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**International
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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***

Public

Public Redacted Version of the “Common Legal Representatives of Victims’ Joint Response to the ‘Prosecution’s Sixth Application for the Submission of Evidence from the Bar Table’” (ICC-01/14-01/18-1934-Conf)

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. The Common Legal Representative of the Victims Former Child Soldiers (the “CLR V1”) and the Common Legal Representatives of the Victims of Other Crimes (the “CLR V2”, together the “CLR V”) support the “Prosecution’s Sixth Application for the Submission of Evidence from the Bar Table” (the “Request”).¹ The CLR V concur with the Prosecution that the submission of the 271 items of evidence from the bar table (the “Bar Table Items”), which comprise evidence relevant to the origins of the Anti-Balaka and the use of speeches to instil fear in the population, creating an anti-Muslim animus, are relevant and probative for the determination by Trial Chamber V (the “Chamber”) of live issues in the present case. This is in accordance with articles 64(9)(a), 69(3) and 69(4) of the Rome Statute (the “Statute”), rule 63(2) of the Rules of Procedure and Evidence (the “Rules”), and the Initial Directions on the Conduct of Proceedings (the “Initial Directions”).² Indeed, said submission will ensure the expeditiousness of the proceedings while fully respecting the rights of the Accused, pursuant to articles 64(2) and 69(4) of the Statute.

2. Moreover, the CLR V submit that said evidence will further assist the Chamber in assessing the nature, complexity and extent of the victimisation of the participating victims they represent.

II. PROCEDURAL BACKGROUND

3. On 26 August 2020, the Presiding Judge of the Chamber issued the Initial Directions.³

¹ See the “Prosecution’s Sixth Application for the Submission of Evidence from the Bar Table”, No. ICC-01/14-01/18-1868-Conf, 15 May 2023 (the “Request”).

² See the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V, Presiding Judge), [No. ICC-01/14-01/18-631](#), 26 August 2020 (the “Initial Directions”).

³ *Ibid.*

4. On 15 May 2023, the Prosecution filed its Request.⁴

5. In response to a request made by the Defence for Mr Yekatom,⁵ and supported by the Defence for Mr Ngaïssona,⁶ the Chamber extended the deadline for filing responses to the Request to 19 June 2023.⁷

III. CONFIDENTIALITY

6. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the present submission is filed confidential following the classification chosen by the Prosecution. A public redacted version will be filed in due course.

IV. SUBMISSIONS

7. The CLRV incorporate by reference their submissions included in their previous responses to bar table motions filed by the Prosecution.⁸ The CLRV further refer to the Chamber's determination in the "Decision on the Fifth Prosecution Submission Request from the Bar Table (Yahoo Emails)",⁹ where it recalled the applicable law for submission of evidence from the bar table, and noted that it will only consider, at this stage, "*whether the Items are subject to any statutory exclusionary rules, including procedural bars, obstacles, and preconditions*".¹⁰

⁴ See the Request, *supra* note 1.

⁵ See the Email correspondence from the Yekatom Defence dated 17 May 2023 at 10:23.

⁶ See the Email correspondence from the Ngaïssona Defence dated 17 May 2023 at 12:35.

⁷ See the Email correspondence from the Chamber dated 19 May 2023 at 17:04.

⁸ See e.g. the "Response by the Common Legal Representatives of the Victims of the Other Crimes to the Prosecution's 'Request for the Submission of Evidence from the Bar Table regarding the Prevalence of Sexual and Gender Based Violence'", [No. ICC-01/14-01/18-1276](#), 11 February 2022, paras. 5-7; and the "Response by the Common Legal Representative of the Former Child Soldiers to the Prosecution's 'Request for the Submission of Evidence from the Bar Table regarding the recruitment and use of child soldiers'", [No. ICC-01/14-01/18-1363](#), 14 April 2022, paras. 6-8.

⁹ See the "Decision on the Fifth Prosecution Submission Request from the Bar Table (Yahoo Emails)" (Trial Chamber V), No. ICC-01/14-01/18-1632-Conf, 25 October 2022.

¹⁰ *Idem*, para. 4.

8. In its Request, the Prosecution submits 271 items and states that they relate to the origins of the Anti-Balaka and refer to events which occurred between the end of 2012 and early 2014, when the organisation and coordination of the group was set up.¹¹ After detailing the general relevance of the Bar Table Items, the Prosecution has further specified the probative value, reliability and authenticity of the following eight categories of Items:

- a. Audio/video materials and their related transcripts/translations;
- b. Media articles;
- c. Reports;
- d. Email correspondence;
- e. Social media (Facebook);
- f. Anti-Balaka documents;
- g. Legal and administrative documents;
- h. Other material.¹²

9. Having comprehensively reviewed the content of the Request, the details provided in its Annexes and the relevant documents, the CLRV consider that the submission of the Bar Table Items does not raise any procedural bars enshrined in the Statute or in the Rules. Nor is there any need for the Chamber to exceptionally consider standard evidentiary criteria at this point of the submission of the evidence since no such determination is presently required in order to ensure the fairness and expeditiousness of the trial proceedings.

10. In addition, the CLRV posit that the Prosecution sufficiently explained the relevance of the Bar Table Items.¹³ In that regard, the CLRV concur that the Items show that Bozize and his inner circle, including Mr Ngaïssona, used fear and hate speech to

¹¹ See the Request, *supra* note 1, para. 1.

¹² *Idem*, paras. 3, and 31-55.

¹³ *Idem*, paras. 8-30. See also the Annexes A and B to the Request containing a specific section, for each Item, on their relevance and probative value.

ingrain anti-Muslim sentiment in the population.¹⁴ A review of the Bar Table Items demonstrate that Bozize, his inner circle, COCORA, and COAC, continuously spread anti-Muslim propaganda, notably by arguing that the Seleka was composed of foreigners, criminals or foreign invaders,¹⁵ or that they were coming to the Central African Republic (the “CAR”) to invade the country and islamise it.¹⁶ They further show that Bozize and his inner circle equated the Seleka with Muslims civilians, seeing the latter as Seleka accomplices,¹⁷ and that Muslims civilians were generally targeted.¹⁸ These issues are particularly relevant to material issues of the case, as well as to the interests of the participating victims in the case.

11. The CLRV further concur with the Prosecution that the Bar Table Items demonstrate that FROCCA continued and led a similar anti-Muslim campaign,¹⁹ also using the threat of ‘Islamisation’ to frighten and mobilise the youth,²⁰ which culminated in FROCCA expressly blaming Muslim civilians for the Seleka crimes.²¹ This led to crimes being committed against Muslim civilians, as the Anti-Balaka and Bozize’s supporters started attacking the enemy, conflating the Muslim civilian population and the Seleka.²² The Bar Table Items equally show that Mr Yekatom and his group followed the same logic.²³

12. Viewed holistically, the Bar Table Items therefore demonstrate, *inter alia*, that Bozize and his inner circle, which included Mr Ngaïssona, made continuous efforts to mobilise the youth, to arm them, and to instill fears among them, resulting in several crimes being committed against the Muslim civilian population. In that regard, the CLRV recall that even if evidentiary items submitted through a bar table motion may

¹⁴ See the Request, *supra* note 1, paras. 9-13, 17-21, 23, 33, and 40.

¹⁵ See Annex A to the Request, [REDACTED].

¹⁶ See Annex A to the Request, [REDACTED].

¹⁷ See Annex A to the Request, [REDACTED].

¹⁸ See Annex A to the Request, [REDACTED].

¹⁹ See the Request, *supra* note 1, paras. 19-21. See also, e.g., Annex A to the Request, [REDACTED].

²⁰ *Idem*, para. 20. See also Annex A to the Request, [REDACTED].

²¹ *Idem*, para. 21. See also Annex A to the Request, [REDACTED].

²² *Idem*, paras. 23-24. See also, Annex A to the Request, [REDACTED].

²³ See Annex A to the Request, [REDACTED].

be technically falling outside the temporal scope, this does not constitute a procedural bar preventing the recognition of said items.²⁴

13. With regard to the authenticity and reliability of the Bar Table Items, the Prosecution argued, for each category of documents, how the items are *prima facie* reliable and authentic by detailing, *inter alia*, (i) the method by which they were obtained or provided to the Prosecution,²⁵ (ii) the way they were drafted, published or broadcasted contemporaneously,²⁶ (iii) how they corroborate each other or other documentary and testimonial evidence,²⁷ and (iv) their general appearance and content.²⁸ The CLRV concur with the Prosecution that the documents are reliable and authentic and face no procedural bars to be formally submitted through a bar table motion.

14. Furthermore, the Prosecution is submitting via the bar table two items which were received by witness P-2625,²⁹ and several items related to witness P-1819.³⁰ As held by Trial Chamber IX in the *Ongwen* case, there is no procedural bar impeding the submission of materials associated with Prosecution's witnesses since the formal submission of material severable from an in-court testimony does not prejudice the Defence,³¹ and documentary evidence introduced through an in-court witness remains documentary since the manner of introduction does not transform it into testimonial evidence.³² This remains the case, even when the material relates to individuals who will not testify, as there "*is no requirement that evidence be tested with a witness in order for it to be submitted*".³³ Thus, there exist no procedural bar that would preclude the submission of said items.

²⁴ See the "Decision on Prosecution's Request to Submit 1006 Items of Evidence" (Trial Chamber IX), [No. ICC-02/04-01/15-795](#), 28 March 2017, para. 7.

²⁵ See the Request, *supra* note 1, paras. 35, 44, and 47.

²⁶ *Idem*, paras. 35, 38, 41, 50, and 53.

²⁷ *Idem*, paras. 38, 41, and 44.

²⁸ *Idem*, paras. 38, 41, 44, 47, 50, 53, and 55.

²⁹ *Idem*, paras. 42-44.

³⁰ See e.g. Annex A to the Request, [REDACTED].

³¹ See the "Decision on Prosecution's Request to Submit 1006 Items of Evidence", *supra* note 24, para. 13.

³² *Idem*, para. 14.

³³ *Idem*, para. 15.

15. The CLRV observe that the submission of the Bar Table Items is not prejudicial to the Defence for Mr Yekatom and Mr Ngaïssona. As again held by Trial Chamber IX in the *Ongwen* case, the ultimate prejudice which the Defence may suffer depends on the nature of the material and how said material is discussed during trial, and whether the Chamber relies on such material in its judgement and in what manner.³⁴ Therefore, undue prejudice determinations at the point of submission can only be done reliably for items for which it is immediately apparent that they cannot be fairly relied upon for any purpose.³⁵ Having conducted a detailed review of the Request, its Annexes and the documents concerned, the CLRV posit that none of the Bar Table Items compels the conclusion at this juncture that the Chamber cannot fairly rely upon them for its determination of the case.

16. The CLRV further posit that granting the Request will be in line with the Chamber's duty to ensure the expeditiousness of the proceedings pursuant to article 64(2) of the Statute. The recognition of the Bar Table Items will obviate the need to call more witnesses to attest to the authenticity of said items. This course of conduct will also enable a reduction of time needed for the trial, therefore responding to both the right of the Accused and the interest of the victims to have expeditious proceedings.

17. Finally, it is the CLRV's position that the submission of the Bar Table Items will assist the Chamber in assessing the nature, complexity, and the extent of victimisation caused by the Anti-Balaka, especially with regard to the origins of the conflict and the emergence of the Anti-Balaka, and the anti-Muslim campaign which resulted in crimes being committed against Muslim civilians. Moreover, the Anti-Muslim propaganda was effectively used as a way of indoctrination of youth, including very small children, pushing them to join the Anti-Balaka and as a way of their further

³⁴ See the "Decision on Prosecution Request to Submit Interception Related Evidence" (Trial Chamber IX), [No. ICC-02/04-01/15-615](#), 1 December 2016, para. 10.

³⁵ *Idem*, paras. 10-11.

instrumentalisation to make them feel at ease to commit crimes against the Muslim population.

V. CONCLUSION

18. For the foregoing reasons, the CLRV respectfully request the Chamber to grant the Request.



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Paolina Massidda

For the team of the Common
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Victims of Other Crimes

Dated this 2nd day of November 2023

At The Hague (The Netherlands)