

**Cour
Pénale
Internationale**



**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 “Second Defence Consolidated Request for
Leave to add items to its List of Evidence, P-6046 & P-6042 to its List of
Witnesses and submit their prior recorded testimony pursuant to Rule
68(2)(b)”, ICC-01/14-01/18-2555-Conf, 26 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:

The Office of the Prosecutor

Mr Karim Asad Ahmad Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Thomas Hannis
Mr Florent Pages-Granier

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Ms Marie O'Leary

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. Counsel for Mr. Alfred Rombhot Yekatom ("Defence") hereby requests leave to add items to its List of Evidence,¹ to add D29-P-6046 and D29-P-6042 to its List of Witnesses, and to submit their prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.²
2. As detailed in the present request, the two items which addition to the List of Evidence is sought, [REDACTED], further the Defence's arguments as regard the existence of fabrication of evidence in relation to Count 29, and the fact that this fabrication is still ongoing, in particular as regard to new item CAR-V45-00000019 disclosed in January 2024. D29-P-6046 and D29-P-6042 testimonies also relate, and support, the Defence's submissions as regard to the use by V45-P-0002 of a false identity when he testified before the Chamber.

PROCEDURAL HISTORY

3. On 29 May 2023, the Chamber directed the Defence to file its List of Evidence and List of Witnesses by 17 November 2023.³
4. On 17 November 2023, the Defence filed its List of Evidence and List of Witnesses. The Defence highlighted that due to several challenges, including the cancellation of missions, it reserved its right "*to seek leave to add witnesses on its Final Witness List, as necessary to ensure the effective exercise of Mr Yekatom's fair trial rights*".⁴
5. On 27 November 2023, the Common Legal Representative for Victims – Former Child Soldiers ("CLRV1") filed a request to be granted leave to submit into

¹ CAR-D29-0014-0189 & CAR-D29-0014-0249.

² For P-6046 : CAR-D29-0009-0722, Annex A CAR-D29-0009-0737, [REDACTED]. For P-6042 : CAR-D29-0009-0748.

³ ICC-01/14-01/18-1892, para. 21.

⁴ ICC-01/14-01/18-2212-Conf, paras 16-17.

evidence material from the bar table, the items consisted of documents which were intended to further the identity of V45-P-0001 and V45-P-0002.⁵

6. On 5 December 2023, the Defence filed its Request for the Exclusion of Fabricated Evidence. The Defence *inter alia* sought the exclusion of the evidence of CLRV1 Witnesses V45-P-0001 and V45-P-0002 after demonstrating the collusion between numerous individuals in order to fabricate evidence in the present case.⁶
7. On 8 December 2023, the Defence opposed the 27 November 2023 CLRV1 leave to file a bar table request, *inter alia* arguing that “*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 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*”.⁷
8. On 18 January 2024, the CLRV1 disclosed document CAR-V45-00000019.⁸ The document consists of two “*Bulletins de naissance*” for two individuals who would allegedly be the children of “[REDACTED]” (V45-P-0002), the documents are both dated [REDACTED].
9. On 18 March 2014, the Chamber issued its Decision on the Common Legal Representative of the Former Child Soldiers Request for Leave to Submit Evidence from the Bar Table. The Chamber partly granted the CLRV1 request for leave to present evidence from the bar table, and noted that “[t]he Yekatom Defence also remains free to determine if it considers the presentation of any additional evidence in this context necessary”.⁹

⁵ ICC-01/14-01/18-2222-Red, para. 2.

⁶ ICC-01/14-01/18-2240-Red, para. 5.

⁷ ICC-01/14-01/18-2252-Conf, paras 62-63, Public Redacted Version available at ICC-01/14-01/18-2252-Red.

⁸ ICC-01/14-01/18-2307-Conf-Anx.

⁹ ICC-01/14-01/18-2412.

10. On 2 April 2024, further to the 18 March 2014 decision, the CLRV1 formally filed its request for submission of evidence from the bar table.¹⁰
11. On 15 April 2024, the Defence opposed the CLRV1's 2 April 2024 bar table and in doing so, set out the investigative steps it undertook as regard to the documents submitted by the CLRV1 and indicated that it *"intends to present the formal findings of its investigations upon completion"*.¹¹
12. On 23 April 2024, the Chamber rejected the Defence Request for Exclusion of Fabricated Evidence. The Chamber nevertheless stressed that *"the present assessment on admissibility is distinct from the probative value that the Allegedly Fabricated Evidence will eventually be awarded in the judgment. This evidence will be subject to the same scrutiny during the Chamber's deliberation as every other piece of evidence at the end of the trial. In this regard, the Chamber assures the Defence that it has taken due notice of the submissions in the present Request and during its opening statements, which all touch upon the standard evidentiary criteria of this evidence, and will duly examine them. This decision is by no means an indication whether, and to what extent, the Chamber will ultimately rely on the Allegedly Fabricated Evidence in its judgment"*.¹²
13. On 4 June 2024, the Chamber granted the CLRV1 2 April 2024 bar table request and submitted into evidence four documents related to the identity of V45-P-0001.¹³ The Chamber considered that the *"potential prejudice that the formal submission of the Items might cause to the accused is mitigated by the fact that [...] (iii) the Yekatom Defence's investigations on the alleged lack of authenticity of the Items – which were disclosed in January 2024 – are 'underway' and, in addition to the*

¹⁰ ICC-01/14-01/18-2428-Conf.

¹¹ ICC-01/14-01/18-2449-Conf, paras 33-36.

¹² ICC-01/14-01/18-2460-Red, para. 55.

¹³ ICC-01/14-01/18-2520-Conf recognizing as formally submitted CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000014 and CAR-V45-00000015.

*submissions made in its Response, it ‘intends to present the formal findings of its investigations upon completion’”.*¹⁴

SUBMISSIONS

14. The Defence will first present its request to add two items to its List of Evidence (A), before requesting the addition of D29-P-6046 and D29-P-6042 to its List of Witnesses (B). Finally, the Defence will develop its request for submission of those two witnesses prior recorded testimony pursuant to Rule 68(2)(b).

A. On the addition of two items to its List of Evidence

15. The Defence respectfully requests leave to add CAR-D29-0014-0189 and CAR-D29-0014-0249 to its List of Evidence. The two documents are the birth registers [REDACTED] for years [REDACTED] and [REDACTED]. They were obtained from the maternity by the Defence on 5 June 2024, and were disclosed to the Parties on 18 June 2024.
16. The Defence recalls that the Chamber previously found that “*a request to add items to a list of evidence does not constitute a request for the variation of a time limit in accordance with Regulation 35 of the Regulations of the Court, but rather a request for leave from the Chamber to add items in accordance with its decision fixing the time limit for filing the initial list of evidence*”.¹⁵
17. The Chamber has to determine for each request whether the reliance on the items cause undue prejudice; several factors are assessed for this determination such as *inter alia* (i) the extent to which the requested addition is opposed, (ii) the time when the addition is sought, (iii) the nature and amount of material concerned, (iv) the intended purpose of the Defence’s requested reliance on the

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

¹⁵ ICC-01/14-01/18-989-Conf, para. 5.

material, (v) the prospective significance in light of the charges and of the rest of the available evidence.¹⁶

18. In the present instance, the two documents are *prima facie* relevant to the adjudication of the case as they go to the credibility of V45-P-0002's testimony in which he indicated that he is the father of [REDACTED] and [REDACTED].¹⁷ The oldest one, [REDACTED],¹⁸ being born in [REDACTED].¹⁹ Both children being born in the maternity of [REDACTED].²⁰
19. The Defence notes that on 18 January 2024, the CLRV1 disclosed document CAR-V45-00000019 which consists of Bulletins de Naissance for "[REDACTED]" born on [REDACTED], son of "[REDACTED]", and for "[REDACTED]" born on [REDACTED], daughter of "[REDACTED]". The mother is named as "[REDACTED]" for those two children. This document was intended to be used by CLRV1 during its examination of D29-P-6036.
20. The two documents for which addition to the List of Evidence is sought are probative of the fact that "[REDACTED]" did not give birth on [REDACTED] and [REDACTED], contrary to what is indicated in CAR-V45-00000019. The documents are thus relevant of the fact that (i) P-0002's assertion regarding his two alleged children is false, (ii) [REDACTED], and (ii) further the Defence's arguments as regard to the fabrication of evidence and false identity related to this individual.
21. Incidentally, an analysis of document CAR-D29-0014-0189 at page 0246 reveals that former Prosecution witness [REDACTED] (P-2582) gave birth on [REDACTED], and that at that date she was [REDACTED] years old (meaning that she is born in [REDACTED]). Document CAR-D29-0014-0189 consequently

¹⁶ ICC-01/14-01/18-989-Conf, para. 5.

¹⁷ P-0002 : ICC-01/14-01/18-T-247-CONF-FRA CT at 14:04:29.

¹⁸ P-0002 : ICC-01/14-01/18-T-247-CONF-FRA CT at 14:05:30.

¹⁹ P-0002 : ICC-01/14-01/18-T-247-CONF-FRA CT at 14:01:33.

²⁰ P-0002 : ICC-01/14-01/18-T-247-CONF-FRA CT at 14:04:13.

corroborates the Defence's allegations that P-2582 was born in [REDACTED] and not [REDACTED];²¹ and further the Defence's general demonstration of the existence of a scheme to fabricate evidence, which the Prosecution could have discovered with due diligence.²²

22. In addition to the above-mentioned relevance of the two documents, the Defence submits that the sought amendment of the List of Evidence is timely in the circumstances. Indeed, the Defence accessed this document in the context of its investigations into V45-P-0002's forged identity. While V45-P-0002's testimony as regard to his two alleged children was rather vague, document CAR-V45-00000019 disclosed by CLRV1 on 18 January 2024 provided sufficiently detailed information for a meaningful investigation (*i.e.* specific dates of birth). Those investigations ran in parallel of the Defence's presentation of its evidence during the first half of 2024. Once the Defence was able to have access to the record kept at the maternity of [REDACTED], on 5 June 2024, it promptly analysed and disclosed the documents to the Parties thirteen days later, on 18 June 2024.
23. The Defence underlines that it gave proper notice to the Chamber and Parties that such investigations were ongoing as those two documents fall squarely into the new rounds of investigations that were being conducted on witnesses P-0001 and P-0002 further to the January 2024 disclosure of new documents by CLRV1. Indeed, the Defence informed the Parties that those investigations were ongoing,²³ and the Chamber noted that those ongoing investigations into those new documents mitigated the prejudice that their submissions would cause to the Defence.²⁴ Moreover, in its 17 November 2023 submissions the Defence already indicated that it may seek leave to amend its List of Evidence as some

²¹ See ICC-01/14-01/18-2240-Conf paras 85-97 for the Defence's submissions on P-2582.

²² See CAR-OTP-2127-3960-R02 and CAR-OTP-2135-2459-R01.

²³ ICC-01/14-01/18-2449-Conf, paras 33-36.

²⁴ ICC-01/14-01/18-2520-Conf, para. 13.

newly discovered material of importance might be discovered further to additional meetings with Defence witnesses and execution of pending requests for cooperation.²⁵

24. Moreover, the nature of the documents, records of births in a maternity classified in chronological order, allow for a swift review and analysis which do not unduly impact the Prosecution's resources and will not cause prejudice.
25. Finally, the Defence will tender these items through a bar table application giving Parties and Participants further time to analyse the items and make corresponding submissions should they so wish.
26. In light of the above, the Defence submits that good cause has been shown and respectfully requests leave to add items CAR-D29-0014-0189 and CAR-D29-0014-0249 to its List of Evidence.

B. On the addition of witnesses P-6046 and P-6042 to the Defence's List of Witnesses

27. The Defence respectfully requests leave to add D29-P-6046 and D29-P-6042 to its List of Witnesses.
28. The Defence recalls that the Chamber ruled that its approach as regard leave to add items to a List of Evidence, detailed above in paragraphs 16 and 17, equally applied to a request for addition of a witness to a Final Witness List.²⁶ The Chamber further ruled that its previous decision concerning the addition of a Prosecution witness, applied *mutatis mutandis* to requests by the Defence to add a witness to its List of Witnesses.²⁷

²⁵ ICC-01/14-01/18-2212-Conf, paras 19.

²⁶ ICC-01/14-01/18-1118-Conf, paras 8-9.

²⁷ ICC-01/14-01/18-2506, para. 5.

i) Witness D29-P-6046

29. Defence Witness D29-P-6046 is named [REDACTED]. D29-P-6046 prior recorded testimony²⁸ relates to :

- P-6046's knowledge and relationship with [REDACTED] and [REDACTED] ;²⁹
- P-6046's knowledge of the [REDACTED] family [REDACTED] which includes (i) the fact that one [REDACTED], and (ii) the fact that [REDACTED] is the son of [REDACTED];³⁰
- P-6046's absence of knowledge of a family with the name [REDACTED] ;³¹
- [REDACTED] ;³²
- [REDACTED] ;³³
- [REDACTED].³⁴

On the relevance of D29-P-6046's testimony

30. The Defence submits that D29-P-6046's prior recorded testimony bears relevance as regard to V45-P-0002's use of the false identity "[REDACTED]" in the current proceedings while his real name is [REDACTED].³⁵ D29-P-6046 also corroborates the Defence's position that evidence was fabricated in relation to Count 29 [REDACTED].³⁶

31. As such, P-6046's prior recorded testimony is significant for the adjudication of the case as regard to the identity of V45-P-0002 and of the existence of a

²⁸ CAR-D29-0009-0722, Annex A CAR-D29-0009-0737, and [REDACTED].

²⁹ CAR-D29-0009-0722, paras 17-18.

³⁰ CAR-D29-0009-0722, paras 20-23.

³¹ CAR-D29-0009-0722, para. 23.

³² CAR-D29-0009-0722, paras 25, 28-29.

³³ CAR-D29-0009-0722, para. 30.

³⁴ CAR-D29-0009-0722, paras 31-33.

³⁵ See this assertion put to V45-P-0002 in ICC-01/14-01/18-T-248-CONF-FRA CT at 10:53:54.

³⁶ [REDACTED].

concerted effort to fabricate evidence for the purposes of these proceedings. In its Decision on the Defence Request for Exclusion of Fabricated Evidence the Chamber indicated that *“it has taken due notice of the submissions in the present Request and during its opening statements, which all touch upon the standard evidentiary criteria of this evidence, and will duly examine them”*;³⁷ P-6046’s evidence supports and complements the arguments presented by the Defence to date, as such it is essential for the Chamber to fully exercise its truth-seeking function in its determination of both the identity of V45-P-0002 and existing submissions concerning the fabricated material introduced to the case record in these proceedings.

On the absence of prejudice caused by addition of P-6046 to the List of Witnesses

32. The Defence further submits that addition of P-6046 to its List of Witnesses would not cause prejudice to other parties as the witness’ prior recorded testimony is only 7 pages long,³⁸ and focused on a single issue namely, V45-P-0002’s identity and documents related to his identity. The subject matter of P-6046’s prior recorded testimony is not unexpected to the Parties and Participants as the Defence consistently made clear, either in its cross-examination or submissions,³⁹ that it was contesting the identity used by V45-P-0002 in the current proceedings. As such, addition of P-6046 to the Defence’s List of Witnesses would not cause undue prejudice to either the Prosecution or CLRV1.
33. In addition the Defence notes that [REDACTED],⁴⁰ [REDACTED]. Therefore, the CLRV1 had ample time, resources, and opportunity to [REDACTED] in the same manner as the Defence did. The CLRV1 could have asked [REDACTED].

³⁷ ICC-01/14-01/18-2460-Red (‘Exclusion Decision’) at para. 55.

³⁸ Out of which only 2 pages (pages 0725 and 0726) relate to the substance of the witness statement, the other 5 pages being dedicated to the usual procedural matters related to the signature of such a statement.

³⁹ ICC-01/14-01/18-2240-Conf.

⁴⁰ [REDACTED].

The CLRV1 could have asked its field counsel to verify whether [REDACTED]. Specifically, the CLRV1 could have investigated [REDACTED]. In the past few months since the disclosure of these items, the CLRV1 had ample time to conduct the investigations that the Defence did while the Defence was in the midst of presenting its evidence. Therefore, the CLRV cannot claim prejudice for items of its own provenance.

On the timing of the addition of P-6046 to the List of Witnesses

34. The Defence further submits that it was diligent in its investigations, obtention of the statement and its disclosure to the Parties and Participants. Indeed, the Defence made clear that its investigations were ongoing into the documents disclosed by CLRV1 in January 2024,⁴¹ and that such investigations were prioritised following the Chamber's Exclusion Decision. While in the midst of the presentation of the Defence's evidence, the Defence undertook a number of investigative steps in order to uncover concerted efforts to fabricate material in these proceedings in violation of Mr. Yekatom's rights and at direct risk to the integrity of these proceedings. Having been burdened with investigating such illegality,⁴² attempts to ascertain the truth were further complicated by the ongoing interference in Defence investigations in this case as well as the apparent fear of reprisal and/or legal implications associated with testifying on the fabricated material and associated fraudulent conduct, in this case.⁴³
35. As a result, P-6046 was interviewed on [REDACTED] June 2024 and a statement signed on the same day,⁴⁴ the statement was disclosed [REDACTED] on

⁴¹ Which led the Chamber to note on 4 June 2024 that "*the Yekatom Defence's investigations on the alleged lack of authenticity of the Items – which were disclosed in January 2024 – are 'underway' and, in addition to the submissions made in its Response, it 'intends to present the formal findings of its investigations upon completion'*" (ICC-01/14-01/18-2520-Conf, para. 13)

⁴² [REDACTED].

⁴³ See e.g. ICC-01/14-01/18-2541-Conf, paras. 13, 19 and fn. 23. See also forthcoming motion concerning the request to add P-6045, P-6047 and P-6040 [REDACTED].

⁴⁴ CAR-OTP-0009-0722 at 0722.

[REDACTED] June 2024, and the present request for leave to add the witness to List of Witnesses is being notified only a few days later.

36. Finally, the Defence highlights that addition of P-6046 to its List of Witnesses would not unduly delay the end of the proceedings or prolong the Defence's case as it intends, as developed below, to submit this witness prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.
37. Should leave be granted to P-6046, for the same reasons, the Defence requests leave to add P-6046's witness statement (CAR-D29-0009-0722), its annex (CAR-D29-0009-0737), and [REDACTED] to its List of Evidence.

ii) Witness D29-P-6042

38. Defence Witness D29-P-6042 is named [REDACTED], [REDACTED]. D29-P-6042 prior recorded testimony relates to :
 - The relative ease in which a birth certificate with a false date of birth can be obtained;⁴⁵
 - The Seleka exactions in [REDACTED];⁴⁶
 - The arrival of the Anti-Balaka in [REDACTED], including Mr. Yekatom, and the fact that they were welcomed by the population;⁴⁷
 - The presence of Muslims when the Anti-Balaka arrived in [REDACTED], with the information that some went to Mbaïki with MISCA;⁴⁸
 - The composition of the Anti-Balaka : the fact that they were mainly FACA, that to P-6042's knowledge no [REDACTED] inhabitants were in the group when they arrived, and that P-6042 did not see any

⁴⁵ CAR-D29-0009-0748, para. 16.

⁴⁶ CAR-D29-0009-0748, paras 23, 25-26.

⁴⁷ CAR-D29-0009-0748, paras 29, 32.

⁴⁸ CAR-D29-0009-0748, paras 28, 33-34.

children in Mr Yekatom's group, nor saw Mr. Yekatom travelling with children;⁴⁹

- P-6046's knowledge of the names of some Anti-Balaka such as [REDACTED], [REDACTED], [REDACTED] or [REDACTED];⁵⁰
- P-6046's knowledge of [REDACTED], [REDACTED], [REDACTED], and of several individual on picture CAR-D29-0010-0028, and the fact that they were not part of the Anti-Balaka;⁵¹
- P-6046's knowledge of [REDACTED] alias [REDACTED] (P-2475) and of [REDACTED] (D29-P-6018) ;⁵²
- P-6046's knowledge of the Enfants Sans Frontières ("ESF") program and their arrival in [REDACTED], including their method of registration and the fact that individuals were shaving themselves to look younger;⁵³
- P-6046's knowledge that P-2475 and "[REDACTED]" (P-2582) were registered in the ESF program, and that they travelled [REDACTED];⁵⁴
- P-6046's personal knowledge of [REDACTED], his recognition of this individual on picture CAR-V45-00000011, and his absence of knowledge of a "[REDACTED]" family.⁵⁵

⁴⁹ CAR-D29-0009-0748, paras 30, 35, 39-40.

⁵⁰ CAR-D29-0009-0748, paras 36-38.

⁵¹ CAR-D29-0009-0748, paras 41, 64.

⁵² CAR-D29-0009-0748, para. 41.

⁵³ CAR-D29-0009-0748, paras 42-50.

⁵⁴ CAR-D29-0009-0748, paras 47, 51-52.

⁵⁵ CAR-D29-0009-0748, paras 53-58, 64.

On the relevance of D29-P-6042's testimony

39. The Defence submits that D29-P-6042's prior recorded testimony bears relevance as regard to V45-P-0002 use of the false identity "[REDACTED]" in the current proceedings while his real name is [REDACTED].⁵⁶
40. P-6042's statement is also particularly relevant as regard to the arrival of ESF in [REDACTED] and the manner in which they registered individuals without proper verification of their identity or age which furthers the long standing demonstration by the Defence of the fraudulent nature of the ESF program.⁵⁷ This position is furthered by P-6042 who recognized individuals on picture CAR-D29-0010-0028 and indicated that they were not members of the Anti-Balaka, despite the picture being taken from an ESF report. Similarly, P-6042 also indicated that he knows individuals whose names were put to him by the Defence, added that those individuals were not part of the Anti-Balaka, despite those name being present on a list provided by ESF (CAR-OTP-2071-0279).
41. As detailed above, in paragraphs 30-31, P-6042's evidence supports and complement the arguments presented by the Defence to date, on the identity of V45-P-0002 as well as on the fraudulent nature of the ESF program, as such this witness' evidence is both relevant for the adjudication of the case and essential for the Chamber to fully exercise its truth-seeking function.

On the absence of prejudice caused by addition of P-6042 to the List of Witnesses

42. The Defence further submits that addition of P-6042 to its List of Witnesses would not cause prejudice to other parties as the witness' prior recorded testimony is relatively short with 11 pages, and focus primarily few specific issues which have been address by all parties and participants in this case : P-0002's identity, the ESF program, and the Anti-Balaka present in [REDACTED].

⁵⁶ See this assertion put to V45-P-0002 in ICC-01/14-01/18-T-248-CONF-FRA CT at 10:53:54.

⁵⁷ See ICC-01/14-01/18-2240-Conf for the Defence extensive submissions on ESF fraudulent scheme.

The subject matters of P-6042's prior recorded testimony are not unexpected to the Parties and Participants as the Defence consistently advanced, either in its cross-examination or submissions,⁵⁸ that it was contesting the identity used by P-0002 in the current proceedings as well as advanced the fact that the ESF program was fraudulent. As such, addition of P-6046 to the Defence's List of Witnesses would not cause undue prejudice to either the Prosecution or CLRV1.

On the timing of the addition of P-6042 to the List of Witnesses

43. Moreover, the Defence submits that it was diligent in its investigations, obtention of the statement and its disclosure to the Parties and Participants. Indeed, the Defence made clear that its investigations were still ongoing, in particular in relation to the real identities of CLRV1 witnesses and the broader allegations concerning concerted efforts to introduce fabricated evidence in these proceedings. The same challenges associated with the investigation of concrete efforts to conceal such illegality as set out in relation to P-6046, equally apply in relation to P-6042.⁵⁹
44. Despite all the evidence presented as regard to V45-P-0002's real identity being [REDACTED], CLRV1 disclosed in January 2024 two Bulletins de Naissance (CAR-V45-00000019) which had the intended purpose, [REDACTED], to substantiate the existence of a "[REDACTED]". As such, and as previous indicated,⁶⁰ the Defence pursued in its investigation into V45-P-0002's real identity. In the context of those investigations, the Defence managed to meet P-6042 on 25 April 2024 before finalising and signing a statement on 4 June 2024, albeit not limited to V45-P-0002 in light of P-6042's knowledge of other events and individuals linked to the town of [REDACTED]. The statement was

⁵⁸ ICC-01/14-01/18-2240-Conf.

⁵⁹ Supra., para. 34 and cites therein.

⁶⁰ ICC-01/14-01/18-2252-Red, para 62 : "[...] 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 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".

disclosed seventeen days later on 21 June 2024, and the present request for leave to add the witness to List of Witnesses is being notified a few days later.

45. Finally, the Defence highlights that addition of P-6042 to its List of Witnesses would not unduly delay the end of the proceedings or prolong the Defence's case as it intends, as developed below, to submit this witness prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.
46. Should leave be granted to add P-6042, for the same reasons, the Defence request leave to add P-6042's witness statement (CAR-D29-0009-0748) to its List of Evidence.

C. On the submission of P-6046 and P-6042's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules to the Defence's List of Witnesses

47. Should addition of the two witnesses be granted, the Defence respectfully requests formal submission of D29-P-6046⁶¹ and D29-P-6042's⁶² prior recorded testimony and their associated annexes and exhibits pursuant to Rule 68(2)(b).
48. As regard to P-6046, the Defence recalls that the Chamber previously found suitable for Rule 68(2)(b) submissions witnesses providing testimony on [REDACTED]⁶³ which is in the present instance the core of P-6046's prior recorded testimony. As regard to P-6042, the Defence similarly recalls that the Chamber found suitable for Rule 68(2)(b) submissions witnesses providing testimony on the ESF organisation,⁶⁴ as well as witnesses providing testimony on the familial relationship of alleged former child soldiers,⁶⁵ categories that cover the subject matter of P-6042's prior recorded testimony. Those previous findings militate in favour of submission of the present two statements of P-6046 and P-6042 pursuant to Rule 68(2)(b) given their similarities.

⁶¹ P-6046's Statement CAR-D29-0009-0722, its annex CAR-D29-0009-0737 [REDACTED].

⁶² P-6042's Statement CAR-D29-0009-0748.

⁶³ [REDACTED].

⁶⁴ ICC-01/14-01/18-2424-Conf, para. 75.

⁶⁵ ICC-01/14-01/18-2424-Conf, para. 62.

49. The Defence highlights that it is not seeking submission of [REDACTED].
50. Having been guided by the Chamber's previous decisions concerning Rule 68(2)(b) applications,⁶⁶ the Defence submits that the two prior recorded testimonies fulfils the requirements of rule 68(2)(b) so as to allow the Chamber to properly exercise its discretion to grant this request.
51. First, P-6046 and P-6042's statements are correctly identified as "prior recorded testimony" for the purposes for Rule 68(2)(b). Indeed, they comprise of written statements collected from those two witnesses, as well as an annex provided by P-6046 which constitute an integral part of her testimony.⁶⁷ As reflected in the two statements, the witnesses understood at the time that the information they provided may be relied upon in the context of legal proceedings⁶⁸ and that they may be called upon to provide their testimony in public.
52. Second, P-6046 and P-6042's prior recorded testimonies do 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.⁶⁹ Instead, as detailed above, P-6046 and P-6042's prior recorded testimony are limited to the ongoing falsification of claims made by alleged former child soldiers, relied upon by the Prosecution and CLRV1, with regard to their identities and/or substantive evidence that they were members of the Anti-Balaka; in particular as regard to V45-P-0002. The limited mention of Mr Yekatom in P-6042's prior recorded testimony as regard to the arrival of the Anti-Balaka in [REDACTED], and the witness not seeing children among the group, do not relate to the acts and

⁶⁶ ICC-01/14-01/18-1833-Corr-Red.

⁶⁷ ICC-01/14-01/18-1833-Corr-Red, para. 24.

⁶⁸ ICC-01/14-01/18-1833-Corr-Red, para. 23.

⁶⁹ ICC-01/14-01/18-1833-Corr-Red, para. 28.

conduct of the accused as it does not refer to the personal actions and/or omissions of Mr Yekatom.⁷⁰

53. Third, the two prior recorded testimonies have sufficient indicia of reliability for the purpose of formal submission pursuant to Rule 68(2)(b)⁷¹ as they were (i) taken in the ordinary course of proceedings, (ii) signed by the witnesses and the investigators conducting the interview, (iii) given voluntarily, (iv) verified by the witnesses at the time of the statement and, (v) includes information that the witnesses were given an explanation of the procedure before the ICC and were 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. Both statements were obtained in a language understood by the witnesses, namely French and/or Sango, and read back by a qualified interpreter assigned by the Registry; during this process the witnesses were informed of their right to make corrections and clarifications to their statement. Moreover, certifications in accordance with Rule 68(2)(b)(ii) was completed for D29-P-6046 and is ongoing for D29-P-6042; they will be submitted in due course.
54. Fourth, P-6046 and P-6042's statements are internally consistent, overviews of their prior recorded testimony are made above in paragraphs 29 and 38 respectively.
55. Fifth, 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 P-6046 and P-6042's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules. The

⁷⁰ ICC-01/14-01/18-1833-Corr-Red, para. 28.

⁷¹ ICC-01/14-01/18-1833-Corr-Red, para. 42.

introduction of the two witnesses' statements pursuant to this Rule would undoubtedly safeguard the expeditiousness of these proceedings and streamline the presentation of the Defence's case.

56. Finally, the Defence highlights that both prior recorded testimonies are corroborated by other evidence in these proceedings as detailed below :

i) Corroboration of witness D29-P-6046

57. P-6046's testimony as regard to CAR-V45-P-0002 being named [REDACTED] and not [REDACTED] is corroborated *inter alia* by the testimonies of P-6027, P-6039, P-6036 and P-6042 who identified [REDACTED] on CAR-V45-00000011;⁷² P-6033 who also recognized "[REDACTED]" on CAR-V45-00000011 and added he was never part of the Anti-Balaka;⁷³ P-6024 who confirmed [REDACTED].⁷⁴

ii) Corroboration of witness D29-P-6042

58. P-6042's testimony as regard to the absence of verification during the registration of individuals by ESF is corroborated by P-6024;⁷⁵ P-2082 who confirms that it was usual for individuals to register their family in initiatives such as the ESF programme ;⁷⁶ P-6013 who explained that ESF registered both orphans and young individuals that were not attending school to help them;⁷⁷ P-6037's testimony that ESF was providing training for individuals who suffered from the Seleka regime and that children on ESF list were not part of armed groups.⁷⁸

59. P-6042's testimony as regard to CAR-V45-P-0002 being named [REDACTED] and not [REDACTED] is corroborated *inter alia* by the testimonies of P-6027, P-

⁷² **P-6027** : CAR-D29-0009-0239, para. 19 ; **P-6039** : CAR-D29-0009-0545, para. 25 ; **P-6036** : ICC-01/14-01/18-T-259-CONF-FRA CT from 09:59:58 to 10:00:55 ; **P-6042** : CAR-D29-0009-0748, paras 53-60.

⁷³ **P-6033** : CAR-D29-0009-0315, paras 29, 31-32.

⁷⁴ **P-6024** : CAR-D29-0009-0209, paras 25-26.

⁷⁵ **P-6024** : CAR-D29-0009-0209, paras 22, 24-26.

⁷⁶ **P-2082** : ICC-01/14-01/18-T-218-CONF-FRA ET at 14:52:43

⁷⁷ **P-6013** : CAR-D29-0009-0324-R01, paras 26-33.

⁷⁸ **P-6037** : CAR-D29-0009-0459-R01, paras 20, 27-31.

6039 and P-6036 who identified [REDACTED] on CAR-V45-00000011;⁷⁹ P-6033 who also recognized “[REDACTED]” on CAR-V45-00000011 and added he was never part of the Anti-Balaka;⁸⁰ P-6024 who confirmed [REDACTED];⁸¹ proposed Rule 68(2)(b) testimony of P-6046 who indicates that she knows [REDACTED] but does not know a [REDACTED] family, [REDACTED].⁸²

60. In light of the above, the Defence argues that P-6046 and P-6042’s prior recorded testimony are suitable for a Rule 68(2)(b) submission and respectfully requests the Chamber to formally recognize them as submitted into evidence pursuant to this provision.

CONFIDENTIALITY

61. The present request is filed on a confidential basis due to the references to the identity of protected witnesses. Annex A is filed on a confidential basis as it refers to the identity of witnesses. A confidential redacted version will be filed forthwith.

RELIEF SOUGHT

62. In light of the above, the Defence respectfully requests Trial Chamber V to:
- GRANT** leave to add CAR-D29-0014-0189 and CAR-D29-0014-0249 to the Defence List of Evidence;
- GRANT** leave to add D29-P-6046 and D29-P-6042 to the Defence List of Witnesses;
- GRANT** leave to add P-6046’s prior recorded testimony (CAR-D29-0009-0722, CAR-D29-0009-0737, [REDACTED]) and P-6042 prior recorded testimony (CAR-D29-0009-0748) to the Defence List of Evidence; and

⁷⁹ **P-6027** : CAR-D29-0009-0239, para. 19 ; **P-6039** : CAR-D29-0009-0545, para. 25 ; **P-6036** : ICC-01/14-01/18-T-259-CONF-FRA CT from 09:59:58 to 10:00:55.

⁸⁰ **P-6033** : CAR-D29-0009-0315, paras 29, 31-32.

⁸¹ **P-6024** : CAR-D29-0009-0209, paras 25-26.

⁸² **P-6046** : CAR-D29-0009-0722-R01.

INTRODUCE the prior recorded testimonies of P-6046 and P-0642 into evidence pursuant to Rule 68(2)(b) of the Rules.

RESPECTFULLY SUBMITTED ON THIS 25TH DAY OF JULY 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands