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**International
Criminal
Court**

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

Date: **2 November 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**With Confidential *Ex Parte* Annex 1 only available to the Yekatom Defence,
Ngaïssona Defence, Prosecution and VPRS**

**Public Redacted Version of the “Yekatom Defence Request for disclosure
of specific material and information related to Count 29 in possession of
the Registry”, 4 July 2023, ICC-01/14-01/18-1959-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Yekatom Defence (“Defence”) hereby requests the Chamber to order the Registry, specifically the Victims Participation and Reparations Section (“VPRS”), to provide specific information in relation to victim’s application forms (“Forms”) of individuals admitted as participating victims “of the crime of enlistment of children under the age of 15 years” (“Sought Information” detailed in paragraphs 24 and 30 below).
2. In light of the information provided by several witnesses, including during the testimonies of P-2018 and P-1974, the Defence argues that the requested information is both material for the preparation of the defence, and will assist the Chamber in its deliberation on Count 29. Moreover, the requested disclosure relates to specific information contained in the Forms and is strictly limited to what is necessary; and disclosure of the Sought Information would be conducted in accordance with the Chamber’s obligation to ensure the security of victims pursuant to Article 68 of the Statute.

PROCEDURAL HISTORY

3. On 28 February 2019, the *Registry Report on Proof of Identity Documents Available in the Central African Republic and Transmission of Proposed Application Form for Victims Under Rule 85(b) of the Rules of Procedure and Evidence* was notified.¹ In this report, the Registry mentioned the different documents used as proof of identity in the Bemba case, which included “civil status signed by the ‘Chef de quartier’”.² The Registry also noted that “[i]n view of the importance of proving the age of the applicant at the time of the commission of the crime of enlistment of children under the age of 15 years, the Registry is currently inquiring on

¹ ICC-01/14-01/18-133.

² ICC-01/14-01/18-133-AnxI, para. 8.

existing documents/alternative tools that can be used to establish the identity and age of the children who were enrolled in armed groups during the conflict, when no official identity document is available".³

4. On 19 October 2020, the *First Registry Transmission of Group C Applications for Victim Participation in Trial Proceedings* was notified to the Defence.⁴ Annex 7 of this filing is a redacted version of victim application form a/65196/19 which used an identification document which the Defence believes to be created by [REDACTED].⁵
5. On 25 March 2022, the Prosecution disclosed the victim application forms of P-2582 (CAR-OTP-2135-2405) and P-2620 (CAR-OTP-2135-2412) to the Defence. Both of those documents rely on an identification document created by [REDACTED].⁶
6. On 15 November 2022, the Prosecution notified the Chamber and Parties that it no longer intended to call P-2582 as a witness.⁷
7. On 12 December 2022, in its *Sixth Periodic Report on the Victims Admitted to Participate in the Proceedings*, the Registry indicated that a "total of 285 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 so far as participating victims at the trial stage".⁸
8. On 26 January 2023, the Defence contacted the Prosecution to request its office to contact the Registry in order to investigate whether any of the 285 alleged

³ ICC-01/14-01/18-133-AnxI, para. 26.

⁴ ICC-01/14-01/18-687.

⁵ ICC-01/14-01/18-687-Conf-Anx7-Red, page 4.

⁶ See CAR-OTP-2135-2405 at 2410 and CAR-OTP-2135-2412 at 2416. The Defence notes that in its requests to the Prosecution and VPRS it used the name [REDACTED] which was the one apparently used on page 2416; however for the sake of clarity the Defence notes that the actual name might also be [REDACTED] which appears on page 2410.

⁷ Email from the Prosecution to the Chamber & Parties titled "notice of withdrawal of prosecution witnesses" and dated 15 November 2022 at 13:38.

⁸ ICC-01/14-01/18-1695, para. 19.

child soldiers admitted to participate as victims provided proof of identification signed by [REDACTED].⁹

9. On 27 January 2023, the Prosecution declined the request, suggested that the Defence could contact the Registry directly, and indicated that “were you to seek an order directing the Registry to provide any such identifying documents as appropriate, we would defer to the Chamber in the exercise of its broad discretion”.¹⁰
10. On 16 February 2023, the Defence contacted VPRS requesting the same information.¹¹
11. On 24 February 2023, VPRS declined to provide the requested information and responded that “since you are requesting access to information that has heretofore been redacted to the Defence in view of article 68(1) of the Statute, I believe that it would be more fruitful if you were to channel your request through the Chamber”.¹²
12. On 10 March 2023, the Prosecution informed the Chamber and Parties of its withdrawal of witness P-2620.¹³

SUBMISSIONS

13. Details of the Sought Information object of this request and the issues related to the Forms will be first addressed by the Defence (I); secondly, the importance of the Sought Information will be developed (II); finally, the Defence will argue the limited nature of the request and the necessity of the Chamber’s intervention (III).

⁹ See Annex 1 page 2, letter ARY-2023-0251.

¹⁰ See Annex 1 page 4, email from the Prosecution dated 27 January 2023 at 16:54.

¹¹ See Annex 1 page 6, letter ARY-2023-0257.

¹² See Annex 1 page 10, email from VPRS dated 24 February 2023 at 13:22.

¹³ ICC-01/14-01/18-1791-Conf, para. 6, fn. 9..

I. On the Sought Information and issues related to the Forms

14. The Defence will first address the issues regarding the proof of identity created by [REDACTED] in some Forms (A); before addressing the issue of the implication of specific individuals in the collection of said Forms (B).

A. On the proof of identification created by [REDACTED]

15. The Defence contends that documents created by [REDACTED], for the purpose of establishing the identity of several individuals, contain suspicious elements that cast doubt on their reliability and the veracity of the information they contain.
16. Indeed, regarding the “*déclaration relative à l’identité*” created [REDACTED] for P-2620,¹⁴ the Defence notes that it lists her date of birth as [REDACTED] while she confirmed in her last statement that her date of birth was actually [REDACTED].¹⁵ The “*déclaration*” also indicates her place of birth to be [REDACTED], while P-2620 clarified in her second statement that she was born in [REDACTED].¹⁶ The “*déclaration*” indicates that P-2620’s father is [REDACTED] while her statement indicates [REDACTED]; her mother is listed as [REDACTED] while her statement indicates [REDACTED];¹⁷ and the statement of [REDACTED], [REDACTED], indicates that her name is [REDACTED] and that she does not use another name.¹⁸
17. Those differences show that the information contained in the “*déclaration relative à l’identité*” was at the very least not verified and/or based on other sources when [REDACTED] drafted the document, or that aspects thereof were simply fabricated.

¹⁴ CAR-OTP-2135-2412 at 2416.

¹⁵ P-2620: CAR-OTP-2121-2567-R06, para. 11.

¹⁶ P-2620: CAR-OTP-2121-2567-R06, para. 11.

¹⁷ P-2620: CAR-OTP-2123-0057-R03, page 0057.

¹⁸ [REDACTED].

18. The lack of reliability of the information contained in such documents was reinforced following specific questions put by the Defence to [REDACTED] regarding the documents signed by [REDACTED]. Specifically, [REDACTED] indicated that he believes that:

[REDACTED].¹⁹

19. The Defence also notes the suspicious coincidence whereby [REDACTED], in his capacity of [REDACTED], also drafted an “*attestation de reconnaissance*” to determine P-2582’s age.²⁰ This document was created on [REDACTED], only a few days prior to the document created for P-2620 on [REDACTED].²¹ While the document specifies that the information is provided by the requestor itself,²² the Defence notes that the indicated date of birth ([REDACTED]) does not match the one found in other documents ([REDACTED]).²³
20. [REDACTED], indicated that such documents should be obtained at a townhall and not negotiated with a “*chef de quartier*”;²⁴ [REDACTED].²⁵
21. Moreover, a review of the redacted version of victim application forms transmitted to the Defence since the beginning of the case led to the discovery of application a/65196/19,²⁶ which is suspected, due to its similarities, to also attach a document created by [REDACTED] as an identifying document. This individual claims to have been a child soldier in the group of Mr Yekatom in [REDACTED].²⁷ The “*attestation de reconnaissance*” for a/65196/19 appears to have been created in the same timeframe as those for P-2582 and P-2620.²⁸

¹⁹ [REDACTED]

²⁰ CAR-OTP-2135-2405 at 2410.

²¹ Comparison between CAR-OTP-2135-2410 at 2410 and CAR-OTP-2135-2412 at 2416.

²² CAR-OTP-2135-2405 at 2410 : “Atteste que, sur sa declaration“

²³ See CAR-D29-0014-0068 at 0069 line 1524; see also CAR-D29-0013-0100 at 0101, CAR-D29-0013-0098.

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ ICC-01/14-01/18-687-Conf-Anx7-Red.

²⁷ ICC-01/14-01/18-687-Conf-Anx7-Red, page 3 : [REDACTED].

²⁸ ICC-01/14-01/18-687-Conf-Anx7-Red, page 4. While the date of creation is redacted, the form was transmitted at the VPRS Field Office on [REDACTED]. For comparison P-2582’s form (CAR-OTP-2135-2405 was

22. As set out above, the content of the documents that [REDACTED] might have been created is contradicted by other sources of information, which casts serious doubts as to their reliability.
23. Further, the Defence has concrete reasons to believe that [REDACTED] might have created identifying documents for a number of individuals who all claim to have been part of Mr Yekatom's group.
24. Consequently, the Defence respectfully requests the Chamber to order VPRS to:
 - a. Indicate how many of the 285 individuals admitted as participating victims "of the crime of enlistment of children under the age of 15 years" attach an identifying form signed by [REDACTED];
 - b. Provide to the Prosecution the Forms that attach a document created by [REDACTED] as identifying information in order to let the Prosecution abide by its disclosure obligation,²⁹ taking into account that the Defence does not oppose, at this stage, to redaction of the identity of the alleged victims;
 - c. Confirm that the "*attestation de reconnaissance*" used in victim application form number a/65196/19 was created by [REDACTED]; and,
 - d. In the affirmative, provide a lesser redacted version of application form number a/65196/19, with the name of [REDACTED] visible.

B. On the implication of specific individuals in the creation and collection of the Forms

25. During the examination of P-1974, and after the witness' indication that he did not know an individual named [REDACTED]),³⁰ the Defence submitted [REDACTED]'s Form to P-1974, which lists him as [REDACTED].³¹ P-1974 explained that he had accompanied an ICC lawyer in [REDACTED] to help him meet alleged victims, but denied having put his name on [REDACTED]'s Form or having worked with [REDACTED] in the context of the proceedings.³² He

transmitted to the VPRS Field Office the day before, [REDACTED], and P-2620's form (CAR-OTP-2135-2412) was transmitted on [REDACTED].

²⁹ See a similar process in ICC-01/14-01/18-1753-Conf-Exp, paras 6-7.

³⁰ P-1974 : ICC-01/14-01/18-T-229-CONF-FRA ET at 12:28:35.

³¹ [REDACTED].

³² P-1974 : ICC-01/14-01/18-T-229-CONF-FRA ET at 12:30:10.

further indicated that the day he was in [REDACTED] with an ICC lawyer, [REDACTED] was also present.³³

26. The Defence notes that only [REDACTED], not P-1974, was listed by VPRS as an individual who “assisted applicants in filing application forms for participation/reparations in the present case and [REDACTED]”, nor is P-1974 listed with P-2580 and P-2638 as “[REDACTED]”.³⁴ The Defence expresses its concerns with the fact that P-1974, a Prosecution witness and [REDACTED], was not listed as an individual who supposedly assisted in the meeting of alleged victims [REDACTED], despite his name being listed in at least one Form ([REDACTED]).
27. The Defence recalls by way of reference that both P-2580 and P-2638 have been implicated in incidents affecting the integrity of the current proceedings.³⁵ It also recalls that the recent testimony of P-1974 demonstrated that he was [REDACTED],³⁶ the same individual from whom P-2580 requested money.³⁷ P-2018’s recent testimony demonstrated not only that he likewise asked [REDACTED] for money,³⁸ but also communicated with several [REDACTED], about the charges brought against Mr. Yekatom.³⁹
28. Those four individuals [REDACTED] (P-1974, P-2018, P-2580 and P-2638), who all engaged in misconduct of varying degrees of gravity, assisted in one way or another in the collection of the Forms in liaison with VPRS.⁴⁰ As part of this activity [REDACTED].

³³ P-1974 : ICC-01/14-01/18-T-229-CONF-FRA ET at 12:41:22.

³⁴ CAR-OTP-00001381.

³⁵ See ICC-01/14-01/18-1728-Conf-Exp, paras 28-39.

³⁶ P-1974 : ICC-01/14-01/18-T-229-CONF-FRA ET from 13:06:26 to 13:22:48.

³⁷ See CAR-OTP-00000144, page 2 ; see also P-2018 : ICC-01/14-01/18-T-226-CONF-FRA ET at 14:49:47.

³⁸ P-2018: ICC-01/14-01/18-T-226-CONF-FRA ET from 14:40:03 to 14:48:20.

³⁹ P-2018: ICC-01/14-01/18-T-226-CONF-FRA ET from 12:11:25 to 12:13:43, see also at 15:12:54.

⁴⁰ Officially for P-2018, P-2580 and P-2638 through document CAR-OTP-00001381; or through his own testimony for P-1974 as mentioned in paragraph 25 above.

29. In light of these facts, the Defence submits that information regarding the Forms of individuals admitted as participating victims “of the crime of enlistment of children under the age of 15 years”, which indicates the involvement of any of P-1974, P-2018, P-2580, and/or P-2638 in their completion or collection, is relevant in the context of Count 29.
30. Consequently, the Defence respectfully requests the Chamber to order VPRS to:
 - a. Indicate how many of the 285 individuals admitted as participating victims “of the crime of enlistment of children under the age of 15 years” were in contact with either P-1974, P-2018, P-2580 or P-2638 during the completion and/or collection of their victim’s application form;
 - b. Provide through the Prosecution said victim’s application form, with the identity of the victim, at this stage, redacted.

II. On the relevance and materiality of the Sought Information

31. The Defence first contends that the Sought Information is material for the preparation of its case on Count 29.
32. Indeed, as detailed above, two former Prosecution witnesses (P-2620 and P-2582) used potentially false documents issued by [REDACTED], while a participating victim (a/65196/19) appears to also rely on proof of identification created by the same individual.
33. Provision of the Sought Information mentioned above would allow the Defence to assess to which extent [REDACTED] 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.
34. In the same vein, information about participating victims who were in contact with P-1974, P-2018, P-2580, and /or P-2638 during the completion and/or collection of their victim’s application form will allow the Defence to continue

its investigations into the implication of [REDACTED] affiliates with alleged “child soldiers” participating victims. The information is also material to the Defence in order to assess whether the name of P-1974 appears in other Forms than that on which he testified and indicated that he did not understand why his name was written on this document.⁴¹ Similarly, the information would be relevant for the assessment of P-2018’s testimony regarding his relation with various sections of the Court.⁴²

35. The Defence is cognizant of the Chamber’s *Decision on the Yekatom Defence Request for an Amendment of the Victim Application Procedure* which indicated 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 [emphasis added].⁴³

36. However, in light of what has transpired from the testimony of witnesses and the evidence submitted so far, the number of participating victims forms on which [REDACTED] and [REDACTED] were involved is an important and relevant information when it comes to appreciating the reliability and the accuracy of the information contained in the forms, and more broadly to the evidence in the case. First, the attestation from [REDACTED] 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 victims supposedly originating from his village. Second, on a total of 285 individuals, the numbers of forms filled or collected with the help of the [REDACTED] affiliates will give an indication of the scale of their involvement in the process.

⁴¹ P-1974 : ICC-01/14-01/18-T-229-CONF-FRA ET from [12:25:46] to [12:34:21].

⁴² P-2018 : ICC-01/14-01/18-T-225-CONF-FRA ET from [12:14:18] to [12:19:27].

⁴³ [ICC-01/14-01/18-1586-Red](#), para. 15.

37. Finally, this information is not only material to the Defence case. Indeed, the Defence also notes the recent Appeals Chamber decision in the Ntaganda case which found that

In order to ensure that applications for reparations are received, the VPRS and the legal representatives of victims may assist a trial chamber in gathering such applications. It also seems advisable, as suggested by Trial Chamber VI in a recent decision in the Said case, for trial chambers, already to seek and identify victim applicants, and collect their applications, from the early stages of proceedings; in fact, rule 94(2) of the Rules and regulation 56 of the Regulations of the Court **suggest this approach and aim to advance reparations proceedings with all expedition.**⁴⁴ [emphasis added]

38. It is in the interest of justice that a potential fraud amongst participating victims be identified as early as possible in the proceedings. Early inquiries by the Defence on this matter, and by the Chamber should it be necessary, will allow proper submissions and assessment to be made on the eligibility of current participating victims to the reparation phase.⁴⁵ Such diligence would squarely fall within the direction of the Appeals Chamber to “advance reparations proceedings with all expedition”.
39. Consequently, in light of the above, the Defence respectfully requests the Chamber to find that the Sought Information is material to the preparation of the Defence, and that its disclosure would also be in the interest of justice.

III. On the necessity of the Chamber’s intervention and limited nature of the Sought Information

40. The Defence first contends that the Chamber’s intervention is necessary in order to obtain the Sought Information as both the Prosecution and VPRS indicated that the request should be addressed to the Chamber, effectively refusing to

⁴⁴ *Prosecutor v. Ntaganda*, Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 12 Septembre 2022, [ICC-01/04-02/06-2782](#), para. 340; referring to *Prosecutor v. Said*, Decision on matters relating to the participation of victims during the trial, 13 April 2022, [ICC-01/14-01/21-278](#), para. 88.

⁴⁵ See also [ICC-01/14-01/18-1586-Red](#), para. 17 where the Chamber noted that “the initial assessment of victims’ applications is based on a *prima facie* standard. It is thus open to review at the deliberation stage, should a more detailed understanding of the full evidence demonstrate that these applications no longer meet the relevant criteria”.

provide the information directly through *inter partes* discussions.⁴⁶ As the Defence is deprived of any other avenue through which it could obtain the Sought Information, a Chamber order on the matter is required.

41. The Defence is cognizant of the Chamber's position that "a judicial order for the Registry to provide information to the participants on operational matters must remain exceptional and is discretionary in nature".⁴⁷ It is however submitted that the Chamber's intervention is appropriate in the present circumstances as the Sought Information is not only material to the preparation of the defence as discussed above, but is also strictly limited to what is necessary.
42. Indeed, it should be noted that before seizing the Chamber the Defence questioned several witnesses, such as [REDACTED] and [REDACTED], on the documents created by [REDACTED].⁴⁸ This led to the provision of concrete information, by relevant witnesses, which only reinforced the indicia that documents emanating from this individual are at the very least unreliable, and more likely a total fabrication. Moreover, the discovery of form a/65196/19, apparently also using a document from [REDACTED], is a strong indication that this alleged fraud is affecting other documents in the current proceedings. In such circumstances, the present request for the Sought Information cannot be dismissed as speculative and/or unsubstantiated.
43. The Defence also argues that the present request should not be assessed as overly broad; to the contrary the Sought Information is narrowly framed to what is strictly necessary. In that regard the Defence is only requesting disclosure of redacted version of the Forms among a specific group of persons, the participating victims "of the crime of enlistment of children under the age of 15 years", who provided a document created by [REDACTED] or who were

⁴⁶ See Annex 1, page 4 & pages 9-10.

⁴⁷ ICC-01/14-01/18-1828-Conf, para. 3.

⁴⁸ See [REDACTED]; see also [REDACTED].

in contact during the completion of the Forms with a limited number of specific individuals (P-1974, P-2018, P-2580, and/or P-2638).

44. Moreover, the Defence does not seek systematic disclosure of the identity of the participating “victims”; to the contrary the Defence does not oppose the application of redactions, at this stage, to this information.⁴⁹ This both limits the scope of the request, and ensures that the sought disclosure does not infringe the Court’s obligation “to protect the safety, physical and psychological well-being, dignity and privacy of victims” enshrined in Article 68(1) of the Statute.
45. It is also recalled that, should this request be granted, the Sought Information would first be transmitted to the Prosecution, which would then disclose it to the Defence, pursuant to its disclosure obligations. The Prosecution, in the eventuality that it assesses the identity of a participating victim to be an information disclosable pursuant to Rule 77 of the Rules or Article 67(2) of the Statute, would be in a position to determine the best course of action and seize the Chamber of the matter should it necessary.
46. In light of these safeguards, the Defence submits that disclosure of the Sought Information does not infringe the Court’s obligations under to Article 68(1) of the Statute.

CONFIDENTIALITY

47. The present request is filed on a confidential basis as it contains information that could lead to the identification of former prosecution witnesses. Annex 1 is classified as confidential *ex parte* as it contains *inter partes* exchanges between the Defence, the Prosecution and VPRS. A public redacted version will be filed forthwith.

⁴⁹ See the scope of the requests in paragraphs 24 and 30.

RELIEF SOUGHT

In light of the above, the Defence respectfully requests Trial Chamber V to:

ORDER the VPRS to provide the Sought Information as set out in paragraphs 24 and 30; and

ORDER the Prosecution to assess and disclose diligently the Sought Information provided by VPRS pursuant to Rule 77 of the Rules or Article 67(2) of the Statute.

RESPECTFULLY SUBMITTED ON THIS 2nd DAY OF NOVEMBER 2023

A handwritten signature in blue ink, appearing to read 'Mylène Dimitri'.

Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands