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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 “Common Legal Representatives’ Joint Response to
the “Motion For Additional Details””**

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 Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly the “Common Legal Representatives”) hereby file their joint response to the “Motion For Additional Details” (the “Defence Motion” or the “Motion”) filed by Mr Yekatom.¹

2. Relying on article 67(1)(a) and (b) of the Statute, the Defence argues that (i) the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Édouard Ngaïssona” (the “Decision Confirming the Charges” or the “DCC”)² lacks sufficient clarity and detail with regard to Counts 2, 3 and 29;³ (ii) the Pre-Trial Chamber failed to rule on its request for specification of the identity of the child soldiers;⁴ (iii) the Prosecution failed to respond to its letter requesting the disclosure of details on victims and locations;⁵ and (iv) the requested details are necessary for the Defence’s preparation for trial.⁶ The Common Legal Representatives submit that the contentions challenging the DCC must be dismissed *in limine* because the Defence could have requested leave to appeal said Decision, but elected not to do so. The Defence can therefore no longer contest the specificity of the charges as confirmed in the DCC and no alleged issues with respect to the form, scope, content and parameters of the charges can be entertained by the Trial Chamber.

¹ See the “Motion For Additional Details”, [No. ICC-01/14-01/18-554-Conf](#), 15 June 2020 (the “Defence Motion” or the “Motion”). A public redacted version was issued on 17 June 2020 as [No. ICC-01/14-01/18-554-Red](#).

² See the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona” (Pre-Trial Chamber II), No. ICC-01/14-01/18-403-Conf, 11 December 2019. A public redacted version was issued on 20 December 2019 as [No. ICC-01/14-01/18-403-Red](#). A corrected confidential and corrected public redacted version were issued on 14 May 2020 as [No. ICC-01/14-01/18-403-Conf-Corr](#) and [No. ICC-01/14-01/18-403-Red-Corr](#) respectively (the “Decision Confirming the Charges”).

³ See the Defence Motion, *supra* note 1, para. 17.

⁴ *Idem*, para. 9.

⁵ *Idem*, para. 12.

⁶ *Idem*, paras. 14-40.

3. Should the Chamber entertain the Motion, it is submitted that the Prosecution is not required to provide the Defence with the requested details given the “*sheer scale*” of the alleged crimes at hand. Furthermore, the disclosure by the Prosecution of the identity of *all* victims it is aware of would endanger the victims and their families, and would be in breach of the Court’s duty to ensure the safety and well-being of the victims in accordance with article 68(1) of the Statute.

II. PROCEDURAL BACKGROUND

4. On 11 November 2018, Pre-Trial Chamber II (the “Pre-Trial Chamber”) issued the “Warrant of Arrest for Alfred Yekatom”.⁷

5. On 19 August 2019, the Prosecution filed the Document Containing the Charges.⁸

6. On 11 December 2019, the Pre-Trial Chamber issued the Decision Confirming the Charges.⁹

7. On 11 March 2020, the Pre-Trial Chamber issued the “Decision on the Prosecutor’s request for reconsideration or, in the alternative, leave to appeal the ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’”, rejecting the Prosecution’s request.¹⁰

⁷ See the “Warrant of Arrest for Alfred Yekatom” (Pre-Trial Chamber II), No. ICC-01/14-01/18-1-US-Exp, 11 November 2018. A public redacted version was issued on 17 November 2018 as [No. ICC-01/14-01/18-1-Red](#).

⁸ See the “Prosecution’s Notification of Filing of the Document Containing the Charges and List of Evidence”, [No. ICC-01/14-01/18-282](#) (with Confidential Annexes A to J), 19 August 2019; a public redacted version of Annex B1 was filed on 18 September 2019 as [No. ICC-01/14-01/18-282-AnxB1-Red](#) (the “Document Containing the Charges”).

⁹ See the Decision Confirming the Charges, *supra* note 2.

¹⁰ See the “Decision on the Prosecutor’s request for reconsideration or, in the alternative, leave to appeal the ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-447](#), 11 March 2020. See also, the “Prosecution’s Request for Reconsideration of, or alternatively Leave to Appeal, the ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’”, [No. ICC-01/14-01/18-437](#), 2 March 2020; the “Common Legal Representatives’ Joint Response to the

8. On 16 March 2020, the Presidency constituted Trial Chamber V (the “Chamber”) and referred the present case to it.¹¹ On 17 March 2020, Judge Schmitt was elected Presiding and Single Judge.¹²

9. On 15 June 2020, the Defence filed its Motion.¹³

10. On 22 June 2020, the Defence for Mr Yekatom filed the “Motion to Dismiss Co-Perpetration Mode of Liability”.¹⁴

III. CLASSIFICATION

11. Pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, the present submission is classified as confidential following the classification chosen by the Defence and because it refers to the content of documents likewise classified as confidential. A public redacted version is filed simultaneously.

IV. SUBMISSIONS

1. The Defence’s challenges to the parameters of the charges should be dismissed *in limine*

12. The Defence argues that the “*Confirmation Decision falls short of providing the required detail because it fails to specify the identity of the victims of Counts 2, 3, and 29*”.¹⁵

Prosecution’s Request for Reconsideration or Leave to Appeal”, [No. ICC-01/14-01/18-442](#), 6 March 2020; and the “Yekatom Defence Opposition to Prosecution’s Request for Reconsideration or Leave to Appeal Confirmation Decision”, [No. ICC-01/14-01/18-443](#), 6 March 2020.

¹¹ See the “Decision constituting Trial Chamber V and referring to it the case of The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona” (Presidency), [No. ICC-01/14-01/18-451](#), 16 March 2020.

¹² See the “Decision notifying the election of a Presiding Judge and Single Judge” (Trial Chamber V), [No. ICC-01/14-01/18-454](#), 17 March 2020.

¹³ See the Defence Motion, *supra* note 1.

¹⁴ See the “Motion to Dismiss Co-Perpetration Mode of Liability”, [No. ICC-01/14-01/18-565-Conf](#), 22 June 2020. A public redacted version was filed on the same day as [No. ICC-01/14-01/18-565-Red](#).

¹⁵ See the Defence Motion, *supra* note 1, para. 17.

The Common Legal Representatives posit that this is an inappropriate attempt to challenge said Decision. Indeed, the ruling constitutes the final and authoritative document informing the Accused of the charges “as confirmed”.¹⁶

13. As underlined by the Appeals Chamber, “there can be no doubt that the decision on the confirmation of the charges defines the parameters of the charges at trial”.¹⁷ In this regard, the Chambers Practice Manual clarifies that:

*“[t]he charges on which the person is committed to trial are those presented by the Prosecutor (and on the basis of which the confirmation hearing was held) as confirmed by the Pre-Trial Chamber. Accordingly, the confirmation decision constitutes the final, authoritative document setting out the charges, and by doing so the scope of the trial. The description of the facts and circumstances in the charges as confirmed by the Pre-Trial Chamber is binding on the Trial Chamber. Any discussion in terms of form of the charges (clarity, specificity, exhaustiveness, etc.) and in terms of their scope, content and parameters ends with the confirmation decision, and no issues in this respect can be entertained by the Trial Chamber”.*¹⁸

14. The Common Legal Representative, therefore, submit that if the Defence was of the opinion that the DCC lacks sufficient clarity and detail with regards to Counts 2, 3 and 29, it should have requested leave to appeal. By failing to do so, the Defence agreed to the parameters set by the Pre-Trial Chamber. The Defence cannot simply circumvent the appeal process and challenge now the Decision Confirming the Charges before the Trial Chamber six months after it was issued.

15. As the Decision Confirming the Charges became final, so did any discussion in terms of clarity and specificity of the charges. Consequently, the Common Legal Representatives contend that the Motion cannot be entertained by the Trial Chamber and should be dismissed *in limine*.

¹⁶ See the “Decision on the Submission of Auxiliary Document” (Trial Chamber VII), [No. ICC-01/05-01/13-992](#), para. 11.

¹⁷ See the “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), [No. ICC-01/04-01/06-3121-Red A5](#), 1 December 2014, para. 124. See also “Decision on the Prosecutor’s appeal against the ‘Decision on the Prosecution’s Request to Amend the Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute’” (Appeals Chamber), [No. ICC-01/09-01/11-1123 OA6](#), 13 December 2013, paras. 26-29.

¹⁸ See the [ICC Chambers Practice Manual](#), May 2017, p. 16 (emphasis added).

16. Should the Chamber, extraordinarily, chose to entertain the merits of the Motion, the Common Legal Representatives submit that the level of the relevant details in the Decision Confirming Charges is sufficient to put Mr Yekatom on notice of the precise nature of the charges against him, their cause and their content, thereby satisfying the requirements of article 67(1)(a) and (b) of the Statute. In this regard, the DCC specifically describes Mr Yekatom's direct perpetration, his awareness of the presence of children, including those under 15 years of age, among his Anti-Balaka elements, and the period and places of recruitment.¹⁹ It also details the use of children under 15 years of age to participate actively in hostilities.²⁰ With regards to Counts 2 and 3, the DCC provides details on the location of the crimes, the identity of some of the victims and the dates of the crimes.²¹

2. The “sheer scale” of the alleged crimes at hand makes it unnecessary and impracticable to provide the Defence with the identity of *all* victims prior to the commencement of the trial

17. The Common Legal Representatives further submit that given the “sheer scale” of the alleged crimes at hand, the Prosecution is not required to provide the Defence with further details on the identity of the victims in order to satisfy the requirements under article 67(1)(a) and (b) of the Statute.

18. Pre-Trial Chamber II in the *Bemba* case recognised the “sheer scale” exception by stating that:

“the Chamber bears in mind the evidentiary threshold to be met at the pre-trial stage - “substantial grounds” threshold - and the fact that in case of mass crimes, it may be impractical to insist on a high degree of specificity. In this respect, it is not necessary for the Prosecutor to demonstrate, for each individual killing, the identity of the victim and the direct perpetrator. Nor is it necessary that the precise number of victims be

¹⁹ See the Decision Confirming the Charges, *supra* note 2, paras. 144-152.

²⁰ *Idem*, para. 149.

²¹ *Idem*, paras. 87-89.

known. This allows the Chamber to consider evidence referring to ‘many’ killings or ‘hundreds’ of killings without indicating a specific number”.²²

19. This exception was first accepted by the international *ad hoc* tribunals. According to the ICTY Appeals Chamber in the *Kupreškić* case, “there may be instances where the sheer scale of the alleged crimes ‘makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes’”.²³

20. Similarly, the SCSL Appeals Chamber has stated in the *Brima et al.* case that “[i]n some cases, the widespread nature and sheer scale of the alleged crimes make it unnecessary and impracticable to require a high degree of specificity”.²⁴

21. In this regard, the Common Legal Representatives argue that the Decision Confirming the Charges makes it clear that the crimes alleged under Counts 2, 3 and 29 fall under the “sheer scale” exception.

a. Counts 2 and 3

22. Counts 2 and 3 relate to the crime of murder, pursuant to and prohibited by articles 7(1)(a) and 8(2)(c)(i) of the Statute, in particular to “the killing of between five and 13 persons, including [REDACTED], at the Boeing market, four Muslim persons in Cattin, and [REDACTED] at the Boeing market, in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013”.²⁵

²² See the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo” (Pre-Trial Chamber II), [No. ICC-01/05-01/08-424](#), 15 June 2009, para. 134.

²³ See ICTY, *Kupreškić*, Case IT-95-16-A, [Appeal Judgement](#) (Appeals Chamber), 23 October 2001, para. 89. See also *Kvočka et al.*, Case IT-98-30/1, [Decision on Defence Preliminary Motions on the Form of the Indictment](#) (Trial Chamber), 12 April 1999, para. 17; *Brđanin*, Case IT-99-36, [Decision on Form of Further Amended Indictment and Prosecution Application to Amend](#) (Trial Chamber), 26 June 2001, para. 61.

²⁴ See SCSL, *Brima et al.*, Case No. SCSL-2004-16-A, [Judgement](#) (Appeals Chamber), 22 February 2008, para. 41. See also *Sesay et al.*, Case No. SCSL-04-15-A, [Judgement](#) (Appeals Chamber), 26 October 2009, paras. 771-776.

²⁵ See the Decision Confirming the Charges, *supra* note 2, Disposition, p. 100.

23. In its Motion, the Defence argues that “[t]he charges as set forth in the Confirmation Decision names two out of 5-13 murder victims during the 5 December 2013 attack at the Boeing market and Cattin”²⁶ and contends that “it is essential that the identity of the victims be specified”²⁷ because “the persons Mr. Yekatom is charged with murdering may well have been combatants and not members of the civilian population. This would constitute a complete defence to the charges in Counts 2 and 3”.²⁸ Further noting that this is a clear example of an outright challenge to the parameters set by the DCC, the Common Legal Representatives contend that the Defence misrepresents said part of the ruling by implying that *a total* of 5 to 13 persons were killed during the 5 December 2013 attack. Rather, this should be seen as a minimum number of victims, with many more potential victims concerned.²⁹

24. Murder as a crime against humanity pursuant to article 7(1)(a) of the Statute is a crime that is widespread by nature. In the *Stakić* case, it was held with regards to killings of that nature that “it was not and will never be possible to identify case by case the direct perpetrator and his victim(s). This however is no impediment precluding the Trial Chamber from coming to the conclusion that killings were committed at a concrete place and at a concrete point in time despite not knowing the exact numbers of victims”.³⁰

25. In the present case, the Pre-Trial Chamber has held that it “is satisfied to the required threshold that this attack was widespread as it resulted in a large number of victims, in abroad geographical area comprising several western CAR prefectures and spanning a long period of time, from September 2013 to December 2014 (article 7(1) of the Statute)”.³¹ The Pre-Trial Chamber also stated that it was “satisfied that the conduct underlying the charges of crimes against humanity confirmed by the Chamber was committed as part of the

²⁶ See the Defence Motion, *supra* note 1, para. 18.

²⁷ *Idem*, para. 21.

²⁸ *Idem*, para. 20.

²⁹ See the “Judgment pursuant to article 74 of the Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3436-tENG](#), 7 March 2014, para. 841, where the Trial Chamber held that the attack on Bogoro claimed the lives of many of its inhabitants and the death toll of 60 constituted a minimum.

³⁰ See ICTY, *Stakić*, Case IT-97-24-T, [Judgment](#) (Trial Chamber), 31 July 2003, para. 201.

³¹ See the Decision Confirming the Charges, *supra* note 2, para. 70.

aforementioned widespread attack against the civilian population, in light of the identity of the victims, the aims pursued, the nature of the acts and their consequences."³² Based on the finding that the attack resulted in a large number of victims, the Common Legal Representatives conclude that the "*sheer scale*" exception applies to the charges underlying Count 2.

b. Count 29

26. Count 29 relates to the conscription, enlistment and use of children under the age of 15 years to participate actively in hostilities, a conduct prohibited by article 8(2)(e)(vii) of the Statute, and in particular to "*the conscription and/or enlistment of children into [Mr Yekatom's] group at various locations, including [REDACTED] and the assignment of a variety of tasks to them, such as, inter alia, participating in hostilities, including the 5 December 2013 Attack, between at least December 2013 and August 2014*".³³

27. The Common Legal Representatives submit that the Defence's assertion that "*the number of child soldiers in this case is small*"³⁴ is groundless and finds no support in the DCC. Indeed, although the Prosecution referred to *at least* 14 children under the age of 15 within the Anti-Balaka ranks, the Pre-Trial Chamber, without attempting to specify the total number of the victims concerned, recognised the widespread nature of the crimes by stating that:

*"[the enlistment and use of children under the age of 15] has been (i) widely reported by national and international NGOs, which testify to having witnessed large numbers of child soldiers in the ranks of the Anti-Balaka during several missions in the field; (ii) relayed in the media; and (iii) signalled by several international organisations, which reported about the 'waves of widespread child recruitment in villages by the Anti-Balaka'".*³⁵

28. Furthermore, the "*sheer scale*" of the crimes under Count 29 is supported by numerous relevant sources, in particular UN and NGOs reports.

³² *Ibid.*

³³ *Idem*, Disposition, p. 101.

³⁴ See the Defence Motion, *supra* note 1, para. 36.

³⁵ See the Decision Confirming the Charges, *supra* note 2, para. 144.

29. Indeed, in his 2014 Report on Children and Armed Conflict, the United Nations Secretary-General noted that in the Central African Republic the recruitment and use of children *“became endemic throughout 2013 and increased with the surge in violence that has plagued the country since mid-September”*.³⁶ Similarly, the United Nations Report on children in the Central African Republic between January 2011 and December 2015 describes the *“large-scale recruitment and use of children by armed groups and [...] the continuing trends of killing and maiming, sexual violence”*³⁷ against these children.

30. In 2014, a study sponsored by UNICEF estimated that between 6,000 and 10,000 children were associated with armed groups, a surge attributed to the increased activities of Anti-Balaka since 2013.³⁸ Between December 2013 and the end of 2014, the Anti-Balaka was considered by the United Nations to be one of the main recruiters of children in the Central African Republic, accounting for 446 new cases of recruitment and the presence of 2,347 child soldiers in its ranks in that year alone.³⁹

31. The reports above thus indicate that the number of potential victims of the crimes alleged under Count 29 could be in the hundreds if not thousands.

32. Furthermore, the Common Legal Representatives contend that the fact that only 88 former child soldiers have been allowed to participate in the proceedings so far⁴⁰ is in no way a reflection of the number of child soldiers that were recruited by the group led by Mr Yekatom.

³⁶ See the Report of the Secretary-General, “Children and armed conflict”, [A/68/878-S/2014/339](#), 15 May 2014, para. 7.

³⁷ See the Report of the Secretary-General on children and armed conflict in the Central African Republic, [S/2016/133](#), 12 February 2016, p. 1.

³⁸ *Idem*, para. 17.

³⁹ *Idem*, para. 20.

⁴⁰ See the “Decision regarding the Registry’s First Assessment Report on Applications for Victim Participation, the Registry’s First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims’ procedural position” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-227-Conf](#), 21 June 2019; public redacted version was filed on the same day as [No. ICC-01/14-01/18-227-Red](#). See also “Decision regarding the Registry’s Outstanding Transmissions of

33. The Common Legal Representatives also contend that the contrasted comparison with the *Lubanga* case has no merit. The contention by the Defence that, in contrast to the *Lubanga* case, the child soldiers in this case were present in a limited geographical area,⁴¹ is a misreading of the Decision Confirming the Charges. Indeed, the DCC explicitly acknowledges the presence of child soldiers in various locations,⁴² and refers to a non-exhaustive list of the locations concerned.⁴³

34. A better comparison can be found in the *Ntaganda* case in which the Accused was a military leader⁴⁴ with close proximity to child soldiers, as in the present case. Mr Ntaganda was also charged with the same mode of liability as Mr Yekatom.⁴⁵ It is thus important to note that in its judgment, Trial Chamber VI in the *Ntaganda* case did not require the identification of *all* child soldiers,⁴⁶ even though the Defence had submitted that the updated document containing the charges did not name a single victim.⁴⁷

35. The Common Legal Representatives also note that Mr Yekatom [REDACTED].⁴⁸ As such, he is supposedly already in possession of information pertaining to the identity of these children. The Defence is thus already in a position to conduct its own investigations into the age of the children, whether they participated in hostilities, and whether Mr Yekatom was aware of their presence among his elements, and does not need further information from the Prosecution.

Applications for Victim Participation" (Pre-Trial Chamber II), [No. ICC-01/14-01/18-338](#), 13 September 2019.

⁴¹ See the Defence Motion, *supra* note 1, para. 37.

⁴² See the Decision Confirming the Charges, *supra* note 2, para. 146.

⁴³ *Idem*, Disposition, p. 101.

⁴⁴ See the "Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019 (the "*Ntaganda* Judgment"), para. 321 (he was "*Deputy Chief of Staff in charge of Operations and Organisation*").

⁴⁵ *Idem*, p. 538.

⁴⁶ *Idem*, paras. 1110-1113.

⁴⁷ See the "Defence Reply to the Prosecution's Response to the Defence Closing Brief", [No. ICC-01/04-02/06-2307-Conf](#), 1 August 2018, para. 15. A public redacted version was filed on 8 November 2018 as [No. ICC-01/04-02/06-2307-Red-Corr.](#)

⁴⁸ See the Document Containing the Charges, *supra* note 8, para. 237.

3. Providing the Defence with the identity of *all* victims will endanger the safety and well-being of the victims concerned and/or of their families

36. The Common Legal Representatives submit that the Prosecution cannot be required to provide the identity of all victims it is aware of unless they are called onto to testify. To proceed otherwise would risk putting these persons in danger, which would be a breach of the Court's duty to protect the safety, physical and psychological well-being, dignity and privacy of the victims pursuant to article 68(1) of the Statute. In this regard, Pre-Trial Chamber I in the *Katanga and Ngudjolo* case, rejected the Defence's request to specify the identity of the victims in the Prosecution's Amended Charging Document because of the need to protect their safety.⁴⁹

4. The Defence's overreliance on the international *ad hoc* tribunals' case law is inapposite

37. Finally, the Common Legal Representatives argue that overreliance on the case law of the international *ad hoc* tribunals by the Defence in support of its request for the specification of the identity of the victims before the commencement of trial is inapposite. Indeed, Pre-Trial Chamber I in the *Katanga and Ngudjolo* case dismissed heavy reliance on the case law of the international *ad hoc* tribunals in such instances by emphasising the differences between the criminal procedures at the Court and at said tribunals.⁵⁰ It held in particular that:

"According to the criminal procedure at the ad hoc Tribunals, an indictment is prepared by the Prosecution and confirmed by a Pre-Trial Judge without any intervention by the Defence insofar as a warrant of arrest, or a summons to appear, is only issued by the Pre-Trial Judge upon the confirmation of the indictment. Once the accused voluntarily appears or is surrendered to the ICTY or the ICTR, the Defence has 30 days, [...], to allege defects in the form of the indictment so as to ensure full compliance with the accused's rights [...]."

The criminal procedure at this Court is rather different insofar as, except for those exceptional situations in which the confirmation hearing is held in absentia, the

⁴⁹ See the "Decision on the Three Defences' Requests Regarding the Prosecution's Amended Charging Document" (Pre-Trial Chamber I), [No. ICC-01/04-01/07-648](#), 25 June 2008, para. 28.

⁵⁰ *Idem*, paras. 6-7.

Charging Document is filed by the Prosecution with the Pre-Trial Chamber for the purpose of the confirmation hearing after the suspect has voluntarily appeared, or has been surrendered to the Court.

As a result, by the time the Prosecution files with the Pre-Trial Chamber its Charging Document, the Defence, [...], is in a position to seek its amendment even prior to the initiation of the hearing - in which the 'core' evidence gathered by the Prosecution in the relevant case [...] is debated for the purposes of deciding whether or not to confirm the charges contained in the Charging Document".⁵¹

38. Given the significant differences between the procedures at the Court and at the international *ad hoc* tribunals, the Common Legal Representatives therefore argue that the Defence's overreliance on said tribunals' case law is misplaced.

39. Indeed, under the legal framework of the Court and in contrast to the international *ad hoc* tribunals, charges are determined following adversary proceedings where evidence gathered by the Prosecution is scrutinised and debated. Once the charges are confirmed, the accused is deemed provided with *sufficient* and *specific* evidence and other information to be able to duly prepare for trial. At post-confirmation stage, the accused cannot allege, as the Defence does in the present instance, defects in the form of the charges, and thus the Prosecution is not required to provide the defence with additional details *beyond* the parameters of the charges as confirmed. In the present case, since the "*sheer scale*" of the crimes alleged under Counts 2, 3 and 29 is supported by the DCC and other relevant sources, the Prosecution cannot be requested, based on the international *ad hoc* tribunals' case law, to provide the Defence with the identity of *all* victims at this stage, *i.e.* post-confirmation and prior to the commencement of trial, as it will be unnecessary and impracticable. Instead, the normal course of disclosure should be followed.

5. Location information

40. At this stage, the Common Legal Representatives do not have any observations on the Defence's submissions regarding information about the locations

⁵¹ *Idem*, para. 10.

in relation to Counts 2, 3 and 6.⁵² They defer to the Prosecution's submissions on the matter.

V. CONCLUSION

41. For the foregoing reasons, the Common Legal Representatives respectfully request the Trial Chamber to reject the Defence Motion *in limine*. Should the Chamber entertain the Request, the Common Legal Representative ask the Chamber to reject it in its entirety because unfounded.



Dmytro Suprun
Common Legal Representative of
the Former Child Soldiers



Paolina Massidda
For the team of Common Legal
Representatives of the Victims of
Other Crimes

Dated this 26th day of June 2020

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

⁵² See the Defence Motion, *supra* note 1, paras. 26-29.