

**Cour
Pénale
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**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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public Redacted Version of “Defence Response to ‘Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the “bar table”, 27 November 2023, ICC-01/14-01/18-2222-Conf”, 8 December 2023, ICC-01/14-01/18-2252-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr. Alfred Rombhot Yekatom ('Defence') hereby responds to the Common Legal Representative of the Former Child Soldiers' ('CLRV1') request for leave to submit into evidence material from the 'bar table'¹ ('Second Request for Leave' or 'Request').
2. The Defence submits that the Second Request for Leave should be rejected. Firstly, the time limit for the CLRV1 to submit such a request has lapsed, and contrary to the CLRV1's contention, the presentation of its evidence has ended on 27 September 2023. Secondly, and in any event, the Request would not meet the requirements for an extension of time pursuant to Regulation 35(2) as no good cause has been shown. Finally, should the Request be granted, the Defence would be unduly prejudiced.
3. The Request is no more than a mean to improperly and unjustifiably protract the CLRV's presentation of evidence seemingly – and for now – until February 2024. This is well after the close of the presentation of the Prosecution's case, after the calling of the Chamber's witness and more pertinently, in the middle of the presentation of the Defence case. If permitted, and noting that the CLRV1 has not expressly stated that this is an exceptional request, this would allow the CLRV1 to continue to file such requests in a poor attempt to shore up 'its case' and flood the case record with even more questionable material. The Trial Chamber is well aware of the fact that material tendered by ESF-affiliated individuals requires interrogation by default; and in the apparent absence of any willingness to investigate this material on the part of the Prosecution, this burden currently rests with the Defence. This burden can also be implied by the Prosecution's absence of any response to the Request.² This will necessarily

¹ ICC-01/14-01/18-2222-Conf

² Email from the Prosecution to the Chamber sent on 6 December 2023, at 12.08.

have knock on effects on the Defence's ability to continue with the presentation of its case in an uninterrupted manner – as afforded to the Prosecution – and contrary to the expeditiousness of these proceedings.

PROCEDURAL HISTORY

4. On 26 August 2020, Trial Chamber V issued the Initial Directions on the Conduct of the Proceedings, directing the CLRV1 to seek leave should they wish to present evidence and non-evidentiary 'views and concerns' of the participating victims.³
5. On 29 May 2023, Trial Chamber V issued the Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence) ('Further Directions'), ruling that the CLRV should file 'any request for leave to present evidence no later than 7 July 2023' and disclose any evidence they intend to rely on, by 18 August 2023.⁴
6. On 1 June 2023, the CLRV1 and Common Legal Representatives for Other Crimes filed the 'Joint Request for extension of time to file a request for leave to present evidence' ('Joint Request').⁵
7. On 9 June 2023, Trial Chamber V rejected the Joint Request ('Decision on the Joint Request').⁶
8. On 11 July 2023, the CLRV1 filed its '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, dated 7 July 2023)' ('First Leave').⁷

³ ICC-01/14-01/18-631.

⁴ ICC-01/14-01/18-1892, paras. 11-12.

⁵ ICC-01/14-01/18-1905-Conf.

⁶ ICC-01/14-01/18-1913.

⁷ ICC-01/14-01/18-1969-Conf-Corr.

9. On 3 August 2023, Trial Chamber V issued the ‘Decision on 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, dated 7 July 2023)’ (‘Decision on Leave’).⁸
10. On 11 September 2023, the Prosecution filed the Prosecution’s Notice of the Close of its Case-in-Chief.⁹
11. From 21 to 27 September 2023, the Common Representative of Child Soldiers (‘CLRV1’) called two witnesses to testify before the Chamber.¹⁰
12. From 24 to 27 October 2023, the Chamber called one witness to testify before Chamber.¹¹
13. On 17 November 2023, the Defence filed the Yekatom Defence’s List of Witnesses and Evidence.¹²
14. On 27 November 2023, the CLRV1 filed the ‘Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the “bar table”’ (‘Second Request for Leave’).¹³
15. On 6 December 2023, the Prosecution informed the Chamber, the Parties and the Participants that it defers to the Chamber’s discretion on the Second Request for Leave.¹⁴

APPLICABLE LAW

16. Article 67 (1) of the Rome Statute

⁸ ICC-01/14-01/18-2016-Conf.

⁹ ICC-01/14-01/18-2089.

¹⁰ ICC-01/14-01/18-T-245-CONF-FRA to ICC-01/14-01/18-248-CONF-FRA..

¹¹ ICC-01/14-01/18-T-249-FRA to ICC-01/14-01/18-252-FRA.

¹² ICC-01/14-01/18-2212-Conf.

¹³ ICC-01/14-01/18-2222-Conf.

¹⁴ Email from the Prosecution to the Chamber sent on 6 December 2023, at 12.08.

In the determination of any charge, the accused shall be entitled to [...] to the following minimum guarantees, in full equality: [...]

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence; [...]

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

17. Regulation 35 (2) RoC

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

SUBMISSIONS

A. The time limit for the CLRV1 to submit its request has lapsed and its presentation of evidence has ended

- i) The Request is a means to circumvent the applicable deadline for the CLRV1 to file any request for leave to present evidence*

18. The CLRV1's role in presenting evidence differs from that of the Parties. The legal representatives of victims are allowed to seek leave to present evidence and/or 'views and concerns' of participating victims, but to obtain such leave they have to meet requirements set by the jurisprudence of the Court.¹⁵ In addition, the legal representatives of victims must also abide by the procedure set by the Trial Chamber which includes procedural deadlines imposed by the Chamber with full consideration of the expeditiousness of these proceedings and necessary time for parties to prepare their case. Both the substantive and

¹⁵ *Le Procureur v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on LRVs requests to present evidence and views and concerns, 9 décembre 2021, ICC-01/12-01/18-2063-Red, par. 11, referring to *Le Procureur v. Germain Katanga et Mathieu Ngudjolo Chui*, Decision on the Modalities of Victim Participation at Trial, 22 janvier 2010, ICC-01/04-01/07-1788-tENG, paras 52, 83; *Le Procureur v. Abdallah Banda Abakaer Nourain*, Decision on the participation of victims in the trial proceedings, 20 mars 2014, ICC-02/05-03/09-545, par. 24.

procedural requirements governing the presentation of evidence by the CLRV1 are mandatory.

19. In this regard, the Trial Chamber, in the Further Directions, ordered “the CLRV [...] to file any request for leave to present evidence **no later than 7 July 2023**,”¹⁶ and directed the CLRV “to disclose any evidence they intend to rely on during their presentation of evidence, should leave to do so be granted, **by 18 August 2023** (emphasis added).”¹⁷

20. These were the applicable deadlines with which the CLRV1 was bound to comply; and which the CLRV1 is well aware of, having previously unsuccessfully requested an extension of time.¹⁸ In rejecting this extension request, the Single Judge emphasised the importance of adhering to such deadlines noting:

the time limits included in the Further Directions were set by the Chamber after careful consideration of all circumstances of the case, particularly bearing in mind the fact that trial proceedings have been ongoing for over two years. The Single Judge emphasises in this regard that the Chamber must ensure that the trial is not only fair, but also expeditious.¹⁹

21. The applicable deadlines are not now moot or irrelevant merely because time has since lapsed. Rather, it only heightens the threshold the CLRV1 must meet in order to seek an extension of time to seek leave to present evidence: namely, that it ‘was unable to file the application within the time limit for reasons outside [its] control.’²⁰

¹⁶ ICC-01/14-01/18-1892, para. 11.

¹⁷ ICC-01/14-01/18-1892, para. 12.

¹⁸ ICC-01/14-01/18-1905-Conf.

¹⁹ ICC-01/14-01/18-1913, para. 8.

²⁰ Regulation 35 (2) RoC.

ii) The CLRV1's presentation of evidence has ended

22. In its Request, the CLRV1 misguidedly states that the presentation of its evidence is 'is ongoing as dual status victim CAR-V44-P-0001 is yet to testify'.²¹

This is factually incorrect.

23. First, the CLRV1's presentation of evidence ends once the evidence for which leave was granted by Chamber's decision has been presented. This occurred before the filing of the Second Request for Leave.

24. In that regard, the procedure for both the Prosecution and CLRV1 are simply different due to their different roles in the proceedings. This is clear from the Further Directions whereby the Prosecution was directed by the Chamber to notify 'by way of formal notice' the conclusion of its presentation of evidence.²² The CLRV1 does not have to submit such notification notably because the scope of its evidence was circumscribed by the Decision on Leave.

25. Second, the circumstances for which CAR-V44-P-0001 has not been able to testify as schedule were exceptional.²³ The Parties and Participants, under the Chamber's supervision,²⁴ have been trying to find a solution in order to accommodate her testimony without it creating any further delays and/or impacting the schedule as set within the Further Directions, while also respecting the rights of both accused in this case. The limited impact of CAR-V44-P-0001 on Mr. Yekatom's charges has enable the Defence to start its evidence prior to CAR-V44-P-0001 giving her testimony. This flexibility was never envisaged as an invitation for the CLRV1 to reopen its evidence. It would also provide an opportunity for participants to manufacture circumstances to extend the presentation of their evidence due to 'scheduling issues'.

²¹ ICC-01/14-01/18-2222-Conf, para. 16.

²² ICC-01/14-01/18-1892, para. 7.

²³ See Email from the Registrar to all ICC personnel sent on 18 September 2023, at 17.37.

²⁴ See email from the Chamber to the Parties and Participants sent on 26 September 2023, at. 16.55.

26. Third, in its decision rejecting the extension request by the CLRVs, the Single Judge was clear that the Chamber's witness was to be called *after* the presentation of evidence by the CLRV.²⁵

27. Given that the CLRV's presentation of evidence has ended, the Request must fail as an unwarranted attempt to re-open its case and/or present rebuttal evidence prior to the Defence case and without seeking leave.

B. The Request does not meet the requirements of Regulation 35 (2) RoC

28. In any event, the Request does not meet the requirements of Regulation 35(2) RoC with regards to the Items.

29. The jurisprudence of the Court is also that the reasons outside the CLRV1 must amount to exceptional circumstances.²⁶

i) No good cause has been shown to permit the CLRV's Request

30. Firstly, given the dates on which the CLRV1 obtained the document,²⁷ it is clear that the Items were obtained following additional investigative steps that the CLRV1 decided to take *following* the testimony of both P-0001 and P-0002.

31. These investigation steps on the very central issue of the identity of their own witnesses could and should have been completed earlier and prior to the 7 July 2023 deadline, and if not, at least prior to the 28 August 2023 deadline. It is to be recalled that P-0001 and P-0002 were participating victims in these proceedings since 20 December 2021²⁸ and 4 September 2019 respectively.²⁹ It is

²⁵ ICC-01/14-01/18-1892, para. 7.

²⁶ ICC-01/14-01/18-403-Corr-Conf, para. 23; see also Trial Chamber IX, The Prosecutor v. Dominic Ongwen, Decision on Defence Request for Variation of the 30 September Deadline, 10 September 2019, ICC-02/04-01/15-1591; see also Appeals Chamber, The Prosecutor v. Thomas Lubanga Dyilo, Reasons for the 'Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007' issued on 16 February 2007, 21 February 2007, ICC-01/04-01/06-834, paras 7, 9.

²⁷ ICC-01/14-01/18-2222-Conf-Anx1-Red.

²⁸ ICC-01/14-01/18-1222-Conf-Anx1.

²⁹ ICC-01/14-01/18-321-Conf-AnxA.

to be reminded, it is the CLRV's obligation, along with the Registry to duly establish the identity of any applicant to be considered a victim in the case.³⁰ It is also to be noted that the baptism card found at Annex 2 was produced at the latest in February 2023, and was therefore available upon request by the CLRV1 to its client since that day.³¹

32. In any case, such steps should also have been anticipated by the CLRV1 as the Defence has been consistent throughout the proceedings in investigating the identities of alleged child soldiers. The Defence was to proceed with the same level of diligence regarding CLRV1 witnesses. Further, the CLRV1 was on notice that the Defence was investigating the identifying information of both witnesses as early as 25 August 2023.³²

33. The fact that the Defence found evidence showing that the identifying information provided by both CLRV1 witnesses was false, does not open a door for re-litigation or rebuttal by the CLRV1. Indeed, it is the very role of the Defence to challenge evidence presented by the Prosecution and the CLRVs. The CLRV1 was at liberty to prepare all the evidence it needed to avoid the ambiguity it now concedes, with regard to the identity of both its witnesses. The CLRV had plenty of opportunity to question its witnesses following cross-examination but opted not to request leave for re-examination. The discontent of the CLRV1 with the evidence now on the record does not amount to either good cause nor any situation outside the CLRV1's control.

34. Furthermore, the CLRV1 reference to the 'earliest opportunity'³³ standard is misplaced. It is the Prosecutor's obligation to disclose material at the earliest opportunity in accordance with Article 67(2).³⁴ This obligation by the

³⁰ ICC-01/14-01/18-141, para. 21.

³¹ ICC-01/14-01/18-2222-Conf-Anx2.

³² See Email from the Defence to the CLRV1 sent on 25 August 2023, at 18.52.

³³ ICC-01/14-01/18-2222-Conf, para. 16.

³⁴ ICC-01/14-01/18-64-Conf, para. 16; see also *The Prosecutor v. Dominic Ongwen*, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 27 February 2015, ICC-02/04-01/15-203, para. 18.

Prosecutor has no bearing with the obligation of the CLRV1 to comply with any deadline imposed by the Chamber in the Further Directions. Also, the fact that the Items were recently obtained does not explain why the CLRV1 failed to obtain them in a timely manner. This explanation is what should have been argued by the CLRV1 in accordance with Regulation 35(2) of the Regulations of the Court ('RoC') in the Second Request for Leave.

ii) The items will not assist the Chamber in its truth seeking function

35. As set out below, the Items are of no relevance and lack any probative value. They do not disprove the Defence's evidence, nor do they corroborate the CLRV1 evidence. Their prospective significance is limited, will not assist the Chamber in its truth-seeking function³⁵ and do not justify any departure from the applicable procedure.

P-0001's and P-0002's identity are clear

36. The CLRV1 concedes that there is an 'ambiguity' on the identifying information of its witnesses P-0001 and P-0002. This so-called 'ambiguity' is in reality the CLRV1's unwillingness to recognize the facts.

37. Indeed, the evidence collected by the Defence, coupled with the information elucidated during their cross examination are clear: both witnesses created a fake identity for the purpose of participating in these proceedings. In addition, Defence witnesses' statements submitted under Rule 68(2) and Rule 68(3),³⁶ disclosed to the Parties and participants on 17 November 2023, confirm the identity of both CLVR1 witnesses P-0001 and P-0002.³⁷

38. Witness P-0001 used the fake identity of [REDACTED] while his real name is [REDACTED].

³⁵ ICC-01/14-01/18-1206, para. 9.

³⁶ ICC-01/14-01/18-2210-Conf; ICC-01/14-01/18-2213-Conf.

³⁷ **P-6025** : CAR-D29-0009-0280; **P-6039** : CAR-D29-0009-0545; **P-6027** : CAR-D29-0009-0239 ; **P-6036** (viva voce witness).

39. The Defence collected various documents subsequently used during its cross examination: (i) school records from [REDACTED];³⁸ (ii) school certificate from [REDACTED];³⁹ (iii) Register from [REDACTED];⁴⁰ (iv) certificate of attendance from the [REDACTED] High School;⁴¹ (v) P-0001's birth certificate;⁴² (vi) registration for the [REDACTED].⁴³

40. P-0001 denied that the identity appearing on each of the items was in fact his identity. P-0001 went so far as to deny recognizing himself on his own picture [REDACTED].⁴⁴ However, [REDACTED], P-0002, [REDACTED] with P-0001, recognized the latter on the same picture without a hint of hesitation.⁴⁵

41. In the same vein, Defence uncovered that Witness P-0002, known in the case under the false identity of [REDACTED], is in reality [REDACTED].

42. The Defence similarly gathered different identifying documents and information for the purpose of cross-examining P-0002: (i) the register of *Ecole* [REDACTED];⁴⁶ (ii) his certificate of attendance from the *Ecole* [REDACTED];⁴⁷ (iii) Facebook photograph of [REDACTED];⁴⁸ (iv) other photographs of his relatives.

43. During his examination by the Defence, P-0002 recognized [REDACTED]. P-0002 denied however that [REDACTED] name is [REDACTED]. On this particular issue, Defence witness P-6027 states that [REDACTED], recognizes P-0002 on CAR-V45-00000011 [REDACTED] and confirms that P-0002's identity is indeed [REDACTED].

³⁸ CAR-D29-0014-0165.

³⁹ CAR-D29-0013-0265.

⁴⁰ CAR-D29-0014-0152.

⁴¹ CAR-D29-0013-0252.

⁴² CAR-D29-0013-0254.

⁴³ CAR-D29-0013-0256.

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ CAR-D29-0014-0169.

⁴⁷ CAR-D29-0013-0266.

⁴⁸ CAR-D29-0016-0157.

44. Amongst the statements already disclosed, [REDACTED] will testify on the authenticity of the above mentioned [REDACTED] that the Defence intends to submit.⁴⁹

The documents annexed by the CLRV1 are irrelevant and/ or lack sufficient indicia of reliability and authenticity

i) Documents in relation to P-0001

45. P-0001's alleged baptism card states that [REDACTED] baptism ceremony occurred on [REDACTED] in [REDACTED] and that the witness was born on [REDACTED].

46. First, while it is indicated that the card was issued on [REDACTED], the year was not filled and remains blank. Besides this casting doubt on its date of creation and therefore on the reliability of the documents, the Defence notes that the baptism card was not submitted to the [REDACTED] while it was apparently in the applicant's hands since at least [REDACTED]. In any event, the applicant, i.e. P-0001, seems never to have been involved in the procedure of establishing a new birth certificate.⁵⁰

47. Second, and contrary to the CRLV1 submissions, the baptism card which indicates [REDACTED] as a date of birth does not corroborate P-0001's date of birth appearing on its birth certificate : [REDACTED]. P-0001 also insisted during its examination by the Defence that he was born on [REDACTED].⁵¹ A similar argument is raised for the P-0001's alleged vaccination card which also indicates [REDACTED] (and not [REDACTED]) as a date of birth for the witness.

⁴⁹ **P-6028** : CAR-D29-0009-0499; **P-6034** : CAR-D29-0009-0372; **P-6030** : CAR-D29-0009-0514; **P-6031** : CAR-D29-0009-0493; *See also* ICC-01/14-01/18-T-253-ENG, page 38.

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

48. The Defence also notes a similarity between the handwriting appearing on the baptism card and on the vaccination card which cast further doubt on the authenticity of both documents.
49. This incongruous degree of similarity militates in favour of the Defence's position that the document appears to have been fabricated after P-0001's appearance before the Chamber in a desperate attempt to save his false testimony.
50. In addition, the stamp appearing on the vaccination card is not complete. The bottom of the [REDACTED] where the name of the city should appear is, conveniently, not visible, which prevent any traceability of the document as the source remains therefore unknown.
51. The Defence additionally recalls that [REDACTED].⁵² Similarly, P-2580 has also been recently [REDACTED].⁵³ Apparent links between [REDACTED] and [REDACTED] only compounds the serious concerns as regards the reliability of this document.
52. On a *prima facie* analysis, the Defence does not, at this stage, present submissions on the authenticity of the birth certificate of [REDACTED]. This is evidently notwithstanding the fact that the Defence did not conduct investigations on the documents including at the [REDACTED] townhall archives department. The Defence however fails to see the relevance and probative value of the document. Although a birth certificate mentions the parents of an individual, it does not specify his/her descendants. Therefore, the family link that the CLRV1 is trying to prove, between P-0001 and [REDACTED] by attempting to submit this item remains inexistant.

⁵² [REDACTED].

⁵³ [REDACTED].

53. Similar argument is made for the birth certificate of P-0001's alleged [REDACTED]: apart from sharing the alleged same family name, there is no indication that could lead to an affiliation whatsoever between the witness and the individual [REDACTED].

54. In addition, the Defence raises that indicia emerging from the document itself strongly suggest that it is forged one. First, the Defence notes that Mr [REDACTED], civil servant at [REDACTED] townhall, allegedly filed and signed the birth certificate of P-0001. It recalls that [REDACTED] also allegedly issued P-2620's birth certificate submitted by the Prosecution.⁵⁴ Yet Mr [REDACTED]'s signature is significantly different from one certificate to the other.

ii) Documents in relation to P-0002

55. Finally, the vaccination card of [REDACTED] is irrelevant; besides potentially establishing that [REDACTED] in [REDACTED], it does not corroborate P-0002's identity as no identifying information is anywhere to be found on the document. The Defence further notes that the card was established [REDACTED].

56. In any event, the Defence never disputed the fact that [REDACTED] is the mother of P-0002.

57. As a final remark, the Defence notes that the CLRV1 is trying to rely on testimonial evidence to support its filing, stating that 'family members of CAR-V45-P-0001 and CAR-V45-P-0002 [...] confirmed their kinship with the Witnesses as well as the Witnesses' identifying information as contained in their respective birth certificates'.⁵⁵ As the CLRV1 is well aware, testimonial evidence is inadmissible unless the individual comes to testify viva voce or a formal

⁵⁴ CAR-OTP-2121-2577.

⁵⁵ ICC-01/14-01/18-2222-Conf, para.30.

statement is submitted under Rule 68. Therefore, the attempt by the CLRV1 to give any weight or reliability to the sought items is misguided.

58. From the above, it is clear that the Items are far from being unequivocal in showing the identity of both CLRV1 witnesses. The Items do not consist of new evidence which would bring to light a previously unknown fact which has a significant impact on the case. Their submission into evidence would not be assisting the Chamber in its truth-seeking function.

C. The Second Request for Leave, if granted, would prejudice Mr. Yekatom's rights

59. Contrary to the CLRV1 submissions, if leave is granted, the request for admission of the items through a bar table motion would unfairly impact and prejudice the rights of Mr Yekatom.

60. In light of the multitude of falsified and fabricated evidence disclosed and used to date in the present case, including concerning the participation of witnesses P-0001 and P-0002, and in light of the above-mentioned arguments, the Defence position is that an investigation into forgery would have to be conducted.

61. The Prosecution's notification of his intention not to respond to the CLRV1 Request ⁵⁶ regrettably aligns with its approach to not investigate the introduction of falsified evidence in the present case, despite its statutory duties in this regard.⁵⁷

62. Therefore, the burden will once again fall on the Defence to investigate and bring evidence to demonstrate the fabrication of evidence that the CLRV1 intends to submit and rely on. The Defence will have to spend a significant

⁵⁶ Email sent by the Prosecution on 6 December 2023 at 12:08, Prosecution's response to Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the 'bar table', ICC-01/14-01/18-2222-Conf ("Request").

⁵⁷ Email sent by the Prosecution on 30 November 2023 at 14:50 *Decision on the Yekatom Defence Request regarding P-2580* transferring to the parties and participants an ex parte email sent to the Chamber informing that it would delegate to CR authorities the investigation into P-2580's misconduct.

amount of time and resources to investigate the sought documents on the eve of the presentation of its case and testimony of its witnesses before the Chamber.

63. Concretely, investigating the Items would require the Defence to take the following steps (among others): (i) engaging in *inter partes* exchanges with the CLRV1 to request the lift of the B.2 redaction applied on the chain of custody; (ii) prepare a mission and send members to [REDACTED] to verify the baptism records of the baptism ceremony [REDACTED]; (iii) locate, approach and meet with [REDACTED], to request *inter alia* if the signature appearing on the baptism card is indeed his; (iv) go to the different [REDACTED] located between [REDACTED] and other remote locations [REDACTED]; (v) search in the archives of the town hall of [REDACTED] to verify the 'souche' of the birth certificate of [REDACTED]; (vi) search in the archives of the townhall of [REDACTED] to verify the 'souche' of the birth certificate of [REDACTED]; (vii) locate, approach and meet with [REDACTED] to confront him with the birth certificate of [REDACTED]; (viii) search in the archives of [REDACTED] for the Register de vaccination.
64. Should the Request be granted, the Defence is also considering the possibility to submit to its expert witness P-7011 the new disclosed documents in light of the similarity in the handwriting.
65. Consequently, the Defence submits that granting the CLRV1 Request would unfairly prejudice the rights of Mr Yekatom as the Defence would have to divert precious resources to the investigation the submission of falsified documents before the Chamber; resources that should now be focused on the presentation of the Defence's case. Moreover, granting the Request would negatively impact the expeditiousness of the proceedings as the Defence would have to potentially

seek leave to bring additional witnesses and/or add additional documents to its List of Evidence.

CLASSIFICATION

66. This request is filed on a confidential basis as it pertains to confidential material.
A public redacted version will be filed in due course.

RELIEF SOUGHT

67. In light of the above, the Defence respectfully requests Trial Chamber V to:
REJECT the Request.

RESPECTFULLY SUBMITTED ON THIS 25TH DAY OF MARCH 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands