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**International
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Date: **11 August 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

**Public redacted version of "Defence Response to the 'Requête des Représentants
Légaux Communs des Victimes des autres crimes aux fins de la Présentation des
Preuves'", ICC-01/14-01/18-1972-Conf-Red, 7 July 2023**

Source: Defence of Patrice-Edouard Ngaißsona

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

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I. Introduction

1. The Defence for Patrice-Edouard Ngaïssona ('Defence') hereby submits its response to the "Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves", ICC-01/14-01/18-1972-Conf-Red, filed on 7 July 2023 ('Request').
2. While the evidence of Victim a/65012/19 is repetitive, the Defence defers to the Chamber as to the appropriateness of allowing his testimony. The remainder of the Request should be dismissed. The evidence of the proposed witnesses is either repetitive, or unrelated to the charges in the present case. While the Defence does not dispute the right of victims to meaningfully participate in the proceedings, it submits that the evidence of two out of three victims selected by the Common Legal Representatives of Victims ('CLRVs') is not appropriate or necessary in the context of the present case.
3. In addition, considering that it would not, in any event, form part of the evidentiary record of the case, the Defence submits that any presentation of victims' 'views and concerns' would be better suited to a later stage of the case.

II. Confidentiality

4. In accordance with Regulation 23*bis*(1) of the Regulations of the Court, the response is filed confidentially as it responds to a document of the same classification. A public redacted version of the response will be filed in due course.

III. Applicable Law

5. While Article 68 of the Rome Statute ('Statute') provides for the possibility for participating victims to present evidence, the statutory framework of the Court does not automatically confer victims a right to present evidence but merely

affords a possibility to do so with the leave of the Chamber.¹ The Chamber must ensure that any presentation of evidence by the victims is authorised only when it is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

6. The primary purpose of the Legal Representatives of Victims ('LRVs') presentation of evidence is to illustrate matters 'relevant to the personal interests of the victims' by eliciting evidence which, while not directly pertaining to the accused's individual responsibility, bears relevance to the issues of the case.² It must not, however, constitute a venue for the LRVs to pose questions aiming to prove the elements of the crimes charged or the accused's role in their commission.³
7. In determining whether it is appropriate and necessary for the LRVs to present evidence, the Chamber must assess, in addition to whether the personal interests of the victims are affected, whether: (i) the hearing of evidence is appropriate and affects the issues in the case; (ii) the hearing of evidence is necessary for the determination of the truth; and (iii) the presentation of evidence is consistent with the rights of the accused.⁴

¹ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Public redacted version of Decision on LRVs requests to present evidence and views and concerns, 9 December 2021, ICC-01/12-01/18-2063-Red, para. 11 (the 'Al Hassan Decision'); Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on the Modalities of Victim Participation at Trial, 22 January 2010, ICC-01/04-01/07-1788-tENG (the 'Katanga Decision'), paras 52, 83; Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain*, Decision on the participation of victims in the trial proceedings, ICC-02/05-03/09-545 (the 'Banda Decision'), para. 24.

² Al Hassan Decision, para. 12; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Urgent Request for Delay in Opening of LRV and CLRV Evidence Presentation, 26 April 2018, ICC-02/04-01/15-1248 (the 'Second Ongwen Decision'), para. 14.

³ Al Hassan Decision, para. 12; Second Ongwen Decision', para. 13; *The Prosecutor v. Dominic Ongwen*, Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests, 6 March 2018, ICC-02/04-01/15-1199-Red (the 'Ongwen Decision'), paras 18, 23. See also Katanga Decision, ICC-01/04-01/07-1788-tENG, para. 52 (noting that 'during the drafting of the Statute, proposals for the victims to be able to present evidence for the purpose of establishing the criminal responsibility of the accused via their legal representatives were not retained in the final version of the Statute').

⁴ Al Hassan Decision, para. 10; Ongwen Decision, para. 17; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, 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' (10 February 2017, ICC01/04-02/06-1780-Conf),

8. As regards the presentation of victims' 'views and concerns', Article 68(3) of the Statute enables such presentation 'at stages of the proceedings determined to be appropriate by the Court'. Chambers retain a broad discretion to determine the appropriate stages of the proceedings for presenting such views and concerns, especially where this presentation is sought to be made by individual victims, as opposed to via their legal representation.⁵

IV. Submissions

9. The Defence recognises that victims must be afforded a meaningful opportunity to participate in the proceedings and to be heard either through the presentation of evidence, or 'views and concerns'. However, the evidence of two of the victims selected by the CLRVs in this case does not meet the requirements established in the Court's jurisprudence to allow the presentation of their evidence. The proposed evidence is in part repetitive, and in other part, outside of the scope of the charges in this case.⁶ As such, this evidence is not necessary for the determination of the truth, and is not consistent with Mr Ngaïssona's rights under the Statute.
10. In addition, there is no compelling reason why the presentation of views and concerns should be granted at this stage of the proceedings, without prejudice to a renewed request by the CLRVs at a later stage.

A. The evidence of the proposed victims is repetitive and not necessary for the Chamber to establish the truth

15 February 2017, ICC-01/04-02/06-1780-Red (the 'Ntaganda Decision'), para. 11; Katanga OA 11 Judgment, ICC-01/04-01/07-2288, para. 114.

⁵ Al Hassan Decision, para. 33; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Preliminary Directions for any LRV or Defence Evidence Presentation, ICC-02/04-01/15-1021, para. 2(i); Ongwen Decision, ICC-02/04-01/15-1199-Red, paras 70-78; Banda Decision, ICC-02/05-03/09-545, para. 17.

⁶ *Contra* Request, para. 22.

11. At the outset, the Defence notes that the summaries of the evidence for the three potential witnesses are excessively redacted, in a way that makes it difficult for the Defence to place their accounts in the context of the case. The locations of the alleged events are for the most part redacted, as is identifying information that would allow a preliminary assessment of relevance and credibility. The Defence is thus obliged to make submissions in the dark in relation to aspects which are crucial to the assessment of the Request, and respectfully reserves its right to make further submissions at a later stage should it be necessary.

12. The Defence further notes that should the Chamber grant the CLRVs Request in whole or in part, the rapid lifting of redactions as well as adequate time to investigate the allegations of the three victims will be essential for Defence preparation ahead of their respective testimonies, in accordance with Article 67 of the Statute.

i. Victim a/65012/19

13. The Defence understands that Victim [REDACTED].⁷ [REDACTED],⁸ [REDACTED],⁹ [REDACTED],¹⁰ [REDACTED],¹¹ [REDACTED],¹² [REDACTED],¹³ [REDACTED],¹⁴ [REDACTED],¹⁵ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

14. [REDACTED],¹⁶ [REDACTED].¹⁷ [REDACTED],¹⁸ [REDACTED],¹⁹
 [REDACTED],²⁰ [REDACTED],²¹ [REDACTED],²² [REDACTED],²³
 [REDACTED],²⁴ [REDACTED]²⁵ [REDACTED].²⁶ [REDACTED].²⁷

15. [REDACTED].

ii. Victim a/65010/19

16. This individual appears to be the spouse of a Muslim trader in or around Bossangoa.²⁸ The alleged events involving Victim a/65010/19's spouse, which would have taken place in November 2013, are eerily similar to the account of Prosecution witness P-2453, who also alleged that in September 2013, his vehicle carrying traders was attacked by Anti-balaka while on the way to a town near the border, and that Muslim passengers were killed and their merchandise pillaged.²⁹ There is no clear benefit from hearing this hearsay testimony, on uncharged events, whereby the Chamber has already heard a witness who was allegedly a direct witness to an alleged attack of the same nature, also outside of the material scope of the charges.

17. The other part of Victim a/65010/19's account is also duplicative of evidence already heard in the course of the Prosecution's case. As stated above, the Court has heard ample evidence from direct witnesses of the 5 December attack, as

¹⁶ See for example P-2682: ICC-01/14-01/18-T-017-CONF-ENG CT, p. 35, lns 10-23, p. 37, lns 10-25 to p. 38, lns 1-7 and p. 41, lns 3-23; P-1704: ICC-01/14-01/18-T-128-CONF-ENG ET, p. 54, lns 23-25 to p. 55, lns 1-2; P-0967: ICC-01/14-01/18-T-199-CONF-ENG ET, p. 18-20.

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ Request, para. 29.

²⁹ ICC-01/14-01/18-T-137-CONF-ENG ET, p. 38-42 ; CAR-OTP-2111-0415, paras 28-30, 32-33, 38-39.

well as on the evacuation of Muslim civilians.³⁰ Notably, Prosecution witness P-0475 also testified about Muslims allegedly dressing like Christians to avoid detection by Anti-balaka.³¹

18. Therefore, the proposed testimony of a/65010/19 is repetitive, partly indirect and outside of the scope of the charges, and would not assist the Chamber's determination of the truth in the present case.

iii. Victim a/65013/19

19. [REDACTED].³² [REDACTED].³³

20. [REDACTED].³⁴

21. [REDACTED].³⁵

22. [REDACTED].

B. The expression of views and concerns by victims is better suited to a later stage of the proceedings

23. The Chamber expressly stated, in the Further Directions on the Conduct of the Proceedings, that it was not "inclined to hear victims present unsworn, non-evidentiary 'views and concerns' before its decision pursuant to Article 74 of

³⁰ See footnotes 16 and 18-26 above.

³¹ ICC-01/14-01/18-T-090-CONF-ENG CT, p. 68, lns 17-25 to p. 69, ln. 1: "A. [14:40:20] Yes, after that crisis, as I said a short while ago, there were Muslims who would go around -- about and would be recognised because of the traditional attire they were wearing, namely, the grand boubou or the gown. But what happened was that those brothers no longer wore the grand boubou for fear of being recognised. That's it. In fact, from time to time, in order to avoid being identified by the Anti-Balaka or those who did not like Central Africans to practise that religion, you see, those who pray regularly do have some marks on their foreheads. And in order to hide those marks, they were forced to wear caps in order to hide the marks on the -- on their forehead in order not to be identified. So that's it".

³² [REDACTED].

³³ [REDACTED].

³⁴ Al Hassan Decision, para. 17.

³⁵ [REDACTED]

the Statute.”³⁶ The Request fails to show why such presentation of views and concerns is warranted at the present stage of the case.

24. First, the Request’s allegation that the presentation of views and concerns will not have an impact on the rights of the Accused because it will be unsworn, and destined to assist the Chamber establish the factual truth³⁷ is misguided. Indeed, a mere unsworn statement should not, in fact, be considered by the Chamber in its determination of the truth, as it “would not be part of the evidentiary record and can therefore not be taken into account in the judgment.”³⁸

25. The Defence submits that it would be more appropriate to hear the views and concerns of individual victims, if any, or through their legal representatives, after the delivery of the trial judgment pursuant to Article 74 of the Statute, if the judgment makes it necessary to hear these views at all. Indeed, since such views and concerns do not form part of the evidentiary record, there are no compelling reasons to receive them at this stage.³⁹ The CLRVs should be directed to reapply at a later stage.

26. Should the Chamber be minded to receive views and concerns at this stage, the Defence argues, alternatively, that the Chamber should request the CLRVs to identify a participating victim whose account is representative of the global experience of victims in the Central African Republic. The Defence submits that Victim a/65090/19’s proposed evidence is not representative, since it contains several sensationalist details, which are not reflective of the evidence currently on the record.⁴⁰

³⁶ ICC-01/14-01/18-1892, para. 11.

³⁷ Request, para. 14.

³⁸ ICC-02/04-01/15-1199-Red, para. 74.

³⁹ See Al Hassan Decision, para. 34; Second Ongwen Decision, ICC-02/04-01/15-1199-Red, paras 74-76.

⁴⁰ See Request, para. 35, in which it is alleged that Victim a/65090/19 [REDACTED].

V. Conclusion

27. For these reasons, the Defence:

- **DEFERS** to the Chamber in relation to Victim a/65012/19;

and requests that the Chamber:

- **REJECT** the request to call victims a/65010/19 and a/65013/19 to provide evidence;
- **REJECT** the request to call victim a/65090/19 to present views and concerns, without prejudice to re-filing a new request at a later stage.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 11 August 2023,

At The Hague, the Netherlands.