



Original: English

No. ICC-01/14-01/18

Date: 17 July 2024

Date of original: 24 May 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

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 Request for Partial Reconsideration of the
Decision concerning the Limited Inspection of Material Obtained by the VWU**

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), (6)(f), 67(1) and 68(1) of the Rome Statute (the ‘Statute’) and Rules 17 and 18 of the Rules of Procedure and Evidence, issues this ‘Decision on the Yekatom Defence Request for Partial Reconsideration of the Decision concerning the Limited Inspection of Material Obtained by the VWU’.

1. The Chamber recalls the procedural history as set out in its ‘Decision on the Yekatom Defence [the ‘Defence’] Request for a Limited Inspection of Material Obtained by the [Victims and Witnesses Unit (the ‘VWU’)]’ (the ‘Inspection Decision’), issued on 17 May 2024.¹ In particular, it recalls that the VWU is in possession of V45-0001’s and V45-0002’s (the ‘Witnesses’) phones since they were initially provided to the VWU for purposes of its risk assessment, and that the Chamber instructed the latter to return the phones to the Witnesses ‘as soon as practicable’ after the Chamber rejected the Defence’s request to inspect V45-0002’s phone.²
2. That same day, the Defence requested the Chamber to partly reconsider its Inspection Decision (the ‘Request’). Specifically, it seeks the Chamber to order the VWU to retain possession of the phones until [REDACTED].³
3. The Defence submits that the Request is ‘necessary to prevent an injustice’, given that returning the phones to the Witnesses would (i) result in the ‘irreversible loss and/or destruction of critical forensic evidence of potential criminal conduct, including [...] pursuant to article 70 [of the Statute]’; (ii) [REDACTED]; and (iii) affect Mr Yekatom’s fair trial rights.⁴

¹ Inspection Decision, ICC-01/14-01/18-2496-Conf, paras 1-3.

² Inspection Decision, ICC-01/14-01/18-2496-Conf, paras 4-6, p. 4.

³ Urgent Yekatom Defence Request for partial reconsideration of ‘Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU’, ICC-01/14-01/18-2500-Conf, paras 1-2, 14. *See also* emails from the Prosecution, 30 November 2023, at 14:50 and 5 December 2023, at 11:32; email from the Chamber, 29 April 2024, at 16:31 *referring to* email from the Prosecution to the Chamber, 16 April 2024, at 10:13.

⁴ Request, ICC-01/14-01/18-2500-Conf, paras 3-11.

4. On 22 May 2024,⁵ the Common Legal Representative of the Former Child Soldiers (the ‘CLRV1’) opposed the Request, on the basis that the criteria for reconsideration are not met. Moreover, he argues, *inter alia*, that the Defence lacks standing to request the measures sought and that its allegations are speculative (the ‘CLRV1 Response’).⁶
5. On the same day, the Prosecution opposed the Request, submitting that (i) reconsideration is not justified; and (ii) the Defence fails to establish standing or any prejudice (the ‘Prosecution Response’).⁷
6. The Chamber observes that the Request does not raise any new issues warranting reconsideration of its Inspection Decision.⁸ Moreover, it notes that the Defence is not a party or participant in respect of any prospective proceeding under Article 70 of the Statute. The Chamber also considers that it is the Prosecution’s prerogative to determine whether to investigate offences falling under the said provision, as well as [REDACTED], as opposed to the Defence or the Chamber.⁹
7. In light of the above, the Chamber finds that partial reconsideration of its Inspection Decision is not warranted. Accordingly, the Request is rejected.

⁵ The Single Judge instructed the participants to file responses to the Request, if any, by 22 May 2024. He further instructed the VWU to retain possession of the Witnesses’ phones until the Chamber issued a decision on the Request (see email from the Chamber, 17 May 2024, at 17:19).

⁶ 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’”, ICC-01/14-01/18-2504-Conf, paras 1-3, 28-34.

⁷ Prosecution’s Response to “Urgent Yekatom Defence Request for partial reconsideration of ‘Decision on the Yekatom Defence Request for a Limited Inspection of Material Obtained by the VWU’”, ICC-01/14-01/18-2500-Conf, ICC-01/14-01/18-2505-Conf, paras 1, 3-9.

⁸ See also Prosecution Response, ICC-01/14-01/18-2505-Conf, para. 3; CLRV1 Response, ICC-01/14-01/18-2504-Conf, para. 29.

⁹ See also Prosecution Response, ICC-01/14-01/18-2505-Conf, para. 6; CLRV1 Response, ICC-01/14-01/18-2504-Conf, paras 30, 34.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

ORDERS the Defence, the CLRV1 and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2500-Conf; the CLRV1 Response, ICC-01/14-01/18-2504-Conf; and the Prosecution Response, ICC-01/14-01/18-2505-Conf, respectively, within one week of notification of this decision.

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



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 17 July 2024

At The Hague, The Netherlands