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

Date: **10 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

Public redacted version of "Prosecution's Response to Yekatom Defence's "Request for an order directing VWU to provide a report" (ICC-01/14-01/18-2111-Conf)",
ICC-01/14-01/18-2122-Conf, 5 October 2023

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 Prosecution defers in part to the discretion of Trial Chamber V (“Chamber”) regarding the Yekatom Defence’s Request for an order directing VWU to provide a report detailing certain information concerning [REDACTED].¹ *First*, although relevant, the scope of the requested information should be narrowly tailored. *Second*, the Request overstates the significance of the potential information on the viability of Count 29. Thus, the Chamber should take account of the degree of necessity demonstrated.

II. CONFIDENTIALITY

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

III. SUBMISSIONS

A. The scope of the request is not sufficiently narrow

3. The Prosecution does not consider that the request for “all information” and “all steps taken”² with regard to the nature and extent of the information sought are sufficiently circumscribed in scope. As such, it may be too overbroad to require the production of the information sought by the Registry which, in any event, does not have a statutory disclosure obligation.

4. To be sure, the Prosecution takes no issue with the Request in respect of information regarding contacts relating to material issues, matters in controversy in the case, and/or evidence suggestive of collusion. With that said, the Prosecution notes

¹ ICC-01/14-01/18-2111-Conf.

² ICC-01/14-01/18-2111-Conf, para. 1(i) and (ii), 31.

that neither [REDACTED] were witnesses in the Prosecution's case-in-chief, nor will their evidence otherwise be relied on in respect of Count 29.

B. The nature of the information sought does not materially affect the viability of Count 29

5. The Prosecution disagrees with the Defence's contention that the information sought from the Registry goes to the "credibility of the Prosecution's *case* concerning Count 29."³ While the information sought might be generally relevant, it does not materially impact the viability of the charge that YEKATOM's Anti-Balaka group ("Group") enlisted children under 15 years old. As the Defence is well aware, this charge is also predicated on testimony regarding observations of, and interactions with, under age children in the Group unconnected to those who participated in the *Enfants Sans Frontières* ("ESF") demobilisation programme.

6. Even assuming *arguendo* that some children under age 15 were not Anti-Balaka 'members' before their involvement with the ESF programme, their participation through fraud perpetrated *in concert* with YEKATOM's chiefs and/or commanders — who identified and held them out as members of the Group — made them a part of the Group for that fraudulent purpose.

7. The motive for such conduct is irrelevant (whether to benefit the children or to benefit the Group politically or financially), and the Statute notably does not require that acts of 'enlistment' or 'conscription' by an armed group be for any specific purpose.⁴ The children's subjection to the custody and control of YEKATOM's chiefs and/or commanders (*i.e.*, in directing them to assemble on Anti-Balaka bases and to provide information in the context of the identification and verification process to

³ ICC-01/14-01/18-2111-Conf, paras. 4 and 27 ("emphasis added").

⁴ See Article 8(e)(vii).

enter the programme) sufficiently establishes the element of 'enlistment into an armed group' under the Statute.

8. Given the above, the significance of the information sought as contended by the Defence is overstated, as is its implied necessity. Consequently, this has a bearing on the Chamber's determination on whether the Registry may be properly obliged to provide the requested information.

IV. CONCLUSION

9. For the reasons above, the Prosecution defers in part to the Chamber's discretion in respect of the Defence Request.



Karim A. A. Khan KC, Prosecutor

Dated this 10th day of December 2023
At The Hague, The Netherlands