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**No. ICC-01/14-01/18
Date: 23 June 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Common Legal Representatives' Joint Request for the Formal
Submission of P-0925's Additional Expert Report and Associated Material under
Rule 68(3) of the Rules**

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), 67(1) and 69 of the Rome Statute, Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Common Legal Representatives’ Joint Request for the Formal Submission of P-0925’s Additional Expert Report and Associated Material under Rule 68(3) of the Rules’.

I. Procedural history

1. On 10 March 2021, the Chamber issued its first decision under Rule 68(3) of the Rules (the ‘First Rule 68(3) Decision’), in which it set out the applicable law for requests for the introduction of prior recorded testimonies under Rule 68(3) of the Rules.¹ The Chamber also granted the Office of the Prosecutor’s (the ‘Prosecution’) request to introduce P-0925’s report (the ‘First Report’)² and associated items under Rule 68(3) of the Rules, subject to the legal requirements of the rule.³
2. On 26 April 2023, the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly, the ‘CLRV’) requested the introduction, under Rule 68(3) of the Rules, of P-0925’s additional expert report (the ‘Additional Report’)⁴ and associated items⁵ (the ‘Request’).⁶
3. On 5 May 2023,⁷ the Ngaïssona Defence indicated that it does not intend to respond to the Request.⁸

¹ Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16.

² CAR-OTP-2127-6805.

³ First Rule 68(3) Decision, ICC-01/14-01/18-907-Red, paras 8-16.

⁴ CAR-V44-00000001; CAR-V45-00000001.

⁵ CAR-V44-00000002; CAR-V45-00000002.

⁶ Common Legal Representatives’ Joint Request for the Formal Submission of P-0925’s Additional Expert Report and Associated Material pursuant to Rule 68(3) of the Rules of Procedure and Evidence, ICC-01/14-01/18-1848-Conf.

⁷ Upon the Yekatom Defence’s request, the Single Judge granted an extension to respond to the CLRV P-0925 Request to 12 May 2023 for all participants (*see* email from the Yekatom Defence, 30 April 2023, at 08:33; email from the Chamber, 2 May 2023, at 08:47).

⁸ Email from the Ngaïssona Defence, 5 May 2023, at 11:41.

4. On 12 May 2023, the Yekatom Defence filed its response, requesting that the Request be dismissed *in limine* or, alternatively, that it be rejected.⁹

II. Analysis

5. The Chamber incorporates by reference the applicable law as previously set out.¹⁰

1. Submissions

6. The CLRV seek to introduce the Additional Report and two associated items,¹¹ consisting of two letters of instructions, under Rule 68(3) of the Rules. They submit that several factors militate in favour of the introduction of the Additional Report pursuant to Rule 68(3) of the Rules, including that the Additional Report was drafted by P-0925, who is an expert ‘possessing sufficient qualifications in his area of expertise’, that ‘its content falls within his field of expertise’, that it ‘meets the minimum standards of relevance, reliability, and probative value’,¹² and that its introduction would promote the expeditiousness of the proceedings, ‘as it would substantially reduce the time for the CLRV’s examination of the witness’.¹³ Moreover, the CLRV submit that the Additional Report meets the criteria set out in Rule 68(3) of the Rules.¹⁴
7. The Yekatom Defence submits that the Request should be rejected *in limine*, as ‘there is no basis which allow[s] the CLRVs to seek submission of the Material under Rule 68(3)’,¹⁵ that the ‘CLRV were not instructed by the Chamber to jointly instruct P-0925 in accordance with Regulation 44 of the Regulations of the Court’, and that they ‘failed to seek leave from the Chamber to present evidence’.¹⁶ Furthermore, it submits

⁹ Response to the Common Legal Representative’s Joint Request for the Formal Submission of P-0925’s Additional Expert Report and Associated Material pursuant to Rule 68(3) of the Rules of Procedure and Evidence, ICC-01/14-01/18-1848-Conf, 26 April 2023, ICC-01/14-01/18-1865-Conf (public redacted version notified on 17 May 2023, ICC-01/14-01/18-1865-Red) (the ‘Response’), paras 2-4, 22, 82.

¹⁰ Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P 0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, 10 March 2021, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16. *See also* Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, 29 April 2022, ICC-01/14-01/18-1383, paras 4-17.

¹¹ Request, ICC-01/14-01/18-1848-Conf, paras 1, 28.

¹² Request, ICC-01/14-01/18-1848-Conf, paras 2, 16.

¹³ Request, ICC-01/14-01/18-1848-Conf, para. 25.

¹⁴ Request, ICC-01/14-01/18-1848-Conf, paras 2, 16.

¹⁵ Response, ICC-01/14-01/18-1865-Red, para. 24.

¹⁶ Response, ICC-01/14-01/18-1865-Red, para. 25.

that, alternatively, ‘in any event, the Additional Report does not meet the requirements for expert evidence as it contains new evidence which the CLRVs are not permitted to present’ and that it ‘usurps the functions of the Chamber’.¹⁷ Moreover, according to the Yekatom Defence, the material ‘is not appropriate in its substance for submission through Rule 68(3)’.¹⁸

2. *The Chamber’s determination*

8. The Chamber recalls that, as set out in the Initial Directions on the Conduct of the Proceedings, the CLRV need to request leave from the Chamber to submit evidence.¹⁹ This is so because ‘the CLRV’s role is different from the Prosecution’s as it is the Prosecution who exclusively carries the burden of proof to establish the alleged crimes’.²⁰
9. Moreover, the Chamber recalls that the First Report was prepared on request of the Prosecution, who also requested its introduction pursuant to Rule 68(3) of the Rules.²¹ In this regard, the Chamber notes that, contrary to what the CLRV assert, the Additional Report is not ‘an extension’ of the First Report.²² Rather, it was mandated by the CLRV and not by the Prosecution,²³ and as such constitutes a separate report. Contrary to the CLRV’s submission,²⁴ the Chamber is of the view that the authorisation to introduce the First Report pursuant to Rule 68(3) of the Rules is unrelated to the potential authorisation to introduce the Additional Report. Before requesting that the Additional Report be introduced into evidence pursuant to Rule 68(3) of the Rules, the CLRV needed to request leave to present evidence.
10. The Chamber notes that while the CLRV had previously informed the participants of their intention to request further information from P-0925 and had subsequent contact

¹⁷ Response, ICC-01/14-01/18-1865-Red, paras 3, 52.

¹⁸ Response, ICC-01/14-01/18-1865-Red, para. 4.

¹⁹ Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631 (the ‘Initial Directions’), para. 16. *See also* Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), 29 May 2023, ICC-01/14-01/18-1892 (the ‘Further Directions’), para. 9.

²⁰ Further Directions, ICC-01/14-01/18-1892, para. 11. *See also* Initial Directions, ICC-01/14-01/18-631, para. 19.

²¹ Prosecution’s Request for the Formal Submission of the Expert Reports and Associated Materials of P-0925, P-2193, P-2926, and P-2927 pursuant to rule 68(3) and article 69(4), 19 January 2021, ICC-01/14-01/18-834-Conf (public redacted version notified on 25 January 2021, ICC-01/14-01/18-834-Red), paras 1, 45.

²² Request, ICC-01/14-01/18-1848-Conf, para. 26 *and the reference cited therein*.

²³ *See* CAR-V44-00000002; CAR-V45-00000002.

²⁴ *See* Request, ICC-01/14-01/18-1848-Conf, para. 26.

with P-0925,²⁵ they did not formally seek leave from the Chamber to present evidence. They merely instructed P-0925 to prepare an additional report²⁶ which they then sought to introduce. The mere expression of intention to instruct an expert and notification of agreement with the Prosecution ‘to call P-0925 jointly’²⁷ does not equate to requesting leave to present evidence. At the very least, such leave could have been sought as part of the Request.

11. In light of the above, the Chamber finds that the CLRV lack standing to seek introduction of the Additional Report at present. Accordingly, the Chamber will not rule on the request to introduce into evidence, pursuant to Rule 68(3) of the Rules, the Additional Report.
12. Therefore, the Chamber dismisses the Request, *in limine*, without prejudice.

FOR THESE REASONS, THE CHAMBER HEREBY

DISMISSES the Request, *in limine*, without prejudice; and

INSTRUCTS the CLRV to file a public redacted version of its Request, ICC-01/14-01/18-1848-Conf, within one week of notification of the present decision.

²⁵ Transcript of hearing, 9 July 2020, ICC-01/14-01/18-T-012-ENG, p. 48, lines 10 to 19. *See also* Joint Submission on Experts, 9 November 2020, ICC-01/14-01/18-719-Conf (public redacted version notified on the same day, ICC-01/14-01/18-719-Red), paras 7-8; Common Legal Representatives’ Joint Response to the “Prosecution’s Request for the Formal Submission of the Expert Reports and Associated Materials of P-0925, P-2193, P-2926, and P-2927 pursuant to rule 68(3) and article 69(4)”, 1 February 2021, ICC-01/14-01/18-860-Conf (public redacted version notified on 16 March 2021, ICC-01/14-01/18-860-Red), para. 13; email from the CLRV, 12 April 2023, at 17:43.

²⁶ *See* CAR-V44-00000002; CAR-V45-00000002.

²⁷ *See* email from the CLRV, 12 April 2023, at 17:06.

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

		
Judge Péter Kovács	Judge Bertram Schmitt	
	Presiding Judge	
		
		Judge Chang-ho Chung

Dated 23 June 2023

At The Hague, The Netherlands