-1959-Conf, para. 24.

¹² Request, ICC-01/14-01/18-1959-Conf, para. 36.

¹³ Request, ICC-01/14-01/18-1959-Conf, para. 33.

from [the Individual] would indicate the geographical origins of the alleged child soldiers; and therefore, the number of attestations he has signed compared to the general number of participating victims will be an indication of numbers of participants [*sic*] victims supposedly originating from his village’.¹⁴

11. The Response states that 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 those of dual status witnesses.¹⁵ It further submits that the transmission of applications of Victims, other than dual status witnesses, would go far beyond the provision of limited information related to the Individual.¹⁶ It adds that the Request attempts to circumvent the A-B-C victim’s participation regime and undermine its scope and objective.¹⁷ The Response also states that the Defence is attempting to investigate the participating victims regardless of whether they are dual status witnesses or not and that it is speculating as to the fraudulent intentions of the Individual.¹⁸
12. The Chamber recalls that it is cognisant that the age of the alleged child soldiers, the alleged involvement of a certain intermediary in establishing contact with alleged child soldiers and the collection of their victim applications are contested matters in this case. However, it also recalls that the parties’ right to be provided with copies of victims’ applications is not absolute and that ‘victims’ applications are, in principle, not provided for the purpose of allowing the defence to gather information that may be important for the preparation of its case’.¹⁹
13. The Chamber is not persuaded that the information generally involving the Individual, as requested, warrants a judicial order to the Registry to provide information in this instance. It considers that the Defence’s allegation concerning the Individual appears to be speculative. This allegation, in itself, is not sufficient

¹⁴ Request, ICC-01/14-01/18-1959-Conf, para. 36.

¹⁵ Response, ICC-01/14-01/18-1983-Conf, paras 15-17.

¹⁶ Response, ICC-01/14-01/18-1983-Conf, para. 16.

¹⁷ Response, ICC-01/14-01/18-1983-Conf, para. 17.

¹⁸ Response, ICC-01/14-01/18-1983-Conf, para. 19; *see also* paras 20-24.

¹⁹ *See* Decision on the Yekatom Defence Request for an Amendment of the Victim Application Procedure, 27 September 2022, ICC-01/14-01/18-1586-Conf-Exp (public redacted version notified the same day, ICC-01/14-01/18-1586-Red) (the ‘Decision on Victim Application Procedure’), para. 15 *and references cited therein*.

to satisfy the exceptional nature of such an order at this stage. The Chamber also does not consider that it is necessary for the Defence to be provided with the requested victims' application forms simply to enable it to gather information which it considers to be important for its investigations. In this regard, the Chamber also bears in mind that the Defence is aware of the identity and purported location of the Individual should it wish to conduct further investigations, as necessary.

14. As regards the First Request concerning the Application, the Defence states that it suspects that the Individual also provided 'an identifying document' for this applicant²⁰ and therefore, requests confirmation from the VPRS to this effect and a lesser redacted version of the Application with the name of the Individual visible.²¹
15. The CLRV1 points out that the Application was rejected by the Chamber as falling outside the temporal scope of the case and the applicant is, therefore, not a victim participating in the proceedings and the 'Defence's request for access to personal data of this individual must be rejected for this reason alone'.²²
16. The Chamber notes that the Application was identified by the Registry as falling under 'Group C',²³ namely concerning an applicant for whom the Registry could not make a clear determination.²⁴ It further notes that the Application was then provided to the Defence with redactions to the identifying information contained therein, in accordance with the procedure for transmission of Group C applications to the Defence. The Chamber rejected the Application for

²⁰ Request, ICC-01/14-01/18-1959-Conf, para. 21.

²¹ Request, ICC-01/14-01/18-1959-Conf, para. 24.

²² Response, ICC-01/14-01/18-1983-Conf, para. 23.

²³ First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 19 October 2020, ICC-01/14-01/18-688 (with confidential annex), paras 27-30; Annex to the First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 19 October 2020, ICC-01/14-01/18-688-Conf-Anx, p. 4.

²⁴ Decision Establishing the Principles Applicable to Victims' Applications for Participation, 5 March 2019, ICC-01/14-01/18-141 (the 'Decision on Victim Participation'), para. 41 (i); *see also* Order Scheduling First Status Conference, 19 March 2020, ICC-01/14-01/18-459, para. 8.

participation in the present trial and therefore, this applicant is neither a participating victim, nor a witness in the present case.²⁵

17. The Chamber recalls that, in principle, the defence does not have a right to the identifying information contained in victim application forms that are rejected. This principle equally applies to the Application. However, the Chamber has assessed the contents of the Application in light of the particular circumstances of this case as well as the related information available to it during the course of the trial. In the view of the Chamber, the information contained in the Application might be material to the Yekatom Defence's investigations concerning Count 29. The Chamber also notes that the Yekatom Defence makes a specific and discrete request concerning this Application.
18. In light of the above and having regard to its obligations pursuant to Article 64(2) of the Statute, the Chamber exceptionally directs the VPRS to transmit the Application to the Prosecution without any redactions by 1 November 2023. The Chamber trusts that the Prosecution will expeditiously assess it and comply with its disclosure obligations, if any, applying redactions, as needed.
19. Accordingly, the Chamber partly grants the First Request.

B. The Second Request

20. The Second Request concerns four individuals 'linked' to [REDACTED], namely P-1974, P-2018, P-2580, and P-2638 (the 'Four Individuals'). The Defence alleges that the Four Individuals 'all engaged in misconduct of varying degrees of gravity, assisted in one way or another in collection of [victim application forms] in liaison with [the] VPRS'.²⁶ The Defence alleges that the involvement of the Four Individuals in the completion and/or collection of the victim application forms is relevant in the context of Count 29 concerning the crime of enlistment of children under the age of 15 years.²⁷

²⁵ Decision on Victims' Participation in Trial Proceedings, 23 November 2020, ICC-01/14-01/18-738, para. 47.

²⁶ Request, ICC-01/14-01/18-1959-Conf, para. 28; *see generally* paras 25-29.

²⁷ Request, ICC-01/14-01/18-1959-Conf, para. 29.

21. The Defence requests the Chamber to order the VPRS to:
- (ii) indicate ‘how many of the 285 [Victims] were in contact with either [of the Four Individuals] during the completion and/or collection of their victim’s application form’; and
 - (iii) provide these victim application forms, through the Prosecution, ‘with the identity of the victim, at this stage, redacted’.²⁸
22. When arguing for the materiality of the information requested as part of the Second Request, the Defence states that it would allow it to continue its investigations into the ‘implication of [REDACTED] affiliates with alleged “child soldiers” participating victims’. It adds that it would also be material to assessing certain parts of in-court testimony by P-1974 and P-2018.²⁹ The Defence further argues that the number of victim application forms ‘filled or collected with the help of the [REDACTED] affiliates will give an indication of the scale of their involvement in the process’.³⁰
23. In addition to what the CLRV1 argued as part of its response to the First Request, the Response states that the Request falls short of explaining how the process of collecting applications of Victims, who are not dual status witnesses, can prove or disprove the charges against Mr Yekatom under Count 29.³¹ It further adds that the Defence’s repeated attempts ‘to lead a fishing expedition through the bulk of victim application forms’ should not be permitted.³²
24. The Chamber is of the view that the Second Request concerning the Victims generally is overly broad and falls short of demonstrating that the entirety of the information sought should be provided by the Registry at this stage.
25. The Chamber notes the VPRS’ statement that only two individuals from the ‘Former Child Soldiers Group’ are dual status witnesses in the present case. It

²⁸ Request, ICC-01/14-01/18-1959-Conf, para. 30.

²⁹ Request, ICC-01/14-01/18-1959-Conf, para. 34.

³⁰ Request, ICC-01/14-01/18-1959-Conf, para. 36.

³¹ Response, ICC-01/14-01/18-1983-Conf, para. 24.

³² Response, ICC-01/14-01/18-1983-Conf, para. 25.

further notes that the Dual Status Witnesses' victim application forms are available to the Defence in their lesser redacted forms.³³

26. The Chamber further recalls that, upon a request by the Defence, discrete portions of the Second Request were previously granted by the Chamber, namely the information about the number of dual status witnesses that P-2638 contacted or identified on behalf of the VPRS.³⁴ It further notes the VPRS' statement that P-2638 neither contacted nor identified these individuals on behalf of the VPRS.³⁵
27. Having regard to the above and considering the Defence's arguments, the Chamber exceptionally grants part of the Second Request insofar as it concerns purported contact between the Four Individuals and the Dual Status Witnesses.
28. Accordingly, the Chamber orders the VPRS to provide to the Prosecution, by 3 November 2023, information in its possession concerning any contact between the Four Individuals and the Dual Status Witnesses during the completion and/or collection of their victim application form. Further, on the basis of the Defence's arguments, the Chamber considers that this information could potentially be material to the preparation of the defence pursuant to Rule 77 of the Rules. The Chamber trusts that the Prosecution will expeditiously assess it and comply with its disclosure obligations, if any, applying redactions, as needed.
29. The Chamber rejects the remainder of the Second Request.

FOR THESE REASONS, THE CHAMBER HEREBY

PARTLY GRANTS the Request;

INSTRUCTS the VPRS to provide information as specified in paragraph 18 of the present decision by 1 November 2023;

³³ See CAR-OTP-2135-2412-R02 and CAR-OTP-2135-2405-R02 respectively; *see also* Decision on Victim Application Procedure, ICC-01/14-01/18-1586-Red, para. 16.

³⁴ 4 April 2023 Decision, ICC-01/14-01/18-1828-Conf, para. 6.

³⁵ VPRS\Implementation of ICC-01/14-01/18-1828-Conf, CAR-OTP-00001381, at 000002.

INSTRUCTS the VPRS to provide information as specified in paragraph 28 of the present decision by 3 November 2023; and

ORDERS the Yekatom Defence and the CLRV1 to file a public redacted version of the Request, ICC-01/14-01/18-1959-Conf and the Response, ICC-01/14-01/18-1983-Conf, respectively, within one week of notification of the present decision.

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

 _____ Judge Péter Kovács	 _____ Judge Bertram Schmitt Presiding Judge	 _____ Judge Chang-ho Chung
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Dated 30 October 2023

At The Hague, The Netherlands