

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 25 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 NGAISSONA*

Public

Public Redacted Version of the "Request of the Common Legal Representative of the Former Child Soldiers for Leave to Reply to the 'Response to the 'Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal' (ICC-01/14-01/18-2654-Conf)'" (No. ICC-01/14-01/18-2681-Conf, dated 9 September 2024)

Source: Office of Public Counsel for Victims (CLR1)

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

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I. INTRODUCTION

1. Pursuant to regulation 24(5) of the Regulations of the Court (the “Regulations”), the Common Legal Representative of the Former Child Soldiers (the “CLR1”) herewith respectfully requests to be granted leave to reply to two discrete issues arising from the “Response to the ‘Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal’ (ICC-01/14-01/18-2654-Conf)”¹ (the “Defence Response”). The two discrete issues on which the CLR1 seeks to submit a reply could not have been reasonably anticipated, and thus granting leave to reply is warranted. Furthermore, faced with the Defence’s serious allegations on violation of the Contact Protocol, the CLR1 should be given an opportunity to reply as a matter of fairness.

2. The fact that the CLR1 merely seeks to reply on two discrete issues, does not mean that he otherwise accepts the accuracy or merit of the rest of the Defence’s submissions.

II. PROCEDURAL BACKGROUND

3. Following the Chamber’s authorization on 3 August 2023,² Witness V45-P-0001 (a/20722/21) and Witness V45-P-0002 (a/65991/19) testified at the seat of the Court on 21 to 22 and 26 to 27 September 2023, respectively.³

¹ See the “Response to the ‘Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal’ (ICC-01/14-01/18-2654-Conf)”, [No. ICC-01/14-01/18-2673-Conf](#), 4 September 2024 (the “Defence Response”).

² See the “Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence” (Trial Chamber V), [No. ICC-01/14-01/18-2016-Conf](#), 3 August 2023. A public redacted version was filed on 6 September 2023 as [No. ICC-01/14-01/18-2016-Red](#).

³ See the transcript of the hearing held on 21 September 2023, [No. ICC-01/14-01/18-T-245-CONF-ENG CT](#), page 4, line 17 to page 44, line 4; and the transcript of the hearing held on 22 September 2023, [No. ICC-01/14-01/18-T-246-CONF-ENG CT](#), page 2, line 19 to page 81, line 2. See also the transcript of the hearing held on 26 September 2023, [No. ICC-01/14-01/18-T-247-CONF-ENG CT](#), page 3, line 21 to page 64, line 8; and the transcript of the hearing held on 27 September 2023, [No. ICC-01/14-01/18-T-248-CONF-ENG CT](#), page 3, line 1 to page 39, line 9.

4. On 27 November 2023, the CLR1 filed a request for leave to submit material from the bar table (the “CLR1 Request of 27 November 2023”).⁴
5. On 8 December 2023, the Yekatom Defence (the “Defence”) opposed the CLR1 Request of 27 November 2023.⁵
6. On 18 March 2024, the Chamber partly granted the CLR1 Request of 27 November 2023.⁶
7. On 2 April 2024, the CLR1 filed a Bar Table Motion,⁷ which the Chamber granted on 4 June 2024.⁸
8. On 26 August 2024, the CLR1 conveyed courtesy copies by email⁹ and formally filed his request for leave to present evidence in rebuttal later on the same day (the “CLR1 Request for leave to present evidence in rebuttal”).¹⁰
9. On 4 September 2024, the Defence filed its Response to the CLR1 Request for leave to present evidence in rebuttal.¹¹

⁴ See the “Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the ‘bar table’”, [No. ICC-01/14-01/18-2222-Conf](#), 27 November 2023. The Items and the relevant metadata were attached to in Annexes 1-6 to the request.

⁵ See the “Defence Response to ‘Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the ‘bar table’”, 27 November 2023, ICC-01/14-01/18-2222- Conf”, [No. ICC-01/14-01/18-2252-Conf](#), 8 December 2023, paras. 1-2, and 67.

⁶ See the “Decision on the Common Legal Representative of the Former Child Soldiers Request for Leave to Submit Evidence from the Bar Table, [No. ICC-01/14-01/18-2412-Conf](#), 18 March 2024 (reclassified as public by order of the Chamber dated 22 May 2024) (Trial Chamber V).

⁷ See the “Request of the Common Legal Representative of the Former Child Soldiers for the submission of evidence from the ‘bar table’”, [No. ICC-01/14-01/18-2428-Conf](#), 2 April 2024.

⁸ See the “Decision on the CLR1 Submission Request from the Bar Table”, [No. ICC-01/14-01/18-2520-Conf](#), 4 June 2024.

⁹ See the Email correspondence from the CLR1 dated 26 August 2024 at 15:33.

¹⁰ See the “Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal”, [No. ICC-01/14-01/18-2654-Conf](#), 26 August 2024.

¹¹ See the Defence Response, *supra* note 1.

III. CONFIDENTIALITY

10. The present Request is classified confidential as it refers to the submissions bearing the same classification and relates to identifying information of protected witnesses.

IV. SUBMISSIONS

11. In accordance with regulation 24(5) of the Regulations, “[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not have reasonably anticipated”.

12. The CLR1 seeks leave to reply to two discrete issues raised in the Defence Response which could not have been reasonably anticipated.

13. First, the CLR1 seeks leave to reply to the Defence’s submissions that the CLR1 had ample opportunity to submit the proposed evidence at an earlier stage.¹² Should leave to reply be granted, the CLR1 will demonstrate that (i) it was simply impossible for him to collect and present, within few days timeframe, evidence to address the Defence’s challenges to V45-P-0001’s and V45-P-0002’s identifying information – during the testimony of the Witnesses; and (ii) subsequently, further to his request for leave to present a bar table motion – which was strongly opposed by the Defence¹³ - the CLR1 did not have any realistic procedural avenue to present any further evidence. In this regard, the CLR1 notes that the Defence also strongly opposed the CLR1 presenting newly collected documents during the testimony of D29-P-6025 and D29-P-6036.¹⁴ As a participant who called V45-P-0001 and V45-P-0002 to testify, the CLR1

¹² *Idem*, paras. 14-19.

¹³ See the “Defence Response to ‘Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the ‘bar table’, 27 November 2023, ICC-01/14-01/18-2222-Conf”, [No. ICC-01/14-01/18-2252-Conf](#), 8 December 2023, paras. 1-2, and 67.

¹⁴ See the Email correspondence from the Defence dated 22 January 2024 at 14:13, and the Email correspondence from the Defence dated 24 January 2024 at 20:00.

had the only procedural avenue to present additional evidence regarding his clients' identifying information in the context of a request for leave to present evidence in rebuttal within the deadline set by the Chamber.¹⁵ The Defence cannot reasonably argue that the CLR1 request for leave to present evidence in rebuttal was late, given that it successfully requested to call five additional rule 68(2)(b) witnesses to testify on V45-P-0001's and V45-P-0002's identifying information at the end of June 2024 and at the very end of the presentation of its case.¹⁶

14. Accordingly, the Defence's submissions that the CLR1 had ample opportunity to submit the proposed evidence at an earlier stage could not have been reasonably anticipated, as the Defence was perfectly aware that the CLR1 did not have a realistic procedural avenue to do so.

15. Second, the CLR1 seeks leave to reply to the Defence's submissions that he allegedly violated the Contact Protocol by contacting witnesses [REDACTED] and [REDACTED].¹⁷ Should leave to reply be granted, the CLR1 will demonstrate that the Defence misrepresents the factual circumstances underpinning his Request for leave to present evidence in rebuttal, and as a result, puts forward entirely unfounded accusations against another counsel contrary to its duty to act fairly, in good faith and courteously as required by article 27(1) the Code of Professional Conduct for counsel.

16. In fact, it was clear from the CLR1 Request for leave to present evidence in rebuttal and the respective metadata that [REDACTED] and [REDACTED] were contacted in their official capacity as [REDACTED] and [REDACTED], respectively, by V45-P-0003 and V45-P-0009 who are not members of the CLR1 team. V45-P-0003

¹⁵ See the Email correspondence from the Chamber dated 7 February 2024 at 15:11.

¹⁶ See the "Consolidated Yekatom Defence Request for Leave to add Four Witnesses and Request for the Formal Submissions of Prior Recorded Testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-2541-Conf](#), 21 June 2024. See also the "Second Defence Consolidated Request for Leave to add items to its List of Evidence, P-6046 & P-6042 to its List of Witnesses and submit their prior recorded testimony pursuant to Rule 68(2)(b)", [No. ICC-01/14-01/18-2555-Conf](#), 26 June 2024.

¹⁷ See the Defence Response, *supra* note 1, paras. 48-53.

went to [REDACTED] to [REDACTED]¹⁸ he has had in his possession,¹⁹ and V45-P-0009 went to [REDACTED],²⁰ in particular in order [REDACTED].²¹ The CLR1 never revealed to V45-P-0003 and V45-P-0009 the status of the concerned individuals as Defence witnesses.

17. Accordingly, the Defence's submissions that the CLR1 allegedly violated the Contact Protocol could not have been reasonably anticipated since it was clear from his Request for leave to present evidence in rebuttal and the respective metadata that [REDACTED] and [REDACTED] were never contacted by members of his team. Faced with serious and entirely unfounded accusations on violation of the Contact Protocol based on the Defence's misrepresentation of the factual circumstances, the CLR1 should be granted leave to reply as a matter of fairness.

V. RELIEF SOUGHT

18. For the reasons set out above, the CLR1 respectfully requests leave to reply to the Defence Response on the two aforementioned discrete issues.



Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 25th Day of September 2024
At The Hague, The Netherlands

¹⁸ See CAR-V45-00000012.

¹⁹ See CAR-V45-00000023, para. 34.

²⁰ See CAR-V45-00000045, paras. 19 and 29.

²¹ See CAR-V45-00000019.