

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/14-01/18

Date: 27 January 2021

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**

Confidential

**Common Legal Representatives' Joint Response to the "Prosecution's
Observations on the 'Requête des Représentants Légaux Communs des
Victimes des autres crimes aux fins de réalisation partielle des déclarations
d'ouverture par liaison vidéo' (ICC-01/14-01/18-838-Conf)"**

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

Ms Fatou Bensouda

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri

Counsel for Patrice-Édouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Legal Representatives of the Victims

Mr Dmytro Suprun

Legal Representatives of the Applicants

Mr Abdou Dangabo Moussa

Ms Marie Édith Douzima Lawson

Mr Yaré Fall

Ms Paolina Massidda

Ms Elisabeth Rabesandratana

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

Mr Dmytro Suprun

Mr Orchlon Narantsetseg

Ms Ludovica Vetrucchio

Ms Anne Grabowski

Ms Nadia Galinier

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

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 the Other Crimes (jointly the "Common Legal Representatives") hereby file their joint response to the "Prosecution's Observations on the 'Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de réalisation partielle des déclarations d'ouverture par liaison vidéo' (ICC-01/14-01/18-838-Conf)" (the "Prosecution's Observations").¹

2. The Common Legal Representatives submit that there is no need for additional specific guidance on the scope of opening statements, as the Presiding Judge of Trial Chamber V (the "Chamber") has already provided sufficient instructions on the modalities of opening statements in the "Initial Directions on the Conduct of the Proceedings" (the "Initial Directions").² Moreover, the Prosecution's request regarding specific guidance on the scope of opening statements finds no support in the Court's jurisprudence. The jurisprudence of other international criminal tribunals relied upon by the Prosecution has no relevance to the position of legal representatives of victims.

3. Nonetheless, the Common Legal Representatives support the Prosecution's request for guidance on the timing and modalities of oral unsworn statements by the Accused, if any.

II. PROCEDURAL BACKGROUND

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

¹ See the "Prosecution's Observations on the 'Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de réalisation partielle des déclarations d'ouverture par liaison vidéo' (ICC-01/14-01/18-838-Conf)", [No. ICC-01/14-01/18-852-Conf](#), 25 January 2021 (the "Prosecution's Observations").

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.*

5. On 19 January 2021, the Common Legal Representatives of the Victims of the Other Crimes filed the “Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de réalisation partielle des déclarations d’ouverture par liaison vidéo” (the “CLRVs’ Request”).⁴

6. On 20 January 2021, the Single Judge ordered responses to the CLRVs’ Request to be filed by 25 January 2021, and instructed the Registry to file observations regarding the technical feasibility of the application by the same date.⁵

7. On 25 January 2021, the Registry⁶ and the Prosecution⁷ filed their observations on the CLRVs’ Request.

8. On 26 January 2021, the Single Judge, noting that the Prosecution’s Observations contained requests pertaining to the opening statements, ordered responses to said Observations to be filed by 27 January 2021.⁸

9. On same date, both Defence teams informed the Chamber that they will not file a response to the Prosecution’s Observations while deferring to the Chamber’s discretion.⁹

⁴ See the “Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de réalisation partielle des déclarations d’ouverture par liaison vidéo”, [No. ICC-01/14-01/18-838-Conf](#), 19 January 2021.

⁵ See the Email communication by the Chamber on 20 January 2021 at 12:48.

⁶ See the “Registry’s Observations on the Technical Feasibility of Using Video-Conferencing for Part of the Opening Statements of the Legal Representatives of Victims for Other Crimes”, [No. ICC-01/14-01/18-849-Conf](#), 25 January 2021.

⁷ See the Prosecution’s Observations, *supra* note 1.

⁸ See the Email communication by the Chamber on 26 January 2021 at 11:40.

⁹ See the Email communication by the Ngaïssona Defence on 26 January 2021 at 15:56. See also the Email communication by the Yekatom Defence on 26 January 2021 at 16:21.

III. CLASSIFICATION

10. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present submission is classified as confidential as it refers to the content of documents likewise classified as confidential. A public redacted version will be filed in due course.

IV. SUBMISSIONS

11. The Common Legal Representatives recall that the Chamber has already provided sufficient instructions on the order and timing of the opening statements in the Initial Directions.¹⁰ In addition, it instructed the parties and the participants to indicate by email any material they intend to use during their opening statements,¹¹ and further ordered that the opening statements shall be presented entirely in public session.¹² The Common Legal Representatives contend that there is no need for the Chamber to provide any additional “*specific guidance*” on the “*appropriate scope and purpose*” of the opening statements.¹³ Indeed, said request finds no support in the Court’s jurisprudence. In this regard, the parties and participants may present opening statements at their discretion,¹⁴ simply bearing in mind that said statements are not considered evidence for the purposes of the trial.¹⁵

12. Additionally, the Common Legal Representatives argue that the Prosecution’s reliance on the jurisprudence of other international criminal tribunals in support of its Request, is of limited – if of any - relevance, especially considering the position of legal

¹⁰ See the Initial Directions, *supra* note 2, paras. 9-15.

¹¹ *Idem*, para. 14.

¹² *Idem*, para. 15.

¹³ See the Prosecution’s Observations, *supra* note 1, para. 1.

¹⁴ See the “Decision on opening and closing statements” (Trial Chamber I), [No. ICC-01/04-01/06-1346](#), 22 May 2008, para. 14; the “Decision on the Conduct of Trial Proceedings (General Directions)” (Trial Chamber V(A)), [No. ICC-01/09-01/11-847-Corr](#), 9 August 2013, para. 4; the “Directions on the conduct of the proceedings” (Trial Chamber VII), [No. ICC-01/05-01/13-1209](#), 2 September 2015, para. 5; the “Directions on the conduct of the proceedings” (Trial Chamber I), [No. ICC-02/11-01/15-205](#), 3 September 2015, para. 9; the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber IX), [No. ICC-02/04-01/15-497](#), 13 July 2016, para. 7.

¹⁵ See the “Decision on the legal representation of victim applicants at trial” (Trial Chamber III), [No. ICC-01/05-01/08-1020](#), 19 November 2010, para. 23.

representatives of victims. Indeed, the legal framework of said tribunals do not foresee the participation of victims. The scope of the Common Legal Representatives' opening statements can therefore not be framed in the same way as that of the parties before said tribunals.

13. Notwithstanding the above, the Common Legal Representatives do support the Prosecution's request for guidance on the timing and modalities of oral unsworn statements by the Accused, if any,¹⁶ insofar this will be in the interest of the proper administration of the proceedings.

¹⁶ See the Prosecution's Observations, *supra* note 1, para. 8.

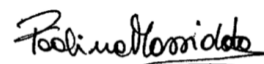
V. CONCLUSION

14. For the foregoing reasons, the Common Legal Representatives respectfully request the Chamber to reject the Prosecution's request for guidance on the scope of opening statements, but to grant the request for guidance on the timing and modalities of oral unsworn statements by the Accused, if any.

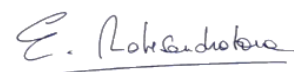


Dmytro Suprun

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 27th day of January 2021

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