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**International  
Criminal  
Court**

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Date: 7 August 2023

**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**

**With Public Redacted Version of Corrigendum of Annex A  
(ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr)**

**Public Redacted Version of the “Corrigendum to the ‘Request of the Common  
Legal Representative of the Former Child Soldiers for leave to present evidence’”  
(No. ICC-01/14-01/18-1969-Conf-Corr, dated 11 July 2023)**

**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. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative” or the “CLR1”) respectfully requests Trial Chamber V (the “Chamber”) leave to present evidence, in particular to call six participating victims to testify as crime-base witnesses.

2. The evidence expected to be elicited directly affects the personal interests of the victims called to testify and is representative of the specific forms of harm suffered by a larger group of the victims former child soldiers, who had similar experience within the Anti-Balaka ranks. The evidence is relevant to the issues to be considered by the Chamber in its assessment of the charges, in particular the extent and variety of the victimisation suffered by the Anti-Balaka child soldiers. The presentation of the proposed evidence is necessary for the determination of the truth in relation to Count 29 – which has been so far uncovered only to a very limited extent. Lastly, it is not prejudicial to, or inconsistent with, the rights of the Accused and a fair and impartial trial. The summaries of the anticipated testimony are provided in Annex A.

## II. PROCEDURAL BACKGROUND

3. On 26 August 2020, the Presiding Judge of the Chamber issued the “Initial Directions on the Conduct of the Proceedings” providing for the possibility for the Common Legal Representatives of the Victims (the “CLRVs”) to present evidence “*should leave to do so be granted*” (the “Initial Directions”).<sup>1</sup>

4. On 29 May 2023, the Chamber issued the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (the “Further Directions”), *inter alia*, (i) ordering the CLRVs to file any request for leave to present evidence, including which witnesses they request leave to call with a summary

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<sup>1</sup> 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”), para. 16.

of their anticipated testimony, no later than 7 July 2023; and (ii) directing to disclose any evidence the CLRVs intend to rely on during their presentation of evidence, by 18 August 2023.<sup>2</sup>

5. On 1 June 2023, the Common Legal Representative of the Victims Former Child Soldiers (the “CLR1”) and the Common Legal Representatives of the Victims of Other Crimes (the “CLR2”) requested an extension of the time limit to file their respective requests for leave to present evidence and associated material, as well as of the deadline for disclosure of evidence.<sup>3</sup>

6. On 9 June 2023, the Chamber issued the “Decision on the CLRV Joint Request for Extension of Time to File a Request for Leave to Present Evidence” rejecting the CLRVs request for extension of time and maintaining the original deadlines, as set out in its Further Directions.<sup>4</sup>

### III. CLASSIFICATION

9. Pursuant to regulation 23*bis* (1) of the Regulations of the Court, the present submissions are classified as confidential as they refer to the content of the victims’ anticipated testimony, which can lead to their identification. Annex A to the present submissions is filed Confidential *Ex Parte* available only to the CLR1 as it refers to the victims’ identities and contains other identifying information to which the other participants have no access, pending the determination on the present Request. A Confidential redacted version of Annex A is filed simultaneously. Public redacted versions will be filed in due course.

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<sup>2</sup> See the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (Trial Chamber V), [No. ICC-01/14-01/18-1892](#), 29 May 2023 (the “Further Directions”), paras. 11-12.

<sup>3</sup> See the “Joint Request for extension of time to file a request for leave to present evidence”, [No. ICC-01/14-01/18-1905-Conf](#), 1 June 2023. A public redacted version was filed on 6 June 2023 as [No. ICC-01/14-01/18-1905-Red](#).

<sup>4</sup> See the “Decision on the CLRV Joint Request for Extension of Time to File a Request for Leave to Present Evidence” (Trial Chamber V, Single Judge), [No. ICC-01/14-01/18-1913](#), 9 June 2023.

## IV. SUBMISSIONS

### 1. Applicable law

10. The Court's established jurisprudence recognises the possibility for victims to present evidence.<sup>5</sup> This recognition is premised on article 69(3) of the Rome Statute (the "Statute"), which authorises the Chamber to request the submission of all evidence that it considers necessary for the determination of the truth – read with article 68(3), which establishes the right of victims to participate, and rule 91(3) of the Rules of Procedure and Evidence (the "Rules"), pursuant to which a chamber leaves open the possibility for the legal representative to request the submission of any evidence.<sup>6</sup>

11. In the *Lubanga* case, the Appeals Chamber found that *"to give effect to the spirit and intention of article 68(3) in the context of the trial proceedings it must be interpreted so as to make participation by victims meaningful"*.<sup>7</sup> It further considered that the provisions of the Statute *"[do not] preclude the possibility for victims to lead evidence pertaining to the guilt or innocence of the accused"*.<sup>8</sup> It clarified in this regard that *"[e]vidence to be tendered at trial which does not pertain to the guilt or innocence of the accused would most likely be*

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<sup>5</sup> See the "Decision on the Common Legal Representatives for Victims' request to present evidence and views and concerns" (Trial Chamber I), [No. ICC-02/05-01/20-874](#), 16 February 2023, para. 7; the "Decision on LRVs requests to present evidence and views and concerns" (Trial Chamber X), [No. ICC-01/12-01/18-2063-Red](#), 9 December 2021, para. 9; the "Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests" (Trial Chamber IX), [No. ICC-02/04-01/15-1199-Red](#), 6 March 2018, para. 15; the "Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns" (Trial Chamber VI), [No. ICC-01/04-02/06-1780-Red](#), 15 February 2017, para. 8; the "Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims" (Trial Chamber III), [No. ICC-01/05-01/08-2138](#), 23 February 2012, para. 18; and the "Decision on the Modalities of Victim Participation at Trial" (Trial Chamber II), [No. ICC-01/04-01/07-1788-tENG](#), 22 January 2010, paras. 94-97.

<sup>6</sup> See the "Public redacted version of 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns'", *supra* note 5, para. 9.

<sup>7</sup> See the "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008" (Appeals Chamber), [No. ICC-01/04-01/06-1432 OA9 OA10](#), 11 July 2008, para. 97. See also the "Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings" (Trial Chamber III), [No. ICC-01/05-01/08-807-Corr](#), 12 July 2010, paras. 31-33.

<sup>8</sup> See the "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008", *supra* note 7, para. 94.

*considered inadmissible and irrelevant” and accordingly “[i]f victims were generally and under all circumstances precluded from tendering evidence relating to the guilt or innocence of the accused [...] their right to participate in the trial would potentially become ineffectual”.<sup>9</sup> Subsequently, in the *Katanga* case, the Appeals Chamber made it clear that “the possibility for the Victims to testify on matters including the role of the accused in the crimes charged against him, grounded on the Trial Chamber’s authority to request evidence necessary for the determination of the truth, is not per se inconsistent with the rights of the accused and the concept of a fair trial”,<sup>10</sup> and “if victims are requested to testify on the role of the accused in the crimes charged, this does not make them ‘supplementary prosecutors in the case’”.<sup>11</sup>*

12. The Appeals Chamber listed the requirements to be met for victims to be allowed to present evidence, including on matters relating to the conduct of the accused: a Trial Chamber must assess whether the proposed evidence (i) affects the victims’ personal interests; (ii) is relevant to the issues of the case; (iii) is necessary for the determination of the truth; and (iv) its presentation would be consistent with the rights of the accused and a fair and impartial trial.<sup>12</sup>

13. Evidence has been considered as affecting the victims’ personal interests when it touches upon the personal interests of the individual victims and is representative of the harm suffered by a larger group of victims.<sup>13</sup> Evidence has been considered as relevant when it is sufficiently closely related to issues which the Chamber must consider in its assessment of the charges against the accused.<sup>14</sup> The definition of what

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<sup>9</sup> *Idem*, para. 97.

<sup>10</sup> See the “Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled ‘Decision on the Modalities of Victim Participation at Trial’” (Appeals Chamber), [No. ICC-01/04-01/07-2288 OA11](#), 16 July 2010, para. 114.

<sup>11</sup> *Idem*, para. 113.

<sup>12</sup> *Idem*, para. 114.

<sup>13</sup> See the “Public redacted version of ‘Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns’”, *supra* note 5, para. 10; the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims” (Trial Chamber III), [No. ICC-01/05-01/08-2138](#), 22 February 2012, para. 24(c); and the “Corrigendum to Directions for the conduct of the proceedings and testimony in accordance with rule 140” (Trial Chamber II), [No. ICC-01/04-01/07-1665-Corr](#), 1 December 2009, para. 30(c).

<sup>14</sup> See the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims”, *supra* note 13, para. 24(b); and the “Corrigendum to

constitutes evidence necessary for the determination of the truth remains to be assessed by the Chamber on a case-by-case basis, while no provision in the Court legal texts confines the submission of evidence pertaining to the conduct of the accused to the Prosecutor.<sup>15</sup>

14. The proposed testimony should not relate to matters already addressed by the Prosecution or be unnecessarily repetitive of evidence tendered by the parties.<sup>16</sup> However, not all repetitions will be rejected: *“only those which do not contribute significantly to the determination of the truth”*.<sup>17</sup> In this sense, the evidence led by the victims should contribute by *“[bringing] to light substantial new information that is relevant to issues which the Chamber must consider in its assessment of the charges”*,<sup>18</sup> or by assisting the Chamber to get a better understanding of the facts through the victims *“providing [a Chamber] with their knowledge of the background to the case or by drawing its attention to relevant information of which it was not aware”*,<sup>19</sup> or by *“assist[ing] the Chamber in its understanding of the case or evidence heard so far”*.<sup>20</sup>

## **2. The evidence expected to be elicited is relevant**

15. The evidence expected to be elicited from the six participating victims is relevant. The concerned individuals were all under the age of fifteen when they were either conscripted or enlisted in the Anti-Balaka ranks under Mr Yekatom's command.

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Directions for the conduct of the proceedings and testimony in accordance with rule 140”, *supra* note 13, para. 30(b).

<sup>15</sup> See the “Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled ‘Decision on the Modalities of Victim Participation at Trial’”, *supra* note 10, para. 112.

<sup>16</sup> See the the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims”, *supra* note 13, para. 24(a); and the “Corrigendum to Directions for the conduct of the proceedings and testimony in accordance with rule 140”, *supra* note 13, para. 30(a).

<sup>17</sup> See the “Decision authorising the appearance of Victims a/0381/09, a/0018/09, a/0191/08, and pan/0363/09 acting on behalf of a/0363/09”, (Trial Chamber II), [No. ICC-01/04-01/07-2517-tENG](#), 4 January 2012, para. 14.

<sup>18</sup> See the “Corrigendum to Directions for the conduct of the proceedings and testimony in accordance with rule 140” *supra* note 13, para. 30(d).

<sup>19</sup> See the “Decision authorising the appearance of Victims a/0381/09, a/0018/09, a/0191/08, and pan/0363/09 acting on behalf of a/0363/09”, *supra* note 17, paras. 4-5.

<sup>20</sup> See the “Public redacted version of ‘Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns’”, *supra* note 5, para. 11.

Thus, the expected evidence relates to Count 29 pertaining to proof of conscription, enlistment and use of children under the age of fifteen years to participate actively in hostilities between at least December 2013 and August 2014.<sup>21</sup> During their experience in the Anti-Balaka ranks under Mr Yekatom's command, child soldiers were, *inter alia*, used to carry out a variety of tasks, forced to participate in military-style training, and subjected to physical and mental violence.<sup>22</sup>

16. The six victims are expected to provide first-hand evidence about their own and other children's experience as Anti-Balaka child soldiers under Mr Yekatom's command, in particular, on the different roles they and other children played in the Anti-Balaka group and various forms of physical and mental violence they and other children were subjected to, and on the resulting specific forms of harm they and other children suffered. Accordingly, the expected evidence directly pertains to the extent and variety of the victimisation suffered by the Anti-Balaka child soldiers, which is among the issues to be considered by the Chamber in its assessment of the charges.

### **3. The evidence expected to be elicited affects the victims' personal interests**

17. The expected evidence affects the personal interests of the individual victims called to testify, as it directly pertains to their experience as Anti-Balaka child soldiers and the ensuing harm they personally suffered. Furthermore, the proposed evidence will show the nature and the specific forms of harm suffered by a larger group of victims former child soldiers, who had similar experience within the Anti-Balaka ranks. Indeed, the vast majority of the former child soldiers admitted so far to participate at trial, underwent a traditional type of initiation (the so-called "*blindage*") upon their conscription or enlistment with the Anti-Balaka, and were then subjected to different forms of physical and mental violence. In particular, as part of their military training they were forced to kill Muslim captives or witness their execution

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<sup>21</sup> See the "Public redacted version of 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-Red](#), 20 December 2019, p. 101.

<sup>22</sup> *Idem*, paras. 148-150.

(the so-called “*baptême d’assassinage*”), forced to take drugs on a daily basis and subjected to different kinds of physical punishment for disobedience or failure to perform certain tasks. Most of the boys were used to participate in the Anti-Balaka combats, often on the frontline, where they were ordered to kill Muslims, both combatants and civilians, and to loot the property of civilians. In turn, girls – further to carry out domestic tasks – were ordered to take part in the killing (“*achever*”) of Muslims captured at combat and used as *mystical shields* for the ‘protection’ of the group. Out of 286 participating victims former child soldiers, at least thirty girls and five boys were subjected to sexual violence, repeatedly and over a prolonged period of time. Following the recurring rapes, several girls fell pregnant – in some instances more than once, then they either suffered a miscarriage or gave birth to an unwanted child. After their demobilisation, the quasi-entirety of the participating former child soldiers continue to be stigmatised in their community because of their past within the Anti-Balaka, while many of them are threatened by former Anti-Balaka elements because of their participation as victims in the present proceedings.

18. As the summaries of the anticipated testimony show, by speaking out about their personal experience the six individuals are also the best-placed to illustrate in a comprehensive manner the different experience lived by the 286 participating victims former child soldiers with the Anti-Balaka, including the specific forms of harm they suffered.

**4. The expected evidence will contribute to the search for the truth, by complementing and/or corroborating the evidence on the record and bringing to light substantial new information**

19. The Legal Representative recalls that the final list of Prosecution witnesses originally included [REDACTED] crime-base witnesses who were expected to provide evidence on their own and others’ experience as Anti-Balaka child soldiers, namely [REDACTED].<sup>23</sup> [REDACTED] were expected to testify amongst other about

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<sup>23</sup> [REDACTED]

being sexually abused.<sup>24</sup> In turn, [REDACTED] were expected to testify about children being sexually exploited by the Anti-Balaka elements.<sup>25</sup>

20. However, [REDACTED].<sup>26</sup> [REDACTED].<sup>27</sup> [REDACTED].<sup>28</sup> As a result, the Chamber heard only two Anti-Balaka former child soldiers as crime-base witnesses.<sup>29</sup> P-2475 was the only witness providing evidence about the different roles he, together with other children, played in the Anti-Balaka and some forms of violence they were subjected to – including [REDACTED].<sup>30</sup> In turn, [REDACTED]’s experience in the Anti-Balaka was rather limited [REDACTED],<sup>31</sup> during [REDACTED].<sup>32</sup> No first-hand evidence was presented on other forms of physical and mental violence children were subjected to during their time in the Anti-Balaka ranks – including sexual assault committed against both female and male child soldiers, traumatic rituals to desensitize children to violence, involving severe physical ordeals and witnessing and participating in acts of extreme brutality.

21. The Legal Representative is mindful that the CLRV’s role is different from the one of the Prosecution, and that it is the Prosecution that carries the burden of proof to establish the alleged crimes.<sup>33</sup> However, he recalls that although the victims’ interests might be seen similar with the ones of the Prosecution, victims play a distinct

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<sup>24</sup> [REDACTED]

<sup>25</sup> See the “Public Redacted Version of ‘Prosecution’s Trial Brief’, 10 November 2020, (ICC-01/14-01/18-723-Conf)”, [No. ICC-01/14-01/18-723-Red](#), 3 March 2021, para. 486, footnote 1234.

<sup>26</sup> [REDACTED]

<sup>27</sup> [REDACTED]

<sup>28</sup> [REDACTED]

<sup>29</sup> See P-2475: the transcripts of the hearings held on 24 May 2022, [No. ICC-01/14-01/18-T-129-Red-ENG WT](#); on 25 May 2022, [No. ICC-01/14-01/18-T-130-Red-ENG WT](#); on 30 May 2022, [No. ICC-01/14-01/18-T-131-Red-ENG WT](#); on 31 May 2022, [No. ICC-01/14-01/18-T-132-Red-ENG WT](#); and on 1 June 2022, [No. ICC-01/14-01/18-T-133-CONF-ENG ET](#). See also [REDACTED]: the transcripts of the hearings held on 16 March 2023, [No. ICC-01/14-01/18-T-213-CONF-ENG CT](#); and on 17 March 2023, [No. ICC-01/14-01/18-T-214-CONF-ENG ET](#).

<sup>30</sup> See P-2475, the transcript of the hearing held on 24 May 2022, [No. ICC-01/14-01/18-T-129-CONF-ENG CT](#), pp. 29-31.

<sup>31</sup> See [REDACTED], the transcript of the hearing held on 16 March 2023, [No. ICC-01/14-01/18-T-213-CONF-ENG CT](#), p. 25.

<sup>32</sup> See [REDACTED], the transcript of the hearing held on 17 March 2023, [No. ICC-01/14-01/18-T-214-CONF-ENG ET](#), p. 49.

<sup>33</sup> See the Further Directions, *supra* note 2, para. 11.

and independent role in the proceedings before the Court.<sup>34</sup> Their main interest lies in the effective realisation of their right to truth and justice, together with their key components – namely the right to know the truth and the right to positively contribute to the search for the truth.<sup>35</sup> Also, pursuant to article 68(3) of the Statute, victims have a statutory right to voice their concerns,<sup>36</sup> in particular the right to tell their story and to be heard.<sup>37</sup> While the Prosecution enjoys discretion in structuring its case and in [REDACTED] its presentation of the evidence if deemed appropriate, said approach in the present case resulted in a significant gap of evidence on the real extent of victimisation that child soldiers suffered in the Anti-Balaka ranks. Considering the evidence presented so far by the Prosecution, the truth in relation to the conscription, enlistment and use of children under the age of fifteen to participate actively in hostilities by the Anti-Balaka in this case is far from being fully uncovered.

22. As developed below, the evidence to be elicited by the six proposed witnesses will advance the victims' quest for truth and justice by contributing to the search for

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<sup>34</sup> See, *inter alia*, the "Fourth Decision on Victims' Participation" (Pre-Trial Chamber III, Single Judge), [No. ICC-01/05-01/08-320](#), 12 December 2008, para. 90. See also the "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6" (Pre-Trial Chamber I), [No. ICC-01/04-101-tEN-Corr](#), 17 January 2006, para. 51, referring to ECtHR, *Berger v. France*, Application No. 48221/99, [Judgment](#), 3 December 2002, para. 38 and ECtHR, *Perez v. France*, Application No. 47287/99, [Judgment](#), 12 February 2004, para. 68.

<sup>35</sup> See, *inter alia*, the "Decision on the participation of victims in the trial proceedings" (Trial Chamber IV), [No. ICC-02/05-03/09-545](#), 20 March 2014, para. 22; the "Decision on the Modalities of Victim Participation at Trial" (Trial Chamber II), [No. ICC-01/04-01/07-1788-tENG](#), 3 March 2010, paras. 60 and 91; the "Decision on the Set of Procedural Rights Attached to Procedural Status of Victims at the Pre-Trial Stage of the Case" (Pre-Trial Chamber I, Single Judge), [No. ICC-01/04-01/07-474](#), 13 May 2008, paras. 31-36; the "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6", *supra* note 34, para. 53. See also, IACtHR, *Almonacid-Arellano et al v. Chile*, [Judgment \(Preliminary Objections, Merits, Reparations and Costs\)](#), 26 September 2006, para. 148; *Moiwana Community v. Suriname*, [Judgment \(Preliminary Objections, Merits, Reparations and Costs\)](#), 15 June 2005, para. 204.

<sup>36</sup> See the "Partly Dissenting Opinion of Judge Sylvia Steiner on the Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, ICC-01/05-01/08-2138" (Trial Chamber III), [No. ICC-01/05-01/08-2140](#), 22 February 2012, para. 18.

<sup>37</sup> See, *inter alia*, the "Decision on Information and Outreach for the Victims of the Situation" (Pre-Trial I), [No. ICC-01/18-2](#), 13 July 2018, para. 8; the "Decision Establishing Principles on the Victims' Application Process" (Pre-Trial Chamber II, Single Judge), [No. ICC-01/04-02/06-67](#), 28 May 2013, para. 25; and the "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6" (Pre-Trial Chamber I), *supra* note 34, paras. 71-72.

the truth and ensuring the fairness of the proceedings towards all parties and participants.<sup>38</sup> By providing first-hand accounts on their personal and other children' experience within the Anti-Balaka group under Mr Yekatom's command, the six proposed victims will significantly complement and/or corroborate to a certain extent the limited evidence presented by the Prosecution to the proof of the crimes committed against Anti-Balaka child soldiers.

23. In addition, the expected evidence will shade lights on aspects that were not touched upon by the Prosecution, and in particular: systematic sexual exploitation of child soldiers under Mr Yekatom's command, both girls and boys, in addition to other forms of physical and mental violence children were subjected to, as well as the Anti-Balaka systematic recourse to traditional practices and rituals to indoctrinate and instrumentalise children and reinforce the ideology of the group. On this specific aspect, the Legal Representative wishes to emphasise that bringing this type of evidence is aimed at, on the one hand, assisting the Chamber to get a better understanding of the cultural background<sup>39</sup> of the Anti-Balaka group, and on the other hand, showing how Anti-Balaka child soldiers were directly involved in these practices and their harmful effects on the children' physical health and psychological wellbeing. It appears that recourse of Mr Yekatom's group to traditional practices was a widespread phenomenon, purportedly aimed at 'protecting' its elements. They involved the conscription and use of young boys to serve as [REDACTED] and young virgin girls to be used as *mystical shields* for the 'protection' of the group. These practices were part of the group's *modus operandi* when 'preparing' the Anti-Balaka elements for and carrying out the combats. Through the *blindage* ritual – which was

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<sup>38</sup> See the "Public redacted version of Decision on Defence Applications for Judgments of Acquittal" (Trial Chamber V(a)), [No. ICC-01/09-01/11-2027-Red-Corr](#), 16 June 2016, Reasons of Judge Eboe-Osui, para. 190: where Judge Eboe-Osui extended a fair trial to the victims, finding that "[a] trial must be fair to all the parties and participants in the case - the Defence and the Prosecution alike. And the victims, too".

<sup>39</sup> In this regard, in the *Ongwen* case, the Presiding Judge of Trial Chamber IX emphasized that "it is also important to know a little bit, or a little bit more about the background of a conflict because things do not occur without any setting, any cultural, political, social setting and it's also important for the Court to know this". See the transcript of the hearing held on 8 June 2017, [No. ICC-02/04-01/15-T-82-ENG CT](#), p. 8, lines 14 to 17.

mandatory for all new recruits, these practices were also used as a means of instilling fear and loyalty and to instrumentalise the children.

24. In this regard, the expected evidence of all the six victims narrate consistently about: (i) ceremonies and rites where children were made to believe they have been endowed with supernatural abilities and that were intended to create a sense of belonging, foster group cohesion, and reinforce the ideology of the group; (ii) ritual objects and symbols, children were given or required to wear specific objects, such as *gris-gris*, believed to possess magical or protective powers – serving as psychological anchors and reminders of their commitment to the armed group; (iii) trauma-based rituals, intentionally designed to break the will of the children, desensitize them to violence, and create psychological dependence on the group. These rituals involved severe physical ordeals and witnessing and participating in acts of extreme violence.

25. The expected evidence is mutually corroborative insofar as it contains some common accounts to the systematic pattern of certain forms of violence Anti-Balaka child soldiers were subjected to. At the same time, it is not repetitive, since each account contains features either unique or very specific to the victims' experience.

26. In relation to the common features of the anticipated evidence, victims a/65190/19, a/65991/19, a/65234/19, a/20712/21 and a/70032/22 all underwent a traditional type of initiation ("*blindage*") in a form of scarification, and/or a *baptême d'assassinage* consisting in killing Muslim captives or witnessing particularly violent acts. They all, including victim a/20722/21, recount about the different forms of violence suffered by the children, involving harsh punishments, sexual violence, being beaten, whipped, tortured and forced to take drugs, in different Anti-Balaka bases located in the forest near [REDACTED]. Victims a/65190/19, a/65991/19 and a/65234/19 were used to actively participate in the Anti-Balaka combats, in particular in [REDACTED], during which they were ordered to kill Muslims, both combatants and civilians, and to pillage the property of Muslim civilians and bring looted goods to their chiefs.

27. In relation to unique or very specific features of the expected evidence, victim a/20722/21 was one [REDACTED] to explain how child soldiers were involved in [REDACTED] the Anti-Balaka traditional practices. He eye-witnessed [REDACTED] about the violence the Anti-Balaka child soldiers were subjected to, including sexual violence committed against young girls who served *mystical shields* for the group.

28. Victim a/65190/19 was tortured to make him a “*machine à tuer*”, witnessed systematic rapes of boys by Anti-Balaka elements, was himself forced [REDACTED] as a punishment and ordered to kill a Muslim captive and [REDACTED]. Victim a/65234/19 was [REDACTED], and was subsequently appointed as his bodyguard, ordered [REDACTED] to always stay close to him, including during the attacks. The victim also participated in several combats, including [REDACTED], and witnessed the presence of young children in different Anti-Balaka bases and the various forms of violence they were subjected to.

29. Victim a/20712/21 played a very specific role as *mystical shield* for the Anti-Balaka group. She took part in [REDACTED] the combats with traditional practices, in [REDACTED] the combats and directly participating on the frontline with other young virgin girls to ‘protect’ the group. Following [REDACTED], she was subjected to repeated rapes, became pregnant and gave birth to a child who is stigmatised in their community because born out of rape.

30. Victim a/70032/22, was used as a sexual slave by the Anti-Balaka elements from the very moment of her conscription and became pregnant two times, suffering first a miscarriage and then giving birth to a child when leaving the group. The victim’s child is stigmatised in the community because born out of rape. Originating from [REDACTED], victim a/65991/19 joined the Anti-Balaka believing that was an opportunity for him to gain money. He was severely traumatised when he was forced to kill a Muslim captive. After his demobilisation, he suffered from emotional and psychological troubles and was [REDACTED] because of the time spent in the Anti-Balaka.

**5. The proposed victims shall be authorised to testify about all forms of violence they were subjected to within the Anti-Balaka ranks and about the role played by Mr Yekatom and other chiefs in their experience and victimisation**

31. Should leave be granted, the proposed victims will testify about their personal and other children' experience as child soldiers in the Anti-Balaka group under Mr Yekatom's command, and the ensuing different forms of harm suffered. During their time in the Anti-Balaka ranks, they were all under the authority and command of their chiefs, they were due to execute orders of their chiefs on a daily basis and were routinely subjected to different types of psychological and mental violence directly perpetrated by their chiefs or by other Anti-Balaka elements, following the chiefs' orders. Thus, the nature of their experience and resulting victimisation is such that any form of harm suffered by the concerned victims is necessarily linked to the conduct of their chiefs, either Mr Yekatom as the chief commander of the group or ComZones the children were subordinated to.

32. Therefore, to be able to meaningfully recount their experience and the extent of their victimisation, the proposed victims shall be authorised to testify about all forms of violence they suffered and about the role of Mr Yekatom and other Anti-Balaka chiefs and elements in their experience. This is particularly true with respect to the victims [REDACTED], whose experience in the Anti-Balaka is primarily linked to [REDACTED] conduct. Curtailing their testimony and precluding them from speaking freely about all forms of the harm they suffered as part of their experience within the Anti-Balaka ranks and about the ones responsible for their victimisation, not only would deny justice to the victims but would also hinder the truth-seeking function of the Chamber.

33. In this regard, the Legal Representative recalls that the Appeals Chamber previously found that "[a] Trial Chamber may request victims to testify on the role of the accused, if it considers that such testimony is necessary for the determination of the truth",<sup>40</sup>

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<sup>40</sup> See the "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled 'Decision on the Modalities of Victim Participation at Trial'", *supra* note 10, para. 112.

and that “*the possibility for the Victims to testify on matters including the role of the accused in the crimes charged against him, [...] is not per se inconsistent with the rights of the accused and the concept of a fair trial*”.<sup>41</sup>

**6. The presentation of the evidence is not prejudicial to, or inconsistent with, the rights of the Accused and a fair and impartial trial**

34. The anticipated evidence is not prejudicial to, or inconsistent with, the right of the Accused. The proposed number of victims to be called to present evidence, namely 6 individuals in total, is reasonable and proportionate considering the number of the participating victims (286), and the very limited number of crime-base witnesses called by the Prosecution to testify on the issue of the presence and use of child soldiers in the Anti-Balaka (2). Accordingly, their appearance is not likely to negatively affect the fairness and expeditiousness of the proceedings. In addition, as discussed *supra*, the proposed evidence affects the personal interests of the victims called to testify and is also representative of the specific forms of harm suffered by a larger group of the participating former child soldiers victims. While focusing on the harm suffered by the concerned victims, the evidence is also directly relevant to one of the issues to be considered by the Chamber in its assessment of the charges – namely the extent and variety of victimisation suffered by the child soldiers in the Anti-Balaka ranks – and as such, is necessary for the determination of the truth.

35. In addition, leave to present evidence is requested in a timely manner and the number of the proposed victims is limited. The summary of the anticipated testimony of each proposed victim is comprehensive and sufficiently detailed, so to enable the Defence to start its preparation immediately and pending the disclosure of the identity of the victims.

36. The fact that the expected evidence touches upon the role played by the Accused in the victims’ experiences within the Anti-Balaka ranks will cause no undue prejudice to the Defence. In fact, the Defence was already put on notice about the

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<sup>41</sup> *Idem*, para. 114.

expected evidence to be elicited at trial in relation to Count 29. In particular, the Prosecution's Trial Brief referred, *inter alia*, to the use of children to injure, weaken, and execute prisoners; their forced participation in military-style training; the threats and the different forms of physical and mental violence child soldiers were subjected to, including sexual abuse by Mr Yekatom's elements and the forced administration of drugs.<sup>42</sup> The Defence was thus aware about the extent of the expected evidence and was already in a position to prepare accordingly. In addition, the Defence is already familiar with [REDACTED] account and identity [REDACTED].<sup>43</sup>

37. Finally, should leave to present evidence be granted, the Defence will have the opportunity to cross-examining the proposed victims and to test the credibility and accuracy of their testimony.

#### **7. Disclosure of the victims' identity and modalities of testimony**

38. All victims the Legal Representative intends to call consented to the disclosure of their identity to the Defence, but only if they are authorised to testify before the Chamber. The identity of victim [REDACTED] is already known to the other participants [REDACTED].<sup>44</sup>

39. All the proposed victims expressed concerns about their security, safety and wellbeing should their identity be disclosed to the public. Several of them referred to concrete threats they received from former Anti-Balaka elements, in addition to being stigmatised in their respective communities.

40. If leave to present evidence is granted, all the proposed victims will testify in Sango. The time estimates of direct examination, also considering that consecutive interpretation will be required, are as follows: three hours for the examination of a/65190/19, a/20722/21, a/65234/19; and two hours for the examination of a/65991/19,

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<sup>42</sup> See the "Public Redacted Version of 'Prosecution's Trial Brief', 10 November 2020, (ICC-01/14-01/18-723-Conf)", *supra* note 25, paras. 485-486.

<sup>43</sup> [REDACTED]

<sup>44</sup> *Ibid.*

a/70032/22 and a/20712/21. It is anticipated at this stage that victims a/65190/19, a/20722/21, a/65234/19 will be called to present evidence in person at the seat of the Court, and the remaining victims via video-link. However, this is still subject to change depending on the concerned victims' availability and provided that all travel related formalities are timely processed. In-court protective measures will be sought with respect to all six proposed victims in the form of use of a pseudonym, voice and face distortion. Indeed, the concerned victims are former child soldiers who are already vulnerable on account on their victimisation at a young age. In addition, given the nature of their testimony, considerable stigmatisation and/or retaliation are likely to arise upon return to their communities.<sup>45</sup> Finally, for all six victims, there exists a risk of self-incrimination on the account of their testimony, and accordingly assurances will be requested under rule 74 of the Rules.

## V. CONCLUSION

41. For the foregoing reasons, the Legal Representative respectfully requests the Chamber leave to call six participating victims to present evidence as crime-base witnesses.

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<sup>45</sup> See the "Public redacted version of 'Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses'" (Trial Chamber V), [No. ICC-01/14-01/18-906-Red2](#), 19 April 2021, paras. 65-66.

**RESPECTFULLY SUBMITTED,**

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', followed by a period.

Dmytro Suprun  
Common Legal Representative of the Former Child Soldiers

Dated this 7<sup>th</sup> day of August 2023  
At The Hague, The Netherlands