

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 29 May 2024

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-ÉDOUARD
NGAÏSSONA***

Public

Public Redacted Version of the “Response of the Common Legal Representative of the Former Child Soldiers to the “Urgent Yekatom Defence Request for partial reconsideration of ‘Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU’” (No. ICC-01/14-01/18-2504-Conf, dated 22 May 2024)

Source: Office of Public Counsel for Victims (CLR1)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “CLR1”) herewith submits his response to the “Urgent Yekatom Defence Motion for partial reconsideration of ‘Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU’” (the “Defence Request” or the “Request”).¹

2. The CLR1 opposes the Request and relief sought in its entirety. The Defence Request fails to meet the criteria necessary to warrant reconsideration. Moreover, the Request lacks any foundation in that the property in question belongs to two witnesses [REDACTED]. The Defence’s allegations in this regard are an insufficient basis for the Chamber to interfere with the witnesses’ right to property and privacy. More generally, the Request is speculative and the Defence’s alarmist intervention is misplaced. Hypothetical developments and/or outcomes [REDACTED] do not provide a legal basis for the Chamber to further interfere the witnesses’ aforementioned human rights.

3. Finally, it is submitted that the Defence lacks standing to request measures to stop the “*potential destruction of evidence*”. They are neither the Prosecutor [REDACTED], nor do they have any other connection that would grant them standing to request the *de facto* seizure of the witnesses’ property. Similarly, the Chamber has no authority to issue orders [REDACTED].

¹ See the “Urgent Yekatom Defence Request for partial reconsideration of ‘Decision on the Limited Inspection of Material Obtained by the VWU’”, [No. ICC-01/04-01/18-2500-Conf](#), 17 May 2024. A public redacted version was filed on 28 May 2024 as [No. ICC-01/14-01/18-2500-Red](#) (the “Defence Request” or the “Request”).

II. PROCEDURAL BACKGROUND

4. On 3 August 2023, Trial Chamber V (the “Chamber”) issued the “Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence”, finding it appropriate and necessary to hear the evidence of victims a/20722/21 (V45-P-0001) and a/65991/19 (V45-P-0002).²

5. On 11 August 2023, the CLR1 submitted [REDACTED].³

6. Witnesses V45-P-0001 and V45-P-0002 testified at the seat of the Court on 21 and 22,⁴ and on 26 and 27 September 2023,⁵ respectively.

7. On 15 December 2023, the VWU sent by email on an *ex parte* basis a request for guidance informing the Chamber that “*within the scope of its activities related to the assessment of [REDACTED] witnesses [REDACTED], it has recently come across material of a potentially evidentiary nature in the case, notably, information concerning their identities*”.⁶

8. On 21 December 2023, the Single Judge instructed the VWU to share said information with the parties and participants, on the record, by 8 January 2024.⁷

9. On 8 January 2024, the VWU filed the related submissions.⁸

² See the “Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence” (Trial Chamber V), [No. ICC-01/14-01/18-2016-Conf](#), 3 August 2023, para. 26. A public redacted version was filed on 6 September 2023 as [No. ICC-01/14-01/18-2016-Red](#).

³ [REDACTED]

⁴ See the transcript of the hearing held on 21 September 2023, [No. ICC-01/14-01/18-T-245-CONF-ENG CT](#), page 4, line 17 to page 44, line 4; and the transcript of the hearing held on 22 September 2023, [No. ICC-01/14-01/18-T-246-CONF-ENG CT](#), page 2, line 19 to page 81, line 2.

⁵ See the transcript of the hearing held on 26 September 2023, [No. ICC-01/14-01/18-T-247-CONF-ENG CT](#), page 3, line 21 to page 64, line 8; and the transcript of the hearing held on 27 September 2023, [No. ICC-01/14-01/18-T-248-CONF-ENG CT](#), page 3, line 1 to page 39, line 9.

⁶ See the Email correspondence from the VWU dated 15 December 2023 at 16:26.

⁷ See the Email correspondence from the Chamber dated 21 December 2023 at 17:09.

⁸ See the “Registry’s submission regarding material obtained by VWU in the course of the execution of its mandate”, [No. ICC-01/14-01/18-2290-Conf](#), 8 January 2024. A public redacted version was filed on 29 February 2024 as [No. ICC-01/14-01/18-2290-Red](#).

10. On 16 January 2024, the CLR1 filed the “Response of the Common Legal Representative of the Former Child Soldiers to the Registry’s Submissions (No. ICC-01/14-01/18-2290-Conf, dated 8 January 2024) and Urgent Request for an order to the VWU to complete the security risk assessment with respect to Witnesses V45-P-0001 and V45-P-0002 and implement protective measures as appropriate” (the “CLR1’s Submissions of 16 January 2024”).⁹

11. On 22 January 2024, the VWU filed its observations on the CLR1’s Submissions of 16 January 2024.¹⁰

12. On the same date, the Defence filed its response to the CLR1’s Submissions of 16 January 2024, in which it, *inter alia*, requested that the Chamber order an independent forensic examination of the [REDACTED] witnesses’ mobile phones, and that all information discovered be disclosed to the Defence.¹¹

13. Following a request from the CLR1,¹² on 23 January 2024, the Chamber instructed the participants to file responses, if any, to the Defence’s request for a forensic examination of the witnesses’ phones by 30 January 2024.¹³

⁹ See the “Response of the Common Legal Representative of the Former Child Soldiers to the Registry’s Submissions (No. ICC-01/14-01/18-2290-Conf, dated 8 January 2024) and Urgent Request for an order to the VWU to complete the security risk assessment with respect to Witnesses CAR-V45-P-0001 and CAR-V45-P-0002 and implement protective measures as appropriate”, [No. ICC-01/14-01/18-2305-Conf-Exp](#), 16 January 2024. A confidential redacted version was filed on 17 January 2024 as [No. ICC-01/14-01/18-2305-Conf-Red](#). A public redacted version was filed on 4 March 2024 as [No. ICC-01/14-01/18-2305-Red](#).

¹⁰ See the “Victims and Witnesses Unit’s Observations on the ‘Response of the Common Legal Representative of the Former Child Soldiers to the Registry’s Submissions (No. ICC-01/14-01/18-2290-Conf, dated 8 January 2024) and Urgent Request for an order to the VWU to complete the security risk assessment with respect to Witnesses CAR-V45-P-0001 and CAR-V45-P-0002 and implement protective measures as appropriate’ (ICC-01/14-01/18-2305-Conf)’ (ICC-01/14-01/18-2320-Conf-Exp)”, [No. ICC-01/14-01/18-2320-Conf-Exp](#), 22 January 2024. A confidential redacted version was filed on 26 January 2024 as [No. ICC-01/14-01/18-2320-Conf-Red](#). A public redacted version was filed on 29 February 2024 as [No. ICC-01/14-01/18-2320-Red](#).

¹¹ See the “Yekatom Defence Response to CLR1 Response of 17 January 2024 to VWU Submissions (ICC-01/14-01/18-2305-Conf-Red), [No. ICC-01/14-01/18-2321-Conf](#), 22 January 2024, paras. 4, and 22-29. A public redacted version was filed on 4 March 2024 as [No. ICC-01/14-01/18-2321-Red](#).

¹² See the Email correspondence from the CLR1 dated 23 January 2024 at 17:50.

¹³ See the Email correspondence from the Chamber dated 24 January 2024 at 12:21.

14. On 25 January 2023, the Ngaïssona Defence informed the Chamber that it did not intend to file a response to the Defence's request for a forensic examination of the Witnesses' phones and that it deferred to the Chamber's discretion in the matter.¹⁴

15. On 30 January 2024, the CLR1 responded to the Defence's request for a forensic examination of the witnesses' phones, opposing said request.¹⁵

16. On 31 January 2024, the Prosecution filed a response in which it, *inter alia*, opposed the Defence's request for a forensic examination of the witnesses' phones.¹⁶

17. On 5 February 2024, the Defence requested leave to reply to the Prosecution's response,¹⁷ which was opposed by the Prosecution on 6 February 2024.¹⁸

18. On 15 February 2024, the VWU informed the CLR1 [REDACTED].¹⁹

19. On 23 February 2024, the Chamber issued a decision whereby it, *inter alia*, rejected the Defence's request for a forensic examination of the witnesses' phones.²⁰

¹⁴ See the Email correspondence from the Ngaïssona Defence dated 25 January 2024 at 21:18.

¹⁵ See the "Response of the Common Legal Representative of the Former Child Soldiers to the Defence's Request for a forensic examination of the CLR1 Witnesses' phones (No. ICC-01/14-01/18-2321-Conf), [No. ICC-01/14-01/18-2335-Conf](#), 30 January 2024. A public redacted version was filed on 4 March 2024 as [No. ICC-01/14-01/18-2335-Red](#).

¹⁶ See the "Prosecution's Response to the Yekatom Defence's request for the forensic examination of V45-P-0001's and V45-P-0002's mobile phones (ICC-01/14-01/18-2321)", [No. ICC-01/14-01/18-2336-Conf](#), 31 January 2024. A public redacted version was filed on 1 March 2024 as [No. ICC-01/14-01/18-2336-Red](#).

¹⁷ See the "Yekatom Defence Request for Leave to Reply to the 'Prosecution's Response to the Yekatom Defence's request for the forensic examination of V45-P-0001's and V45-P-0002's mobile phones (ICC-01/14-01/18-2321)', 31 January 2024, ICC-01/14-01/18-2336-Conf, [No. ICC-01/14-01/18-2345-Conf](#), 5 February 2024, paras. 1 and 7. A public redacted version was filed on 4 March 2024 as [No. ICC-01/14-01/18-2345-Red](#).

¹⁸ See the "Prosecution Response to the 'Yekatom Defence Request for Leave to Reply to the Prosecution's Response to the Yekatom Defence's request for the forensic examination of V45-P-0001's and V45-P-0002's mobile phones (ICC-01/14-01/18-2321), 31 January 2024, ICC-01/14-01/18-2336-Conf' (ICC-01/14-01/18-2343-Conf)", [No. ICC-01/14-01/18-2347-Conf](#), 6 February 2024, paras. 1 and 13. A public redacted version was filed on 23 May 2024 as [No. ICC-01/14-01/18-2347-Red](#).

¹⁹ [REDACTED]

²⁰ See the "Decision on the CLRV1 and Yekatom Defence Requests following the VWU Report on V45-0001 and V45-0002" (Trial Chamber V), [No. ICC-01/14-01/18-2376-Conf](#), 23 February 2024 (the "23 February 2024 Decision"). A public redacted version was filed on 17 May 2024 as [No. ICC-01/14-01/18-2376-Red](#).

20. On 12 March 2024, the Defence filed the “Yekatom Defence Motion for limited inspection of material obtained by VWU” (the “Defence Motion of 12 March 2024”).²¹

21. On 13 March 2024, the CLR1 sought clarifications from the VWU [REDACTED].²²

22. On 19 March 2024, the VWU informed the CLR1 [REDACTED].²³

23. On 25 March 2024, the CLR1 responded to the Defence Motion of 12 March 2024.²⁴

24. On 17 May 2024, the Chamber issued its “Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU” (the “17 May 2024 Decision”),²⁵ *inter alia*, instructing the VWU to “*return the phones to the Witnesses as soon as practicable*”.²⁶

25. On the same day, the Defence filed its Request.²⁷ In particular, the Defence seeks the reconsideration of the Chamber’s decision to instruct the VWU to return the telephones to the [REDACTED] witnesses on the basis that [REDACTED].²⁸

²¹ See the “Yekatom Defence Motion for limited inspection of material obtained by VWU”, [No. ICC-01/14-01/18-2406-Conf](#), 12 March 2024. A public redacted version was filed on 27 May 2024 as [No. ICC-01/14-01/18-2406-Red](#).

²² [REDACTED]

²³ [REDACTED]

²⁴ See the “Response of the Common Legal Representative of the Former Child Soldiers to the ‘Yekatom Defence Motion for limited inspection of material obtained by VWU’ and Request for an order to the VWU with respect to Witnesses V45-P-0001 and V45-P-0002”, [No. ICC-01/14-01/18-2420-Conf](#), 25 March 2024.

²⁵ See the “Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU” (Trial Chamber V), [No. ICC-01/14-01/18-2496-Conf](#), 17 May 2024 (the “17 May 2024 Decision”).

²⁶ *Idem*, p. 4.

²⁷ See the Defence Request, *supra* note 1.

²⁸ *Idem*, para. 5.

26. Also on 17 May 2024, the Chamber shortened the response deadline to the Defence Request and requested that any responses be filed by 22 May 2024. It further instructed the VWU [REDACTED].²⁹

III. CLASSIFICATION

27. Pursuant to regulation 23*bis* and (2) of the Regulations of the Court, the present submissions are classified as confidential since the Defence Motion bears the same level of classification.

IV. SUBMISSIONS

28. The CLR1 submits that the Defence Request does not satisfy the criteria warranting reconsideration. The Chamber has previously underscored the exceptional nature of reconsideration of its decisions and the limited circumstances in which such reconsideration would be warranted. In particular, the Chamber recently reiterated that reconsideration “*should only be done if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice*”.³⁰

29. The Defence Request fails to identify a clear error of reasoning on the Chamber’s part. It is but a mere rehashing of prior arguments the Chamber has already considered and rejected on two separate occasions.³¹

30. As regards the second limb of the applicable standard, the Defence Request is likewise without merit. As will be argued in more detail below, the Defence as a party to the main proceedings has no vested interest in any collateral proceedings. It is neither its role to ‘safeguard’ any ancillary proceedings, nor does it have a statutory obligation to do so, unlike the Prosecutor.

²⁹ See the Email correspondence from the Chamber dated 17 May 2024 at 17:22.

³⁰ See the “Decision on the Ninth Prosecution Submission Request from the Bar Table and Request for Reconsideration of the Email Decision on CAR-OTP-2052-0576” (Trial Chamber V), [No. ICC-01/14-01/18-2182](#), 1 November 2023, para. 8.

³¹ See the 23 February 2024 Decision, *supra* note 20; and the 17 May 2024 Decision, *supra* note 25.

31. The phones are the private property of V45-0001 and V45-0002. The return of the witnesses' private property has no bearing on the proceedings in this case. The Defence has had ample opportunity to make submissions on its case theory and allegations of improper behaviour or misconduct on the part of witnesses called by the Prosecution and CLR1. It has done so. These submissions have been heard and considered by the Chamber. The Chamber has properly dealt with the matter in the 17 May 2024 Decision. As such, ordering the return of the phones to their rightful owners has no bearing on the proceedings before this Chamber. No 'injustice' can arise from hypothetical subsequent events outside of the ambit of the proceedings.

32. Indeed, the Defence's reliance on speculative future developments or outcomes [REDACTED] do not in any event provide a legal basis to further curtail the witnesses' rights to property and privacy. Any interference with the right to peaceful enjoyment of possessions must be lawful and pursue a legitimate aim.³² [REDACTED], which negates a lawful basis for effectively seizing their property.³³ The Defence Request does not demonstrate the existence of any alternative legitimate legal basis to retain the witnesses' property any further. Its submissions are mere conjecture related [REDACTED].

33. The private property of the witnesses has been retained by the Court for many months already and the Chamber has unequivocally held – on two consecutive occasions – that it sees no need to further examine the witnesses' phones.³⁴ This was the end of the matter and should be respected as such by all participants.

34. The Defence's insistence on implications [REDACTED] is unwarranted. The Defence's allegations that *"returning the Phones to V45-0001 and V45-0002 would result in the irreversible loss and/or destruction of critical forensic evidence"*³⁵ are speculative in nature. Any and all relevant requests [REDACTED] are not only outside of the

³² See e.g. ECtHR, *Beyeler v. Italy*, Application No. 33202/96, [Judgment](#), 5 January 2000, para. 98.

³³ Cf. ECtHR, *Capatina v. Romania*, Application No. 911/16, [Judgment](#), 28 February 2023, para. 48.

³⁴ See the 17 May 2024 Decision, *supra* note 20, para. 4.

³⁵ See the Defence Request, *supra* note 1, para. 6.

purview of the Chamber, but also outside of the reach and responsibility of the Defence. As previously pointed out,³⁶ [REDACTED].

V. RELIEF SOUGHT

35. For the foregoing reasons, the CLR1 respectfully requests that the Chamber:

- **REJECT** the Defence Request in its entirety, and
- **INSTRUCT** the VWU:
 - to execute the Chamber's instructions set out in the 17 May 2024 Decision without any further delay; and
 - to report on the successful transmission of the phones to their rightful owners once effected.

RESPECTFULLY SUBMITTED,



Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 29th Day of May 2024
At The Hague, The Netherlands

³⁶ See the "Response of the Common Legal Representative of the Former Child Soldiers to the 'Yekatom Defence Motion for limited inspection of material obtained by VWU' and Request for an order to the VWU with respect to Witnesses V45-P-0001 and V45-P-0002", [No. ICC-01/14-01/18-2420-Conf](#), 25 March 2024, para. 53.