

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 25 March 2024

**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  
NGAISSONA**

**Public**

**Public Redacted Version of 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, dated 27 November 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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**Unrepresented Applicants  
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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’s (the “Chamber”) leave to submit into evidence material from the “bar table” (the “Request” or the “CLR1 Request”), in accordance with articles 64(9)(a), 69(3) and 69(4) of the Rome Statute (the “Statute”), and rule 63(2) of the Rules of Procedure and Evidence (the “Rules”), read with article 68(3) of the Statute and rule 91(3) of the Rules, and pursuant to the directions on the conduct of proceedings.<sup>1</sup>

2. The Items for which leave is sought refer to identifying information of dual status victims CAR-V45-P-0001 and CAR-V45-P-0002, and were obtained directly from their family members. At this stage, the Items are provided as attachments to the present request in Annexes 2-5 (regarding CAR-V45-P-0001) and Annex 6 (regarding CAR-V45-P-0002) (the “Items”). Annex 1 provides the information on the chain of custody. The Items can be submitted from the “bar table” as they (i) affect the personal interests of the victims; (ii) are *prima facie* relevant to the issues at trial and have a *prima facie* probative value; (iii) are necessary for the Chamber’s determination of the truth; and (iv) their formal submission would not be prejudicial to the rights of the Accused and to a fair and expeditious trial. Should leave be granted, the Items will be formally disclosed and a request for their submission from the “bar table” will be filed forthwith.

3. Pursuant to the Initial Directions regarding “bar table” applications<sup>2</sup> and for the purpose of the expeditiousness of the proceedings, the CLR1 hereby seizes the opportunity to inquire with the other Participants if they consent or object to the submission of said evidence.

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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”), paras. 16, and 61-62. See also the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLR1 and the Defence)” (Trial Chamber V), [No. ICC-01/14-01/18-1892](#), 29 May 2023 (the “Further Directions”), paras. 5 and 9.

<sup>2</sup> See the Initial Directions, *supra* note 1, para. 62.

## II. PROCEDURAL BACKGROUND

4. On 26 August 2020, the Presiding Judge of the Chamber issued the “Initial Directions on the Conduct of the Proceedings” (the “Initial Directions”).<sup>3</sup>

5. 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”).<sup>4</sup>

6. On 7 July 2023, the Common Legal Representatives of the Victims (the “CLRV”) submitted the “Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence”,<sup>5</sup> and the “*Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves*”.<sup>6</sup>

7. On 3 August 2023, the Chamber issued its “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”, whereby it, *inter alia*, authorised victims a/20722/21, a/65991/19 and a/65010/19 to present evidence.<sup>7</sup>

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<sup>3</sup> See the Initial Directions, *supra* note 1, paras. 61-62.

<sup>4</sup> See the Further Directions, *supra* note 1, para. 9.

<sup>5</sup> See 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](#), 7 July 2023 and 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](#), 11 July 2023; with a Corrigendum of Confidential Redacted Annex A (ICC-01/14-01/18-1969-Conf-AnxA-Red), [No. ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr](#). Public redacted versions were filed on 7 August 2023 as [No. ICC-01/14-01/18-1969-Conf-Red](#) and [No. ICC-01/14-01/18-1969-AnxA-Red-Corr-Red](#).

<sup>6</sup> See the “*Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves*”, [No. ICC-01/14-01/18-1972-Conf-Red](#), 7 July 2023. A public redacted version was filed on 11 August 2023 as [No. ICC-01/14-01/18-1972-Red](#).

<sup>7</sup> 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.

8. On [REDACTED], Witness CAR-V45-P-0001 (a/20722/21) testified at the seat of the Court.<sup>8</sup> On [REDACTED], Witness CAR-V45-P-0002 (a/65991/19) also testified at the seat of the Court.<sup>9</sup> Witness CAR-V44-P-0001 (a/65010/19) is yet to testify.

9. On 13 November 2023, the Yekatom Defence announced its intention to file a “request for the exclusion of evidence of [REDACTED]” (the “Exclusion Request”) and sought an extension of page limits to 80 pages.<sup>10</sup>

10. On 15 November 2023, the Prosecution and the CLRV opposed the extension of page limits for the Exclusion Request.<sup>11</sup> On the same date, the Single Judge of the Chamber partially granted the extension of page limits to up to 50 pages.<sup>12</sup>

### III. CLASSIFICATION

11. Pursuant to regulation 23bis (1) of the Regulations of the Court, the present submissions are classified as confidential as they refer to the identifying information of the protected witnesses CAR-V45-P-0001 and CAR-V45-P-0002 and of their family members. Annex 1 is classified as confidential *ex parte* only available to the CLR1 as it contains the identity of CAR-V45-P-0001’s uncle, to which the other Participants are not privy. Annexes 2-6 are filed as confidential as they refer to the identifying information of the protected witnesses CAR-V45-P-0001 and CAR-V45-P-0002 and of their family members. Confidential redacted Annex 1 is filed simultaneously. Public redacted versions of the presents submissions and of Annexes 1-6 will be filed in due course.

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<sup>8</sup> [REDACTED]

<sup>9</sup> [REDACTED]

<sup>10</sup> See the Email correspondence from the Yekatom Defence dated 13 November 2023 at 10:47.

<sup>11</sup> See the Email correspondence from the Prosecution dated 15 November 2023 at 09:01; and the Email correspondence from the CLRV dated 15 November 2023 at 09:16.

<sup>12</sup> See the Email correspondence from the Chamber dated 15 November 2023 at 14:51.

### III. SUBMISSIONS

#### 1. The proposed evidence can be submitted from the “bar table”

12. The Court’s established jurisprudence recognises the possibility for victims to present evidence.<sup>13</sup> This recognition is premised on article 69(3) of 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, pursuant to which a Chamber leaves open the possibility for the legal representative to request the submission of any evidence.<sup>14</sup>

13. The Initial Directions expressly provide for all participants the possibility to submit evidence through a “bar table” application.<sup>15</sup> In the Initial and Further Directions, the Chamber provided the CLRV with the possibility to present evidence “*should leave to do so be granted*”.<sup>16</sup> In the *Gbagbo and Blé Goudé* case, the legal representative of the victims was granted leave to submit evidence from the “bar table”.<sup>17</sup>

14. In accordance with the established jurisprudence of the Court, in order to determine if leave to present evidence should be granted, the Chamber needs to assess

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<sup>13</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>14</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 13, para. 9.

<sup>15</sup> See the Initial Directions, *supra* note 1, para. 61.

<sup>16</sup> *Idem*, para. 16. See also the Further Directions, *supra* note 1, para. 9.

<sup>17</sup> See, *inter alia*, the “Decision on the common legal representative of victims’ application to submit one item of documentary evidence” (Trial Chamber I), [No. ICC-02/11-01/15-1188](#), 19 June 2018.

whether the proposed evidence: (i) affects the personal interests of the victims; (ii) is relevant to the issues in 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>18</sup>

15. The Items are documentary evidence. Should leave be granted, the Items can be submitted through a “bar table” application under the same conditions that any material tendered from the “bar table” by the parties.

## **2. The CLR1 Request is timely**

16. The present Request is made at the earliest opportunity. The CLR1 received the Items very recently, and after the in-court testimony of dual status victims CAR-V45-P-0001 and CAR-V45-P-0002. The submission of the Items from the “bar table” is also appropriate at this stage of the proceedings. Indeed, the presentation of evidence by the CLR1 is ongoing as dual status victim CAR-V44-P-0001 is yet to testify. In this regard, the CLR1 notes that by analogy the Prosecution was allowed by the Chamber to file any further requests to submit evidence in writing before the conclusion of its presentation of evidence.<sup>19</sup>

## **3. The proposed evidence affects the personal interests of the victims**

17. The Items clearly affect the victims’ personal interests since they pertain to the identifying information of dual status victims CAR-V45-P-0001 and CAR-V45-P-0002. Presently, there exists [REDACTED] of the concerned individuals. This [REDACTED] could potentially compromise the fairness and integrity of the proceedings, making it imperative to resolve this issue with no delay.

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<sup>18</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, paras. 97-104. See also 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, paras. 111-114.

<sup>19</sup> See the Further Directions, *supra* note 1, para. 5.

18. Accordingly, the purpose of the present request is to address those concerns and to contribute [REDACTED] of dual status victims CAR-V45-P-0001 and CAR-V45-P-0002. The submission of the Items from the “bar table” is therefore crucial for the interests of the victims involved and for their pursuit of justice. Moreover, it will contribute to the completeness and accuracy of the case record and it will uphold the integrity of the proceedings.

**4. The proposed evidence is *prima facie* relevant to the issues in the present proceedings and has a *prima facie* probative value**

19. Due to [REDACTED] of CAR-V45-P-0001 and CAR-V45-P-0002 that arose during their testimonies, and the forthcoming Exclusion Request by the Yekatom Defence,<sup>20</sup> the CLR1 finds it appropriate at this stage to seek leave to submit additional documentation to corroborate their identifying information as provided by the Witnesses themselves and contained in their birth certificates CAR-V45-00000006 and CAR-V45-00000009.

20. In particular, leave is requested in relation to the following items: (i) for CAR-V45-P-0001, his “*Carte baptême*”, his “*Fiche de vaccination*”, and the birth certificates of both his parents ([REDACTED]); and (ii) for CAR-V45-P-0002, the “*Carte de vaccination*” of his mother ([REDACTED]).

21. Pursuant to rule 85(a) of the Rules, the identity of an applicant must be duly established for the person to be considered a victim.<sup>21</sup> In the Report on Proof of Identity Documents Available in the Central African Republic (the “CAR”), the Registry provided a non-exhaustive list of documents establishing the identity of individuals in the CAR, including birth certificates and “*cartes de religion*”. In addition, the Registry applied the criteria previously used in the *Bemba* case and considered a statement

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<sup>20</sup> See *supra* para. 9.

<sup>21</sup> See the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (Trial Chamber V), [No. ICC-01/14-01/18-141](#), 23 November 2020, para. 21.



signed by two witnesses and accompanied by their identification document as being a sufficient proof of identity of the victim applicant.<sup>22</sup>

22. The Items are *prima facie* relevant to the issues in the present proceedings since they pertain to the identifying information of dual status victims CAR-V45-P-0001 and CAR-V45-P-0002 who came to testify at trial on Count 29 of the charges, as well as to the identity of their parents. They corroborate the identifying information of the Witnesses as contained in their birth certificates (CAR-V45-00000006 and CAR-V45-00000009).

23. The Items have a *prima facie* probative value as they bear sufficient indicia of reliability and authenticity. They have been provided to the CLR1 by close family members of CAR-V45-P-0001 (his mother and his uncle) and CAR-V45-P-0002 (his mother). These family members are in the best position to confirm the Witnesses' identity and to provide authentic documents that could attest it. The documents are also stamped and signed by the relevant and competent authorities. The Items are mutually corroborative. They are also corroborative of other submitted evidence and with the testimony of the Witnesses at trial.

##### **5. The submission of the proposed evidence is necessary for the Chamber's determination of the truth**

24. The submission of the Items is necessary for the Chamber's determination of the truth as they will contribute to ascertain the identifying information of dual status victims CAR-V45-P-0001 and CAR-V45-P-0002. This is an important element for the purpose of the Chamber's assessment of the evidence provided by the concerned individuals and of the holistic assessment of the entirety of the evidence produced at trial. By addressing [REDACTED] of CAR-V45-P-0001 and CAR-V45-P-0002 that arose during their testimony, the proposed Items will also contribute to ensure the

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<sup>22</sup> See the "Annex I Registry Report on Proof of Identity Documents Available in the Central African Republic", [No. ICC-01/14-01/18-133-AnxI](#), 28 February 2019, paras. 6-8. See also the "Decision Establishing the Principles Applicable to Victims' Applications for Participation" (Pre-Trial Chamber II), [No. ICC-01/14-01/18-141](#), 5 March 2019.

completeness and accuracy of the case record, and to uphold the integrity of the proceedings. The submission of the Items would therefore advance the victims' quest for justice by contributing to the search for the truth and ensuring the fairness of the proceedings towards all Participants.

**6. The formal submission of the proposed evidence would not be prejudicial to the rights of the Accused and to a fair and expeditious trial**

25. The submission of the Items would not be prejudicial to the rights of the Accused and to a fair and expeditious trial for the following reasons. First, they are evidence of a limited nature which pertains to a discrete issue insofar as they aim to ascertain the identifying information of CAR-V45-P-0001 and CAR-V45-P-0002, being currently a matter under dispute. As such, the issue is not new to the Defence's case.

26. Second, should leave to submit the proposed evidence be granted, the Defence will have ample time and opportunity to present any other additional evidence on the matter during the presentation of its case. In fact, the submission of material from the "bar table" *"does not in any way preclude the Defence from challenging, inter alia, their probative value or relevance. Nor does it preclude the Defence from challenging the evidence by calling witnesses as appropriate and/or submitting any evidence in support of its challenge. [...] There is no requirement that evidence be tested with a witness in order for it to be submitted"*.<sup>23</sup>

27. Third, the submission of the Items is not prejudicial to a fair and expeditious trial. On the contrary, their submission aligns with the principles of fairness and the integrity of the proceedings, serving to forestall any potential injustice. Considering also the forthcoming Exclusion Request by the Yekatom Defence,<sup>24</sup> denying authorization for their submission could lead the Chamber to adjudicate said request

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<sup>23</sup> See the "Decision on Prosecution's Request to Submit 1006 Items of Evidence" (Trial Chamber IX), [No. ICC-02/04-01/15-795](#), 28 March 2017, para. 15

<sup>24</sup> See *supra* para. 9.

on an incomplete case record, causing substantial harm to the overall fairness and integrity of the proceedings.

## 7. Final remarks

28. At this stage, the Items are provided as attachments to the present Request in Annexes 2-5 (regarding CAR-V45-P-0001) and Annex 6 (regarding CAR-V45-P-0002). Annex 1 provides the information on the chain of custody. Should leave be granted, the Items will be formally disclosed and a request for their submission from the “bar table” will be filed forthwith.

29. Pursuant to the Initial Directions regarding “bar table” applications<sup>25</sup> and for the purpose of the expeditiousness of the proceedings, the CLR1 hereby seizes the opportunity to inquire with the other Participants if they consent or object to the submission of said evidence.

30. Finally, the CLR1 wishes to inform the Chamber that the attached documents were obtained directly from the family members of CAR-V45-P-0001 and CAR-V45-P-0002. They confirmed their kinship with the Witnesses as well as the Witnesses’ identifying information, as contained in their respective birth certificates (CAR-V45-00000006 and CAR-V45-00000009). The CLR1 will nonetheless continue his inquiries and reserves his right to request leave to present rebuttal evidence in due course pursuant to paragraph 16 of the Initial Directions.<sup>26</sup>

**FOR THE FOREGOING REASONS**, the Legal Representative respectfully requests that the Chamber grants leave to submit the Items into evidence from the “bar table”.

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<sup>25</sup> See the Initial Directions, *supra* note 1, para. 62.

<sup>26</sup> *Idem*, para. 16.

**RESPECTFULLY SUBMITTED,**

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a period at the end.

Dmytro Suprun  
Common Legal Representative of the Former Child Soldiers

Dated this 25<sup>th</sup> Day of March 2024  
At The Hague, The Netherlands