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**International
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Court**

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**No. ICC-01/14-01/18
Date: 18 September 2024**

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF
THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA

Confidential

**Decision on the Common Legal Representative of the Former Child Soldiers
Request to Present Evidence in Rebuttal**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67 and 69(3) of the Rome Statute, and Regulation 24(5) of the Regulations of the Court (the 'Regulations'), issues this 'Decision on the Common Legal Representative of the Former Child Soldiers Request to Present Evidence in Rebuttal'.

I. Procedural history

1. From 21 to 27 September 2023, dual status witnesses V45-0001 and V45-0002 testified before the Chamber (together, the 'Witnesses').¹
2. On 4 June 2024, the Chamber granted the request from the Common Legal Representative of the Former Child Soldiers (the 'CLRV1') for formal submission of four items pertaining to the 'identifying information of V45-0001 and his parents'.²
3. On 26 August 2024,³ the CLRV1 filed a request to present evidence in rebuttal concerning the identifying information of the Witnesses (the 'Rebuttal Evidence' and the 'Rebuttal Request', respectively).⁴ Should leave be granted, the CLRV1

¹ See **V45-0001**: Transcripts of hearings, 21 September 2023, ICC-01/14-01/18-T-245-Red2-ENG; 22 September 2023, ICC-01/14-01/18-T-246-Red2-ENG; **V45-0002**: Transcripts of hearings, 26 September 2023, ICC-01/14-01/18-T-247-Red2-ENG; 27 September 2023, ICC-01/14-01/18-T-248-Red2-ENG. See also Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence, 3 August 2023, ICC-01/14-01/18-2016-Conf (public redacted version notified on 6 September 2023, ICC-01/14-01/18-2016-Red), para. 30, p. 22.

² Decision on the CLRV1 Submission Request from the Bar Table, 4 June 2024, ICC-01/14-01/18-2520-Conf, para. 2, p. 6. See also Request of the Common Legal Representative of the Former Child Soldiers for the submission of evidence from the "bar table", 2 April 2024, ICC-01/14-01/18-2428-Conf (with confidential Annex A) (public redacted version notified on 10 June 2024, ICC-01/14-01/18-2428-Red). See also Decision on the Common Legal Representative of the Former Child Soldiers Request for Leave to Submit Evidence from the Bar Table, 18 March 2024, ICC-01/14-01/18-2412-Conf; Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the "bar table", 27 November 2023, ICC-01/14-01/18-2222-Conf (with confidential *ex parte* Annex 1, only available to the CLRV1; confidential redacted version of Annex 1; and confidential Annexes 2-6) (public redacted version notified on 25 March 2024, ICC-01/14-01/18-2222-Red).

³ The Chamber instructed the participants to file any requests for leave to present evidence in rebuttal as soon as practicable, and at the latest, five days after the last Defence witness had testified (see email from the Chamber, 7 February 2024, at 15:11, in response to a request for clarification from the CLRV1).

⁴ Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal, ICC-01/14-01/18-2654-Conf, paras 1, 63.

requests that the Rebuttal Evidence be recognised as formally submitted pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence.⁵

4. On 28 August and 2 and 4 September 2024,⁶ the Common Legal Representatives of Victims of Other Crimes (the 'CLRV2'), the Office of the Prosecutor (the 'Prosecution'), and the Ngaïssona Defence, respectively, informed the Chamber that they do not intend to respond to the Rebuttal Request.⁷
5. On 4 September 2024, the Yekatom Defence (the 'Defence') opposed the Rebuttal Request (the 'Response to the Rebuttal Request').⁸
6. On 9 September 2024, the CLRV1 requested leave to reply to the Response to the Rebuttal Request (the 'Request for Leave to Reply').⁹
7. On the same day,¹⁰ the Defence opposed the Request for Leave to Reply (the 'Response to the Request for Leave to Reply').¹¹
8. Also on the same day, the CLRV2 informed the Chamber that they do not intend to respond to the Request for Leave to Reply.¹²

II. Analysis

A. The Request for Leave to Reply

9. The CLRV1 seeks leave to reply to two issues, which he submits arise from the Response to the Rebuttal Request and could not have been reasonably

⁵ Rebuttal Request, ICC-01/14-01/18-2654-Conf, paras 1, 55-63.

⁶ The Single Judge instructed that any responses to the Rebuttal Request be filed by 4 September 2024 (*see* email from the Chamber, 28 August 2024, at 11:48).

⁷ Email from CLRV2, 28 August 2024, at 13:03; email from the Prosecution, 2 September 2024, at 17:54; email from the Ngaïssona Defence, 4 September 2024, at 11:12.

⁸ Response to the 'Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal' (ICC-01/14-01/18-2654-Conf), ICC-01/14-01/18-2673-Conf, paras 1, 76.

⁹ Request of the Common Legal Representative of the Former Child Soldiers for Leave to Reply to the "Response to the 'Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal' (ICC-01/14-01/18-2654-Conf)", ICC-01/14-01/18-2681-Conf.

¹⁰ The Single Judge instructed that any responses to the Request for Leave to Reply be filed by 10 September 2024 (*see* email from the Chamber, 9 September 2024, at 15:42).

¹¹ Yekatom Response to "Request of the Common Legal Representative of the Former Child Soldiers for Leave to Reply to the "Response to 'Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal' (ICC-01/14-01/18-2654-Conf)", ICC-01/14-01/18-2684-Conf.

¹² Email from the CLRV2, 9 September 2024, at 16:09.

anticipated.¹³ Specifically, he seeks to reply to the Defence's submissions (i) that the CLRV1 had ample opportunity to submit the Rebuttal Evidence at an earlier stage (the 'First Issue');¹⁴ and (ii) that the CLRV1 allegedly violated the 'Protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant',¹⁵ by contacting witnesses D29-6049 and D29-6046 (the 'Second Issue').¹⁶

10. The Defence submits that there is no new issue arising from the Response to the Rebuttal Request meriting a reply, nor does it raise any issues that could not have been reasonably anticipated.¹⁷ The Defence further argues that a reply would not assist the Chamber in resolving the matter.¹⁸
11. According to Regulation 24(5) of the Regulations, 'a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated'.
12. With regard to the First Issue, the Chamber finds that it could have been anticipated by the CLRV1. It first notes, as is apparent from the Rebuttal Request,¹⁹ that the jurisprudence setting out the criteria applied to requests for presenting rebuttal evidence, including the requirement that an issue of significance has arisen *ex improviso*,²⁰ was known to the CLRV1 at the time of filing the initial request. The Chamber further recalls its guidance, in response to a request for clarification from the CLRV1, that any such requests should be presented as soon as practicable.²¹

¹³ Request for Leave to Reply, ICC-01/14-01/18-2681-Conf, paras 1, 12, 14, 17-18.

¹⁴ Request for Leave to Reply, ICC-01/14-01/18-2681-Conf, paras 13-14. *See* Response to the Rebuttal Request, ICC-01/14-01/18-2673-Conf, paras 14-19.

¹⁵ Annex 5 to Decision on Protocols at Trial, 8 October 2020, ICC-01/14-01/18-677-Anx5.

¹⁶ Request for Leave to Reply, ICC-01/14-01/18-2681-Conf, paras 15-17. *See* Response to the Rebuttal Request, ICC-01/14-01/18-2673-Conf, paras 48-53.

¹⁷ Response to the Request for Leave to Reply, ICC-01/14-01/18-2684-Conf, paras 2-6.

¹⁸ Response to the Request for Leave to Reply, ICC-01/14-01/18-2684-Conf, paras 2, 7.

¹⁹ *See* Rebuttal Request, ICC-01/14-01/18-2654-Conf, paras 28-31.

²⁰ *See* para. 15 below, *referring to* Decision on the Prosecution Request for the Submission of Rebuttal Evidence, 17 September 2024, ICC-01/14-01/18-2694-Conf, paras 5-6.

²¹ *See* email from the Chamber, 7 February 2024, at 15:11.

13. With regard to the Second Issue, the Chamber considers that submissions from the participants on this matter are not relevant to its adjudication of the Rebuttal Request, and that it would therefore not be assisted in receiving additional submissions thereon.
14. Accordingly, the Chamber rejects the Request for Leave to Reply.

B. The Rebuttal Request

15. The Chamber recalls the applicable law regarding rebuttal requests as set out in its previous decision.²²
16. The Rebuttal Evidence consists of the statements and associated items of seven witnesses,²³ which the CLRV1 submits relate to Count 29 and the identity and age of the Witnesses.²⁴ In the CLRV1's view, the Rebuttal Evidence pertains to a limited and discrete issue of significance *vis-à-vis* the legal issue to be determined in the case, which arose *ex improviso* during the examination of the Witnesses by the Defence, and the submission of this evidence would not be prejudicial to the rights of the accused.²⁵

²² See Decision on the Prosecution Request for the Submission of Rebuttal Evidence, 17 September 2024, ICC-01/14-01/18-2694-Conf, paras 5-6.

²³ **V45-0003**: Statement, CAR-V45-00000023; associated items, CAR-V45-00000024, CAR-V45-00000022, and CAR-V45-00000038; **V45-0004**: Statement, CAR-V45-00000025; associated items, CAR-V45-00000026, CAR-V45-00000044, CAR-V45-00000048, and CAR-V45-00000042; **V45-0006**: Statement, CAR-V45-00000028; associated items, CAR-V45-00000029, and CAR-V45-00000034; **V45-0007**: Statement, CAR-V45-00000035; associated items, CAR-V45-00000037, and CAR-V45-00000036; **V45-0009**: Statement, CAR-V45-00000045; associated items, CAR-V45-00000046, CAR-V45-00000033, CAR-V45-00000047, CAR-V45-00000031, CAR-V45-00000032, and CAR-V45-00000043; **V45-0005**: Statement, CAR-V45-00000027; associated items, CAR-V45-00000016, CAR-V45-00000017, and CAR-V45-00000018; **V45-0008**: Statement, CAR-V45-00000039; associated items, CAR-V45-00000040, and CAR-V45-00000041. See Rebuttal Request, ICC-01/14-01/18-2654-Conf, paras 33-44, 46-49. The Chamber notes that the Rebuttal Request refers to V45-0007's statement as CAR-V45-00000025 (see footnote 68) and to the copy of V45-0009's professional card as CAR-V45-00000037 (see footnote 81), but the correct ERNs appear to be CAR-V45-00000035 and CAR-V45-00000033, respectively. The Chamber further recalls that it previously rejected the CLRV1's request for leave to submit CAR-V45-00000016 from the bar table, as it was 'not persuaded that [CAR-V45-00000016], which merely contains information on the witness's mother's yellow fever vaccination, is relevant for its assessment of the identity of V45-0002' (see Decision on the Common Legal Representative of the Former Child Soldiers Request for Leave to Submit Evidence from the Bar Table, 18 March 2024, ICC-01/14-01/18-2412-Conf, para. 6).

²⁴ See Rebuttal Request, ICC-01/14-01/18-2654-Conf, paras 1, 31, 50.

²⁵ See Rebuttal Request, ICC-01/14-01/18-2654-Conf, paras 1, 31-32, 45, 52, 54.

17. Irrespective of the question whether the CLRV1 has standing to present rebuttal evidence,²⁶ the Chamber considers that the issue raised by the CLRV1 has not arisen *ex improviso*.
18. First, the Chamber notes that the Defence raised the issue of ascertaining the identities of the Witnesses and the fact that documents disclosed by the CLRV1 contained contradictory identifying information at least in August 2023, in advance of the Witnesses' testimonies.²⁷ The Chamber also observes that the Defence examined the Witnesses in relation to their identifying information and related documents, including several documents the CLRV1 seeks to challenge through the Rebuttal Evidence, during their testimonies in September 2023.²⁸ These documents were included in the Defence's lists of materials to be used during the Witnesses' examinations, which were communicated ahead of the testimonies.²⁹
19. Second, the Chamber notes that the Witnesses' testimonies concerned the factual allegations under Count 29. Therefore, information relating to the respective ages and dates of birth of the Witnesses, including related documentation, was central to their testimonies. In this context, the Chamber considers that it was foreseeable that the identifying information of the Witnesses, including the provenance and reliability of documents purportedly attesting to such information, would be subject to examination and possibly challenged by the Defence.³⁰

²⁶ See Response to the Rebuttal Request, ICC-01/14-01/18-2673-Conf, paras 2, 4-9.

²⁷ See email from the Defence, 31 August 2023, at 11:41. See also Response to the Rebuttal Request, ICC-01/14-01/18-2673-Conf, para. 14.

²⁸ See **V45-0001**: Transcript of hearing, 22 September 2023, ICC-01/14-01/18-T-246-CONF-ENG (public redacted version ICC-01/14-01/18-T-246-Red2-ENG); **V45-0002**: Transcripts of hearings, 26 September 2023, ICC-01/14-01/18-T-247-CONF-ENG (public redacted version ICC-01/14-01/18-T-247-Red2-ENG); 27 September 2023, ICC-01/14-01/18-T-248-CONF-ENG (public redacted version ICC-01/14-01/18-T-248-Red2-ENG).

²⁹ See email from the Defence, 20 September 2023, at 14:46. See also Response to the Rebuttal Request, ICC-01/14-01/18-2673-Conf, para. 15, footnote 22.

³⁰ In this regard, the Chamber notes that the Defence had previously examined witnesses and raised multiple challenges with regard to the identifying information of alleged former child soldiers, including documents purportedly attesting to such information, throughout the Prosecution's presentation of evidence. See, generally, the Defence's examination of **P-2475**: Transcripts of hearings, 30 May 2022, ICC-01/14-01/18-T-131-CONF-ENG (public redacted version ICC-01/14-01/18-T-131-Red-ENG); 31 May 2022, ICC-01/14-01/18-T-132-CONF-ENG (public redacted version ICC-01/14-01/18-T-132-Red2-ENG); 1 June 2022, ICC-01/14-01/18-T-133-CONF-ENG (public redacted version ICC-01/14-01/18-T-133-Red-ENG); **P-2476**: Transcripts of hearings, 16 March 2023, ICC-01/14-01/18-T-213-

20. The Chamber further considers that it would be prejudicial to the accused to submit the Rebuttal Evidence at this stage of the proceedings. In light of the above, it rejects the Rebuttal Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Reply;

REJECTS the Rebuttal Request; and

ORDERS the CRLV1 and the Defence to file public redacted versions of the Rebuttal Request, ICC-01/14-01/18-2654-Conf; the Response to the Rebuttal Request, ICC-01/14-01/18-2673-Conf; the Request for Leave to Reply, ICC-01/14-01/18-2681-Conf; and the Response to the Request for Leave to Reply, ICC-01/14-01/18-2684-Conf, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.

 _____ Judge Péter Kovács	 _____ Judge Bertram Schmitt Presiding Judge	 _____ Judge Chang-ho Chung
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Dated 18 September 2024

At The Hague, The Netherlands

CONF-ENG (public redacted version ICC-01/14-01/18-T-213-Red-ENG); 17 March 2023, ICC-01/14-01/18-T-214-CONF-ENG (public redacted version ICC-01/14-01/18-T-214-Red-ENG); and **P-2018**: Transcripts of hearings, 18 April 2023, ICC-01/14-01/18-T-223-CONF-ENG (public redacted version ICC-01/14-01/18-T-223-Red2-ENG); 19 April 2023, ICC-01/14-01/18-T-224-CONF-ENG (public redacted version ICC-01/14-01/18-T-224-Red-ENG); 20 April 2023, ICC-01/14-01/18-T-225-CONF-ENG (public redacted version ICC-01/14-01/18-T-225-Red2-ENG); 24 April 2023, ICC-01/14-01/18-T-226-CONF-ENG (public redacted version ICC-01/14-01/18-T-226-Red-ENG).