

**Cour
Pénale
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**International
Criminal
Court**

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Date: 28 March 2022

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 “Request of the Common Legal Representative of the Former Child Soldiers for leave to reply to the Defence’s Response No. ICC-01/14-01/18-1305-Conf dated 7 March 2022”, No. ICC-01/14-01/18-1308-Conf, dated 9 March 2022

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. Pursuant to regulation 24(5) of the Regulations of the Court (the “RoC”), the Common Legal Representative of the Former Child Soldiers (the “Legal Representative” or “CLR1”) respectfully requests leave to reply to the “Yekatom Defence Response to ‘Confidential Redacted Version of the “Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620”’ (the “Defence’s Response”).¹

2. The Defence’s Response contains not only observations on the CLR1’s Request to Maintain Redactions,² but also two new requests based on its submissions under the heading “Preliminary Issue: the conduct of the CLR1 and Prosecution”.³ The Legal Representative submits that, insofar as the applicable procedure was clearly set out, the issues raised by the Defence are new and could not have been reasonably anticipated within the meaning of regulation 24(5) of the RoC, and thus granting leave to reply is warranted. Furthermore, it is submitted that faced with such serious allegations advanced by the Defence, the Legal Representative should be given an opportunity to respond as a matter of fairness.

¹ See the “Yekatom Defence Response to ‘Confidential Redacted Version of the “Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620”’, [No. ICC-01/14-01/18-1305-Conf](#), 7 March 2022 (the “Defence’s Response”).

² See the “Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals”, [No. ICC-01/14-01/18-1290-Conf-Exp](#), 22 February 2022. A confidential redacted version was filed on the same date as [No. ICC-01/14-01/18-1290-Conf-Red](#) (the “Request to Maintain Redactions”).

³ See the Defence’s Response, *supra* note 1, paras. 18-24 and 60.

II. PROCEDURAL BACKGROUND

3. On 18 November 2019, the Legal Representative provided the Prosecution's investigators with a redacted version of P-2620's victim application form ([REDACTED]),⁴ which was subsequently disclosed to the Defence as CAR-OTP-2123-0072.

4. On 5 March 2020, the Legal Representative provided the Prosecution's investigators with a redacted version of P-2582's victim application form ([REDACTED]),⁵ which was subsequently disclosed to the Defence as CAR-OTP-2126-0456.

5. On 8 October 2020, Trial Chamber V (the "Trial Chamber") adopted the Dual Status Protocol and the Redaction Protocol.⁶

6. On 4 January 2021, the Single Judge of the Trial Chamber confirmed that "*the Registry is expected to provide the Prosecution with the unredacted applications of dual status individuals. The Prosecution must subsequently effect disclosure pursuant to its statutory disclosure obligations and in line with [the Dual Status Protocol and the Redactions Protocol]*".⁷

7. On 15 January 2021, the VPRS provided the Prosecution with the full and unredacted versions of P-2582's and P-2620's victim application forms.⁸

8. On 19 January 2022, the Defence approached the Legal Representative with its first request to lift the redactions to the identifying and contact information of the

⁴ See the Email correspondence from the CLR1 to the Prosecution on 18 November 2019 at 08:11.

⁵ See the Email correspondence from the CLR1 to the Prosecution on 5 March 2020 at 16:28.

⁶ See the "Decision on Protocols at Trial", [No. ICC-01/14-01/18-677](#), 8 October 2020 (the "Decision on Protocols"); "Annex 2 to the Decision on Protocols at Trial", [No. ICC-01/14-01/18-677-Anx2](#), 8 October 2020 (the "Dual Status Protocol"); and "Annex 3 to the Decision on Protocols at Trial", [No. ICC-01/14-01/18-677-Anx3](#), 8 October 2020 (the "Redaction Protocol").

⁷ See the Email correspondence from the Trial Chamber to the parties and participants on 4 January 2021 at 15:35.

⁸ See the Email correspondence from the VPRS to the Prosecution on 15 January 2021 at 15:54.

intermediaries and the organisations that assisted the dual status individuals P-2582⁹ and P-2620¹⁰ in completing their victim application forms (the “First Defence Request”), on the basis of the alleged discrepancies between the victim application forms and the witness statements.¹¹

9. On 20 January 2022, the Legal Representative responded to the First Defence Request, and submitted that pursuant to paragraphs 6 and 9 of the Redaction Protocol, such a request should be addressed to the Prosecution as the calling and disclosing party.¹²

10. On the same date, the Defence re-directed its First Defence Request to the Prosecution.¹³

11. On 27 January 2022, the Legal Representative conveyed to the Prosecution his position on the content of the First Defence Request by submitting that the current redactions should be maintained, and further expressed his availability to provide the Prosecution with lesser redacted versions of the victim application forms of the individuals concerned.¹⁴

12. On 11 February 2022, the Prosecution responded to the Defence and submitted that the redactions applied to the victim application forms of the individuals concerned do not fall within the parameters of the Redaction Protocol, as the underlying content is not in the Prosecution’s possession, and therefore the First Defence Request should be dealt with by the Legal Representative.¹⁵

13. On the same date, during further consultations with the Prosecution over the phone, the Legal Representative reiterated his position on the content of the First

⁹ See CAR-OTP-2126-0456, at 0459.

¹⁰ See CAR-OTP-2123-0072, at 0075.

¹¹ See the Email correspondence from the Defence to the CLR1 on 19 January 2022 at 17:55.

¹² See the Email correspondence from the CLR1 to the Defence on 20 January 2022 at 09:13.

¹³ See the Email correspondence from the Defence to the Prosecution on 20 January 2022 at 10:12.

¹⁴ See the Email correspondence from the CLR1 to the Prosecution on 27 January 2022 at 10:43.

¹⁵ See the Email correspondence from the Prosecution to the Defence on 11 February 2022 at 12:59.

Defence Request, and further suggested contacting the VPRS to seek their views on the matter.

14. On 14 February 2022, the Defence approached the Legal Representative with its second request to lift the redactions applied to the “*Photocopie de la preuve d’identité de la victime*” attached to the victim application forms of the dual status individuals concerned¹⁶ (the “Second Defence Request”)¹⁷.

15. On 15 February 2022, the Legal Representative informed the Prosecution about the Second Defence Request and provided the Prosecution with the lesser redacted versions of the relevant victim application forms of the dual status individuals to enable the Prosecution to discharge its obligations under paragraph 9 of the Redaction Protocol in consultation with the Legal Representative.¹⁸

16. On the same date, the Legal Representative responded to the Second Defence Request and stated that this request should also be addressed to the Prosecution, and informed the Defence about the transmission of the lesser redacted versions of the victim application forms of the dual status individuals concerned to the Prosecution.¹⁹

17. On the same date, the VPRS expressed serious concerns to the Prosecution about the disclosure to the Defence of the names of the intermediaries and organisations that assisted P-2582 and P-2620 in completing their victim application forms.²⁰

18. On 16 February 2022, the Prosecution informed the VPRS of its intention to disclose to the Defence the names of the intermediaries and organisations that assisted P-2582 and P-2620 in completing their victim application forms.²¹

¹⁶ See CAR-OTP-2126-0456, at 0459 and 0460; and CAR-OTP-2123-0072, at 0076.

¹⁷ See the Email correspondence from the Defence to the CLR1 on 14 February 2022 at 14:25.

¹⁸ See the Email correspondence from the CLR1 to the Prosecution on 15 February 2022 at 11:00.

¹⁹ See the Email correspondence from the CLR1 to the Defence on 15 February 2022 at 11:23.

²⁰ See the Email correspondence from the VPRS to the Prosecution on 15 February 2022 at 17:41.

²¹ See the Email correspondence from the Prosecution to the VPRS on 16 February 2022 at 11:53.

19. On the same date, the Legal Representative requested the Prosecution to clarify its position with respect to the existing redactions. He reiterated his position that the names of the intermediaries should remain redacted and, in light of the views expressed by the VPRS, submitted that the names of the organisations should also remain redacted. Due to the different interpretations regarding the application of redactions pursuant to the Redaction Protocol, the Legal Representative also inquired whether the Prosecution intended to seize the Trial Chamber pursuant to paragraph 11 of the Redaction Protocol, and provided notice of his intention to do so should there be a disagreement regarding the application of the Redaction Protocol.²²

20. On the same date, the Prosecution subsequently confirmed its intention to disclose to the Defence the names of the intermediaries and the organisations in question and indicated that it did not intend to seize the Trial Chamber on the matter.²³

21. On 22 February 2022, the Legal Representative submitted his Request to Maintain Redactions, simultaneously in *ex parte* and confidential redacted versions.²⁴

22. On 24 February 2022, the Single Judge of the Trial Chamber instructed the Registry to provide observations regarding the security implications for the concerned intermediaries and organisations within the deadline applicable to the parties and participants' responses.²⁵

23. On 1 March 2022, the Prosecution submitted its response to the Request to Maintain Redactions.²⁶

²² See the Email correspondence from the CLR1 to the Prosecution on 16 February 2022 at 13:59.

²³ See the Email correspondence from the Prosecution to the CLR1 on 16 February 2022 at 14:51.

²⁴ See the Request to Maintain Redactions, *supra* note 2.

²⁵ See the Email correspondence from the Trial Chamber to the parties and participants on 24 February 2022 at 12:48.

²⁶ See the "*Réponse de l'Accusation à la "Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620" (ICC-01/14-01/18-1290-Conf-Exp)""*, [No. ICC-01/14-01/18-1297-Conf-Exp](#), 1 March 2022. A confidential redacted version was filed on the same date as [No. ICC-01/14-01/18-1297-Conf](#).

24. On 4 March 2022, the Registry submitted its observations supporting the Request to Maintain Redactions.²⁷

25. On 7 March 2022, the Common Legal Representatives of Victims of Other Crimes submitted a response which supported the granting of the Request to Maintain Redactions.²⁸

26. On 7 March 2022, the Yekatom Defence submitted its response wherein it, *inter alia*, requested the Trial Chamber to find that the Legal Representative was in violation of the Redaction Protocol, to order the Legal Representative to provide unredacted victim application forms of the individuals concerned to the Prosecution, and to deny the Request to Maintain Redactions.²⁹

III. CLASSIFICATION

27. Pursuant to regulation 23*bis* (1) and (2) of the RoC, this request for leave to reply is filed confidentially since it refers to submissions which are likewise classified as confidential. A public redacted version will be filed in due course.

IV. SUBMISSIONS

28. In accordance with regulation 24(5) of the RoC, “[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not have reasonably anticipated”.

²⁷ See the “Registry Observations on ICC-01/14-01/18-1290-Conf-Exp”, [No. ICC-01/14-01/18-1302-Conf-Exp](#), 4 March 2022. A confidential redacted version was filed on the same date as [No. ICC-01/14-01/18-1302-Conf-Red](#).

²⁸ See the “Response by the Common Legal Representatives of Victims of Other Crimes to the “Request of the Common Legal Representative of the Former Child Soldiers to maintain redactions to the identifying and contact information of the intermediaries and the organisations mentioned in victim application forms of the dual status individuals P-2582 and P-2620”, [No. ICC-01/14-01/18-1304-Conf](#), 7 March 2022.

²⁹ See the Defence’s Response, *supra* note 1, para. 60.

29. The Defence's Response contains not only observations on the Legal Representative's Request to Maintain Redactions, but also two new requests based on its submissions under the heading "Preliminary Issue: the conduct of the CLR1 and Prosecution". The Legal Representative submits that, insofar as the applicable procedure was clearly set out, the issues raised by the Defence are new and could not have been reasonably anticipated within the meaning of regulation 24(5) of the RoC, and thus granting leave to reply is warranted. In this regard, he wishes to emphasise that on 4 January 2021, the Single Judge of the Trial Chamber confirmed that "*the Registry is expected to provide the Prosecution with the unredacted applications of dual status individuals. The Prosecution must subsequently effect disclosure pursuant to its statutory disclosure obligations and in line with [the Dual Status Protocol and the Redactions Protocol]*",³⁰ and on 15 January 2021, the VPRS provided the Prosecution with the full and unredacted versions of P-2582's and P-2620's victim application forms.³¹ Furthermore, it is submitted that faced with such serious allegations advanced by the Defence, the Legal Representative should be given an opportunity to respond as a matter of fairness.

30. In particular, the Legal Representative respectfully requests leave to reply to the following submissions made by the Defence:

- (i) The applicable procedure governing the disclosure of the victim application forms of dual status individuals as set out in the present case;³²
- (ii) The Legal Representative's alleged failure to provide the Prosecution with unredacted versions of P-2582's and P-2620's victim application forms and his alleged violation of the applicable procedure;³³

³⁰ See the Email correspondence from the Trial Chamber to the parties and participants on 4 January 2021 at 15:35.

³¹ See the Email correspondence from the VPRS to the Prosecution on 15 January 2021 at 15:54.

³² See the Defence's Response, *supra* note 1, para. 18.

³³ *Idem*, paras. 19-20.

- (iii) The Legal Representative's alleged failure to address the substance of the two Defence requests for lifting redactions;³⁴ and
- (iv) The Legal Representative's alleged failure to duly cooperate as part of *inter partes* consultations.³⁵

31. Should leave to reply be granted, the Legal Representative undertakes to address the issues raised by the Defence in a concise manner and with a short deadline.

V. CONCLUSION

32. For the foregoing reasons, the Legal Representative respectfully requests the Trial Chamber to grant him leave to reply to the Defence's Response on the issues as listed in paragraph 30 above.

RESPECTFULLY SUBMITTED



Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 28th Day of March 2022

At The Hague, The Netherlands

³⁴ *Idem*, para. 21.

³⁵ *Ibid.*