

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 June 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-Ho Chung
Judge Beti Hohler, Alternate Judge

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 the submission of evidence from the ‘bar table’”
(No. ICC-01/14-01/18-2428-Conf, dated 2 April 2024)**

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 “CLR1”) respectfully requests Trial Chamber V (the “Chamber”) to recognise as formally submitted four items of documentary evidence obtained from the CLR1’s investigations (respectively the “Identifying Evidence” and the “Request”). The Request is made following the Chamber’s decision whereby it instructed the CLR1 to file a bar table motion regarding Items 1 to 4 referred to therein (the “Decision of 18 March 2024”)¹ and is in accordance with the directions on the conduct of proceedings.²

2. First, the procedural requirements for the submission of the Request have been met. Second, the Identifying Evidence satisfies *prima facie* the relevant criteria for its formal submission. In particular, it is relevant to issues at trial and necessary for the Chamber’s determination of the truth, bears sufficient indicia of reliability, and its recognition as formally submitted will not be prejudicial to the Defence and a fair and expeditious trial. Finally, there exist no procedural bars for the recognition of the Identifying Evidence as formally submitted.

II. PROCEDURAL BACKGROUND

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

¹ See the “Decision on the Common Legal Representative of the Former Child Soldiers Request for Leave to Submit Evidence from the Bar Table” (Trial Chamber V), [No. ICC-01/14-01/18-2412-Conf](#), 18 March 2024 (reclassified as public pursuant to the Chamber’s instruction dated 22 May 2024 as [No. ICC-01/14-01/18-2412](#)) (the “Decision of 18 March 2024”), p. 5.

² See the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V, Presiding Judge), [No. ICC-01/14-01/18-631](#), 26 August 2020 (the “Initial Directions”), paras. 16, and 61-62. See also 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. 5 and 9.

³ See the Initial Directions, *supra* note 2, paras. 61-62.

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)”.⁴

5. 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”,⁵ and the “*Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves*”.⁶

6. 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.⁷

7. On 21 and 22 September 2023, Witness CAR-V45-P-0001 (a/20722/21) testified at the seat of the Court.⁸ On 26 and 27 September 2023, Witness CAR-V45-P-0002 (a/65991/19) also testified at the seat of the Court.⁹

⁴ See the Further Directions, *supra* note 2, para. 9.

⁵ 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](#).

⁶ 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](#).

⁷ 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. A public redacted version was filed on 6 September 2023 as [No. ICC-01/14-01/18-2016-Red](#).

⁸ See the transcript of the hearing held on 21 September 2023, [No. ICC-01/14-01/18-T-245-CONF-ENG ET](#), page 4, line 17 to page 44, line 4; and the transcript of the hearing held on 22 September 2023, [No. ICC-01/14-01/18-T-246-CONF-ENG CT](#), page 2, line 19 to page 81, line 2.

⁹ See the transcript of the hearing held on 26 September 2023, [No. ICC-01/14-01/18-T-247-CONF-ENG CT](#), page 3, line 21 to page 64, line 8; and the transcript of the hearing held on 27 September 2023, [No. ICC-01/14-01/18-T-248-CONF-ENG CT](#), page 3, line 1 to page 39, line 9.

8. On 27 November 2023, the CLR1 requested the Chamber's leave to submit evidence from the bar table and inquire with the other Participants if they consent or object to the submission of said evidence (the "CLR1's Request of 27 November 2023").¹⁰ The items for which the CLR1 sought leave consist of (i) the "*Carte de baptême*" of V45-P-0001 (the "Item 1"); (ii) the "*Fiche de vaccination*" of V45-P-0001 (the "Item 2"); (iii) the birth certificates of V45-P-0001's parents (the "Item 3" and the "Item 4"); and (iv) the "*Carte de vaccination*" of V45-P-0002's mother (the "Item 5").

9. On 6 December 2023, the Prosecution indicated that it deferred to the Chamber's discretion on the CLR1's Request of 27 November 2023.¹¹

10. On 8 December 2023, the Yekatom Defence opposed the CLR1's Request of 27 November 2023.¹²

11. On 23 January 2024, the Identifying Evidence was disclosed to the other Participants.¹³

12. By its Decision of 18 March 2024, the Chamber partially granted the CLR1's Request of 27 November 2023 in relation to Items 1 to 4.¹⁴

¹⁰ See 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](#) (with confidential *ex parte* Annex 1, only available to the CLR1; confidential redacted version of Annex 1, and confidential Annexes 2-6), 27 November 2023 (the "CLR1's Request of 27 November 2023"), paras. 1-2. A public redacted version was filed on 25 March 2024 as [No. ICC-01/14-01/18-2222-Red](#).

¹¹ See the Email correspondence from the Prosecution dated 6 December 2023 at 12:08.

¹² See the "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", [No. ICC-01/14-01/18-2252-Conf](#), 8 December 2023 (the "Yekatom Defence's Response of 8 December 2023"), paras. 1-2, 67. A public redacted version was filed on 25 March 2024 as [No. ICC-01/14-01/18-2252-Red](#).

¹³ See the "Common Legal Representative of the Former Child Soldiers Communication of the Disclosure of Evidence on 23 January 2024", [No. ICC-01/14-01/18-2340-Conf](#) (with confidential Annexes I and II), 31 January 2024.

¹⁴ See the Decision of 18 March 2024, *supra* note 1, p. 5.

III. CLASSIFICATION

13. Pursuant to regulation 23bis (1) of the Regulations of the Court, the present Request and its Annex A are classified as confidential as they refer to the identifying information of the protected Witness V45-P-0001 and his family members.

IV. SUBMISSIONS

1. Applicable law

14. As per the Chamber's established practice in the present case, (i) *"in accordance with the 'Submission Approach', it 'will assess the standard evidentiary criteria (namely the relevance, probative value and potential prejudice) of each item as part of its holistic assessment when deliberating its judgment pursuant to Article 74(2) of the Statute'"*¹⁵; (ii) *"[d]uring trial, the Chamber will accordingly only recognise the participants' formal submission of evidence"*¹⁶; and *"[a]t this stage the Chamber will only consider the admissibility of items in the context of the statutory exclusionary rules, including procedural bars, obstacles and preconditions"*¹⁷. As regards procedural requirements, *"Bar table applications shall contain (i) a short description of the item (and/or relevant portions therein); and (ii) a short description of the asserted relevance and probative value pursuant to Rule 64(1) of the Rules. Before submitting the application, the tendering participant shall inquire whether the opposing participant consents or objects and include this information in the table. The opposing party's reasons do not need to be included in this table. This information should be provided to assist the Chamber later in its holistic assessment of the evidence during the deliberation of the judgment"*¹⁸.

15. It is submitted, first, that the procedural requirements for the submission of the Request have been met. Second, the Identifying Evidence satisfies *prima facie* the

¹⁵ See the "Decision on the First Prosecution Submission Request from the Bar Table (Sexual and Gender Based Violence)" (Trial Chamber V), 19 April 2022, [No. ICC-01/14-01/18-1359](#), (the "First Bar Table Decision"), para. 10. See also the Initial Directions, *supra* note 2, para. 53.

¹⁶ See the Initial Directions, *supra* note 2, para. 53.

¹⁷ See the First Bar Table Decision, *supra* note 15, para. 12. See also the Initial Directions, *supra* note 2, paras. 54-56.

¹⁸ See the Initial Directions, *supra* note 2, para. 62.

relevant criteria for its formal submission. In particular, it is relevant to issues at trial and necessary for the Chamber's determination of the truth, bears sufficient indicia of reliability, and its recognition as formally submitted will not be prejudicial to the Defence and a fair and expeditious trial. Finally, there exist no procedural bars for the recognition of the Identifying Evidence as formally submitted.

2. The procedural requirements for the submission of the Request have been met

16. In accordance with paragraph 62 of the Initial Directions, in his Request of 27 November 2023, the CLR1 inquired with the other Participants if they consent or object to the submission of the Identifying Evidence.¹⁹ The Prosecution indicated that it deferred to the Chamber's discretion on the CLR1's Request of 27 November 2023.²⁰ The Yekatom Defence opposed the CLR1's Request of 27 November 2023 in arguing, *inter alia*, that (i) the Identifying Evidence will not assist the Chamber in its truth seeking function, since in particular P-0001's and P-0002's identity is clear;²¹ (ii) the Identifying Evidence is irrelevant and/or lack sufficient indicia of reliability and authenticity;²² and (iii) their formal submission would prejudice Mr Yekatom's rights.²³ The Ngaïssona Defence and the Common Legal Representatives of Victims of the Other Crimes did not respond to the CLR1's Request of 27 November 2023 and his inquiry contained therein.

17. Also, in accordance with paragraph 62 of the Initial Directions, Annex A to the Request contains the following details for each item of the Identifying Evidence: (i) the evidence registration number ("ERN"); (ii) the type; (iii) the title; (iv) the date of the document; (v) a short description of the item; (vi) its relevance and probative value; (vii) the source (viii) the date of disclosure and (ix) the Defence position.

¹⁹ See the CLR1's Request of 27 November 2023, *supra* note 10, para. 29.

²⁰ See the Email correspondence from the Prosecution dated 6 December 2023 at 12:08.

²¹ See the Yekatom Defence's Response of 8 December 2023, *supra* note 12, paras. 35-44.

²² *Idem*, paras. 45-58.

²³ *Idem*, paras. 59-65.

3. The Identifying Evidence is *prima facie* relevant to the issues in the present proceedings and is necessary for the Chamber's determination of the truth

19. The Identifying Evidence is documentary evidence. It is *prima facie* relevant to the issues in the present proceedings since it pertains to the identifying information of dual status victim V45-P-0001 who came to testify at trial on Count 29 of the Document Containing the Charges, as well as to the identity of this dual status victim's parents.

20. In particular, the Request relates to the following items regarding V45-P-0001: (i) the "*Carte de baptême*" of V45-P-0001;²⁴ (ii) the "*Fiche de vaccination*" of V45-P-0001;²⁵ (iii) the birth certificate of V45-P-0001's mother ([REDACTED]);²⁶ and (iv) the birth certificate of V45-P-0001's father ([REDACTED]).²⁷

21. Pursuant to rule 85(a) of the Rules of Procedure and Evidence (the "Rules"), the identity of an applicant must be duly established for the person to be considered a victim.²⁸ 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 signed by two witnesses and accompanied by their identification document as being a sufficient proof of identity of the victim applicant.²⁹

²⁴ See CAR-V45-00000012.

²⁵ See CAR-V45-00000013.

²⁶ See CAR-V45-00000014.

²⁷ See CAR-V45-00000015.

²⁸ 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.

²⁹ 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.

22. Due to the issues raised by the Yekatom Defence on the identifying information of V45-P-0001 during his testimony and through its Exclusion Request,³⁰ the recognition of the Identifying Evidence as formally submitted is necessary to ascertain the identity of dual status victim V45-P-0001, and therefore would assist the Chamber in its truth seeking function. The Identifying Evidence is highly relevant to the Chamber's assessment of the evidence provided by V45-P-0001, but also to the holistic assessment of the entirety of the evidence on the record. By addressing the ambiguity concerning the identifying information of V45-P-0001 that arose during this witness's testimony, the Identifying Evidence will also contribute to the completeness and accuracy of the case record and uphold the integrity of the proceedings. Thus, the recognition of the Identifying Evidence as formally submitted would also ensure procedural fairness for all Participants to the proceedings.

23. In its Decision of 18 March 2024, the Chamber has already found that "[since] the identity of the Witnesses [V45-P-0001 and V45-P-0002] is materially in dispute between the participants, [...] Items 1 to 4 would be of assistance in its determination of the truth, particularly, with regard to Count 29".³¹

4. The Identifying Evidence bears sufficient indicia of reliability and authenticity

24. To assess the *prima facie* reliability of evidentiary material, the Chamber may evaluate the factors affecting its authenticity, such as its origin, the context in which it was created, the method with which the information contained therein was compiled, and the availability of corroborative evidence.³²

³⁰ See the "Request for the Exclusion of Fabricated Evidence", [No. ICC-01/14-01/18-2240-Conf](#), 5 December 2023 (the "Yekatom Defence's Exclusion Request"). A public redacted version was filed on 9 February 2024 as [No. ICC-01/14-01/18-2240-Red](#).

³¹ See the Decision of 18 March 2024, *supra* note 1, para. 6.

³² See for e.g. the "Corrigendum to Decision on the admissibility of four documents" (Trial Chamber I), [No. ICC-01/04-01/06-1399-Corr](#), 21 January 2011, paras. 36-40; and the "CORRIGENDUM - 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, paras. 98-100.

19. The Identifying Evidence has a *prima facie* probative value as it bears sufficient indicia of reliability and authenticity. They have been provided to the CLR1 by close family members of V45-P-0001, namely his mother and his uncle. The Identifying Evidence confirms the identifying information of V45-P-0001 contained in his birth certificate.³³ The documents are stamped and signed by the relevant authorities. The Identifying Evidence is mutually corroborative, and also corroborative of other evidence on the record and the testimony of V45-P-0001 at trial.

5. The recognition of the Identifying Evidence as formally submitted would not be prejudicial to the Defence and a fair and expeditious trial

18. The recognition of the Identifying Evidence as formally submitted would not be prejudicial to the Defence. As recognised by the Chamber, the Identifying Evidence is “*limited in nature*” and the “*potential prejudice to the rights of the accused is relatively limited*”.³⁴ The Identifying Evidence pertains to a discrete issue insofar as it aims to ascertain the identity of V45-P-0001, which is a material issue in dispute. Furthermore, as the Chamber noted, the Yekatom Defence will have the “*opportunity to present further submissions in relation to the probative value of the [Identifying Evidence] in the context of the CLR1’s future written application*”, and is free to determine if the presentation of any additional evidence is required for this purpose.³⁵ 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*”.³⁶

³³ See CAR-V45-00000006.

³⁴ See the Decision of 18 March 2024, *supra* note 1, paras. 7-8.

³⁵ *Idem*, para. 8.

³⁶ 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

19. The recognition of the Identifying Evidence as formally submitted is also not prejudicial to a fair and expeditious trial. Given the Yekatom Defence's Exclusion Request³⁷ — which, *inter alia*, challenges the identifying information of V45-P-0001³⁸ — denying the formal recognition of the Identifying Evidence could lead the Chamber to adjudicate said request on an incomplete case record, and potentially have an adverse impact on the overall fairness and integrity of the proceedings.

6. There exist no procedural bars for the recognition of the Identifying Evidence as formally submitted

20. The Identifying Evidence is documentary evidence and is not testimonial in nature. There exist no procedural bars included in article 69(7) of the Rome Statute and rule 63(3) of the Rules for the recognition of the Identifying Evidence as formally submitted.

V. RELIEF SOUGHT

21. For the foregoing reasons, the CLR1 respectfully requests the Chamber to recognise as formally submitted the Identifying Evidence listed in the Annex A to the present Request.

³⁷ See the Yekatom Defence's Exclusion Request, *supra* note 30.

³⁸ *Idem*, paras. 25-26.

RESPECTFULLY SUBMITTED,

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

Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 10th Day of June 2024
At The Hague, The Netherlands