

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 25 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-ÉDOUARD
NGAISSONA***

Public

**Public Redacted Version of the “Request of the Common Legal Representative of
the Former Child Soldiers for leave to present evidence in rebuttal”
(No. ICC-01/14-01/18-2654-Conf, dated 26 August 2024)**

Source: Office of Public Counsel for Victims (CLR1)

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “CLR1”) seeks Trial Chamber V (the “Chamber”) leave to present evidence in rebuttal concerning the identifying information of Witnesses V45-P-0001 and V45-P-0002 (the “Proposed Rebuttal Evidence”). The discrete issue is very limited and arose *ex improviso*. Should leave be granted, the CLR1 seeks to introduce the Proposed Rebuttal Evidence pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”) to ensure the expeditiousness of the proceedings.

II. PROCEDURAL BACKGROUND

2. On 26 August 2020, the Presiding Judge of the Chamber issued the “Initial Directions on the Conduct of the Proceedings” (the “Initial Directions”).¹

3. On 29 May 2023, the Chamber issued the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)”.²

4. On 7 July 2023, the Common Legal Representatives of the Victims (the “CLRV”) submitted respectively the “Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence”,³ and the “*Requête des*

¹ See the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V, Presiding Judge), [No. ICC-01/14-01/18-631](#), 26 August 2020 (the “Initial Directions”), paras. 16, and 61-62.

² See the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (Trial Chamber V), [No. ICC-01/14-01/18-1892](#), 29 May 2023 (the “Further Directions”), paras. 5 and 9.

³ See the “Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence”, [No. ICC-01/14-01/18-1969-Conf](#), 7 July 2023 and the “Corrigendum to the “Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence”, [No. ICC-01/14-01/18-1969-Conf-Corr](#), 11 July 2023; with a Corrigendum of Confidential Redacted Annex A (ICC-01/14-01/18-1969-Conf-AnxA-Red), [No. ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr](#). Public redacted versions were filed on 7 August 2023 as [No. ICC-01/14-01/18-1969-Conf-Red](#) and [No. ICC-01/14-01/18-1969-AnxA-Red-Corr-Red](#).

Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves".⁴

5. On 3 August 2023, the Chamber issued its "Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence", whereby it, *inter alia*, authorised victims a/20722/21, a/65991/19 and a/65010/19 to present evidence.⁵

6. On 21 and 22 September 2023, Witness V45-P-0001 (a/20722/21) testified at the seat of the Court.⁶ On 26 and 27 September 2023, Witness V45-P-0002 (a/65991/19) also testified at the seat of the Court.⁷

7. On 27 November 2023, the CLR1 filed a request for leave to submit material from the bar table, in particular Items CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000014, CAR-V45-00000015 and CAR-V45-00000016.⁸

8. On 8 December 2023, the Yekatom Defence (the "Defence") opposed the CLR1's Request of 27 November 2023.⁹

⁴ See the "*Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves*", [No. ICC-01/14-01/18-1972-Conf-Red](#), 7 July 2023. A public redacted version was filed on 11 August 2023 as [No. ICC-01/14-01/18-1972-Red](#).

⁵ See the "Decision on the Common Legal Representatives of Victims Requests for Leave to Present Evidence and Further Order on the Remainder of the Prosecution Presentation of Evidence" (Trial Chamber V), [No. ICC-01/14-01/18-2016-Conf](#), 3 August 2023. A public redacted version was filed on 6 September 2023 as [No. ICC-01/14-01/18-2016-Red](#).

⁶ See the transcript of the hearing held on 21 September 2023, [No. ICC-01/14-01/18-T-245-CONF-ENG CT](#), page 4, line 17 to page 44, line 4; and the transcript of the hearing held on 22 September 2023, [No. ICC-01/14-01/18-T-246-CONF-ENG CT](#), page 2, line 19 to page 81, line 2.

⁷ See the transcript of the hearing held on 26 September 2023, [No. ICC-01/14-01/18-T-247-CONF-ENG CT](#), page 3, line 21 to page 64, line 8; and the transcript of the hearing held on 27 September 2023, [No. ICC-01/14-01/18-T-248-CONF-ENG CT](#), page 3, line 1 to page 39, line 9.

⁸ See the "Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the 'bar table'", [No. ICC-01/14-01/18-2222-Conf](#), 27 November 2023. The Items and the relevant metadata were attached to in Annexes 1-6 to the request.

⁹ See the "Defence Response to 'Request of the Common Legal Representative of the Former Child Soldiers for leave to submit into evidence material from the 'bar table'", 27 November 2023, ICC-01/14-01/18-2222- Conf", [No. ICC-01/14-01/18-2252-Conf](#), 8 December 2023, paras. 1-2, 67.

9. On 17 January 2024, the CLR1 disclosed additional documents relating to V45-P-0002's identity, namely Items CAR-V45-00000016, CAR-V45-00000017, CAR-V45-00000018 and CAR-V45-00000019.¹⁰

10. On 23 January 2024, the CLR1 formally disclosed Items CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000014 and CAR-V45-00000015, and further disclosed additional documents relating to V45-P-0001's identity, namely Items CAR-V45-00000020, CAR-V45-00000021 and CAR-V45-00000022.¹¹

11. On 7 February 2024, the Chamber clarified that *"any request for leave to present evidence in rebuttal or non-evidentiary views and concerns of participating victims should be brought before the Chamber as soon as practicable, and at the latest, five days after the last Defence witness has testified"*.¹²

12. On 18 March 2024, the Chamber partly granted the CLR1's request for leave to present evidence from the bar table,¹³ authorizing the submission of four documents related to V45-P-0001's identity, namely Items CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000014 and CAR-V45-00000015.

13. On 2 April 2024, the CLR1 filed a Bar Table Motion, whereby he sought the formal submission of the four Items related to V45-P-0001's identity.¹⁴

14. On 4 June 2024, the Chamber granted the CLR1's Bar Table Motion.¹⁵

¹⁰ See the "Common Legal Representative of the Former Child Soldiers Communication of the Disclosure of Evidence on 17 January 2024", [No. ICC-01/14-01/18-2307](#), 18 January 2024; with Confidential [Annex](#).

¹¹ See the "Common Legal Representative of the Former Child Soldiers Communication of the Disclosure of Evidence on 23 January 2024", [No. ICC-01/14-01/18-2340](#), 31 January 2024; with Confidential [Annex I](#) and [Annex II](#).

¹² See the Email correspondence from the Chamber on 7 February 2024 at 15:11.

¹³ See the "Decision on the Common Legal Representative of the Former Child Soldiers Request for Leave to Submit Evidence from the Bar Table", [No. ICC-01/14-01/18-2412-Conf](#), 18 March 2024 (reclassified as public by order of the Chamber dated 22 May 2024) (the "Decision of 18 March 2024").

¹⁴ See the "Request of the Common Legal Representative of the Former Child Soldiers for the submission of evidence from the 'bar table'", [No. ICC-01/14-01/18-2428-Conf](#), 2 April 2024.

¹⁵ See the "Decision on the CLRV1 Submission Request from the Bar Table", [No. ICC-01/14-01/18-2520-Conf](#), 4 June 2024.

15. On 21 June 2024, the Defence filed the “Consolidated Yekatom Defence Request for Leave to add Four Witnesses and Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)” (the “Defence First Request”).¹⁶

16. On 26 June 2024, the Defence filed 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)” (the “Defence Second Request”).¹⁷

17. On 3 July 2024, the Prosecution filed its Response to the First Defence Request.¹⁸

18. On 4 July 2024, the CLR1 filed a consolidated response to the Defence First and Second Requests.¹⁹

19. On 8 July 2024, the Defence filed the “Yekatom Defence Third Consolidated Request for Leave to amend its Witness and Evidence Lists and for formal submission of prior recorded testimony via Rule 68(2)(b)” (the “Defence Third Request”).²⁰ On the same date, the Prosecution filed its Response to the Second Defence Request.²¹

¹⁶ See the “Consolidated Yekatom Defence Request for Leave to add Four Witnesses and Request for the Formal Submissions of Prior Recorded Testimony pursuant to Rule 68(2)(b)”, [No. ICC-01/14-01/18-2541-Conf](#), 21 June 2024.

¹⁷ See 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)”, [No. ICC-01/14-01/18-2555-Conf](#), 26 June 2024.

¹⁸ See the “Prosecution’s Response to the ‘Consolidated Yekatom Defence Request for Leave to add Four Witnesses and Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)’ (ICC-01/14-01/18-2541-Conf)”, [No. ICC-01/14-01/18-2574-Conf](#), 3 July 2024.

¹⁹ See the “Consolidated Response of the Common Legal Representative of the Former Child Soldiers to the ‘Consolidated Yekatom Defence Request for Leave to add Four Witnesses and Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)’ and 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)’”, [No. ICC-01/14-01/18-2575-Conf](#), 4 July 2024.

²⁰ See the “Yekatom Defence Third Consolidated Request for Leave to amend its Witness and Evidence Lists and for formal submission of prior recorded testimony via Rule 68(2)(b)”, [No. ICC-01/14-01/18-2581-Conf](#), 8 July 2024.

²¹ See the “Prosecution’s Response to 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”, [No. ICC-01/14-01/18-2578-Conf](#), 8 July 2024.

20. On 9 July 2024, the Chamber instructed that any response to the Defence Third Request should be submitted by 12 July 2024.²²

21. On 10 July 2024, the Prosecution responded to the Defence Third Request.²³

22. On 18 July 2024, the Chamber issued its “Decision on the Yekatom Defence Requests for Leave to Add Six Witnesses and Submissions under Rule 68(2)(b) of the Rules”,²⁴ granting the request and allowing the submission of the statements of D29-6043, D29-6044, D29-6049, D29-6050, and D29-6046 into the case record.

23. On 16 August 2024, the Chamber issued the “Decision on the Yekatom Defence Request for Leave to Add Three Witnesses and Submission under Rule 68(2)(b) of the Rules”,²⁵ granting the Defence Request to add material to its List of Evidence, including CAR-V45-00000020 and CAR-V45-00000021.²⁶

24. On 21 August 2024, the last Defence witness, *i.e.* D30-P-4914, completed his testimony in the present case.

25. On 26 August 2024, the CLR1 sent by email to the Chamber, Parties and Participants the courtesy copies of the Proposed Rebuttal Evidence, pending its formal disclosure, together with an Excel table containing the respective metadata.²⁷

²² See the Email correspondence from the Chamber on 9 July 2024 at 15:48.

²³ See the “Prosecution’s Response to the ‘Yekatom Defence Third Consolidated Request for Leave to amend its Witness and Evidence Lists and for formal submission of prior recorded testimony via Rule 68(2)(b), 8 July 2024 (ICC-01/14-01/18-2581-Conf)”, [No. ICC-01/14-01/18-2583-Conf](#), 10 July 2024.

²⁴ See the “Decision on the Yekatom Defence Requests for Leave to Add Six Witnesses and Submissions under Rule 68(2)(b) of the Rules” (Trial Chamber V), [No. ICC-01/14-01/18-2598-Conf](#), 18 July 2024.

²⁵ See the “Decision on the Yekatom Defence Request for Leave to Add Three Witnesses and Submission under Rule 68(2)(b) of the Rules” (Trial Chamber V), [No. ICC-01/14-01/18-2638-Conf](#) 16 August 2024.

²⁶ *Idem*, para. 25.

²⁷ See the Email correspondence from the CLR1 dated 26 August 2024 at 15:33.

III. CLASSIFICATION

26. Pursuant to regulation 23*bis* (1) of the Regulations of the Court, the present Request is classified as confidential as it refers to the identifying information of Witnesses V45-P-0001 and V45-P-0002 who testified with in-court protective measures.

IV. SUBMISSIONS

1. Applicable law

27. As per the Chamber's established practice in the present case, (i) *"in accordance with the 'Submission Approach', it 'will assess the standard evidentiary criteria (namely the relevance, probative value and potential prejudice) of each item as part of its holistic assessment when deliberating its judgment pursuant to Article 74(2) of the Statute'"*; ²⁸ (ii) *"[d]uring trial, the Chamber will accordingly only recognise the participants' formal submission of evidence"*; ²⁹ and *"[a]t this stage the Chamber will only consider the admissibility of items in the context of the statutory exclusionary rules, including procedural bars, obstacles and preconditions"*. ³⁰

28. In accordance with the Initial Directions, the Chamber's leave must be sought to present *'rebuttal'/'rejoinder'* evidence or non-evidentiary *'views and concerns'* of participating victims. ³¹ In this regard, the Chamber also noted that any request for leave to present evidence in rebuttal or non-evidentiary views and concerns of participating victims should be brought before the Chamber as soon as practicable, and at the latest, five days after the last Defence witness has testified. ³² The Chamber cautioned the Participants that leave to present rebuttal evidence will only be granted

²⁸ See the "Decision on the First Prosecution Submission Request from the Bar Table (Sexual and Gender Based Violence)" (Trial Chamber V), 19 April 2022, [No. ICC-01/14-01/18-1359](#), (the "First Bar Table Decision"), para. 10. See also the Initial Directions, *supra* note 1, para. 53.

²⁹ See the Initial Directions, *supra* note 1, para. 53.

³⁰ See the First Bar Table Decision, *supra* note 28, para. 12. See also the Initial Directions, *supra* note 1, paras. 54-56.

³¹ See the Initial Directions, *supra* note 1, para. 16.

³² See the Email correspondence from the Chamber on 7 February 2024 at 15:11.

if the proposed evidence is of significance *vis-à-vis* the legal issues to be determined in this case, particularly in light of the evidence already on the record.³³

29. In the *Lubanga* case, Trial Chamber I after having reviewed the jurisprudence of Trial Chamber II and the international criminal *ad hoc* tribunals, found that “*calling rebuttal evidence is likely to be an exceptional event, and certainly in the context of [the particular application before the chamber], it will be necessary for the prosecution to demonstrate, first, that an issue of significance has arisen ex improviso; second, that the evidence on rebuttal satisfies the admissibility criteria; and, third, this step will not undermine the accused’s rights, in particular under Article 67 of the Statute*”.³⁴

30. Rebuttal evidence shall not be a way to perfect one’s case and should address an issue that could not have been anticipated before.³⁵ More generally, a participant may be allowed to introduce new evidence when it may add a new dimension to the issues of the trial.³⁶

2. The Request meets the requirements for leave to submit the Proposed Rebuttal Evidence be granted

31. The Proposed Rebuttal Evidence pertains to a limited and discrete issue which is nevertheless of significance *vis-à-vis* the legal issue to be determined in this case in

³³ *Ibid.* See also the “Decision on Prosecution request to present evidence in rebuttal” (Trial Chamber IX), [No. ICC-02/04-01/15-1600](#), 19 December 2019.

³⁴ See the “Decision on the Prosecution’s Application to Admit Rebuttal Evidence from Witness DRC-OTP-WWWW-0005” (Trial Chamber I), [No. ICC-01/04-01/06-2727-Red](#), 28 April 2011, paras 42-43 and the case law referred to in relevant footnotes. See the transcript of hearing held on 24 November 2010, [No. ICC-01/04-01/07-T-222-Red2-ENG WT](#), page 77, lines 11 to 25; and the “Decision on ‘Prosecution’s Application to Submit Additional Evidence’” (Trial Chamber III), No. ICC-01/05-01/08-3029, 2 April 2014, paras. 24-25. See also the “Decision on Prosecution request for presentation of evidence in rebuttal (ICC-01/04-02/06-2197-Conf) and related filings” (Trial Chamber VI), [No. ICC-01/04-02/06-2246](#), 26 February 2018, para. 20.

³⁵ See the ICTR, *Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier Nzuwinemeye and Innocent Sagahutu*, “Decision on the Prosecution Motion to call Rebuttal Evidence” (Trial Chamber), [ICTR-00-56-T](#), 20 February 2009, para. 4; *Prosecutor v. Ntagerura et al*, “Decision on the Prosecutor’s Motion for Leave to Call Evidence in Rebuttal Pursuant to Rule 54, 73 and 85(A)(iii) of the Rules of Procedure and Evidence” (Trial Chamber), [ICTR-99-46-T](#), 21 May 2003, para. 32.

³⁶ See the “Decision on the ‘Requête de la Défense sollicitant l’autorisation d’interjeter appel de la décision orale du 4 mars 2010 autorisant l’utilisation et le dépôt en preuve de trois photographies’” (Trial Chamber I), [No. ICC-01/04-01/06-2404](#), 29 April 2010, para. 3.

light of the evidence already on the record. In particular, it relates to Count 29 and the identity and the age of Witnesses V45-P-0001 and V45-P-0002 - who are former child soldiers in the Anti-Balaka group under Mr Yekatom's command. In the present instance, the Proposed Rebuttal Evidence meets the relevant requirements for submission before the Chamber: (i) the issue concerning the identifying information of Witnesses V45-P-0001 and V45-P-0002 arose *ex improviso* during the Defence cross-examination; (ii) the Proposed Rebuttal Evidence meets the admissibility criteria; (iii) the submission of the Proposed Rebuttal Evidence is necessary for the determination of the truth; and (iv) the submission of the Proposed Rebuttal Evidence would not be prejudicial to the rights of the Accused, and it is necessary to ensure the fairness and integrity of the present proceedings.

1) The issue concerning V45-P-0001's and V45-P-0002's identifying information arose *ex improviso*

a) The Proposed Rebuttal Evidence related to V45-P-0001

32. During the cross-examination of V45-P-0001, the Defence suggested to the Witness that his real name is [REDACTED].³⁷ The Defence subsequently called one rule 68(3) Witness³⁸ and submitted rule 68(2)(b) prior recorded testimony of twelve Witnesses,³⁹ essentially to demonstrate that V45-P-0001's real identity is [REDACTED] and his real parents are [REDACTED].

i. Witnesses V45-P-0003 and V45-P-0004, associated material and further related material

33. First, the CLR1 seeks leave to present rule 68(2)(b) prior recorded testimony (the "PRT") of two Witnesses, V45-P-0003 - who is V45-P-0001's [REDACTED] and [REDACTED] of V45-P-0001's father [REDACTED]⁴⁰ - and V45-P-0004 - who is V45-P-0001's [REDACTED], residing at [REDACTED].⁴¹ In their PRT, V45-P-0003 and V45-P-

³⁷ See the transcript of the hearing held on 22 September 2023, [No. ICC-01/14-01/18-T-246-CONF-ENG CT](#), page 59, line 25 to page 60, line 3.

³⁸ Witness [REDACTED].

³⁹ Witnesses [REDACTED].

⁴⁰ See CAR-V45-00000023.

⁴¹ See CAR-V45-00000025.

0004 recognise the individual on Item CAR-V45-00000010 as their, respectively, [REDACTED]. They consistently state that: (i) V45-P-0001's name is [REDACTED], born in [REDACTED], and (ii) his parents are [REDACTED]. They are also consistent in explaining the circumstances which led V45-P-0004 to [REDACTED] V45-P-0001, after he was [REDACTED]. Accordingly, the proposed evidence rebuts the Defence cumulative evidence regarding V45-P-0001's identity.

34. As regards Witness V45-P-0003, the Witness states in addition that he [REDACTED] V45-P-0001 at [REDACTED] and that V45-P-0001 [REDACTED]. This evidence, taken together with Items CAR-V45-00000020 and CAR-V45-00000021 already admitted into evidence, rebuts the Defence evidence that V45-P-0001 [REDACTED],⁴² and that [REDACTED] was V45-P-0001's [REDACTED].⁴³

35. V45-P-0003 further states that after the events of 2013-2014 – [REDACTED]. He also [REDACTED]. Accordingly, the proposed evidence rebuts of the Defence cumulative evidence that V45-P-0001's biological parents are [REDACTED].

36. In his PRT, V45-P-0003 also confirms that [REDACTED]. This evidence rebuts the Defence evidence that the individual who [REDACTED] is the one appearing on the Item [REDACTED].⁴⁴

37. In addition to V45-P-0003's PRT, the CLR1 also seeks leave to present associated material referred to in the statement, in particular: (i) a copy of V45-P-0003's [REDACTED];⁴⁵ and (ii) the [REDACTED] certificate delivered by [REDACTED].⁴⁶ Although the second Item was not collected by V45-P-0003, it was shown to the Witness and discussed in his PRT. The [REDACTED] certificate rebuts the Defence evidence that V45-P-0001 is [REDACTED].⁴⁷ Finally, the CLR1 seeks leave to present

⁴² See CAR-D29-0013-0265, and [REDACTED] PRT CAR-D29-0009-0372-R01.

⁴³ [REDACTED]

⁴⁴ See [REDACTED] PRT CAR-D29-0009-0788-R01.

⁴⁵ See CAR-V45-00000024.

⁴⁶ See CAR-V45-00000022.

⁴⁷ See CAR-D29-0013-0252. See also [REDACTED] PRT CAR-D29-0009-0499-R01, and [REDACTED].

as additional related documentary material a Certificate [REDACTED]⁴⁸ provided by V45-P-0003. This material rebuts the Defence evidence included in [REDACTED] PRT, that the [REDACTED] and that he does not know [REDACTED].⁴⁹

38. As regards Witness V45-P-0004, she recognises Item CAR-V45-00000014 as [REDACTED].⁵⁰ She states in addition that she is also [REDACTED].⁵¹ She states that in addition to [REDACTED].⁵² She did not recognise the individuals [REDACTED].⁵³ This proposed evidence rebuts the Defence evidence that the Item CAR-V45-00000014 is [REDACTED],⁵⁴ that [REDACTED],⁵⁵ and that she [REDACTED].⁵⁶

39. In her PRT, V45-P-0004 also confirms that [REDACTED].⁵⁷

40. Further to V45-P-0004's PRT, the CLR1 seeks leave to present associated material referred to in the statement, in particular the [REDACTED] taken by the CLR1 when obtaining her PRT.⁵⁸ Finally, the CLR1 seeks leave to present additional related documentary material including: (i) a copy [REDACTED], referred to by V45-P-0004,⁵⁹ V45-P-0006's,⁶⁰ and V45-P-0009's⁶¹ as one of V45-P-0004's [REDACTED];⁶² (ii) a copy of Item CAR-V45-00000044 [REDACTED];⁶³ and (iii) a photo of [REDACTED] taken by the CLR1.⁶⁴ This material rebuts the Defence evidence that [REDACTED],⁶⁵ and that [REDACTED].⁶⁶

⁴⁸ See CAR-V45-00000038.

⁴⁹ See [REDACTED] PRT CAR-D29-0009-0759-R01, paras. 31 and 33.

⁵⁰ See CAR-V45-00000025, para. 14.

⁵¹ See CAR-V45-00000025, paras. 14 and 16.

⁵² See CAR-V45-00000025, para. 24.

⁵³ See CAR-V45-00000025, paras. 32-33.

⁵⁴ See [REDACTED] PRT CAR-D29-0009-0692-R02, paras. 14, 16 and 18-19.

⁵⁵ *Idem*, para. 19.

⁵⁶ See [REDACTED] PRT CAR-D29-0009-0701-R02, para. 16.

⁵⁷ See CAR-V45-00000025, paras. 14 and 30.

⁵⁸ See CAR-V45-00000026.

⁵⁹ See CAR-V45-00000025, para. 18.

⁶⁰ See CAR-V45-00000028, para. 17.

⁶¹ See CAR-V45-00000045, para. 21.

⁶² See CAR-V45-00000044.

⁶³ See CAR-V45-00000048.

⁶⁴ See CAR-V45-00000042.

⁶⁵ See [REDACTED] PRT CAR-D29-0009-0692-R02, para. 19.

⁶⁶ See [REDACTED] PRT CAR-D29-0009-0701-R02, para. 16.

(ii) Witness V45-P-0006 and V45-P-0007, and associated material

41. Second, the CLR1 seeks leave to present under rule 68(2)(b) the PRT of two Witnesses, V45-P-0006 who is V45-P-0004's [REDACTED]⁶⁷ and V45-P-0007 who is [REDACTED].⁶⁸ In their respective PRT, V45-P-0006 and V45-P-0007 consistently state (i) that [REDACTED]; (ii) that she [REDACTED], and (iii) that she is [REDACTED]. In addition, Witness V45-P-0006 states that (i) [REDACTED] parents are [REDACTED] - who is V45-P-0006's [REDACTED] and (ii) [REDACTED] is the father of [REDACTED]. Furthermore, V45-P-0006 recognises the individual on Item CAR-V45-00000010 as [REDACTED]. The proposed material rebuts the Defence evidence that Item CAR-V45-00000014 is [REDACTED];⁶⁹ that [REDACTED],⁷⁰ and that [REDACTED].⁷¹ Moreover, it rebuts the Defence cumulative evidence that V45-P-0001's [REDACTED] and his parents are [REDACTED].

42. Further to V45-P-0006's and V45-P-0007's PRT, the CLR1 also seeks leave to present associated material referred in the statements, in particular (i) V45-P-0006's [REDACTED] taken by the CLR1 when obtaining his PRT;⁷² (ii) a copy of [REDACTED] V45-P-0006's [REDACTED];⁷³ (iii) V45-P-0007's [REDACTED] taken by the CLR1 when obtaining his PRT;⁷⁴ and (iv) a copy of V45-P-0007's [REDACTED].⁷⁵

(iii) Witness V45-P-0009, and associated material

43. Third, the CLR1 seeks leave to present under rule 68(2)(b) the PRT of one additional Witness, V45-P-0009, who is [REDACTED].⁷⁶ As a result V45-P-0009 [REDACTED]: (i) [REDACTED]; that she is [REDACTED]; and (ii) the individuals

⁶⁷ CAR-V45-00000028.

⁶⁸ CAR-V45-00000025.

⁶⁹ See [REDACTED] PRT CAR-D29-0009-0692-R02, paras. 14, 16 and 18-19.

⁷⁰ *Idem*, para. 19.

⁷¹ See [REDACTED] PRT CAR-D29-0009-0701-R02, para. 16.

⁷² See CAR-V45-00000029.

⁷³ See CAR-V45-00000034.

⁷⁴ See CAR-V45-00000037.

⁷⁵ See CAR-V45-00000036.

⁷⁶ See CAR-V45-00000045.

[REDACTED]. The proposed evidence rebuts the Defence suggestion that Item CAR-V45-00000014 is [REDACTED];⁷⁷ that [REDACTED];⁷⁸ and that she [REDACTED].⁷⁹

44. Further to V45-P-0009's PRT, the CLR1 also seeks leave to present associated material which referred to in the statement, in particular (i) a copy of V45-P-0009's [REDACTED] taken by the CLR1 while obtaining his PRT;⁸⁰ (ii) a copy of V45-P-0009's [REDACTED];⁸¹ (iii) V45-P-0009's [REDACTED] taken by the CLR1 when obtaining his PRT;⁸² (iv) [REDACTED];⁸³ and (v) [REDACTED].⁸⁴

b) The Proposed Rebuttal Evidence related to V45-P-0002

45. During the cross-examination of V45-P-0002, the Defence suggested to the Witness that his real name is [REDACTED].⁸⁵ The Defence subsequently called one live Witness⁸⁶ and further submitted the PRT of seven Witnesses under rule 68(2)(b) of the rules,⁸⁷ essentially to demonstrate that V45-P-0002's real identity is [REDACTED].

i. Witnesses V45-P-0005 and V45-P-0008, associated material and further related material

46. First, the CLR1 seeks leave to submit under rule 68(2)(b) the PRT of two Witnesses, V45-P-0005 - who is V45-P-0002's [REDACTED]⁸⁸ - and V45-P-0008 - who is V45-P-0002's [REDACTED].⁸⁹ In their PRT, V45-P-0005 and V45-P-0008 recognise the individual on Item CAR-V45-00000011 respectively as their [REDACTED], whose name is [REDACTED].

⁷⁷ See [REDACTED] PRT CAR-D29-0009-0692-R02, paras. 14, 16 and 18-19.

⁷⁸ *Idem*, para. 19.

⁷⁹ See [REDACTED] PRT CAR-D29-0009-0701-R02, para. 16.

⁸⁰ See CAR-V45-00000046.

⁸¹ See CAR-V45-00000037.

⁸² See CAR-V45-00000047.

⁸³ See CAR-V45-00000031.

⁸⁴ See CAR-V45-00000032.

⁸⁵ See the transcript of the hearing held on 27 September 2023, [No. ICC-01/14-01/18-T-248-CONF-ENG CT](#), page 32, lines 1 to 25.

⁸⁶ Witness [REDACTED].

⁸⁷ Witnesses [REDACTED].

⁸⁸ See CAR-V45-00000027.

⁸⁹ See CAR-V45-00000039.

47. Both Witnesses consistently state that: (i) V45-P-0002 was born [REDACTED]; (ii) consequently V45-P-0005 [REDACTED], and (iii) [REDACTED]. In addition, V45-P-0005 states that V45-P-0002 [REDACTED],⁹⁰ but V45-P-0002 [REDACTED].⁹¹ V45-P-0008 states that V45-P-0002 [REDACTED].⁹² The proposed evidence rebuts the Defence cumulative suggestion that V45-P-0002's real name is [REDACTED].

48. In addition to V45-P-0005's and V45-P-0008's PRT, the CLR1 also seeks leave to present associated material which referred in the statements, in particular: (i) a copy of V45-P-0008's [REDACTED];⁹³ (ii) V45-P-0008's [REDACTED] taken by the CLR1 while taking her PRT;⁹⁴ (iii) a copy of V45-P-0005's [REDACTED];⁹⁵ (iv) a copy of V45-P-0002's [REDACTED];⁹⁶ and (v) a copy of [REDACTED].⁹⁷ The last two Items were provided by V45-P-0005 and were shown to the Witness when obtaining her PRT. They rebut the Defence cumulative evidence that V45-P-0002's real name is [REDACTED].

(ii) Witness V45-P-0009, and associated material

49. Second, the CLR1 seeks leave to present under rule 68(2)(b) the PRT of one additional Witness, V45-P-0009, who is [REDACTED].⁹⁸ V45-P-0009 [REDACTED]. The proposed evidence rebuts the Defence suggestion that V45-P-0002 [REDACTED]. Further to V45-P-0009's PRT, the CLR1 also seeks leave to present associated material referred to in the statement, (i) a copy of V45-P-0009's [REDACTED] taken by the CLR1 together with his PRT;⁹⁹ (ii) V45-P-0009's [REDACTED] taken by the CLR1 when obtaining his PRT;¹⁰⁰ and (iii) [REDACTED].¹⁰¹

⁹⁰ See CAR-V45-00000027, para. 27.

⁹¹ *Ibid.*

⁹² See CAR-V45-00000039, para. 31.

⁹³ See CAR-V45-00000040.

⁹⁴ See CAR-V45-00000041.

⁹⁵ See CAR-V45-00000016.

⁹⁶ See CAR-V45-00000017.

⁹⁷ See CAR-V45-00000018.

⁹⁸ See CAR-V45-00000045.

⁹⁹ See CAR-V45-00000046.

¹⁰⁰ See CAR-V45-00000047.

¹⁰¹ See CAR-V45-00000043.

2) The Proposed Rebuttal Evidence is relevant to the issues in the case, meets the admissibility criteria and is necessary for the determination of the truth

50. The Proposed Rebuttal Evidence is relevant to the issues in the present proceedings. It pertains to the identifying information of Witnesses V45-P-0001 and V45-P-0002 who came to testify on Count 29 as former child soldiers in the Anti-Balaka group under Mr Yekatom's command.

51. The Proposed Rebuttal Evidence has a *prima facie* probative value as it bears sufficient indicia of reliability and authenticity. The PRT of the proposed Witnesses have been collected by the CLR1 team and recorded in the required format with the assistance of a certified interpreter. They are duly signed and paraphed by all persons involved. The proposed documentary evidence has been provided to the CLR1 by [REDACTED] of V45-P-0001 and V45-P-0002. The documents at hand are either stamped and/or signed by the authorities or persons who issued the documents. The Proposed Rebuttal Evidence is mutually corroborative, and also corroborative of other evidence on the record, including the testimony of V45-P-0001 and V45-P-0002.

52. The submission of the Proposed Rebuttal Evidence is necessary for the determination of the truth as it will assist the Chamber in its holistic assessment of the evidence on the record. By addressing the ambiguity concerning the identifying information of V45-P-0001 and V45-P-0002 that arose *ex improviso* during their testimony, the Proposed Rebuttal Evidence will also contribute to the completeness and accuracy of the case record and uphold the integrity of the proceedings.

53. In its Decision of 18 March 2024, the Chamber has already found that "[since] the identity of the Witnesses [V45-P-0001 and V45-P-0002] is materially in dispute between the participants, [...] Items 1 to 4 would be of assistance in its determination of the truth, particularly, with regard to Count 29".¹⁰² It has also recently recognized the addition of and submission of the statements of additional Defence witnesses who speak about

¹⁰² See the Decision of 18 March 2024, *supra* note 13, para. 6.

matters concerning V45-P-0001's identity and testimony.¹⁰³ The CLR1 submits that the Chamber should follow this earlier approach and grant the submission of the new material for the same purpose.

3) The submission of the Proposed Rebuttal Evidence would not be prejudicial to the rights of the Accused and is necessary to ensure the fairness and integrity of the present proceedings

54. The submission of the Proposed Rebuttal Evidence would not be prejudicial to the Defence. The Evidence is "*limited in nature*" and the "*potential prejudice to the rights of the accused is relatively limited*".¹⁰⁴ The Proposed Rebuttal Evidence pertains to a very discrete issue aiming at ascertaining the identifying information of V45-P-0001 and V45-P-0002. The CLR1 notes that despite the discrete nature of the issue, the Defence was authorised to call thirteen witnesses to testify on V45-P-0001's identifying information, and eight witnesses on V45-P-0002's identifying information. As a matter of procedural fairness, the CLR1 should be authorised to present the Proposed Rebuttal Evidence – since it is solely aimed to rebut the Defence evidence pertaining to his clients' identifying information. Although the Defence has already submitted a large amount of evidence on the issue, it will still be able to seek leave to submit rejoinder evidence at a later stage. Accordingly, the submission of the Proposed Rebuttal Evidence would not be prejudicial to the rights of the Accused and is necessary to ensure the fairness and integrity of the present proceedings.

4. The Proposed Rebuttal Evidence should be introduced pursuant to rule 68(2)(b) of the Rules

55. The CLR1 submits that the Proposed Rebuttal Evidence, if allowed, should be introduced pursuant to rule 68(2)(b) of the Rules in order to ensure the expeditiousness of the proceedings.

¹⁰³ See the "Decision on the Yekatom Defence Requests to Add Six Witnesses and Submission under Rule 68(2)(b) of the Rules" (Trial Chamber V), [No. ICC-01/14-01/18-2598-Conf](#), 18 July 2024.

¹⁰⁴ See the Decision of 18 March 2024, *supra* note 13, paras. 7-8.

56. The decision of whether to introduce prior recorded testimony pursuant to rule 68(2)(b) of the Rules, when the relevant requirements are met, is discretionary in nature. Rule 68(2)(b)(i) provides a non-exhaustive list of factors that the Chamber must bear in mind in the exercise of such discretion. The Chamber has elaborated on those criteria in its previous decisions on the application of rule 68(2)(b) in this case. Significantly, the Chamber has emphasized that the crucial question is whether the previously recorded testimony may, in light of its content and significance to the case, be introduced without the need for ‘testing’ the information through oral examination of the witness at trial.

57. The Proposed Rebuttal Evidence goes to proof of a matter other than the acts and conduct of the Accused. In fact, it is solely aimed to rebut the Defence evidence on the identifying information of V45-P-0001 and V45-P-0002, and not to corroborate or support the other evidence provided by the Witnesses. The Proposed Rebuttal Evidence is of cumulative nature and mutually corroborative. In addition, it is corroborated by other evidence on the record,¹⁰⁵ and is consistent with the Witnesses’ testimony.

58. The discrepancy in V45-P001’s testimony regarding the month of birth – [REDACTED] as stated by the Witness versus [REDACTED] in other documents - is not just insignificant; it does not have the potential to affect the Witness's credibility. A witness is expected to testify based on their best knowledge and recollection, and the Witness has consistently believed since childhood that he was born in [REDACTED]. This minor inconsistency does not undermine the overall credibility of the testimony, as the day and year of birth are corroborated by other evidence on record.

¹⁰⁵ As regards V45-P-0001, see CAR-V45-00000005, CAR-V45-00000006, CAR-V45-00000012, CAR-V45-00000013, CAR-V45-00000014, CAR-V45-00000015, CAR-V45-00000020, CAR-V45-00000021. As regards V45-P-0002, see CAR-V45-P-00000008, CAR-V45-00000009.

59. The same holds true as regards V45-P-0001's testimony that he was born in [REDACTED].¹⁰⁶ To the Witness's knowledge since when he was a child, he was born in [REDACTED]. He said during the testimony: "*I know that I was born in [REDACTED]. This is all I know*".¹⁰⁷

60. Regarding the discrepancies between V45-P-0001's testimony, in which he stated that he attended school in [REDACTED], and the newly submitted information indicating that he attended [REDACTED], the Defence only inquired about the witness's primary school education, specifically asking where it took place. The witness stated that he [REDACTED].¹⁰⁸ No further questions were posed to the Witness regarding whether he attended any other elementary or primary schools in other periods of time.

61. As regards V45-P-0002, in relation to the Witness's month of birth, the Witness himself stated that he was born on [REDACTED].¹⁰⁹ This is the same date of birth as provided in Items [REDACTED]. Regarding the date of birth of [REDACTED] mentioned in [REDACTED], the CLR1 submits that there is only a slight discrepancy in this date of birth and what the Witness himself provided, along with the official documents, as it is only [REDACTED] which is different to [REDACTED], mentioned in all other sources. This slight discrepancy is negligible, given that all the other evidence cumulatively confirms the name of V45-P-0002 as [REDACTED] and his date of birth as [REDACTED].

62. As argued *supra*, the Proposed Rebuttal Evidence has sufficient indicia of reliability. Given its very limited scope, the interests of justice will best be served by its introduction pursuant to rule 68(2)(b) of the Rules.

¹⁰⁶ See the transcript of the hearing held on 21 September 2023, [No. ICC-01/14-01/18-T-245-CONF-ENG CT](#), page 6, lines 1-3.

¹⁰⁷ See the transcript of the hearing held on 22 September 2023, [No. ICC-01/14-01/18-T-246-CONF-ENG CT](#), page 9, line 22.

¹⁰⁸ *Idem*, page 15, lines 15-23.

¹⁰⁹ See the transcript of the hearing held on 26 September 2023, [No. ICC-01/14-01/18-T-247-CONF-ENG CT](#), page 6, lines 20-22.

V. RELIEF SOUGHT

63. For the foregoing reasons, the CLR1 respectfully requests that the Chamber:
- **GRANT** leave to present evidence in rebuttal regarding the identifying information of Witnesses V45-P-0001 and V45-P-0002, and should leave be granted,
 - **RECOGNISE** as formally submitted pursuant to rule 68(2)(b) of the Rules the prior recorded testimony of the proposed Witnesses, associated and other related material as referred to in the present Request, namely:
CAR-V45-00000016, CAR-V45-00000017, CAR-V45-00000018, CAR-V45-00000022, CAR-V45-00000023, CAR-V45-00000024, CAR-V45-00000025, CAR-V45-00000026, CAR-V45-00000027, CAR-V45-00000028, CAR-V45-00000029, CAR-V45-00000030, CAR-V45-00000031, CAR-V45-00000032, CAR-V45-00000033, CAR-V45-00000034, CAR-V45-00000035, CAR-V45-00000036, CAR-V45-00000037, CAR-V45-00000038, CAR-V45-00000039, CAR-V45-00000040, CAR-V45-00000041, CAR-V45-00000042, CAR-V45-00000043, CAR-V45-00000044, CAR-V45-00000045, CAR-V45-00000046, CAR-V45-00000047, and CAR-V45-00000048.



Dmytro Suprun
Common Legal Representative of the Former Child Soldiers

Dated this 25th Day of September 2024
At The Hague, The Netherlands