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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***

Confidential

**Common Legal Representatives' Joint and Consolidated Response to
the Prosecution's Fourth, Fifth, Sixth, Seventh and Eight Requests for the Formal
Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b)**

Source: Common Legal Representatives of Victims

Pursuant to Trial Chamber V Single Judge's instruction, dated 16 September 2024, this document is reclassified as "Public"

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 and the Common Legal Representatives of the Victims of Other Crimes (jointly the "Common Legal Representatives") hereby file their joint and consolidated response to the Prosecution's Fourth, Fifth, Sixth, Seventh and Eighth Requests for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) (the "Prosecution's Requests").¹

2. The Common Legal Representatives submit that the Prosecution's Requests to have admitted the prior recorded testimonies and associated exhibits of witnesses P-0460, P-0461, P-1143, P-1721, P-2472, P-2698, P-1172, P-0974, P-0473, P-1990, P-0520, P-0589, P-1584, P-1676, P-1865, P-2377, P-0365, P-2671, P-0505, P-2133, P-1442, P-0567, P-1503, P-1576, P-1739, P-1530, P-1932, P-2973, P-0342, P-1921, P-2050, P-2138, P-2432, P-2467, and P-2652 (the "Concerned Witnesses") under rule 68(2)(b) of the Rules of Procedure and Evidence (the "Rules") should be granted.

3. In particular, the Common Legal Representatives support the Requests since (i) the prior recorded testimonies and associated exhibits go to proof of a matter other than the acts and conduct of the Accused; (ii) the evidence contained in said testimonies have indicia of reliability; (iii) their introduction will best served the

¹ See the "Prosecution's Fourth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-794-Conf](#), 22 December 2020, with Confidential Annexes [No. ICC-01/14-01/18-794-Conf-AnxA](#) and [No. ICC-01/14-01/18-794-Conf-AnxB](#); the "Prosecution's Fifth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-795-Conf](#), 22 December 2020, with Confidential Annexes [No. ICC-01/14-01/18-795-Conf-AnxA](#) and [No. ICC-01/14-01/18-795-Conf-AnxB](#); the "Corrigendum to the Prosecution's Sixth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-802-Conf-Corr](#), 8 January 2021 (Corrigendum filed on 12 January 2021) with Confidential Annex A, [No. ICC-01/14-01/18-802-Conf-Corr-Anx](#); the "Prosecution's Seventh Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-808-Conf](#), 11 January 2021, with Confidential Annexes [No. ICC-01/14-01/18-808-Conf-AnxA](#) and [No. ICC-01/14-01/18-808-Conf-AnxB](#); and the "Prosecution's Eighth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-812-Conf](#), 11 January 2021, with Confidential Annex [No. ICC-01/14-01/18-812-Conf-AnxA](#) and [No. ICC-01/14-01/18-812-Conf-AnxB](#) (the "Prosecution's Requests").

interests of justice and will not be prejudicial to the fairness of the proceedings and the rights of both Accused; and (iv) this course of action will also promote the rights of the Victims to fair and expeditious proceedings.

II. PROCEDURAL BACKGROUND

4. On 6 May 2020, Trial Chamber V (the "Chamber") issued the "Decision on the Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence".²

5. On 26 August 2020, the Presiding Judge of the Chamber issued the "Initial Directions on the Conduct of the Proceedings" (the "Initial Directions").³

6. On 16 October 2020, the Chamber issued the "Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules" (the "Guidance on Rule 68 Decision").⁴

7. On 3 and 27 November 2020, the Prosecution filed three requests for the formal submission of prior recorded testimonies pursuant to rule 68(2)(b) of the Rules (the "Prosecution's First, Second and Third Requests").⁵

² See the "Decision on the Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence" (Trial Chamber V), [No. ICC-01/14-01/18-508](#), 6 May 2020. See also, the "Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence", [No. ICC-01/14-01/18-489](#), 22 April 2020.

³ See the "Initial Directions on the Conduct of the Proceedings" (Trial Chamber V), [No. ICC-01/14-01/18-631](#), 26 August 2020 (the "Initial Directions").

⁴ See the "Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules (Trial Chamber V)", [No. ICC-01/14-01/18-685](#), 16 October 2020 (the "Guidance on Rule 68 Decision"). See also, the "Prosecution's Request pursuant to Regulation 35 to vary the Time Limit for the Submission of Applications pursuant to Rule 68", [No. ICC-01/14-01/18-652](#), 14 September 2020.

⁵ See the "Prosecution's Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-710-Conf](#), 3 November 2020; the "Prosecution's Second Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-744-Conf](#), 27 November 2020, with Confidential Annexes [No. ICC-01/14-01/18-744-Conf-AnxA](#) and [No. ICC-01/14-01/18-744-Conf-AnxB](#); and the "Prosecution's Third Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-745-Conf](#), 27 November 2020, with Confidential Annexes

8. On 16 November and 10 December 2020, the Common Legal Representatives filed their responses to those Requests.⁶

9. On 22 December 2020, the Prosecution filed its fourth and fifth requests for the formal submission of prior recorded testimonies pursuant to rule 68(2)(b) of the Rules.⁷ The same day by e-mail the Chamber extended the deadline to file responses to the Prosecutions' Fourth and Fifth Requests until 15 January 2021.⁸

10. On 8 January 2021, the Prosecution filed its sixth request for the formal submission of prior recorded testimonies pursuant to rule 68(2)(b) of the Rules.⁹

11. On 11 January 2021, the Prosecution filed its seventh and eighth requests for the formal submission of prior recorded testimonies pursuant to rule 68(2)(b) of the Rules.¹⁰

12. On 12 January 2021, the Defence for Mr Ngaïssona filed the "Defence Consolidated Request Pursuant to Regulation 35 to vary time Limit for the Response to the Prosecution's Sixth, Seventh, and Eighth Requests for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)".¹¹ On the same date the Chamber

[No. ICC-01/14-01/18-745-Conf-AnxA](#) and [No. ICC-01/14-01/18-745-Conf-AnxB](#) (collectively, the "Prosecution's First, Second and Third Request").

⁶ See the "Common Legal Representatives' Joint Response to the 'Prosecution's Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-731-Conf](#), 16 November 2020; the "Common Legal Representatives' Joint and Consolidated Response to the Prosecution's Second and Third Request for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-761-Conf](#), 10 December 2020 (the "CLRV's Responses").

⁷ See *supra* note 1.

⁸ See the e-mail sent by the Trial Chamber on 22 December 2020 at 16:57.

⁹ See the "Corrigendum to the Prosecution's Sixth Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), [No. ICC-01/14-01/18-802-Conf-Corr](#), 8 January 2021 (Corrigendum was filed on 12 January 2021), with Confidential Annex A, [No. ICC-01/14-01/18-802-Conf-Corr-Anx](#).

¹⁰ See the "Prosecution's Seventh Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-808-Conf](#), 11 January 2021, with Confidential Annexes [No. ICC-01/14-01/18-808-Conf-AnxA](#) and [No. ICC-01/14-01/18-808-Conf-AnxB](#); and the "Prosecution's Eighth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-812-Conf](#), 11 January 2021, with Confidential Annex [No. ICC-01/14-01/18-812-Conf-AnxA](#) and [No. ICC-01/14-01/18-812-Conf-AnxB](#).

¹¹ See the "Defence Consolidated Request Pursuant to Regulation 35 to vary time Limit for the Response to the Prosecution's Sixth, Seventh, and Eighth Requests for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-815-Conf](#), 12 January 2021.

ordered that responses thereto, if any, should be filed by 13 January 2021 and may be submitted by way of email.¹²

III. CLASSIFICATION

13. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present submission is classified as confidential following the classification chosen by the Prosecution and because it refers to the content of documents likewise classified as confidential. A public redacted version will be filed in due course.

IV. SUBMISSIONS

14. The Common Legal Representatives recall the applicable statutory provisions, the specific decisions of the Chamber on the matter (including the Initial Directions and the Guidance on Rule 68 Decision) and the relevant jurisprudence of the Court cited previously in their responses to the Prosecution's applications on the matter.¹³

15. The Common Legal Representatives submit that the four requirements under rule 68(2)(b)(i) to (iii) of the Rules have been fulfilled in the Prosecution's Requests. Firstly, the statements and associated exhibits of the Concerned Witnesses are evidentiary material falling within the meaning of "prior recorded testimony" in the context of rule 68(2)(b) since: (a) they are written statements taken pursuant to rules 111 and 112 of the Rules; and (b) the Concerned Witnesses understood that they were providing information which may be relied upon in the context of legal proceedings or were questioned in the capacity as a witness.

16. Said statements and associated exhibits provide evidence related to the overall nature and extent of the widespread Anti-Balaka attacks carried out between

¹² See the e-mail sent by the Trial Chamber on 12 January 2021 at 18:08.

¹³ See the "Common Legal Representatives' Joint Response to the 'Prosecution's Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)'", *supra* note 6, paras. 9-12 and 14-19; and the "Common Legal Representatives' Joint and Consolidated Response to the Prosecution's Second and Third Request for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b), *supra* note 6, para. 9.

September 2013 and December 2014 in the Central African Republic. Consequently, these documents do not concern the acts or conduct of the Accused. Rather, they demonstrate the existence of contextual elements for war crimes and crimes against humanity under articles 7 and 8 of the Rome Statute (the "Statute"), going to the proof of a matter other than the acts and conduct of both Accused. Therefore, the material the Prosecution seeks to be admitted only relates to issues that are not materially in dispute.

17. Moreover, the evidence contained in the statements and associated exhibits of the Concerned Witnesses is of cumulative and/or corroborative nature. In light of the extensive nature of the expected evidence from "live-witnesses" called by the Prosecution,¹⁴ said statements and associated exhibits can be introduced without the need of calling the Concerned Witnesses. As a result, the first requirement for the admission of prior recorded testimonies under rule 68(2)(b) of the Rules is met.

18. Secondly, the Common Legal Representatives posit that the interests of justice will be best served by the introduction of the prior recorded testimonies and associated exhibits of the Concerned Witnesses. Indeed, this course of action will allow the Chamber, *inter alia*, to (i) safeguard the expeditiousness of the proceedings; (ii) streamline the presentation of evidence; (iii) focus live testimony on those topics of greatest relevance to the proceedings; (iv) minimise cumulative in-court testimony on aspects which are expected to be addressed by other witnesses; (v) save Court's resources; and (vi) avoid the Concerned Witnesses having to travel in order to appear in court. Furthermore, the introduction of said statements and associated exhibits will spare the Concerned Witnesses the burden of appearing, recounting their painful experiences and of potential re-traumatisation. Accordingly, the second requirement under rule 68(2)(b) of the Rules is also met.

¹⁴ See the "Prosecution's List of Witnesses and Evidence, [No. ICC-01/14-01/18-724](#) and Annexes [No. ICC-01/14-01/18-724-Conf-AnxA](#) and [No. ICC-01/14-01/18-724-Conf-AnxB](#), 10 November 2021.

19. Thirdly, the statements and associated exhibits of the Concerned Witnesses have sufficient indicia of reliability since they were: (i) obtained by the Prosecution in the ordinary course of its investigations and signed by the witnesses and the investigator(s) conducting the interview; (ii) given voluntarily; (iii) obtained in the presence of a qualified interpreter; and (iv) declared to be accurate by the witnesses at the time of giving them and include information that the witnesses were given an explanation of the procedure and were informed of the significance of providing evidence to the Prosecution. There appear no issues affecting the credibility of the information provided by the Concerned Witnesses. Hence, the third requirement under rule 68(2)(b) of the Rules is fulfilled.

20. Fourthly, a prior recorded testimony must be accompanied by a declaration by the testifying person that its content is true and correct to the best of that person's knowledge and belief and witnessed by a person authorised to that effect by the relevant Chamber. In this regard, the Chamber had already decided to designate the Registry's Senior Legal Advisor or anyone delegated by him to witness the declarations of the Concerned Witnesses. Consequently, this requirement is formally but conditionally met.

21. In conclusion, the Common Legal Representatives submit that the introduction of the statements and associated exhibits of the Concerned Witnesses is not prejudicial to the fairness of the proceedings and, more specifically, the rights of both Accused since the evidence in question: (i) relates to issues that are not materially in dispute and is not central to core issues in the case; (ii) only provides background information; and (iii) is cumulative and corroborative of other evidence.

22. As already indicated in previous submissions on the matter,¹⁵ this course of event will also promote the rights of Victims to fair and expeditious proceedings.

¹⁵ See the "Common Legal Representatives' Joint Response to the 'Prosecution's Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)'", *supra* note 6, para. 22; and the Common Legal Representatives' Joint and Consolidated Response to the Prosecution's Second and

Indeed, Victims have been waiting for justice for many years now. They are concerned with the time that the investigation conducted by the Prosecution has taken so far and the prospective of a lengthy trial. Thus, any procedural steps that would unnecessarily prolong the total duration of the trial will further frustrate the legitimate expectations of Victims to promptly receive justice.

23. Finally, granting the Prosecution's Requests will be in line with the Chamber's duty to ensure that not only the trial is fair and expeditious but is also conducted with due regard to the protection of victims and witnesses pursuant to article 64(2) of the Statute. Likewise, by granting the Prosecution's Requests, the Chambers will fulfil its obligation to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, according to article 68(1) of the Statute.

Third Request for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b), *supra* note 6, para. 19.

V. CONCLUSION

24. For the foregoing reasons, the Common Legal Representatives respectfully request the Chamber to grant the Prosecution's Requests and admit into evidence the prior recorded statements and associated exhibits of P-0460, P-0461, P-1143, P-1721, P-2472, P-2698, P-1172, P-0974, P-0473, P-1990, P-0520, P-0589, P-1584, P-1676, P-1865, P-2377, P-0365, P-2671, P-0505, P-2133, P-1442, P-0567, P-1503, P-1576, P-1739, P-1530, P-1932, P-2973, P-0342, P-1921, P-2050, P-2138, P-2432, P-2467, and P-2652 pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence.

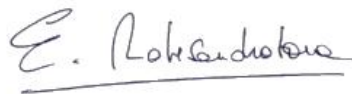


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Dated this 14th day of January 2021

At The Hague (The Netherlands), Bangui (Central African Republic), La Rochelle (France) and Saint Louis (Senegal)