

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18

Date: 4 July 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-ÉDOUARD NGAÏSSONA***

Public

Public Redacted Version of the “Common Legal Representatives of Victims’ Joint Request for Leave to Introduce into Evidence P-0925’s Additional Report and Associated Material pursuant to Rule 68(3) of the Rules of Procedure and Evidence” (No. ICC-01/14-01/18-1954-Conf, dated 3 July 2023)

Source: Common Legal Representatives of Victims

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

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I. INTRODUCTION

1. In accordance with the “Initial Directions on the Conduct of the Proceedings” (the “Initial Directions”)¹ and in light of the “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” (the “Decision on the Initial Request”),² the Common Legal Representative of the Victims Former Child Soldiers (the “CLRV1”) and the Common Legal Representatives of the Victims of Other Crimes (the “CLRV2”, together the “CLRV”) jointly request leave to introduce into evidence, under rule 68(3) of the Rules of Procedure and Evidence (the “Rules”), P-0925’s additional expert report (the “Additional Report”)³ and the letters of instructions (the “Associated Material”).⁴

2. In the Decision on the Initial Request, Trial Chamber V (the “Chamber”) opined that, before the introduction of the material at hand into evidence, the CLRV needed to request leave to present evidence.⁵ Consequently, the CLRV file the present request at this stage of the proceedings in light of the upcoming testimony of P-0925.

3. The CLRV submit that the personal interests of the victims are affected by the anticipated testimony of P-0925 in general and by the Additional Report in particular. The Additional Report will assist the Chamber in understanding the nature and the extent of the harm suffered by the victims. It is highly relevant to the issues of the case and will bring to light important new information before the Chamber. It will also contribute significantly to the determination of the truth and will not be prejudicial to, or inconsistent with, the rights of the Accused and a fair and impartial trial.

¹ See the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-631](#), 26 August 2020, paras. 58 and 67 (the “Initial Directions”).

² See the “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” (Trial Chamber V), [No. ICC-01/14-01/18-1943](#), 23 June 2023 (the “Decision on the Initial Request”).

³ See [REDACTED].

⁴ See [REDACTED].

⁵ See the Decision on the Initial Request, *supra* note 2, para. 9.

4. The CLRV further submit that the Additional Report, along with its Associated Material, can be introduced under rule 68(3) of the Rules since it was drafted by an expert possessing sufficient qualifications in his area of expertise and meets the minimum standards of relevance, reliability and probative value.

5. Finally, the CLRV indicate that the present request is with no prejudice to their prospective requests for leave to present evidence pursuant to the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (the “Further Directions”).⁶ Indeed, both teams of Common Legal Representatives intend to file by 7 July 2023 – as instructed - separate requests for authorisation to present evidence relevant to the interests of their respective clients.

II. PROCEDURAL BACKGROUND

6. On 9 July 2020, during the first status conference, the Chamber issued a direction for the parties and participants to seek agreement concerning prospective expert evidence in order to streamline the presentation of said evidence.⁷ During the same status conference, the CLRV expressed their willingness to call jointly with the Prosecution the expert on trauma.⁸ On 16 July 2020, the Chamber also issued the “Decision Setting the Commencement Date of the Trial” and reiterated its strong encouragement for the parties *“to reach agreement at least on a number of experts”*.⁹

7. On 26 August 2020, the Chamber issued the Initial Directions.¹⁰

⁶ See the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (Trial Chamber V), [No. ICC-01/14-01/18-1892](#), 29 May 2023, para. 11 (the “Further Directions”).

⁷ See the transcript of the hearing held on 9 July 2020, [No. ICC-01/14-01/18-T-012-ENG ET WT](#), pp. 42-49.

⁸ *Idem*, p. 48.

⁹ See the “Decision Setting the Commencement Date of the Trial” (Trial Chamber V), [No. ICC-01/14-01/18-589](#), 16 July 2020, para. 17.

¹⁰ See the Initial Directions, *supra* note 1.

8. On 9 November 2020, the Prosecution filed the “Joint Submission on Experts” indicating, *inter alia*, that the CLRV agreed to jointly retain the proposed expert on trauma and their intention to provide him directly with additional instructions.¹¹ On 19 January 2021, the Prosecution requested, *inter alia*, the formal submission of the expert report and associated materials of P-0925.¹² On 1 February 2021, the CLRV provided further information on the relevance and importance of P-0925’s expertise to the interests of the victims in the present case and informed the Chamber and the parties of their contacts with P-0925 in order to provide him with additional instructions and obtaining an addendum to his expert report prepared for the Prosecution.¹³

9. On 10 March 2021, the Chamber ruled that P-0925’s expert report (CAR-OTP-2127-6805) (the “First Report”) and its associated documents (CAR-OTP-2122-8997; CAR-OTP-2122-9975) could be introduced into evidence, subject to the fulfilment of the legal requirements of rule 68(3) of the Rules.¹⁴

10. On 30 March 2023, P-0925 provided the Additional Report to the CLRV. On 12 April 2023, the CLRV informed the Chamber and the parties that they would be in a position to disclose the Additional Report by 24 April 2023.¹⁵ On 17 April 2023, the CLRV provided a courtesy copy of the Additional Report to the parties.¹⁶

¹¹ See the “Joint Submission on Experts”, [No. ICC-01/14-01/18-719-Conf](#), 9 November 2020, paras. 7-8. A public redacted version was filed on 18 January 2021 as [No. ICC-01/14-01/18-719-Red](#).

¹² See 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)”, [No. ICC-01/14-01/18-834-Conf](#), 19 January 2021. A public redacted version was filed on 25 January 2021 as [No. ICC-01/14-01/18-834-Red](#).

¹³ See the “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)’”, [No. ICC-01/14-01/18-860-Conf](#), 1 February 2021, para. 13. A public redacted version was filed on 16 March 2021 as [No. ICC-01/14-01/18-860-Red](#).

¹⁴ See the “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 Ngaiissona Defence Motion to Limit the Scope of P-2926’s Evidence” (Trial Chamber V), [No. ICC-01/14-01/18-907-Conf](#), 10 March 2021, paras. 32-36. A public redacted version was filed on 1 April 2021 as [No. ICC-01/14-01/18-907-Red](#).

¹⁵ See the Email correspondence from the CLRV dated 12 April 2023 at 17:06.

¹⁶ See the Email correspondence from the CLRV dated 17 April 2023 at 15:09.

On 25 April 2023, the CLRV formally disclosed the Additional Report and Associated Material.¹⁷

11. On 26 April 2023, the CLRV requested the introduction, under rule 68(3) of the Rules, of P-0925's Additional Report and Associated Material (the "Initial Request").¹⁸ On 12 May 2023, the Yekatom Defence filed a response opposing the Initial Request.¹⁹

12. On 29 May 2023, the Chamber issued the Further Directions.²⁰

13. On 23 June 2023, the Chamber rendered its Decision on the Initial Request, holding, *inter alia*, that: (i) the Additional Report constitutes a separate report from that of the Prosecution; and therefore, before requesting to have the Additional Report introduced into evidence pursuant to rule 68(3) of the Rules, (ii) the CLRV needed to request leave to present evidence.²¹

III. CONFIDENTIALITY

14. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the present submissions are filed confidential as they contain confidential information regarding P-0925. A public redacted version will be filed in due course.

¹⁷ See the "Common Legal Representatives of Victims Communication of the Disclosure of Evidence on 25 April 2023", [No. ICC-01/14-01/18-1847](#), 25 April 2023.

¹⁸ See the "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, [No. ICC-01/14-01/18-1848-Conf](#), 25 April 2023 (the "Initial Request").

¹⁹ See the "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, No. ICC-01/14-01/18-1848-Conf, 26 April 2023", [No. ICC-01/14-01/18-1865-Conf](#), 12 May 2023. A public redacted version was filed on 17 May 2023 as [No. ICC-01/14-01/18-1865-Red](#).

²⁰ See the Further Directions, *supra* note 6.

²¹ See the Decision on the Initial Request, *supra* note 2, paras. 9-10.

IV. SUBMISSIONS

15. Preliminarily, the CLRV note that, on 25 April 2023, they disclosed the Additional Report and Associated Material, in light of their clear intention to rely on P-0925's expertise as communicated on numerous occasions to the Chamber and, in the absence of communication or instruction by the latter, having a legitimate understanding that it was the right course of event and also for the sake of efficacy and expeditiousness of the proceedings. However, following the Decision on the Initial Request, the CLRV formally request for leave to introduce into evidence the Additional Report and Associated Material.

16. Article 68(3) of the Statute, read in conjunction with article 69(3), provides an avenue for participating victims to present evidence when their personal interests are affected.²²

17. Said right has been regularly upheld by Chambers which established that, in determining if leave to present evidence should be given, it should be assessed whether: (i) the personal interests of the victims are affected; as well as if the presentation of the evidence (ii) is appropriate and affects the issues in the case; (iii) is necessary for the determination of the truth; and (iv) is consistent with the rights of the accused.²³

A. The personal interests of the victims are affected by the P-0925's expert evidence (including his Additional Report and prospective testimony)

18. In assessing whether the proposed evidence affects the victims' personal interests, Chambers have considered whether said evidence is representative of the

²² See the "Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests" (Trial Chamber IX), [No. ICC-02/04-01/15-1199-Red](#), 6 March 2018, para. 15 (the "Ongwen Decision on Presentation of Evidence").

²³ *Idem*, para. 17.

harm suffered by a larger group of victims.²⁴ The CLRV submit that P-0925's evidence deals specifically with [REDACTED].

B. The Additional Report is relevant to the issues in the case

19. In the practice of the Court, the evidence has been considered relevant when it is sufficiently closely related to issues which the Chamber must consider in its assessment of the charges against the accused.²⁵

20. As mentioned *supra*, the proposed evidence specifically relates to [REDACTED] and thus is relevant to issues which the Chamber must consider in its assessment of the charges, in particular the extent of the victimisation. In fact, the expert evidence differs from a first-hand account by a direct victim, thus allowing the Chamber to assess the impact of the charged crimes on the lives of the victims in a more universal manner.²⁶

C. The Additional Report is necessary for the determination of the truth

21. In the jurisprudence of the Court, what constitutes evidence necessary for the determination of the truth is decided by the relevant Chamber on a case-by-case basis.²⁷ The evidence led by the victims may contribute to the determination of the truth by bringing to light new information²⁸ or helping the Chamber to have a better

²⁴ See the "Public redacted version of 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns'" (Trial Chamber VI), [No. ICC-01/04-02/06-1780-Red](#), 15 February 2017, para. 10, the "Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims" (Trial Chamber III), [No. ICC-01/05-01/08-2138](#), 22 February 2012, para. 24(c) and the "Directions for the conduct of the proceedings and testimony in accordance with rule 140" (Trial Chamber II), [No. ICC-01/04-01/07-1665](#), 20 November 2009, para. 30(c).

²⁵ See the "Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims", *supra* note 24, para. 24(b). See also, the "Directions for the conduct of the proceedings and testimony in accordance with rule 140", *supra* note 24, para. 30(b).

²⁶ See the *Ongwen* Decision on Presentation of Evidence, *supra* note 22, para. 35.

²⁷ See the "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled 'Decision on the Modalities of Victim Participation at Trial'" (Appeals Chamber), [No. ICC-01/04-01/07-2288 OA11](#), 16 July 2010, para. 112.

²⁸ See the "Directions for the conduct of the proceedings and testimony in accordance with rule 140", *supra* note 24, para. 30(d).

understanding of the facts with their knowledge of the background to the case or by drawing its attention to relevant information of which it was not aware (for example, which may be of use later in the proceedings if the extent of the harm suffered by the victims should be assessed).²⁹

22. In this regard, the Additional Report is necessary for the determination of the truth as the Chamber will be assisted in its truth seeking functions by the provision of the expert's professional opinion on important matters pertaining to the magnitude and degree of the harms suffered by the victims and the other matters addressed in said Report. It is, indeed, important for the Chamber to rely on the witness' expertise on these topics in order to fully appraise the specific types of prejudices that the victims have been suffering from and the effects and consequences of said harms on their lives from a scientific perspective. Lastly, said evidence is not repetitive of the evidence already available in the record of the case since the Additional Report addresses matters from the victims' prospective which is different from the ones relevant for the Prosecution.

D. The admission of the Additional Report is not prejudicial to, or inconsistent with, the rights of the Accused

23. The admission of the Additional Report does not usurp the functions of the Chamber³⁰ and is not prejudicial to, or inconsistent with, the rights of the Accused since it does not in any way deal with the guilt or innocence of the defendants. Moreover, the admission under rule 68 of the Additional Report will – as explained *infra* - significantly shorten P-0925's upcoming testimony; therefore, ensuring that the proceedings are expeditious, preventing undue delays that would substantially

²⁹ See the "Decision authorising the appearance of Victims a/0381/09, a/0018/09, a/0191/08, and pan/0363/09 acting on behalf of a/0363/09" (Trial Chamber II), [No. ICC-01/04-01/07-2517-tENG](#), 4 January 2012, paras. 4-5 and 20.

³⁰ See the "Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu" (Trial Chamber V), [No. ICC-01/09-01/11-844](#), 7 August 2013, para. 11. See also, the "Decision on Defence preliminary challenges to Prosecution's expert witnesses" (Trial Chamber VI), [No. ICC-01/04-02/06-1159](#), 9 February 2016, para. 8.

increase the length of the trial and ultimately guaranteeing that the presentation of evidence led by the victims is not prejudicial to or inconsistent with the rights of the Accused.³¹ Moreover, P-0925's testimony - including on matters addressed in the Additional Report - will be given in open court with the utmost neutrality and objectivity.³² Needless to say, the evidence has already been properly disclosed to the Defence. Finally, and as required under rule 68(3) of the Rules, both Defence teams will have the opportunity to examine P-0925.

E. The Additional Report and Associated Material may be introduced under rule 68(3) of the Rules

24. Should the Chamber authorise the presentation of the Additional Report and Associated Material, the CLRV further submit that the requirements for introducing said material under rule 68(3) of the Rules have been met.

25. As argued previously in the Initial Request,³³ the Additional Report was drafted by P-0925 [REDACTED]. Additionally, the content of the Additional Report falls squarely within his area of expertise.

26. Moreover, the Additional Report also meets the minimum standards of relevance, probative value and reliability. As argued in the Initial Request,³⁴ the Additional Report is highly relevant to assess and fully understand the nature and extent of the harms suffered by the victims participating in this case. In particular, the Additional Report details, *inter alia*, [REDACTED].³⁵ As such, it is extremely relevant and at the core of the interests of victims participating in this case and is representative of the harm they suffered. The Additional Report also has probative value since it is

³¹ See the "Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims" (Trial Chamber III), [No. ICC-01/05-01/08-2027](#), 21 December 2011, paras. 9 and 11.

³² See the "Decision on Defence preliminary challenges to Prosecution's expert witnesses", *supra* note 30, para. 9.

³³ See the Initial Request, *supra* note 18, paras. 17-19.

³⁴ *Idem*, paras. 20-22.

³⁵ See the Additional Report, *supra* note 3, pp. 13-25, 26-33, 34-54 and 59-64.

based on the expert's review of relevant evidence, along with a comprehensive comparative analysis of the literature on psychosocial impacts of trauma caused by the exposure to extreme violent events on individuals, their families and communities³⁶ and of the *verbatim* accounts of several victims.³⁷ Finally, the Additional Report has sufficient reliability since its methodology is detailed, the sources used are all identified³⁸ and its content falls entirely within P-0925's area of expertise.

27. Lastly, the introduction of the Additional Report and Associated Material would promote the expeditiousness of the proceedings, substantially reducing the time for the CLRV's examination of the witness. The fact that the First Report has already been introduced pursuant to rule 68(3) of the Rules further militates in favour of the introduction of the Additional Report via the same provision as well. Indeed, the Additional Report was prepared by the expert as an extension of the report previously provided to the Prosecution.

F. The present Request is with no prejudice to the CLRV's prospective requests for leave to present evidence pursuant to the Further Directions

26. Finally, the CLRV wish to clarify that the present request is made at this stage of the proceedings in light of the upcoming testimony of P-0925 and following the Decision on the Initial Request. Therefore, the present request is with no prejudice to the prospective requests for leave to present evidence relevant to the different and distinct interests of the two categories of victims participating in the trial, which both teams of CLRV will file by 7 July 2023 pursuant to the Further Directions.³⁹

³⁶ *Idem*, p. 9.

³⁷ *Idem*, p. 8.

³⁸ *Idem*, pp. 11-12 and 81-92.

³⁹ See the Further Directions, *supra* note 6, para. 11.

V. CONCLUSION

27. For the foregoing reasons, the CLRV respectfully request the Chamber to grant the present request to introduce into evidence P-0925's Additional Report and Associated Material pursuant to rule 68(3) of the Rules.



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For the team of the Common
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Victims of Other Crimes

Dated this 4th day of July 2023

At The Hague (The Netherlands)