

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

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

Date: **25 July 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public with Confidential Annex A

Public Redacted Version of the “Yekatom Defence Request for Leave to add Four Witnesses to its List of Witnesses and Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)”, ICC-01/14-01/18-2541-Conf, 21 June 2024

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”) respectfully requests leave to add four witnesses to, namely [REDACTED] (P-6043),¹ [REDACTED] (P-6044), [REDACTED] (P-6049) and [REDACTED] (P-6050) (collectively the “Four Witnesses”) to its List of Witnesses (“LoW”). The addition of the Four Witnesses is relevant and necessary to the Chamber’s determination of the truth with respect to the identity of [REDACTED] ([REDACTED]/CAR-V45-P-0001) and more broadly, the submission of falsified and/or fraudulently obtained material in these proceedings. The Defence further submits that good cause exists which justifies their late addition and that its reliance on the Four Witnesses does not unduly prejudice the procedural rights of the Prosecution nor the CLRV1.
2. Should the addition of the Four Witnesses be granted, the Defence further requests the formal submission of the prior recorded testimony of the Four Witnesses, pursuant to rule 68(2)(b) of the Rules of Evidence and Procedure (‘Rules’).

PROCEDURAL HISTORY

3. On 21 and 22 September 2023, V45-P-0001 testified.²
4. On 29 May 2023, the Chamber issued its “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)”, whereby it instructed the CLRV1 to file any request for leave to present evidence no later than 7 July 2023 and to disclose any evidence they intended to rely on during their presentation of evidence no later than 18 August 2023.³ The Defence was directed to file its lists of witnesses and list of evidence by 17 November 2023.⁴

¹ Alternate spellings: [REDACTED], [REDACTED].

² CAR-V45-P-0002: ICC-01/14-01/18-T-247-CONF-ENG CT and ICC-01/14-01/18-T-248-CONF-ENG CT.

³ ICC-01/14-01/18-1892, paras. 11 and 12.

⁴ ICC-01/14-01/18-1892, para. 21 (i).

5. On 27 November 2023, the CLRV1 requested the Chamber's leave to submit evidence from the bar table.⁵
6. On 8 December 2023, the Defence responded to the CLRV1 request and opposed it in its entirety both in respect of the timeliness of the request and the lack of relevance and authenticity of the items.⁶
7. On 18 March 2024, the Chamber granted the CLRV1 request for leave to present evidence from the bar table in relation to the following items: (i) CAR-V45-00000012; (ii) CAR-V45-00000013; (iii) CAR-V45-00000014; and (iv) CAR-V45-00000015 (collectively the "CLRV1 Items"). The Chamber noted that the Defence remained free to consider the presentation of any additional evidence.⁷
8. On 2 April 2024, the CLRV1 requested submission of the CLRV1 Items ("CLRV1 BTM").⁸
9. On 15 April 2024, the Defence strongly opposed the CLRV1's bar table request since the items, introduced six months after the close of the CLRV1 case, directly contradicted identifying information as attested to by V45-P-0001 in his sworn testimony as well as other identifying documents led and relied upon by CLRV1.⁹
10. On 4 June 2024, the Chamber recognised the CLRV1 Items as formally submitted.¹⁰ The Chamber noted that the potential prejudice caused by the submission of the items was mitigated by *inter alia* the Defence's investigations on the alleged authenticity of the items, which it noted were 'under way', and the fact that the Defence intended to present the formal findings of its investigations upon completion.¹¹

⁵ ICC-01/14-01/18-2222-Conf.

⁶ ICC-01/14-01/18-2252-Conf.

⁷ ICC-01/14-01/18-2412, paras. 8-9.

⁸ ICC-01/14-01/18-2428-Conf, para. 2.

⁹ ICC-01/14-01/18-2428-Conf.

¹⁰ ICC-01/14-01/18-2520-Conf.

¹¹ ICC-01/14-01/18-2520-Conf, para. 13.

SUBMISSIONS

A. Request for addition of four witnesses to the Defence's list of witnesses

11. The Defence seeks leave to add the following four witnesses, as well as the corresponding statements and associated exhibits, to its List of Witnesses and List of Exhibits respectively,¹² namely: (i) [REDACTED] (P-6043),¹³ (ii) [REDACTED] P-6044),¹⁴ (iii) [REDACTED] (P-6049)¹⁵ and (iv) [REDACTED] (P-6050).¹⁶
12. The addition of these Four Witnesses meets the requisite criteria,¹⁷ in that the evidence is necessary for the exercise of the truth-seeking functions of this Chamber will respect to the identity of V45-P-0001 and the submission of falsified and/or fraudulently obtained material in these proceedings. In particular, the addition of the Four Witnesses at this stage follows the submission of four items, namely (i) CAR-V45-00000012, (ii) CAR-V45-00000013, (iii) CAR-V45-00000014, and (iv) CAR-V45-00000015 which were recently introduced in the CRLV1 BTM, and which serve to further obscure the actual identity of V45-P-0001. As such, there is sufficient cause to add the Four Witnesses at this stage and in doing so, there is no prejudice to the procedural rights of the Prosecution and the CLRV1.
 - a) *The Four Witnesses provide relevant and probative evidence which is necessary for the Chamber's determination of the truth*
13. The addition of the Four Witnesses is of direct relevance to the purported identity of V45-P-0001 as most recently advanced in the CLRV1 BTM. In particular, the

¹² ICC-01/14-01/18-2212-Conf. Annex A includes the List of Rule 68(2) Witnesses whilst Annex D includes the List of Evidence.

¹³ Rule 68(2) statement: CAR-D29-0009-0692-R01. Associated exhibits: CAR-V45-00000005, CAR-V45-00000006, CAR-V45-00000010, CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000014, CAR-V45-00000015, CAR-V45-00000020, CAR-D29-0013-0256, CAR-D29-0015-0051, CAR-D29-0016-0125 and CAR-D29-0016-0159.

¹⁴ Rule 68(2) statement: CAR-D29-0009-0701-R01. Associated exhibits: CAR-V45-00000005, CAR-V45-00000006, CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000020, CAR-D29-0013-0256, CAR-D29-0015-0053 and CAR-D29-0016-0159.

¹⁵ Rule 68(2) statement: CAR-D29-0009-0759-R01. Associated exhibits: CAR-D29-0009-0766 and CAR-D29-0009-0767.

¹⁶ Rule 68(2) statement: CAR-D29-0009-0773-R01. Associated exhibit: CAR-D29-0009-0779.

¹⁷ See ICC-01/14-01/18-2506, fn. 7 citing to ICC-01/14-01/18-1118-Conf, paras. 8-9 and ICC-01/14-01/18-989-Conf, paras. 5-6.

collective evidence of the Four Witnesses demonstrates that [REDACTED] (P-6043) [REDACTED],¹⁸ that her husband [REDACTED] is named [REDACTED] (P-6044) and not '[REDACTED]',¹⁹ and more pertinently, that her brother-in-law [REDACTED] ([REDACTED]).²⁰ Further still, the evidence of the Four Witnesses, demonstrates that items submitted by the CLRV1, including CAR-V45-00000012 (Baptism Card) and CAR-V45-00000013 (Vaccination Card) have been fabricated for the purposes of these proceedings,²¹ that the chain of custody of items submitted by the CLRV1 is false,²² and that [REDACTED] (P-2638) is implicated in the fabrication of V45-P-0001's false identity.²³ The specific details of the statements of each of the Four Witnesses is set out further below.²⁴

14. The addition of the Four Witnesses is therefore vital for the Chamber's assessment of the truthfulness of V45-P-0001's identity and its broader determination of the fabricated evidence relied upon by the Prosecution and CLRV1 to support Count 29. As the Chamber will recall, the CLRV1 has advanced contradictory identifying particulars concerning the identity of V45-P-0001's mother,²⁵ the date of his birth,²⁶

¹⁸ See CAR-D29-0009-0692-R01, para. 17 *contra* CAR-V45-00000014 as well CAR-V45-00000005, CAR-V45-00000006 and V45-P-0001's sworn testimony *see e.g.* T-246-CONF-FRA ET, from [10:42:08] to [10:44:34].

¹⁹ See CAR-D29-0009-0692-R01, paras. 19-20 and CAR-D29-0009-0701-R01, para. 16-17 *contra* CAR-V45-00000015 as well CAR-V45-00000005, CAR-V45-00000006 and V45-P-0001's sworn testimony *see e.g.* T-246-CONF-FRA ET, from [10:42:08] to [10:44:34].

²⁰ See CAR-D29-0009-0692-R01, para. 45 and CAR-D29-0009-0701-R01, paras. 20-22.

²¹ CAR-D29-0009-0759-R01, paras. 27-36 and CAR-D29-0009-0773-R01, paras. 19-23.

²² See in particular, CAR-D29-0009-0692-R01, paras. 26 and 33 in which P-6043 states that she has never met [REDACTED] and does not know why [REDACTED] (i.e. CAR-V45-00000014) is before the ICC in contrast to CLRV1 BTM, paras. 19-20 and metadata of CAR-V45-00000014 which asserts that the CAR-V45-00000014 was [REDACTED] by P-6043. See also CAR-D29-0009-0692-R01, para. 34 in which P-6043 states that she has never [REDACTED] birth certificate [REDACTED] and has never seen this document (i.e. CAR-V45-00000015) in contrast to CLRV1 BTM, paras. 19-20 and the metadata of CAR-V45-00000015 which assert that CAR-V45-00000015 was [REDACTED] by P-6043.

²³ See CAR-D29-0009-0773-R01, paras. 21-22. in which P-6050 describes that [REDACTED] (CAR-V45-00000013). The Defence recalls its submissions concerning [REDACTED]. See further, CAR-D29-0009-0692-R01, paras. 43-45 in which P-6043 is initially reluctant to confirm that [REDACTED]. During the course of the interview, it was observed that P-6043's demeanour visibly shifted and that she displayed physical signs of distress when [REDACTED].

²⁴ *Infra.*, paras. 33 – 48.

²⁵ See e.g. CAR-V45-00000004 which indicates V45-P-0001's [REDACTED] compared to CAR-V45-00000013 which indicates V45-P-0001's [REDACTED].

²⁶ See e.g. CAR-V45-00000005 and CAR-V45-00000006 in contrast to CAR-V45-00000012 and CAR-V45-00000013 which indicates that he was born on [REDACTED]. This is also in contrast to V45-P-0001's sworn testimony that he was born on [REDACTED] and not [REDACTED] *see* ICC-01/14-01/18-2449-Conf, para. 16 and fns. 23 and 24.

his place of birth, and his place of education.²⁷ The evidence of the Four Witnesses demonstrates that the CLRV1's most recent iteration in this regard continues to be false and that there is clear *indicia* that items submitted in the CLRV1 BTM were fabricated,²⁸ and/or fraudulently produced after V45-P-0001's sworn testimony.²⁹

b) There is sufficient cause to add the Four Witnesses at this stage

15. The Defence seeks leave to add the Four Witnesses at this stage in accordance with the Chamber's direction that: a) the Defence remained free to determine if it considers the presentation of any additional evidence to be necessary in the context of the CLRV1 Items³⁰ and b) the potential prejudice of the formal submission of the CLRV1 Items was mitigated by the fact that the Defence's investigations in relation to these items was underway and that the formal findings of these investigations would be presented upon completion.³¹
16. The identification and addition of these Four Witnesses is a direct result of the CLRV1's repeated introduction of falsified material on the case record in order to support the false identity of V45-P-0001. The continuation of Defence investigations in this regard has therefore had to mirror and respond to each effort taken by V45-P-0001 to conceal his true identity [REDACTED].
17. At the outset, and in advance of V45-P-0001's testimony on 21-22 September 2023, the Defence focused its limited investigative resources in [REDACTED] on the basis of his victim application form.³² Defence investigations in [REDACTED] were fruitful in that they revealed that V45-P-0001's actual name was

²⁷ See e.g. V45-P-0001's sworn testimony that he was born, resided and educated in [REDACTED] (see ICC-01/14-01/18-2449-Conf, para. 17 and cites therein) in contrast to CAR-V45-00000012 and CAR-V45-00000013 which indicates that he was vaccinated and baptised in [REDACTED] respectively.

²⁸ *Supra.*, fn. 22.

²⁹ *Supra.*, fn. 23.

³⁰ ICC-01/14-01/18-2412, para. 8. The Chamber's position is consistent with Mr Yekatom's right to present evidence pursuant to article 67(1)(e) see also ICC-02/04-01/15-1639, para. 11.

³¹ ICC-01/14-01/18-2520-Conf, para. 13.

³² CAR-V45-00000004.

[REDACTED],³³ that [REDACTED],³⁴ and that the two, with the assistance of [REDACTED] (P-2018), had fabricated V45-P-0001's victim application form in an attempt to fraudulently secure relocation abroad.³⁵

18. It was only after its robust cross-examination that the CLRV1 Items were produced which sought to relocate V45-P-0001's entire existence away from [REDACTED] to [REDACTED]. The Defence had no reason to direct its investigations in [REDACTED] prior to this point given that this detail directly contradicts both the victim application form (CAR-V45-00000004) and more pertinently, the sworn testimony of V45-P-0001.
19. Indeed, following the disclosure of these items in January 2024,³⁶ the Defence was put on notice of the need to reinstate and redirect its investigations to [REDACTED]. At this point, the presentation of the defence case had already commenced and there were competing priorities as regard defence investigations.³⁷ Moreover, the Defence bore the entire burden of having to investigate efforts to fabricate evidence in these proceedings following the absence of any effort to do so by the Prosecution. The involvement of [REDACTED] (P-2638) has further complicated the direction and duration of Defence investigations with witnesses reporting that they were subject to interference,³⁸ and/or were reluctant to provide the truth as to his involvement in the fabrication of material.³⁹
20. Accordingly, the addition of these Four Witnesses comes at the earliest opportunity.

³³ CAR-D29-0014-0165, CAR-D29-0013-0265, CAR-D29-0014-0152, CAR-D29-0013-0252, CAR-D29-0013-0254 and CAR-D29-0013-0256. See also T-263-CONF FRA ET, from [10:06:59] to [10:08:18].

³⁴ *Ibid*, at [10:21:59] and at [10:24:13]. See also CAR-V45-00000004, pp 1-2, 4 whereby V45-P-0001 provides [REDACTED].

³⁵ ICC-01/14-01/18-2240-Conf, para. 25 and cites therein as well as T-246-CONF-FRA ET, from [10:33:52] to [10:41:59] and T-245-CONF-FRA ET, at [41:717].

³⁶ ICC-01/14-01/18-2520-Conf, para. 13.

³⁷ See also ICC-01/14-01/18-2252-Conf, para. 59 *et seq.*

³⁸ See e.g. ICC-01/14-01/18-2161-Conf-Exp, para. 23.

³⁹ CAR-D29-0009-0692-R01, paras. 43-45. *Supra.*, fn. 24.

c) There is no prejudice to the procedural rights of the Prosecution and the CLRV1

21. The Defence's reliance on the Four Witnesses does not cause undue prejudice to the procedural rights of the Prosecution nor the CLRV1 in the present circumstances.
22. First, the evidence of the Four Witnesses is narrow in scope in that it only concerns the purported identity of V45-P-0001 and the four items submitted by the CLRV1. Submissions with regard to the wider implications of the concerted efforts to present false evidence on the part of Prosecution witnesses, Prosecution and Registry intermediaries, alleged 'former child soldier' participating victims, and other individuals relied on by the Prosecution in its investigation and prosecution of Count 29 have already been raised before this Chamber by all parties and participants.
23. Second, the Prosecution and CLRV1 have been on notice of the Defence's investigations in relation to V45-P-0001's identity. This was first flagged by the Defence with the CLRV1 on 25 August 2023,⁴⁰ and repeated in various filings thereafter. Moreover, the concrete investigations concerning the CLRV1 Items were explicitly raised by the Defence, and relied upon by the Chamber, in April 2024.⁴¹
24. Third, the Defence recalls that in the CLRV1 BTM, the CLRV1 highlighted the need for the Chamber to avoid having an 'incomplete case record' in relation to the identity of V45-P-0001 as this would 'potentially have an adverse impact on the overall fairness and integrity of the proceedings'.⁴² The addition of the Four Witnesses complements this position.

⁴⁰ Email from the Defence to the CLRV1 sent on 25 August 2023, at 18.52 see also ICC-01/14-01/18-2252-Conf, para. 32.

⁴¹ ICC-01/14-01/18-2449-Conf, para. 31 *et seq.*

⁴² ICC-01/14-01/18-2428-Conf, para. 19.

25. Finally, insofar as the Prosecution opposes the addition of the Four Witnesses, the Defence submits that such opposition is of limited value. [REDACTED],⁴³ the Prosecution cannot now declare that its procedural rights would be prejudiced by material which would further the same.

B. Request for the formal submission of prior recorded testimony pursuant to Rule 68(2)(b)

26. Should the addition of the Four Witnesses be granted, the Defence requests the formal submission of the prior recorded testimony of the Four Witnesses pursuant to rule 68(2)(b) of the Rules. In each instance, the prior recorded testimony of the Four Witnesses comprises the witness statements and the associated exhibits which form an integral part of the testimony (collectively 'Proposed Rule 68(2)(b) Material'). Having been guided by the Chamber's previous decisions concerning rule 68(2)(b) applications,⁴⁴ the Defence submits that the Proposed Rule 68(2)(b) Material fulfils the requirements of rule 68(2)(b) so as to allow the Chamber to properly exercise its discretion to grant this request.

a) The Proposed Rule 68(2)(b) Material is correctly identified as 'prior recorded testimony' for the purposes of rule 68(2)(b)

27. The Proposed Rule 68(2)(b) Material comprises the written statements collected from the Four Witnesses as well as the associated exhibits which were either used or explained by each witness and which therefore constitute an integral part of their respective testimonies.⁴⁵ As reflected in the Proposed Rule 68(2)(b) Material, each of the Four Witnesses understood at the time that the information they provided may be relied upon in the context of legal proceedings⁴⁶ and that they may be called upon to provide their testimony in public.

⁴³ See email from the Defence to the Chamber and Parties and Participants, dated 30 April at 18:24.

⁴⁴ ICC-01/14-01/18-1833-Conf-Corr, ICC-01/14-01/18-1907-Conf, ICC-01/14-01/18-2272-Conf and ICC-01/14-01/18-2424-Conf.

⁴⁵ ICC-01/14-01/18-1833-Conf-Corr, para. 24.

⁴⁶ ICC-01/14-01/18-1833-Conf-Corr, para. 23.

b) The Proposed Rule 68(2)(b) Material does not relate to matters concerning the charged acts and conduct of the accused

28. The Proposed Rule 68(2)(b) Material does not relate to the charged acts and conduct of the accused as described in the confirmed charges or which are otherwise relied upon by the Prosecution to establish the accused's criminal responsibility for the crimes charged.⁴⁷ Instead, the Proposed Rule 68(2) Material is limited to the identity of V45-P-0001 and the lack of authenticity/reliability of the documents disclosed by the CLRV1 following V45-P-0001's testimony and shows the ongoing interference, as well as the fear of reprisal and/or legal implications associated with testifying on the fabricated material and associated fraudulent conduct, in this case.⁴⁸

c) The Proposed Rule 68(2)(b) Material has been prepared in a reliable manner

29. The Proposed Rule 68(2)(b) Material has sufficient *indicia* of reliability for the purposes of formal submission pursuant to rule 68(2)(b).⁴⁹ For each of the Four Witnesses, the prior record testimony was: (i) taken in the ordinary course of proceedings, (ii) signed by the witness and the investigator(s) conducting the interview, (iii) given voluntarily, (iv) verified by the witness at the time of the statement and, (v) includes information that the witness was given an explanation of the procedure before the ICC and was informed of the significance of providing the statement to the Defence. In this regard, each statement contains an express acknowledgement attesting to the voluntariness and the truth of its contents to the best of the witness' knowledge. Moreover, certifications in accordance with rule 68(2)(b)(ii) are currently in progress and will be submitted in due course.

30. Each statement was obtained in a language understood by each of the Four Witnesses, namely French and/or Sango, and read back by a qualified interpreter

⁴⁷ ICC-01/14-01/18-1833-Conf-Corr, para. 28.

⁴⁸ *Supra.*, fn. 24.

⁴⁹ ICC-01/14-01/18-1833-Conf-Corr, para. 42.

assigned by the Registry. In doing so, each of the Four Witnesses was informed of their right to make corrections and clarifications to their statement.

31. Further, as developed below, each of the statements are internally consistent and sufficiently corroborated by other evidence in these proceedings.⁵⁰

d) Overview of the Proposed Rule 68(2)(b) Material

32. In order to assist the Chamber's assessment of the Proposed Rule 68(2)(b) Material, the Defence provides a comprehensive overview of the salient issues arising within the prior recorded testimony for each of the Four Witnesses, as well as a summary of the relevant cumulative and/or corroborating evidence in this case. Whilst the Defence notes that full consideration of the standard evidentiary criteria is to be deferred to the Chamber's eventual deliberation of its judgment,⁵¹ it is submitted that the Proposed Rule 68(2)(b) Material meets the requisite relevance and probative value threshold.

i) [REDACTED] (P-6043)

33. The Defence tenders for formal submission P-6043's statement collected on 6 June 2024, totalling approximately 9 pages.⁵² There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-6043's statement.
34. The witness's proposed testimony establishes the following:
- P-6043 was born in [REDACTED] but currently lives in [REDACTED];
 - P-6043 has had only one partner or spouse, and that is [REDACTED] (P-6044);
 - P-6043 explains that she shares [REDACTED] children with P-6044: [REDACTED];

⁵⁰ Noting that the Chamber is only obliged to conduct a preliminary assessment of these factors at this stage, see ICC-01/14-01/18-1833-Conf-Corr, para. 43.

⁵¹ ICC-01/14-01/18-1833-Conf-Corr, para. 15.

⁵² CAR-D29-0009-0692.

- P-6043 does not know of an individual named [REDACTED] nor has she ever seen his birth certificate (CAR-V45-00000015);
- P-6043 has five direct siblings, one of whom is [REDACTED];
- [REDACTED] is married to a man named [REDACTED] and they live in [REDACTED] with [REDACTED] - they do not have a daughter;
- P-6043 has never met with lawyers working for the ICC nor an individual named [REDACTED];
- P-6043 recognises [REDACTED] (CAR-V45-00000014) but does not know how it could have ended up in the hands of the ICC;
- P-6043 has never seen the baptism card of [REDACTED] (i.e. CAR-V45-00000012) and denies knowing anyone having been baptised as the [REDACTED] church;
- P-6043 has never seen the vaccination card of [REDACTED] (i.e. CAR-V45-00000013) and denies [REDACTED];
- P-6043 has never seen the *Transcription de jugement supplétif d'acte de naissance* of [REDACTED] (i.e. CAR-V45-00000006) and does not understand [REDACTED];
- P-6043 has never seen the *Jugement de reconstitution d'acte de naissance* of [REDACTED] (i.e. CAR-V45-00000005);
- P-6043 has never seen a [REDACTED] school attendance certificate in the name of [REDACTED] (i.e. CAR-V45-00000020). Besides some of her nephews, P-6043 has no children attending the [REDACTED] and does not know a [REDACTED] that goes there;
- P-6043 first denies recognising any individual appearing on CAR-D29-0016-0159, CAR-D29-0016-0125, CAR-D29-0013-0256 at page 0259 (i.e. showing [REDACTED] and V45-P-0001) but, after being confronted by the Defence to information provided by her husband (P-6044), recognises [REDACTED] on CAR-D29-0016-0159;

- P-6043, when reshowing a picture of V45-P-0001 (i.e. CAR-D29-0013-0256), admits recognising [REDACTED]. She states that this is the son of [REDACTED] (i.e. the daughter of P-6043's maternal uncle) and that she does not know why the document indicates that V45-P-0001's last name is [REDACTED].

35. P-6043's proposed evidence is cumulative and corroborative of *inter alia* i) P-6025's testimonial evidence attesting that P-6043 is not [REDACTED],⁵³ ii) documentary evidence showing that the biological mother and father of P-0001 are [REDACTED] and [REDACTED],⁵⁴ iii) P-6034's testimonial evidence attesting to the kinship between V45-P-0001 and [REDACTED] and [REDACTED] and not [REDACTED],⁵⁵ iv) P-6017's testimonial evidence on the threats she received [REDACTED].⁵⁶

36. The Defence submits 12 associated exhibits which form an integral part of P-6043's testimony. These comprise: an identity card, two images of [REDACTED] (P-2638) Facebook page, a registration form to the *Brevet des Collèges*, V45-P-0001's photograph, [REDACTED] (P-6043) birth certificate, [REDACTED] birth certificate, [REDACTED] baptism card, [REDACTED] vaccination card, [REDACTED] *Transcription de jugement supplétif d'acte de naissance* and *Jugement de reconstitution d'acte de naissance*, and the [REDACTED] school attendance certificate in the name of [REDACTED].⁵⁷

⁵³ P-6025: CAR-D29-0009-0280-R01, paras. 21 and 24; ICC-01/14-01/18-T-264-CONF-FRA ET, from [09:43:09] to [09:43:55].

⁵⁴ CAR-D29-0013-0254; CAR-D29-0013-0265; CAR-V45-00000004, p. 006;

⁵⁵ P-6034: CAR-D29-0009-0372, para. 21.

⁵⁶ P-6027: CAR-D29-0009-0260, paras. 20-21.

⁵⁷ CAR-D29-0015-0051, CAR-D29-0016-0159, CAR-D29-0016-0125, CAR-D29-0013-0256, CAR-V45-00000010, CAR-V45-00000014, CAR-V45-00000015, CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000006, CAR-V45-00000005 and CAR-V45-00000020.

ii) [REDACTED] (P-6044)

37. The Defence tenders for formal submission P-6044's statement collected on 6 June 2024, totalling approximately 7 pages.⁵⁸ There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-6044's statement.

38. The witness's proposed testimony establishes the following:

- P-6044 was born in [REDACTED] but lives in [REDACTED];
- P-6044 is a farmer [REDACTED];
- P-6044 has been in a relationship with P-6043 since 2004 and they share [REDACTED] children, the first being born in [REDACTED];
- P-6043 has no other children from a previous relationship;
- P-6044 states that P-6043 has [REDACTED] siblings, including [REDACTED];
- [REDACTED] is married to [REDACTED] and they live in [REDACTED];
- P-6044 does not know an individual named [REDACTED];
- P-6044 has never seen the baptism card of [REDACTED] (i.e. CAR-V45-00000012) and explains that having left [REDACTED] a long time ago, P-6044 does not recognise either the pastor, [REDACTED], nor the name [REDACTED];
- P-6044 has never seen the vaccination card of [REDACTED] (i.e. CAR-V45-00000013) and does not understand why [REDACTED];
- P-6044 has never seen a [REDACTED] school attendance certificate in the name of [REDACTED] (i.e. CAR-V45-00000020) and is surprised [REDACTED];

⁵⁸ CAR-D29-0009-0701.

- P-6044 has never seen the *Jugement de reconstitution d'acte de naissance* of [REDACTED] (i.e. CAR-V45-00000005) and does not understand why it is written that [REDACTED];
- P-6044 has never seen the *Transcription de jugement supplétif d'acte de naissance* of [REDACTED] (i.e. CAR-V45-00000006) and does not understand why [REDACTED];
- P-6044 identifies [REDACTED] (P-2638) as photographed in CAR-D29-0016-0159.

39. P-6044's proposed evidence is cumulative and corroborative of *inter alia* i) P-6025's testimonial evidence attesting that that [REDACTED], [REDACTED],⁵⁹ ii) the proposed rule 68(2) testimony of [REDACTED] (P-6043),⁶⁰ iii) documentary evidence showing that the [REDACTED],⁶¹ iv) P-6034's testimonial evidence attesting to the kinship between V45-P-0001 and his parents [REDACTED],⁶² v) P-6025 and P-6034's testimonial evidence on the identities of [REDACTED].⁶³

40. The Defence submits eight associated exhibits which form an integral part of P-6044's testimony. These comprise: [REDACTED] registration form to the *Brevet des Collèges*, P-6044's electoral card, a [REDACTED] Facebook publication, [REDACTED] *Transcription de jugement supplétif d'acte de naissance* and *Jugement de reconstitution d'acte de naissance*, [REDACTED] baptism card, [REDACTED] vaccination card, and the [REDACTED] school attendance certificate in the name of [REDACTED].⁶⁴

⁵⁹ P-6025: ICC-01/14-01/18-T-264-CONF-FRA ET, from [09:43:09] to [09:43:55].

⁶⁰ *Supra.*, paras 33-36.

⁶¹ CAR-D29-0013-0254; CAR-D29-0013-0265; CAR-V45-00000004, p. 006;

⁶² P-6034: CAR-D29-0009-0372, para. 21.

⁶³ P-6025: CAR-D29-0009-0280-R01, para. 24; P-6034: CAR-D29-0009-0372-R01, para. 19.

⁶⁴ CAR-D29-0013-0256, CAR-D29-0015-0053, CAR-D29-0016-0159, CAR-V45-00000005, CAR-V45-00000006, CAR-V45-00000012, CAR-V45-00000013 and CAR-V45-00000020.

iii) [REDACTED] (P-6049)

41. The Defence tenders for formal submission P-6049's statement collected on 11 June 2024, totalling approximately seven pages.⁶⁵ There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-6049's statement.

42. The witness's proposed testimony establishes the following:

- P-6049 has been a pastor of the [REDACTED] and has been baptising worshippers [REDACTED];
- There is only one [REDACTED] church in [REDACTED];
- P-6049 knows the names of all worshippers of his church;
- P-6049 does not recognise the names [REDACTED] or [REDACTED], and specifies that they are neither members of his church nor residents of [REDACTED]. He has never heard the name "[REDACTED]" in [REDACTED];
- P-6049 states that the [REDACTED] Church of [REDACTED] has a register listing the complete names and the dates of adhesion of the members;
- P-6049 indicates that the [REDACTED] Church of [REDACTED] has a baptism register listing the complete names, the parents' complete names and the baptism dates of the baptised individual;
- P-6049 states that there were no baptisms in [REDACTED] since there were no new members;
- P-6049 explains that baptism cards are issued upon request; the card is filled out by the pastor of the [REDACTED] church with [REDACTED] signature and stamp as well as the signature of the worshipper;
- P-6049 explains that the baptism card of [REDACTED] (i.e. CAR-V45-00000012) is not the baptism card used at his church: the mention [REDACTED] is irregular and that the usual insignia does not appear;

⁶⁵ CAR-D29-0009-0759.

- P-6049 explains that the church has [REDACTED]. P-6049 does not know Pastor [REDACTED];
- P-6049 acknowledges [REDACTED] (P-6045) had worked for [REDACTED] years as [REDACTED] of the [REDACTED] school.

43. P-6049's proposed evidence is corroborative of V45-P-0001's sworn testimony that he was born in [REDACTED] and 'nowhere else',⁶⁶ lived with his mother in [REDACTED],⁶⁷ and completed his primary school education [REDACTED] in [REDACTED],⁶⁸ going as far as to testify to the name of his primary school teacher [REDACTED].⁶⁹ At no point did V45-P-0001 raise any association with [REDACTED] during his sworn testimony or make reference to this item.

44. The Defence submits two associated exhibits which form an integral part of P-6049's testimony namely, the front and back pages of the baptism card of [REDACTED].⁷⁰

iv) [REDACTED] (P-6050)

45. The Defence tenders for formal submission P-6050's statement collected on 18 June 2024, totalling approximately six pages.⁷¹ There are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-6050's statement.

46. The witness's proposed testimony establishes the following:

- P-6050 has been [REDACTED]. In the course of her duties, she [REDACTED];
- P-6050 does not know an individual named [REDACTED];

⁶⁶ V45-P-0001: ICC-01/14-01/18-T-246-CONF-ENG, from [9:56:31] and [9:57:04]. See also ICC-01/14-01/18-T-245-CONF-ENG, from [9:43:13] to [9:43:18].

⁶⁷ V45-P-0001: ICC-01/14-01/18-T-245-CONF-ENG, at [9:44:25]. See also ICC-01/14-01/18-T-246-CONF-ENG, from [10:50:10] to [10:50:41].

⁶⁸ V45-P-0001: ICC-01/14-01/18-T-246-CONF-ENG, from [10:10:26] to [10:10:58].

⁶⁹ V45-P-0001: ICC-01/14-01/18-T-246-CONF-ENG, from [14:12:35] to [14:13:12].

⁷⁰ CAR-D29-0009-0759 and CAR-D29-0009-0760.

⁷¹ CAR-D29-0009-0773-R01.

- P-6050 states that she has never seen vaccination cards dated 2003 or 2004 but can comment on the information contained in the vaccination card of [REDACTED] (i.e. CAR-V45-00000013): there is an error since [REDACTED]; there is a mistake [REDACTED] and that the correct term is [REDACTED]; [REDACTED];
- P-6050 explains that [REDACTED];
- P-6050 explains that [REDACTED].

47. P-6050's proposed evidence is cumulative and corroborative of *inter alia* i) documentary and testimonial evidence that [REDACTED] (P-2580) is the [REDACTED];⁷² ii) P-6025's testimonial evidence as to the role and duties of [REDACTED] and [REDACTED] (P-2638) implication therein,⁷³ iii) P-6025's testimonial evidence attesting that V45-P-0001's biological parents are [REDACTED] and [REDACTED] and not [REDACTED],⁷⁴ iv) the proposed rule 68(2) testimony of [REDACTED] (P-6043),⁷⁵ v) the proposed rule 68(2) testimony of P-6044,⁷⁶ vi) V45-P-0001's sworn testimony that he was born in [REDACTED] and 'nowhere else',⁷⁷ lived with his mother in [REDACTED],⁷⁸ and completed his primary school education [REDACTED],⁷⁹ going as far as to testify to the name of his primary school teacher at [REDACTED].⁸⁰

48. The Defence submits one associated exhibit which forms an integral part of P-6050's testimony namely, the vaccination card of [REDACTED].⁸¹

⁷² P-6046: CAR-D29-0009- 0722-R01, para. 17. See also CAR-D29-0016-0171.

⁷³ P-6025: ICC-01/14-01/18-T-264-CONF-FRA ET, from [12:56:11] to [13:02:19]. See also CAR-OTP-00001381.

⁷⁴ P-6025: ICC-01/14-01/18-T-264-CONF-FRA ET, from [09:43:09] to [09:43:55].

⁷⁵ *Supra.*, paras 33-36.

⁷⁶ *Supra.*, paras 37-40.

⁷⁷ V45-P-0001: ICC-01/14-01/18-T-246-CONF-ENG, from [9:56:31] and [9:57:04]. See also ICC-01/14-01/18-T-245-CONF-ENG, from [9:43:13] to [9:43:18].

⁷⁸ V45-P-0001: ICC-01/14-01/18-T-245-CONF-ENG, at [9:44:25]. See also ICC-01/14-01/18-T-246-CONF-ENG, from [10:50:10] to [10:50:41].

⁷⁹ V45-P-0001: ICC-01/14-01/18-T-246-CONF-ENG, from [10:10:26] to [10:10:58].

⁸⁰ V45-P-0001: ICC-01/14-01/18-T-246-CONF-ENG, from [14:12:35] to [14:13:12].

⁸¹ CAR-D29-0009-0779.

e) *The fairness requirements are weighed in favour of an accused's right to expeditious proceedings where the calling party is the Defence*

49. Rule 68(2)(b) was introduced in order to streamline proceedings so as to identify certain situations where it is not necessary to examine witnesses while at the same time preserving the fair and expeditious conduct of the proceedings.⁸² This is a delicate balance which forms the centre of rule 68(2)(b) litigation before this Court.
50. In this regard, the Defence recalls the Appeals Chamber's findings in the *Al Hassan* case, namely that rule 68 must be treated as an "exception to the principle of orality as set out in article 69(2)",⁸³ and as such it must be interpreted and applied "in a manner that is consistent with internationally recognised human rights norms".⁸⁴ This includes the internationally recognised right of an accused to confront a witness against him/her, as protected under article 67(1)(e) and article 69(2).⁸⁵ Accordingly, as held by the Appeals Chamber, the criteria set out in rule 68 are "aimed at reducing prejudice to the rights of the accused".⁸⁶
51. The rule 68(2)(b) factors are not therefore aimed at reducing any purported internationally recognised right of the Prosecution,⁸⁷ nor of the CLRV1 as participants in these proceedings, to examine the evidence led by the Defence and must be given full effect so as not to defeat the very objective of rule 68.⁸⁸

⁸² ICC-01/14-01/18-1833-Conf-Corr, para. 37.

⁸³ ICC-01/12-01/18-2222 OA4, para. 1.

⁸⁴ ICC-01/12-01/18-2222 OA4, para. 79.

⁸⁵ ICC-01/12-01/18-2222 PA4, paras. 75 -77.

⁸⁶ ICC-01/12-01/18-2222 OA4, para 79. See also ICC-01/14-01/18-1833-Conf-Corr, para. 27 'The purpose of this limitation is to safeguard 'a fair trial in full equality', 44 in particular ensuring the accused's right to confront and examine those persons making direct allegations against them in court'.

⁸⁷ See e.g. ICC-01/04-02/12-271-Corr OA, paras. 253 to 256 in which the Appeals Chamber, whilst addressing arguments concerning the Prosecutor's right to a fair trial, determined that the fundamental right to a fair trial "first and foremost, inures to the benefit of the accused" and that further, "specific rights entrenched in article 67 (1) of the Statute are specifically tailored to the needs of the accused person".

⁸⁸ See also ICC-01/12-01/18-2222 OA4, paras. 3 and 55, further cited in ICC-01/14-01/18-1833-Conf-Corr, para 27.

f) The formal submission of the Proposed Rule 68(2)(b) Material best serves the interests of justice and would not prejudice or be inconsistent with the rights of the accused

52. Given the limited impact on the accused's right to confront a witness against him/her in these circumstances, it is submitted that the interests of justice are necessarily best served by the introduction of the Proposed Rule 68(2)(b) Material into evidence pursuant to Rule 68(2)(b). The introduction of the Proposed Rule 68(2)(b) Material would undoubtedly safeguard the expeditiousness of these proceedings and streamline the presentation of the Defence's case.

CLASSIFICATION

53. This request is filed on a confidential basis as it concerns the identities and confidential information of protected witnesses. A public redacted version will be filed in due course.

RELIEF SOUGHT

54. For the foregoing reasons, the Defence respectfully requests Trial Chamber V to:

GRANT leave to add CAR-D29-P-6043, CAR-D29-P-6044, CAR-D29-P-6049 and CAR-D29-P-6050 to the Defence List of Witnesses;

GRANT leave to add the Items to the Defence List of Witnesses;

INTRODUCE the prior recorded testimony of CAR-D29-P-6043, CAR-D29-P-6044, CAR-D29-P-6049 and CAR-D29-P-6050 into evidence pursuant to rule 68(2)(b).

RESPECTFULLY SUBMITTED ON THIS 25th DAY OF JULY 2024⁸⁹



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⁸⁹ The Defence is grateful for Legal Intern Ms Lina Hammi's assistance in the drafting of this filing.