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**International
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Court**

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

Date: **19 August 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 “Fourth Defence Consolidated Request for Leave to add items to its List of Evidence, P-6040, P-6045 & P-6047 to its List of Witnesses and submit their prior recorded testimony pursuant to Rule 68(2)(b)”, ICC-01/14-01/18-2593-Conf, 15 July 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. Counsel for Mr. Alfred Rombhot Yekatom (“Defence”) hereby requests leave to add items to its List of Evidence;¹ to add D29-P-6040, D29-P-6045 and D29-P-6047 to its List of Witnesses, and to submit their prior recorded testimony pursuant to Rule 68(2)(b) of the Rules (the “Request”).²
2. As detailed in the present Request, the two items for which addition to the List of Evidence is sought, as well as the testimonies of P-6040, P-6045 and P-6047, are relevant in demonstrating that documents disclosed in January 2024 by the Common Legal Representative for Victims – Former Child Soldiers (“CLRV1”) lack reliability and authenticity. The present Request further the Defence’s arguments as regards the existence of a continued fabrication of evidence in relation to Count 29, particularly, in the present instance, in relation to the identity of V45-P-0001.

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

¹ CAR-D29-0001-0650 and CAR-D29-0001-0648.

² For **P-6040** : statements CAR-D29-0009-0782 and CAR-D29-0009-0788, annexes CAR-D29-0009-0794, CAR-D29-0009-0795, CAR-D29-0009-0796, exhibits CAR-V45-00000020 and CAR-V45-00000021 ; For **P-6045** : statement CAR-D29-0009-0708 and exhibits CAR-V45-00000020, CAR-V45-00000021 ; For **P-6047** : statement CAR-D29-0009-0729 and exhibits CAR-V45-00000020, CAR-V45-00000021.

³ [ICC-01/14-01/18-1892](#), para. 21.

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

5. On 27 November 2023, the CLRV1 filed a request to be granted leave to submit into 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 30 November 2023, the Defence was informed that [REDACTED].⁶
7. 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.⁷
8. 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”.⁸
9. On 23 January 2024, the CLRV1 disclosed documents CAR-V45-00000015, CAR-V45-00000020 and CAR-V45-00000021.⁹ Those documents consist of one “*acte de naissance*” dated [REDACTED] signed by [REDACTED], and two documents related to V45-P-0001 originating from [REDACTED] which were supposedly [REDACTED].
10. On 18 March 2024, 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

⁵ [ICC-01/14-01/18-2222-Red](#), para. 2.

⁶ [REDACTED].

⁷ [ICC-01/14-01/18-2240-Red](#), para. 5.

⁸ ICC-01/14-01/18-2252-Conf, paras 62-63, Public Redacted Version available at [ICC-01/14-01/18-2252-Red](#).

⁹ ICC-01/14-01/18-2340-Conf-AnxI & AnxII.

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”.¹⁰

11. On 2 April 2024, further to the 18 March 2024 decision, the CLRV1 formally filed its request for submission of evidence from the bar table, including document CAR-V45-00000015.¹¹
12. On 15 April 2024, the Defence opposed the CLRV1’s 2 April 2024 bar table motion and in doing so, set out the investigative steps it undertook as regards the documents submitted by the CLRV1 and indicated that it “*intends to present the formal findings of its investigations upon completion*”.¹²
13. 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*”.¹³
14. 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-

¹⁰ [ICC-01/14-01/18-2412](#).

¹¹ ICC-01/14-01/18-2428-Conf.

¹² ICC-01/14-01/18-2449-Conf, paras 33-36.

¹³ [ICC-01/14-01/18-2460-Red](#), para. 55.

0001,¹⁴ including CAR-V45-00000015. 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 submissions made in its Response, it ‘intends to present the formal findings of its investigations upon completion’”*.¹⁵

15. On 2 July 2024, the Chamber set 30 August 2024 as the last day of live witness testimony.¹⁶ On 2 February 2024, the Chamber had previously directed the Defence to file any application to submit evidence in writing within one week after the testimony of the last witness to be called by the Defence.¹⁷

SUBMISSIONS

16. The Defence will first present its request to add two items to its List of Evidence (A), before requesting the addition of D29-P-6040, D29-P-6045 and D29-P-6047 to its List of Witnesses (B). Finally, the Defence will develop its request for submission of those three witnesses’ prior recorded testimony pursuant to Rule 68(2)(b) of the Rules (C).

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

17. The Defence respectfully requests leave to add CAR-D29-0001-0648 and CAR-D29-0001-0650 to its List of Evidence. The two documents are decrees nominating [REDACTED] as [REDACTED] on [REDACTED], and its revocation on [REDACTED] (the “Decrees”).
18. 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*

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

¹⁵ ICC-01/14-01/18-2520-Conf, para. 13.

¹⁶ [ICC-01/14-01/18-2571](#).

¹⁷ [ICC-01/14-01/18-2342](#).

*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”.*¹⁸

19. 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 material, (v) the prospective significance in light of the charges and of the rest of the available evidence.¹⁹
20. In the present instance, the two Decrees are *prima facie* relevant to the adjudication of the case as they go to the authenticity of submitted document CAR-V45-00000015, which the CLRV1 avers is the birth certificate of V45-P-0001’s father.²⁰
21. Indeed, CAR-V45-00000015 appears to be dated [REDACTED] and signed by [REDACTED] in his capacity of [REDACTED].²¹ However, Decree CAR-D29-0001-0650 shows that [REDACTED] was nominated [REDACTED] on [REDACTED], more than 25 years after the creation of the birth certificate CAR-V45-00000015 which he would have allegedly signed. Decree CAR-D29-0001-0648 indicates that [REDACTED] function of [REDACTED] ended on [REDACTED].
22. The Defence further recalls that [REDACTED] is also the signatory of P-2620’s fabricated birth certificate which indicates a birth date of [REDACTED], but a

¹⁸ [ICC-01/14-01/18-989-Red](#), para. 5.

¹⁹ [ICC-01/14-01/18-989-Red](#), para. 5.

²⁰ ICC-01/14-01/18-2428-Conf, para. 20, Public Redacted Version available at [ICC-01/14-01/18-2428-Red](#).

²¹ See CAR-V45-00000015 lines « *Naissance déclarée le* [REDACTED] *à* [REDACTED] » and « *Qui après lecture faite du présent acte a signé avec nous* [REDACTED] ».

declaration of birth a year prior to the birth itself, *i.e.* on [REDACTED].²² The Decrees go to disproving the authenticity of CAR-V45-00000015 and are thus relevant to show the continuous and ongoing fabrication of evidence, in particular birth certificates, in this case.

23. In addition to the relevance of the two Decrees, the Defence submits that the sought amendment of the List of Evidence is timely in the circumstances. Indeed, document CAR-V45-00000015 containing [REDACTED] name was only disclosed to the Defence on 23 January 2024;²³ and investigations in relation to [REDACTED] years in function were launched after comparing the time elapsed with the birth certificate allegedly dated [REDACTED],²⁴ 27 years after the document disclosed by CLRV1.²⁵ Following local investigations, a request for cooperation was sent to [REDACTED] on [REDACTED], the two Decrees were provided to the Defence on 19 June 2024 and promptly disclosed two days later on 21 June 2024.²⁶ All these steps were diligently undertaken in the midst of the high workload induced by the Defence's presentation of evidence.
24. The Defence recalls that it informed the Parties that investigations were ongoing on document CAR-V45-00000015,²⁷ and the Chamber noted that those ongoing investigations mitigated the prejudice that submission of the document would cause to the Defence.²⁸ The two Decrees for which addition to the List of Evidence is sought are the result of those ongoing investigations on the CLRV1 document, as such proper notice was given to the Parties that such addition would be sought.

²² CAR-OTP-2121-2577 : "[REDACTED]"

²³ ICC-01/14-01/18-2340-Conf-AnxI.

²⁴ CAR-OTP-2121-2577.

²⁵ CAR-V45-00000015 dated [REDACTED].

²⁶ ICC-01/14-01/18-2540-Conf-AnxA, page 3.

²⁷ ICC-01/14-01/18-2449-Conf, paras 35-36. Public Redacted Version available : [ICC-01/14-01/18-2449-Red](#).

²⁸ ICC-01/14-01/18-2520-Conf, para. 13.

25. The Defence further underlines that the documents are two governmental decrees totaling 3 pages. Their succinct and clear nature allow for a swift review and analysis which do not unduly impact the Prosecution's resources and will not cause prejudice. Moreover, the Defence will tender these Decrees through a bar table application giving Parties and Participants further time to analyze the items and make corresponding submissions should they wish to do so.
26. In light of the above, the Defence submits that good cause exists for the Chamber to grant leave to add items CAR-D29-0001-0648 and CAR-D29-0001-0650 to the Defence's List of Evidence.

B. On the addition of witnesses P-6040, P-6045 and P-6047 to the Defence's List of Witnesses

27. The Defence respectfully requests leave to add D29-P-6040, D29-P-6045 and D29-P-6047 (the "Three Witnesses") to its List of Witnesses.
28. The Defence recalls that the Chamber ruled that its approach as regards leave to add items to a List of Evidence, detailed above in paragraphs 18 and 19, equally applied to a request for addition of a witness to a Final Witness List.²⁹ 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.³⁰

i) Witness D29-P-6040

29. Defence Witness D29-P-6040 is named [REDACTED]. He is [REDACTED]. In this capacity he [REDACTED].³¹ D29-P-6040's prior recorded testimony³² relates to :

²⁹ ICC-01/14-01/18-1118-Conf, paras 8-9.

³⁰ [ICC-01/14-01/18-2506](#), para. 5.

³¹ [REDACTED].

³² Statements CAR-D29-0009-0782 and CAR-D29-0009-0788; Annexes CAR-D29-0009-0794, CAR-D29-0009-0795, CAR-D29-0009-0796; Exhibits CAR-V45-00000020 and CAR-V45-00000021.

- The creation of document CAR-V45-00000020 [REDACTED];³³
- [REDACTED];³⁴
- D29-P-6040 not knowing “[REDACTED]” nor his parents;³⁵
- D29-P-6040 recognizing on a photograph [REDACTED] (D29-P-6047);³⁶
- D29-P-6040 indicating that the signature on document CAR-V45-00000021 is not the one of [REDACTED];³⁷
- D29-P-6040 indicating that he is the creator of [REDACTED];³⁸
- D29-P-6040’s recognition of material errors contained in document CAR-V45-00000021.³⁹

ii) Witness D29-P-6045

30. Defence Witness D29-P-6045 is named [REDACTED]. [REDACTED]. D29-P-6045’s prior recorded testimony⁴⁰ relates to :

- The structure of [REDACTED] with [REDACTED] : [REDACTED] (D29-P-6047);⁴¹
- [REDACTED] (D29-P-6040) being [REDACTED];⁴²
- The creation of a [REDACTED], such as CAR-V45-00000020, and his comments on this specific example;⁴³
- His absence of knowledge of individuals named [REDACTED], [REDACTED] and [REDACTED] (D29-P-6043);⁴⁴

³³ CAR-D29-0009-0782, paras 17-19.

³⁴ CAR-D29-0009-0788, paras 27-29. [REDACTED].

³⁵ CAR-D29-0009-0782, para. 19.

³⁶ CAR-D29-0009-0788, paras 15-17.

³⁷ CAR-D29-0009-0788, para. 19.

³⁸ CAR-D29-0009-0788, paras 20-21.

³⁹ CAR-D29-0009-0788, paras 22-26.

⁴⁰ Statement CAR-D29-0009-0708 and Exhibits CAR-V45-00000020, CAR-V45-00000021.

⁴¹ CAR-D29-0009-0708, paras 23-27.

⁴² CAR-D29-0009-0708, para. 26.

⁴³ CAR-D29-0009-0708, paras 29-41.

⁴⁴ CAR-D29-0009-0708, paras 35, 39-40, 52.

- His surprise to see names in document CAR-V45-00000021 of individuals allegedly [REDACTED];⁴⁵
- His findings that [REDACTED] in document CAR-V45-00000021 are incorrect, and that several [REDACTED] are also erroneous;⁴⁶
- His findings that the signature, in document CAR-V45-00000021, under the name [REDACTED] is not the signature of [REDACTED].⁴⁷

iii) Witness D29-P-6047

31. Defence Witness D29-P-6047 is named [REDACTED]. [REDACTED]. D29-P-6047's prior recorded testimony⁴⁸ relates to :

- The structure of [REDACTED], including the current organization with [REDACTED] (D29-P-6040) [REDACTED] (D29-P-6045), as well as D29-P-6047 and [REDACTED];⁴⁹
- The absence of knowledge of individuals named [REDACTED], [REDACTED], [REDACTED] (D29-P-6043) or of a [REDACTED] family in [REDACTED];⁵⁰
- D29-P-6047 recognizing some of the names of [REDACTED] on document CAR-V45-00000021 and his comments on some of them, including errors in their names;⁵¹
- D29-P-6047's confirmation that the signature [REDACTED] on CAR-V45-00000021 is not [REDACTED], and that [REDACTED] and not merely [REDACTED] as written on the document;⁵²

⁴⁵ CAR-D29-0009-0708, paras 43-44.

⁴⁶ CAR-D29-0009-0708, paras 45-46.

⁴⁷ CAR-D29-0009-0708, para. 47.

⁴⁸ Statement CAR-D29-0009-0729 and Exhibits CAR-V45-00000020, CAR-V45-00000021.

⁴⁹ CAR-D29-0009-0729, paras 23-26.

⁵⁰ CAR-D29-0009-0729, paras 27, 41, 53.

⁵¹ CAR-D29-0009-0729, paras 30-47.

⁵² CAR-D29-0009-0729, para. 48.

- His findings of material errors contained in CAR-V45-00000021 as regard [REDACTED];⁵³
- D29-P-6047's comments on CAR-V45-00000020 and how a [REDACTED] should usually be done.⁵⁴

On the relevance of the Three Witnesses testimony

32. The Defence submits that the Three Witnesses' prior recorded testimony bear sufficient relevance as regard to the authenticity and reliability of documents CAR-V45-00000020 and CAR-V45-00000021, disclosed by the CLRV1 in support of its position as regards V45-P-0001's use of the name "[REDACTED]", which the Defence submits is a false identity.⁵⁵
33. Indeed, the Three Witnesses, who all lived or are currently living in [REDACTED], indicate that they do not know individuals named [REDACTED], [REDACTED] or a [REDACTED] family. Nor do any of the Three Witnesses remember [REDACTED] who would have [REDACTED].
34. Moreover, the Three Witnesses recognize that document CAR-V45-00000021 is affected by numerous errors, including the use of a signature not belonging to [REDACTED], or factual errors as regard to [REDACTED]. Their testimonies put serious doubts as to authenticity and reliability of this document.
35. Finally, [REDACTED], being none other than [REDACTED] (P-2580) whom the Defence extensively detailed his involvement in the fabrication of evidence in the present case.⁵⁶ D29-P-6040's testimony is relevant in demonstrating that as of [REDACTED] P-2580 was still implicated in the fabrication of evidence in the current case, [REDACTED].⁵⁷

⁵³ CAR-D29-0009-0729, paras 50-51.

⁵⁴ CAR-D29-0009-0729, paras 52-56.

⁵⁵ See *inter alia* ICC-01/14-01/18-2240-Conf, paras 25-26.

⁵⁶ ICC-01/14-01/18-2240-Conf.

⁵⁷ [REDACTED].

36. The Defence emphasises that while the CLRV1 did not submit CAR-V45-00000020 and CAR-V45-00000021, the Three Witnesses statements are nevertheless still relevant as furthering the Defence's position that fabrication of evidence occurred in the current proceedings, and that it is still ongoing as of January 2024. In that sense the Three Witnesses will assist the Chamber in its determination of the truth, in particular as regard to the documents that the Defence submits are fabricated in its Request for the Exclusion of Fabricated Evidence.⁵⁸ In its Decision related to this request, the Chamber highlighted 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"*⁵⁹; the statements of the Three Witnesses on the new January 2024 documents, as well as the apparent implication of P-2580, will consequently bear relevance in assisting the Chamber in its holistic assessment of the evidence submitted in the present case during its deliberation.

On the absence of prejudice caused by addition of the Three Witnesses to the List of Witnesses

37. The Defence submits that addition of the Three Witnesses to its List of Witnesses would not cause prejudice to other Parties as the witnesses' prior recorded testimony are short, being between 6 and 8 pages. Moreover, they are focused on a single issue, namely V45-P-0001's identity and the documents obtained on this issue [REDACTED].
38. The subject matter of the three prior recorded testimonies, namely issues relating to the identity of V45-P-0001, are not novel to the Parties as the Defence has consistently put forward its position that the name of "[REDACTED]" was

⁵⁸ See the Defence Request for the Exclusion of Fabricated Evidence, ICC-01/14-01/18-2240-Conf.

⁵⁹ [ICC-01/14-01/18-2460-Red](#), para. 55.

false.⁶⁰ As the Three Witnesses provide additional information on this subject, as regards the new documents disclosed by CLRV1 in January 2024, their addition 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 the Three Witnesses to the List of Witnesses

39. The Defence submits that it was diligent in its investigations, obtention of the statements and its disclosure to the Parties and Participants. Indeed, the Defence made clear that its investigations into the documents disclosed by CLRV1 in January 2024 were ongoing.⁶¹ The Defence undertook numerous investigative steps as regards to the newly disclosed documents, including CAR-V45-00000020 and CAR-V45-00000021.
40. To this end, the Defence had to organize field missions to [REDACTED], a small village in the Lobaye region not easily accessible, with very poor telephone network, in order to locate [REDACTED] (D29-P-6040) who was [REDACTED]. Once located, a transfer of D29-P-6040 to Bangui had to be organized in order to conduct his first summary [REDACTED] March 2024 interview.⁶² Further to this first interview, the Defence continued its investigations into the documents, conducted further field missions to find two other individuals related to [REDACTED] (D29-P-6045 and D29-P-6047, [REDACTED]) and organized for their transfer to Bangui in June 2024 for their interviews and statements while the Defence was on mission in CAR.
41. The Defence recalls that all these investigations were conducted in the midst of the Defence's presentation of evidence, further to the disclosure of new

⁶⁰ See ICC-01/14-01/18-2240-Conf, paras 25-26; see also the Defence examination of V45-P-0001 : ICC-01/14-01/18-T-246-CONF-FRA ET from 14:13:10 to 14:35:03.

⁶¹ 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)

⁶² CAR-D29-0009-0782.

documents by the CLRV1. All statements were promptly disclosed to the Parties on 27 June 2024, and the present request formalised less than two weeks later.

42. Any arguments as regard the untimeliness of the present request should be roundly disregarded. Indeed, it is recalled that those investigations were made necessary in light of the CLRV1's change of story as regard to the name used by V45-P-0001,⁶³ and disclosure of new documents in January 2024, more than a month after the testimony of the first Defence witness on 11 December 2023, and more importantly several months after the conclusion of the testimony of the last CLRV1 witness on 27 September 2023. In comparison, the present request is made before the end of the Defence's case, which was set by the Chamber at 30 August 2024.⁶⁴ In light of the heavy workload linked to the Defence's presentation of evidence, and the complex nature of investigations in remote locations outside the capital, namely [REDACTED] a location that was not previously investigated, the Defence's investigations were diligent and the current request presented to the Chamber in a timely manner.
43. The Defence further highlights that addition of the Three Witnesses 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 the prior recorded testimony of those witnesses pursuant to Rule 68(2)(b) of the Rules.
44. Should leave be granted to add those witnesses to the List of Witnesses, and for the same reasons, the Defence requests to add P-6040, P-6045 and P-6047 prior

⁶³ See testimony D29-P-6025 during which CLRV1 surprisingly suggested that V45-P-0001 [REDACTED]; a new position which prompted Defence Counsel to note that "If I have to now deal with a moving target and change the course of my investigations after the LRV close their case, it's a fundamental fairness issue as well" (P-6025 : ICC-01/14-01/18-T-264-CONF-ENG ET from 09:59:42 to 10:02:08).

⁶⁴ [ICC-01/14-01/18-2571](#).

recorded testimonies, including their annexes and exhibits, to its List of Evidence.⁶⁵

C. On the submission of P-6040, P-6045 and P-6047's prior recorded testimony pursuant to Rule 68(2)(b) of the Rules

45. Should addition of the Three Witnesses to the List of Witnesses be granted, the Defence respectfully requests formal submission of D29-P-6040, D29-P-6045 and D29-P-6047's prior recorded testimony and their associated annexes and exhibits pursuant to Rule 68(2)(b).
46. The Defence recalls that the Chamber previously found suitable for Rule 68(2)(b) submissions witnesses providing testimony on the production of documentary material related to alleged child soldiers,⁶⁶ which is the same subject matter as that developed in the Three Witnesses' prior recorded testimonies. Those previous findings militate in favour of submission of the P-6040, P-6045 and P-6047's statements pursuant to Rule 68(2)(b) given their identical nature.
47. The Defence highlights that it is not seeking the submission of exhibits CAR-V45-00000020 and CAR-V45-00000021 for the truth of their content; instead submission of those documents is solely sought as they are the main subject matter of the Three Witnesses testimonies, and that they further the fact that documents with dubious authenticity keep being created in relation to V45-P-0001's false identity of "[REDACTED]".
48. Having been guided by the Chamber's previous decisions concerning Rule 68(2)(b) applications,⁶⁷ the Defence submits that the three prior recorded

⁶⁵For **P-6040** : statements CAR-D29-0009-0782 and CAR-D29-0009-0788, annexes CAR-D29-0009-0794, CAR-D29-0009-0795, CAR-D29-0009-0796, exhibits CAR-V45-00000020, CAR-V45-00000021 ; For **P-6045** : statement CAR-D29-0009-0708 and exhibits CAR-V45-00000020, CAR-V45-00000021 ; For **P-6047** : statement CAR-D29-0009-0729 and exhibits CAR-V45-00000020, CAR-V45-00000021.

⁶⁶ ICC-01/14-01/18-2424-Conf, para. 32.

⁶⁷ [ICC-01/14-01/18-1833-Corr-Red](#).

testimonies fulfil the requirements of rule 68(2)(b) so as to allow the Chamber to properly exercise its discretion to grant this request.

49. First, P-6040, P-6045 and P-6047'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 three witnesses, as well as three annexes produced during P-6040's interview, which constitute an integral part of his testimony.⁶⁸ As reflected in the four statements,⁶⁹ the witnesses understood at the time that the information they provided may be relied upon in the context of legal proceedings⁷⁰ and that they may be called upon to provide their testimony in public.
50. Second, the Three Witnesses 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.⁷¹ Instead, those prior recorded testimonies relate to the authenticity and reliability of two documents (CAR-V45-00000020 and CAR-V45-00000021) as well as the witnesses' absence of knowledge of individuals named "[REDACTED]" or "[REDACTED]" in [REDACTED].
51. Third, the three prior recorded testimonies have sufficient indicia of reliability for the purpose of formal submission pursuant to Rule 68(2)(b)⁷² 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

⁶⁸ [ICC-01/14-01/18-1833-Corr-Red](#), para. 24.

⁶⁹ Two statements for P-6040, and one statement each for P-6045 and P-6047.

⁷⁰ [ICC-01/14-01/18-1833-Corr-Red](#), para. 23.

⁷¹ [ICC-01/14-01/18-1833-Corr-Red](#), para. 28.

⁷² [ICC-01/14-01/18-1833-Corr-Red](#), para. 42.

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.

52. The Defence highlights due to an oversight instead of a signature on the first page of P-6040's first interview,⁷³ the witness put his initials "[REDACTED]" at the bottom of this page. The witness correctly signed the "*Attestation du Témoin*" section on the last page of the same statement.⁷⁴ The omission of the witness' signature on the first page of the first statement does not irremediably affect the reliability of the statement for the purpose of its submission pursuant to Rule 68(2)(b).
53. Further, the four statements of the Three Witnesses were obtained in a language understood by the witnesses, namely French and/or Sango. They were either read back by a qualified interpreter assigned by the Registry in the case of P-6040 and P-6047, or by the investigators in French to P-6045. During this process the witnesses were informed of their right to make corrections and clarifications to their statement. Certifications in accordance with Rule 68(2)(b)(ii) are completed for all Three Witnesses, and will be submitted in due course.
54. The CLRV1 will also not be procedurally prejudiced by the introduction of the Three Witnesses prior recorded testimony pursuant to Rule 68(2)(b) of the Rules. Indeed, the Defence recalls that the CLRV1 elected to not ask any question to D29-P-6016, ⁷⁵ [REDACTED], despite having opposed the Rule 68(2)(b) application of this witness, indicating that the Defence should call the witnesses live or under Rule 68(3) "*to enable the other Participants to cross-examine*

⁷³ CAR-D29-0009-0782 at 0782.

⁷⁴ CAR-D29-0009-0782 at 0787.

⁷⁵ D29-P-6016 : ICC-01/14-01/18-T-275-CONF-FRA ET and ICC-01/14-01/18-T-276-CONF-FRA ET

them".⁷⁶ In comparison, the Three Witnesses statements are limited to a single and straightforward subject matter, which alleviate the necessity of an in-court examination.

55. Fourth, P-6040, P-6045 and P-6047's statements are internally consistent, as shown in overviews of their prior recorded testimony, made above in paragraphs 29, 30 and 31 respectively.
56. Fifth, given the absence of 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 P-6040, P-6045 and P-6047's prior recorded testimonies pursuant to Rule 68(2)(b) of the Rules. The introduction of the Three Witnesses' statements pursuant to this Rule would undoubtedly safeguard the expeditiousness of these proceedings and streamline the presentation of the Defence's case.
57. Finally, the Defence highlights that the three prior recorded testimonies are corroborated by other evidence in these proceedings. Indeed, V45-P-0001 himself testified to the effect that [REDACTED];⁷⁷ at no point did V45-P-0001 make mention of [REDACTED]. A point also corroborated by witnesses D29-P-6034⁷⁸ and D29-P-6025,⁷⁹ as well as documentary evidence.⁸⁰
58. D29-P-6049 corroborates the fact that [REDACTED], [REDACTED] or [REDACTED] were not inhabitants of [REDACTED].⁸¹ D29-P-6049 also corroborates the fact that [REDACTED] (D29-P-6045) was [REDACTED].⁸² D29-P-6049 also confirms that a baptism card allegedly from [REDACTED],⁸³

⁷⁶ [ICC-01/14-01/18-2250-Red](#), paras 1-2.

⁷⁷ **V45-P-0001** : ICC-01/14-01/18-T-246-CONF-FRA CT from 10:10:16 to 10:11:08, from 14:11:24 to 14:15:52.

⁷⁸ **D29-P-6034** : CAR-D29-0009-0372-R01.

⁷⁹ **D29-P-6025** : CAR-D29-0009-0280-R01, paras 27 and following.

⁸⁰ See CAR-D29-0013-0265.

⁸¹ **D29-P-6049** : CAR-D29-0009-0759, paras 22-23.

⁸² **D29-P-6049** : CAR-D29-0009-0759, para. 20.

⁸³ CAR-V45-00000012.

disclosed by the CLRV1, does not correspond to those actually used at this church; which is a similar situation as the lack of reliability and authenticity of documents CAR-V45-00000020 and CAR-V45-00000021 discussed by the Three Witnesses.

59. In light of the above, the Defence argues that P-6040, P-6045 and P-6047's prior recorded testimony are suitable for Rule 68(2)(b) submission and respectfully requests the Chamber to formally recognize them as submitted into evidence pursuant to this provision.

CONFIDENTIALITY

60. The present request is filed on a confidential basis due to 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

61. In light of the above, the Defence respectfully requests Trial Chamber V to:

GRANT leave to add CAR-D29-0001-0648 and CAR-D29-0001-0650 to the Defence List of Evidence ;

GRANT leave to add D29-P-6040, D29-P-6045 and D29-P-6047 to the Defence List of Witnesses ;

GRANT leave to add **P-6040's** prior recorded testimony (CAR-D29-0009-0782, CAR-D29-0009-0788, CAR-D29-0009-0794, CAR-D29-0009-0795, CAR-D29-0009-0796, CAR-V45-00000020, CAR-V45-00000021), **P-6045's** prior recorded testimony (CAR-D29-0009-0708, CAR-V45-00000020, CAR-V45-00000021) and **P-6047's** prior recorded testimony (CAR-D29-0009-0729, CAR-V45-00000020, CAR-V45-00000021) to the Defence List of Evidence; and

INTRODUCE the prior recorded testimonies of P-6040, P-6045 and P-6047 into evidence pursuant to Rule 68(2)(b) of the Rules.

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF AUGUST 2024



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