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**International
Criminal
Court**

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Date: 6 September 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

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’ 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, dated 10 December 2020)**

Source: Common Legal Representatives of Victims

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

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Ms Anta Guissé
Mr Thomas Hannis
Ms Sarah Bafadhel

Counsel for Patrice-Édouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of the Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Marie Édith Douzima Lawson
Mr Yaré Fall
Ms Paolina Massidda
Ms Elisabeth Rabesandratana

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Mr Dmytro Suprun

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

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 Second and Third Request for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b)¹ (the “Prosecution’s Second and Third Requests” or the “Requests”).

2. The Common Legal Representatives submit that the Requests to have admitted the prior recorded testimonies and associated exhibits of witnesses P-0595, P-0732, P-0811, P-1598, P-1779, P-1964, P-2205, P-2416, P-2422, P-2486 and P-2546 (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 shall best serve the 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.

¹ See 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 [No. ICC-01/14-01/18-745Conf-AnxA](#) and [No. ICC-01/14-01/18-745-Conf-AnxB](#) (the “Prosecution’s Second and Third Requests” or the “Requests”).

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 November 2020, the Prosecution filed its first request for the formal submission of prior recorded testimonies pursuant to Rule 68(2)(b) of the Rules (the “First Request”).⁵ On 16 November 2020, the Common Legal Representatives⁶ and the Defence for both Accused⁷ filed their responses.

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.

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.

⁷ See the “Yekatom Defence Response to Prosecution’s Rule 68(2)(b) Applications (ICC-01/14-01/18-710-Conf)”, [No. ICC-01/14-01/18-732-Conf](#), 16 November 2020 and the “Defence response to ‘Prosecution’s Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)’”, [No. ICC-01/14-01/18-733-Conf](#), 16 November 2020.

III. CLASSIFICATION

8. 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

9. 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 response to the First Request.⁸

10. The Common Legal Representatives likewise submit that the four requirements under rule 68(2)(b)(i) to (iii) of the Rules have been fulfilled in the Prosecution's Second and Third 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.

11. Most importantly, said statements and associated exhibits provide evidence concerning the overall nature and extent of the widespread Anti-Balaka attacks carried out between September 2013 and December 2014 in the Central African Republic. Consequently, the Common Legal Representatives observe that these documents do not concern the acts or conduct of the Accused. In other words, they do not refer to the actions or omissions of Mr Yekatom and Mr Ngaïssona as described in the charges

⁸ 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.

confirmed against them or which are otherwise relied upon to establish their criminal responsibility for the crimes charged.

12. Rather, the Common Legal Representatives note that the statements and associated exhibits in question 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, said material only relates to issues that are not materially in dispute. In other words, they do not concern matters which are soundly and conceivably disputed between the parties and are of crucial significance for the Chamber's eventual determination of the charges against Mr Yekatom and Mr Ngaïssona in its judgment under article 74 of the Statute.

13. Moreover, the evidence contained in the statements and associated exhibits of the Concerned Witnesses is of a cumulative or corroborative nature. Consequently, it is unnecessary that said witnesses be called to testify live and the examination by the parties may rather be dispensed of without prejudicing the rights of both Accused. Hence, the Common Legal Representatives submit that, due to the extensive evidence to be elicited from other "live-witnesses" called by the Prosecution,⁹ said statements and associated exhibits can be introduced without 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.

14. Secondly, the Common Legal Representatives posit that the interests of justice shall 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;

⁹ See the "Notification of the Provisional List of Prosecution Witnesses with a Summary of their Anticipated Testimony, [No. ICC-01/14-01/18-642-Conf](#) and Annex A [No. ICC-01/14-01/18-642-Conf-AnxA](#), 31 August 2020.

(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.

15. Furthermore, the Common Legal Representatives contend that the interests of justice shall also be served by the introduction of said statements and associated exhibits in so far it will spare the Concerned Witnesses the burden of appearing, recounting their painful experiences and of potential re-traumatisation. [REDACTED].¹⁰ Consequently, the second requirement under rule 68(2)(b) of the Rules is also met.

16. 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.

¹⁰ See also in this regard the Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, COM (2011) 275 final, 18 May 2011, pp. 9-10. This proposal states that "[a] victims of crime are per se vulnerable and accordingly require sensitive and careful treatment. However, some victims are particularly vulnerable to further victimisation or intimidation by the accused or suspected person or his associates. In addition, some victims are particularly at risk of being further distressed or harmed by their involvement in criminal proceedings whether through the giving of evidence or through other forms of participation. Such victims require special measures in order to minimise the likelihood of further harm occurring. [...] [S]econdary victimisation [should be prevented] by ensuring that the victim is interviewed as early as possible and that interaction with authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them." See also, for UN standards - Handbook on Justice for Victims on the use and application of the Declaration of Basic Principles and Justice for Victims of Crime and Abuse of Crime, 1999, pp. 34-40, 69-71.

17. 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.

18. 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, as argued above, 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.

19. In addition, the Common Legal Representatives submit that this course of event shall also promote the rights of Victims to fair and expeditious proceedings. Indeed, Victims have been waiting for justice for many years now. They are concerned with the speed which 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.

20. Finally, granting the Prosecution's Second and Third Requests shall also be in line with the Chamber's duty to ensure that not only the trial is fair and expeditious but also is conducted with due regard to the protection of victims and witnesses pursuant to article 64(2) of the Statute. Equally, this also falls within the Chambers' 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.

V. CONCLUSION

21. For the foregoing reasons, the Common Legal Representatives respectfully request the Chamber to grant the Requests and admit into evidence the prior recorded statements and associated exhibits of P-0595, P-0732, P-0811, P-1598, P-1779, P-1964, P-2205, P-2416, P-2422, P-2486 and P-2546 pursuant to rule 68(2)(b) of the Rules.



Dmytro Suprun
Common Legal Representative
Victims Former Child Soldiers



Paolina Massidda

Elisabeth Rabesandratana

Yaré Fall

Abdou Dangabo Moussa

Marie-Edith Douzima-Lawson

Common Legal Representatives
Victims of Other Crimes

Dated this 6th day of September 2024

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