

**Cour
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**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**
Date: **26 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public Redacted Version of 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)”, 4 September 2024, ICC-01/14-01/18-2673-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr. Yekatom ('Defence') opposes the 'Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence in rebuttal'.¹
2. The Request should be denied *in limine*. Contrary to the title of the Request, the Legal Representative of the Former Child Soldiers ('CLRV1') are not entitled to submit rebuttal evidence which by its very nature would exceed the role of participating victims. Rather, as set out in the conduct of proceedings,² participating victims may only request to present the 'non-evidentiary 'views and concerns'',³ such as unsworn statements of victims. However, the Chamber has already indicated its reluctance to entertain such views and concerns at this stage.⁴
3. Further, even if the CLRV was permitted to present rebuttal evidence, the Request fails to fulfil the three cumulative criteria for rebuttal evidence, as the CLRV1 does not demonstrate: first, that an issue of significance has arisen *ex improviso*; second, that the evidence on rebuttal satisfies the admissibility criteria, and third, that this step will not undermine the accused's rights, in particular under Article 67 of the Statute.

SUBMISSIONS

A. The Request should be dismissed *in limine*

4. Paragraph 16 of the conduct of proceedings concerns the sequence of the presentation of evidence in accordance with Articles 64(6)(b) and 69(3) of the Statute, whereby the presentation of evidence by the Prosecution is to be followed by any presentation by the CLRV where leave has been granted; and then by any presentation of evidence by the Defence. This order of presentation is reflective of an adversarial order of evidence and is consistent with the fact that the Prosecution bears the burden of proof.⁵
5. Of note, paragraph 16 of the conduct of proceedings further refers to the need to seek the Chamber's leave 'in order to present "rebuttal"/ "rejoinder" evidence or non-evidentiary "views and concerns" of participating victims'. Whilst there is no express distinction as to which party or participant may exercise which right, it is clear from the plain language of

¹ ICC-01/14-01/18-2654 ('Request').

² ICC-01/14-01/18-631.

³ ICC-01/14-01/18-631, para. 16.

⁴ Email from Trial Chamber V to Parties and Participants dated 7 February 2024 at 15:11.

⁵ Article 66(2).

the direction that the participating victims are only entitled to seek leave to submit their non-evidentiary views and concerns. This position further accords with the Trial Chamber's previous position whereby, in response to a request from the CRLV concerning the applicable deadline related to paragraph 16 of the conduct of proceedings, it held that it was 'provisionally not inclined to hear victims present unsworn, non-evidentiary views and concerns before rendering its Judgment (emphasis added)'.⁶

6. Further, whilst noting that no other participating victims in proceedings before the Court have been afforded the right to present rebuttal, the Defence notes that the relevant criteria for the admission of rebuttal evidence has been developed and strictly applied to rebuttal evidence led by the Prosecution. In particular, as more recently affirmed by the Appeals Chamber in *Ongwen*, the Prosecution cannot call rebuttal evidence 'merely because its case has been contradicted by other evidence or in order to reinforce other evidence that has already been called' given that 'the Prosecution is under a duty to adduce all the evidence necessary to prove the guilt of the accused and thereafter it should close its case'.⁷ Rather, the Appeals Chamber has emphasized that such evidence must arise "directly out of defence evidence"⁸ and it has affirmed the Trial Chamber's reasoning that rebuttal evidence is permitted only to address "points and facts not previously addressed by the Prosecutor."⁹ In other words, the right to rebuttal evidence is intrinsically linked to the Prosecution's duty to discharge the burden of proof.
7. No such right exists with the participating victims, nor does it exist with the Defence either. It is for this reason that whilst the Defence cannot seek leave to submit rebuttal evidence, it may seek leave to submit rejoinder evidence. Put simply, paragraph 16 of the Conduct of proceedings provides for the Prosecution's right to seek leave to submit rebuttal evidence, the Defence's right to seek leave to submit rejoinder evidence, and the participating victim's right to seek leave to submit non-evidentiary views and concerns. Any alternative position would exceed the scope of the role of participating victims as set out in Article 68(3) and

⁶ Email from TCV to all parties and participants dated 7 February 2024 at 15:10. The Defence recalls that at the same time the Chamber was seized of a request by the CLRV1 in order to file evidentiary material concerning the identities of V45-P0001 and V45-P-0002 via a bar table motion which was subsequently permitted see, ICC-01/14-01/18-2222-Conf, ICC-01/14-01/18-2601-Conf.

⁷ *Prosecutor v. Ongwen*, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgment", 15 December 2022, ICC-02/04-01/15-2022-Red, para. 363 citing: *Prosecutor v. Lubanga*, Decision on the Prosecution's Application to Admit Rebuttal Evidence from Witness DRC-OTP-WWWW-0005, ICC-01/04-01/06-2727-Red, paras 42-43.

⁸ *Ibid.*

⁹ *Ibid.*, para. 365.

Rule 91, and, given the very purpose of rebuttal evidence, place the CRLV in the (unpermitted) role of secondary prosecution.¹⁰

8. This is not a theoretical argument to contend with. The current Request includes several prior recorded statements from individuals who are not even participating victims. Allowing participating victims to call witnesses who are not part of the victim group would fundamentally alter their role as defined in the Statute, creating an undue burden on the Defence by effectively forcing it to contend with two prosecutors.
9. As is clear from its title and substance, the present Request evidently concerns rebuttal evidence beyond that which is permitted under the statutory framework of this Court and should therefore be dismissed *in limine*.

B. The Request fails to meet the requisite conditions for rebuttal evidence

10. The Appeals Chamber has determined that the presentation of rebuttal evidence is exceptional,¹¹ which must meet the following three factors: 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.¹²
11. The Request falls woefully short of these three conditions and is by no means exceptional in nature.

a. The Request does not concern an issue of significance which has arisen *ex improviso*

ii) The issue raised in the request is insignificant

12. The issue raised in the Request concern, in the very words of the CRLV1, 'a limited and discrete issue' related to the identities and personal histories of 2 out of 292 participating victims.¹³ Moreover, the Prosecution has stated that it considers that the litigation

¹⁰ ICC-01/14-01/18-631, para. 19. The Trial Chamber has repeatedly warned the CLRV1 of exceeding his role during his examination of witnesses and thereby serving as secondary prosecutors; see e.g. ICC-01/14-01/18-T-028-CONF-ENG ET, 12:8-12; ICC-01/14-01/18-T061-CONF-ENG, 58:21-24.

¹¹ ICC-02/04-01/15-2022-Red, paras. 362-364.

¹² ICC-01/04-01/06-2727-Red, paras. 43-44. See also ICC-01/04-01/07-T-222-Red2-ENG WT, page 77, lines 11 to 25; ICC-01/05-01/08-3029, paras. 24-25; ICC-01/04-02/06-2246, para. 20; ICC-02/04-01/15-2022-Red, paras. 362-364.

¹³ ICC-01/14-01/18-2443; The Request does not claim that, upon consulting all of his clients, they consider this issue to be of substantial importance to their views and concerns.

surrounding the identity of V45-P0002 is a tangential issue,¹⁴ and that ‘it does not intend to rely on the evidence provided by Common Legal Representative of Victims 1 (“CLRV1”) witness CAR-V45-P-0001 in its case against the Accused’.¹⁵ Accordingly, the Request cannot be said to concern a matter of significance given the Prosecution’s indication that it does not form the basis of its case against Mr. Yekatom.

iii) The issue raised was known to the CLRV1 and has not arisen ex improviso

13. The CLRV1’s argument that the ‘ambiguity concerning the identifying information of V45-P-0001 and V45-P-0002 [arose] *ex improvisio* during their testimony’¹⁶ is without merit. First, and as a matter of basic due diligence, it is crucial for Counsel to verify and confirm a client’s identity and background from the outset, rather than after the fact. CLRV1 should have been fully aware of his clients’ identities from the moment they became his clients in [REDACTED]¹⁷ and [REDACTED]¹⁸ respectively, or at the very latest when he sought to call them as witnesses¹⁹ and organised their passports.²⁰

14. CLRV1 was also aware as early as August 2023 that the Defence was challenging the identities of his clients. At that time, the Defence argued: ‘[c]urrently the Defence is unable to accurately confirm the identity of either victim in light of the various contradictory identifying information provided by the CLR1 in its disclosure thus far. This includes for example, diverging information with respect to the parent names and date of births which are a contentious issue in these proceedings (emphasis added).’²¹ CLRV1 had ample opportunity to seek clarification or address any concerns regarding the identities of his clients well before the current stage. Therefore, the claim that the issue has arisen unexpectedly is unfounded, and the Request should be dismissed on these grounds.

¹⁴ ICC-01/14-01/18-2601-Conf, paras 2, 5-6.

¹⁵ ICC-01/14-01/18-2574-Conf, para. 3.

¹⁶ Request para. 52.

¹⁷ CAR-V45-00000004.

¹⁸ CAR-V45-00000007.

¹⁹ ICC-01/14-01/18-1969-Conf-Corr.

²⁰ Email from CLRV1 to Trial Chamber V and Parties and Participants dated 28 September 2023 at 11:36.

²¹ Email from Yekatom Defence to Trial Chamber V and Parties and Participants dated 31 August 2023 at 11:41; See also Email from Yekatom Defence to CLRV1 dated 25 August 2023 at 18:52 in which the Yekatom Defence informs CLRV1 that: ‘Toutefois, la Défense réitère que les documents divulgués par les CLR1 offrent des informations contradictoires à propos de l’identité des parents des témoins, rendant complexe pour la Défense l’identification des témoins a.65991.19 et a.20722.21.’ See also Email from Yekatom Defence to CLRV1 dated 24 August 2023 at 18:17 where the Yekatom Defence underscores to CLRV1 that: ‘Nous notons que certaines informations identifiantes, tels que les noms des parents des témoins, diffèrent sur certains documents (Voir par exemple CAR-V45-00000007 et CAR-V45-00000009).’

15. Second, at the time of CLRV1's examination of his clients, the Defence had already provided him with a binder²² containing all the information he now seeks to rebut in his Request. While the CLRV1 claims that his Request is intended to rebut notably twelve²³ and seven²⁴ Defence witnesses respectively, their prior recorded statements were submitted solely to authenticate several Defence documents²⁵ which had been provided to CLRV1, the Prosecution and the Chamber – both in hardcopy and electronically – prior to the testimony of V45-P-0001 and V45-P-0002. CLRV1 had sufficient time to review the binder, consult with his field counsel, speak to [REDACTED]—who has now been revealed as the [REDACTED]²⁶—and communicate with the [REDACTED] of V45-P-0002, with whom he had ongoing contact.²⁷ These opportunities provided him with sufficient time to address these matters during the examination-in-chief or, most notably through re-examination and well within the presentation of the CLRV1's case.²⁸
16. Additionally, when CLRV1 received his clients' application forms and decided to obtain the *Jugement de reconstitution d'acte de naissance* for his clients and provide them with birth certificates and passports,²⁹ he should have noticed the contradictory information on [REDACTED] which was highlighted by the Defence and was the subject of several *inter partes* correspondences in August 2023.³⁰ Given this contradictory information, CLRV1 should have clarified the matter with his clients at that time or at the very least, well before the close of the Defence case so as to warrant the exceptional step of requiring a rebuttal.
17. Moreover, CLRV1 was aware of the fundamental discrepancies with regard to his clients identities well before filing his Request. While CLRV1 correctly cites jurisprudence stating that 'rebuttal evidence should not be used to perfect one's case and should address an issue

²² Email from Yekatom Defence to Trial Chamber V and Parties and Participants dated 20 September 2023 at 14:45. It is worth noting that the binder for both V45-P-0001 and V45-P-0002 concerned the same material save for a few additional items for V45-P-0002.

²³ Request, footnote 39.

²⁴ Request, footnote 87.

²⁵ ICC-01/14-01/18-2213-Conf-AnxA; See associated exhibits columns which includes several ERN that were included in D29's binder provided prior to the testimony of V45-P-0001 and V45-P-0002.

²⁶ Request, para. 35.

²⁷ Email from CLRV1 to Yekatom Defence dated 29 August 2023 at 10:55 detailing his conversation with V45-P-0001's mother which is available upon request. See also Email from CLRV1 to Trial Chamber V and Parties and Participants dated 31 August 2023 at 15:53 in which he underlines: '[t]he CLR1 wishes to draw the attention of the Chamber to the fact that [REDACTED] is mentioned as a/65991/19's mother on his birth certificate (see CAR-V45-0000009). He posits that the Yekatom Defence should no longer have any doubt about a/65991/19's identity'.

²⁸ The Defence recalls that the CLRV1 had previously sought to argue that the presentation of the CLRV's case remained open during the course of the Defence's case in light of delays to the scheduling of CAR-V44-P-0001's testimony see ICC-01/14-01/18-2222-Conf, para. 16.

²⁹ Email from CLRV1 to Trial Chamber V and Parties and Participants dated 28 September 2024 at 11:36.

³⁰ See for example email from Yekatom Defence to CLRV1 dated 24 August 2023 at 18:17, available upon request.

that could not have been anticipated before (emphasis added),³¹ his Request fails to meet this standard.

18. In the same vein, CLRV1 could have obtained the evidence of the proposed evidence long before filing his Request. The witnesses he seeks to add in rebuttal have been available to him for more than nine months. Indeed, the individuals whose statements CLRV1 now seeks to admit as rebuttal evidence—those claiming to be [REDACTED] of his clients—were accessible to him at that time. CLRV1 purportedly had contact with the [REDACTED] of V45-P-0002 when [REDACTED].³² Additionally, CLRV1 asserts that he was in regular contact with V45-P-0001's [REDACTED]³³, [REDACTED].³⁴
19. Furthermore, CLRV1 is seeking to submit the prior recorded testimony of several alleged family members of his clients as rebuttal evidence. It is worth noting that CLRV1 obtained several documents from these same witnesses back in [REDACTED] 2023, according to his own metadata.³⁵ Therefore, the individuals with whom CLRV1 has had contact for more than nine months are the same individuals he now seeks to call as witnesses under Rule 68(2), namely V45-P-0003, V45-P-0004, and V45-P-0005.³⁶ The issue could have been anticipated and should not have been requested at the eleventh hour. Given that the Trial Chamber had granted him leave to file items from the bar table,³⁷ there is no valid justification for his delay in disclosing and seeking similar leave.
20. Further, contrary to the jurisprudence concerning the admission of evidence,³⁸ CLRV1 appears to be inappropriately attempting to fill gaps in his case by introducing additional evidence in response to evidence presented by the Defence. The Request constitutes an inappropriate attempt to call additional evidence merely because CLRV1's case has been challenged and contradicted by the Defence. In this context, the Request does not pertain to

³¹ Request, para. 30 and fn 35.

³² Email from CLRV1 to Yekatom Defence dated 29 August 2023 at 10:55 detailing his conversation with V45-P-0001's mother which is available upon request.

³³ Request, para. 35.

³⁴ ICC-01/14-01/18-T-246-CONF-ENG, [10:25:57].

³⁵ ICC-01/14-01/18-2222-Conf-Anx1.

³⁶ According to the chain of possession listed in ICC-01/14-01/18-2222-Conf-Anx1, CLRV1 obtained several documents from these individuals *i.e.* from [REDACTED] (V45-P-0003); from [REDACTED] (V45-P-0004) and from [REDACTED] (V45-P-0005).

³⁷ ICC-01/14-01/18-2222-Conf.

³⁸ See e.g. ICC-01/04-01/06-2727-Red, para. 42 citing to ICTY, *Prosecutor v. Delalic and al.*, Appeals Chamber Judgement, 20 February 2001, para. 275 ('the prosecution cannot call additional evidence merely because its case has been met by certain evidence to contradict it').

rebutting "new issues" that could not have been anticipated but rather seeks to add to the existing evidence on relevant matters, effectively attempting to perfect his case.

b. The rebuttal evidence does not satisfy the admissibility criteria

21. Contrary to the assertions of CLRV1, the rebuttal evidence does not meet the admissibility criteria,³⁹ as required by the standards set for rebuttal evidence, nor does it qualify for submission given the lack of probative value to be attached. The material is not relevant, nor does it bear sufficient *indicia* of probative value and reliability. The material collected appears to be nothing more than a desperate attempt from the CRLV1 to accredit false theories fabricated after the testimonies of V45-P-0001 and V45-P-0002 with the aim of saving its credibility. Despite the contradiction with the sworn testimonies of V45-P-0001 and V45-P-0002, the CLRV1 continues to collect and request for the submission of fabricated material.
22. The Defence expresses concern over the level of detail in the supporting material for the Request, which appears, from the Defence's perspective, to be the result of a deliberate effort to modify the narrative of CLRV1's clients following the Defence's examination and submission of documents which exposed the fabrication of their evidence. It has been done so even in contradiction with the oral testimony of its own clients.

i) Documents tendered concerning V45-P-0001

23. The CRLV1 requests the presentation as rebuttal evidence on V45-P-0001 of (i) the Statement of [REDACTED] (P-0003) ('Item 1');⁴⁰ (ii) the identity card of P-0003 ('Item 2');⁴¹ (iii) the Statement of [REDACTED] (P-0004) ('Item 3');⁴² (iv) an identity photograph of [REDACTED] (P-0004) ('Item 4');⁴³ (v) Statement of [REDACTED] (P-0006) ('Item 5');⁴⁴ (vi) an identity photograph of [REDACTED] (P-0006) ('Item 6');⁴⁵ (vii) a photograph of [REDACTED] (P-0004) and [REDACTED] (P-0006) ('Item 7');⁴⁶ (viii) two [REDACTED] ('Items 8 and 9');⁴⁷ (ix) birth certificate of [REDACTED] (P-0006) ('Item

³⁹ Request, para. 31 and paras 50-53.

⁴⁰ CAR-V45-00000023.

⁴¹ CAR-V45-00000024.

⁴² CAR-V45-00000025.

⁴³ CAR-V45-00000026.

⁴⁴ CAR-V45-00000028.

⁴⁵ CAR-V45-00000029.

⁴⁶ CAR-V45-00000030.

⁴⁷ CAR-V45-00000031 and CAR-V45-00000032.

10’);⁴⁸ (x) Statement of [REDACTED] (P-0007) (‘Item 11’);⁴⁹ (xi) identity card of [REDACTED] (P-0007) (‘Item 12’);⁵⁰ (xii) an identity photograph of [REDACTED] (P-0007) (‘Item 13’);⁵¹ (xiii) certificate from the [REDACTED] (‘Item 14’);⁵² (xiv) photograph of [REDACTED] (P-0004’s [REDACTED]), his birth certificate and a duplicate of his birth certificate (‘Items 15, 16 and 17’);⁵³ (xv) school certificate delivered by the [REDACTED] attesting the enrolment of [REDACTED] (‘Item 18’).⁵⁴

24. *First*, the Defence observes that the documents collected and disclosed by the CLRV1 are in contradiction with the evidence provided by V45-P-0001 during his testimony. In particular, the Defence notes that CLRV1’s current theory, [REDACTED],⁵⁵ does not match V45-P-0001’s own sworn evidence.

25. It is recalled that V45-P-0001 recognized [REDACTED]. Even though the Defence suggested to the witness that [REDACTED] (P-2638) [REDACTED], therefore giving him ample opportunity to explain,⁵⁶ at no point did V45-P-0001 mention that [REDACTED].

26. Similarly, when the Defence presented to V45-P-0001 his victim application form [REDACTED] is referenced as his mother, the witness explained that it was a mistake and never mentioned [REDACTED] because he would have been the target of threats due to his enrolment in the anti-balaka as alleged by the CLRV1.⁵⁷

27. Moreover, and contrary to the allegations raised in the rebuttal material according to which V45-P-0001 would have lived in the village of [REDACTED], then moved [REDACTED] and then to [REDACTED] before being transferred to [REDACTED] where he would have been [REDACTED],⁵⁸ V45-P-0001 never mentioned any of these locations during his testimony. To the contrary, V45-P-0001 stated he is originated from [REDACTED],⁵⁹ that he went to [REDACTED]⁶⁰ and reached [REDACTED] after he left the Anti balaka group

⁴⁸ CAR-V45-00000034.

⁴⁹ CAR-V45-00000035.

⁵⁰ CAR-V45-00000036.

⁵¹ CAR-V45-00000037.

⁵² CAR-V45-00000038.

⁵³ CAR-V45-00000042, CAR-V45-00000044 and CAR-V45-00000048.

⁵⁴ CAR-V45-00000022.

⁵⁵ **P-6025** : ICC-01/14-01/18-T-264-CONF-FRA, from [09:59:41] to [10:02:42]; CAR-V45-00000023, para. 28; CAR-V45-00000025, para. 23;

⁵⁶ ICC-01/14-01/18-T-245-CONF-FRA, from [14:17:45] to [14:18:59].

⁵⁷ ICC-01/14-01/18-T-245-CONF-FRA, at [10:46:34].

⁵⁸ **V45-P-0003** : CAR-V45-00000023, paras 20 to 22 and 26 to 28 ; **V45-P-0004** : CAR-V45-00000025, paras 21 to 23 ; **V45-P-0006** : CAR-V45-00000028, para.19 ; **V45-P-0007** : CAR-V45-00000035, para. 15.

⁵⁹ ICC-01/14-01/18-T-245-CONF-FRA, at [09:43:15] and [09:44:34]; ICC-01/14-01/18-T-246-CONF-FRA, from [09 :55 :59] to [09:57:01].

⁶⁰ ICC-01/14-01/18-T-245-CONF-FRA, at [09:44:34].

because he could not stay in [REDACTED].⁶¹ V45-P-0001 testified that he only came back to [REDACTED] when he heard about [REDACTED].⁶²

28. Furthermore, P-0004 declares that she has [REDACTED].⁶³ This contradicts the testimony of [REDACTED], V45-P-0001, whereby he explained that [REDACTED].⁶⁴

29. In the same vein, [REDACTED] (P-0003)'s statement and the school certificate delivered by the [REDACTED] attesting the enrolment of [REDACTED] for the year of [REDACTED] contradicts the live evidence provided by V45-P-0001. Indeed, V45-P-0001 stated that he was not currently enrolled, [REDACTED]⁶⁵ and that he '[REDACTED]'.⁶⁶

30. Similarly, P-0003's allegations that he [REDACTED] V45-P-0001 at the [REDACTED] who attended this school until [REDACTED] are also in contradiction with V45-P-0001's evidence as he testified that he did primary studies [REDACTED].⁶⁷

31. *Second*, the rebuttal material tendered for V45-P-0001 contains *prima facie* clear indicia of unreliability.

32. The Defence notes that P-0004, presented as [REDACTED], does not have any identification document, apart from the birth certificate already disclosed.

33. P-0004 declares that [REDACTED]. The Defence first notes that, conveniently, this is the name provided by D29-P-6043 for V45-P-0001's [REDACTED] in her statement.⁶⁸ Also, while the [REDACTED]'s report mentions that the [REDACTED], [REDACTED] (P-0007) knows a '[REDACTED]' but has to verify the identity in the census record, the Defence observes that extract of the relevant census record is not annexed to the report nor disclosed therefore depriving the allegation from any foundation.⁶⁹ Moreover, the statement provided by [REDACTED] to the [REDACTED] does not attest that '[REDACTED]' is [REDACTED] but merely states that he knows an individual named [REDACTED].⁷⁰

⁶¹ ICC-01/14-01/18-T-245-CONF-FRA, at [11:51:36].

⁶² ICC-01/14-01/18-T-245-CONF-FRA, at [11:55:44].

⁶³ CAR-V45-00000025, para. 18.

⁶⁴ ICC-01/14-01/18-T-245-CONF-FRA, from [09:48:24] to [09:49:20].

⁶⁵ ICC-01/14-01/18-T-246-CONF-FRA, from [10:09:17] to [10:11:07].

⁶⁶ ICC-01/14-01/18-T-246-CONF-FRA at [14:22:15].

⁶⁷ ICC-01/14-01/18-T-246-CONF-FRA, from [10:09:17] to [10:11:07].

⁶⁸ CAR-D29-0009-0698, para. 47.

⁶⁹ CAR-V45-00000031 at 003 ; See also CAR-V45-00000045 at 004.

⁷⁰ CAR-V45-00000031 at 003.

34. While the [REDACTED], [REDACTED] (P-0007), states to know [REDACTED] (P-0004), he asserts that she has [REDACTED], [REDACTED] and [REDACTED].⁷¹ This contradicts P-0004's statement in which she states that she has [REDACTED] including [REDACTED]; [REDACTED] and [REDACTED], which is purportedly supported by the latter's disclosed photograph.⁷²
35. The Defence also observes that the names of [REDACTED]'s parents appearing on her birth certificates are [REDACTED] and [REDACTED].⁷³ Coincidentally, these are also the names of the parents of [REDACTED].⁷⁴ Not surprisingly, [REDACTED], seems to be another family member of [REDACTED] (P-2638) for who he is also trying to secure a benefit from the Court following the successful relocation of [REDACTED] (P-2620) and [REDACTED], and the attempt of [REDACTED] (V45-P-0001).
36. Finally, the Defence submits that Items 2, 4, 6, 7, 10, 12, 13, 15, 16 and 17 are irrelevant to the case and the identity of V45-P-0001.

ii) Documents tendered concerning V45-P-0002

37. Concerning V45-P-0002, the CRLV1 requests the presentation as rebuttal evidence of (i) the vaccination card of V45-P-0002's [REDACTED] (P-0005) ('Item 1');⁷⁵ (ii) the '*carnet de vaccination [REDACTED]*' of V45-P-0002 ('Item 2');⁷⁶ (iii) a [REDACTED] letter from the Church [REDACTED] for V45-P-0002 ('Item 3');⁷⁷ (iv) [REDACTED] (P-0005) (P-0002's [REDACTED]) ('Item 4');⁷⁸ (v) [REDACTED] (P-0002's [REDACTED]) (P-0008) ('Item 5');⁷⁹ (vi) Electoral card of [REDACTED] ('Item 6');⁸⁰ (vii) Photograph of [REDACTED] ('Item 7');⁸¹ and (viii) a [REDACTED] ('Item 8').⁸²
38. Concerning Item 1, the Chamber already determined that it was of no relevance for the assessment of V45-P-0002's identity and rejected leave to submit the item from the Bar Table.⁸³ The item remains irrelevant. Comments made by P-0005 in her statement does not

⁷¹ CAR-V45-00000035, para. 17.

⁷² CAR-V45-00000025, para. 18; CAR-V45-00000042; CAR-V45-00000044; CAR-V45-00000048.

⁷³ CAR-45-00000014.

⁷⁴ CAR-D29-0009-0229 at 0232.

⁷⁵ CAR-V45-00000016.

⁷⁶ CAR-V45-00000017.

⁷⁷ CAR-V45-00000018.

⁷⁸ CAR-V45-00000027.

⁷⁹ CAR-V45-00000039.

⁸⁰ CAR-V45-00000040.

⁸¹ CAR-V45-00000041.

⁸² CAR-V45-00000044.

⁸³ ICC-01/14-01/18-2412, para. 7.

add any pertinence to the document but merely confirm the accuracy of the information provided which the Defence does not contest.⁸⁴ In any event, the Defence never contested that [REDACTED] is V45-P-0001's mother.

39. While the CLRV1 requests to present Items 2 and 3 referred in P-0005's statement, at no point in the request does it argue the relevance of the items. [REDACTED] (P-0005) explains that she herself went to collect the documents at [REDACTED] and [REDACTED] following the request of the CLRV1. This inevitably casts doubt on the reliability of the document as it is not clear why the [REDACTED] would deliver a [REDACTED] to P-0005, who was not the patient, [REDACTED],⁸⁵ one year and a half after [REDACTED]. Similarly, the [REDACTED] letter is dated [REDACTED] while the chain of custody indicates that the document was provided [REDACTED] on [REDACTED]. This inconsistency evidently affects the reliability of the document as the letter should include the date of issuance i.e. [REDACTED].
40. Items 4 and 5 also contradict the sworn evidence provided by V45-P-0002 during his testimony.
41. First, P-0005's allegation that V45-P-0002 was enrolled at the [REDACTED] school [REDACTED] under the name of '[REDACTED]' is inconsistent with V45-P-0002's testimony. While V45-P-0002 would have been called by the name of '[REDACTED]' every day at school for five years, he stated that this was not his name appearing on the school registry and the school certificate of [REDACTED]. More generally, this allegation is not convincing as regards to the constant denial by V45-P-0002 regarding his knowledge of the name '[REDACTED]'.
42. P-0005's claim was clearly brought to circumvent evidence obtained by the Defence from the [REDACTED] school records.⁸⁶
43. The Defence also notes that P-0005 does not provide any comments on the collection process of CAR-V45-00000019 in her statement while she is the one who went to collect it [REDACTED].
44. The [REDACTED]'s report, dated [REDACTED], mentions that P-0005 recognizes the [REDACTED] *bulletins de naissance* and that [REDACTED].⁸⁷ This contradicts V45-P-

⁸⁴ CAR-V45-00000027, para.9.

⁸⁵ According to the metadata appearing on Nuix.

⁸⁶ CAR-D29-0014-0169 and CAR-D29-0013-0266.

⁸⁷ CAR-V45-00000043 at 001.

0002's evidence who says that his children are named [REDACTED].⁸⁸ Conveniently however, a few days after on [REDACTED], P-0008 specifies in her statement that [REDACTED].⁸⁹

45. V45-P-0002 also never mentioned that he went to live [REDACTED].

46. Concerning [REDACTED] V45-P-0002 mentioned in P-0005 and P-0008's statements, the Defence recalls the observations by Victims and Witnesses Unit concerning the implementation of in court protective measures assessing that V45-P-0002 did not report any threat or security incident in relation to his cooperation with the Court and did not communicate about any threat actors.⁹⁰

47. Finally, Items 6 and 7 are irrelevant to the case and the identity of V45-P-0002.

iii) Violation of the Protocol

48. The Defence notes with great concern that the CRLV1 violated the *Protocol on the handling of confidential information and contact between a party and participants and witnesses of the opposing party or of a participant*.⁹¹

49. *First*, the Defence notes that the two *procès-verbaux* disclosed mention the name of CLRV1 protected witness, [REDACTED], and his participation as a victim in the trial before the ICC.⁹²

50. *Second*, the Defence disclosed the statements of [REDACTED] (P-6049) and of [REDACTED] (D29-P-6046) respectively on 18 June 2024 and 21 June 2024.⁹³ From this date, the CRLV1 was on notice that both of those individuals were Defence witnesses. It nevertheless entered in contact with them without notifying beforehand the Defence of his intention to do so.

51. It is clear from the [REDACTED] and V45-P-0009's statement that the CLRV1 directly contacted [REDACTED] Defence witness D29-P-6046, [REDACTED] after the disclosure

⁸⁸ ICC-01/14-01/18-T-247-CONF-FRA at [14:04:29].

⁸⁹ CAR-V45-00000039, para. 31.

⁹⁰ ICC-01/14-01/18-2104-Conf, paras 11 to 16; see also mail from the VWS to TC5 and parties and participants dated 22 September 2023 at 12:00 disseminated in paper version.

⁹¹ ICC-01/14-01/18-677-AnxV.

⁹² CAR-V45-00000031; CARV45-00000032 : [REDACTED].

⁹³ CAR-D29-0009-0722 disclosed in Trial D29 Package 101 21 June 2024 ; CAR-D29-0009-0759 disclosed in trial D29 Package 100 18 June 2024.

of her statement to the parties and participants.⁹⁴ It was following the instructions of [REDACTED] that the [REDACTED], [REDACTED], went to [REDACTED] in order to interview [REDACTED], D29-P-6046.⁹⁵ Therefore the CLRV1 consciously neglected the Protocol and never contacted beforehand the Defence to seek the consent of the witness as prescribed by the Protocol.

52. Similarly, the CLRV1 indirectly contacted Defence witness, D29-P-6049, through [REDACTED].⁹⁶ Again, neither did the CLRV1 seek D29-P-6049's consent by contacting the Defence nor did it inform the Defence of any inadvertent contact following the reception of the document by its witness.

53. On this matter, the Defence recalls the recent notification of potential interference with Defence investigations and preparation concerning the contact with Defence witness D29-P-6050 and informs that a previous violation of the Protocol was reported to the CLRV1 in relation with witness CAR-D29-P-6022.⁹⁷

c. The Request is prejudicial to the rights of Mr. Yekatom

54. The Request fundamentally undermines Mr. Yekatom's rights under Article 67 of the Rome Statute, specifically his rights: (i) to have adequate time and facilities for the preparation of his defence; (ii) to be tried without undue delay; and (iii) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

i) Mr Yekatom's right to have adequate time and facilities for the preparation of his defence.

55. The Request violates Mr. Yekatom's fundamental right to have adequate time and facilities for the preparation of his defence. As stated above, CLRV1 had access to the witnesses mentioned in the Request and had the opportunity to collect their statements earlier but chose to delay doing so. This delay in gathering and disclosing evidence has directly impeded Mr. Yekatom's ability to prepare his defence effectively by meaningfully investigating, thereby undermining his rights.

⁹⁴ CAR-V45-00000045; CAR-V45-00000043.

⁹⁵ CAR-V45-00000045, para. 27; CAR-V45-00000043 : [REDACTED].

⁹⁶ CAR-V45-00000038.

⁹⁷ ICC-01/14-01/18-2620-Conf ; See email from Yekatom Defence to CLRV1 18 October 2023 at 22:09 and email from CLRV1 to Yekatom Defence on 19 October 2023 at 18 :03 (available upon request by the Chamber).

56. Specifically, V45-P-0003, V45-P-0004 were met as early as [REDACTED] 2023.⁹⁸ V45-P-0005 was in contact with CLRV1 by [REDACTED] 2023.⁹⁹ According to CAR-V45-P-00000031, V45-P-0004 resides [REDACTED], V45-P-0006. Therefore, there appears to be no reason CLRV1 could not have met and interviewed V45-P-0006 in [REDACTED] 2023, when he acquired CAR-V45-00000014. Similarly, given that CLRV1 was in contact with V45-P-0005 in [REDACTED] 2023, he could have also met [REDACTED], V45-P-0008, at that time. Both V45-P-0005 and V45-P-0008 reside [REDACTED], where V45-P-0002 also lived [REDACTED].¹⁰⁰ These facts indicate that CLRV1 had ample opportunity to verify the information and interview the relevant individuals well before the current stage of the proceedings, thereby negating any claims of unanticipated difficulties in gathering evidence.

57. Setting aside the fact that CLRV1 could have met the individuals referenced in the Request as early as 2023, the metadata of the material reveals that CLRV1 was in possession of this evidence as early as April, June, and July 2024.¹⁰¹ Contrary to the Chamber's previous decision granting the CLRV1 leave to submit evidence from the bar table, the newly disclosed material is not limited in scope.¹⁰² Unlike the prior situation where the Yekatom Defence's investigations into the items were already "underway" following their disclosure in [REDACTED] 2024,¹⁰³ the current material has only just been disclosed. This creates a significantly different set of circumstances than those considered in said earlier decision. While CLRV1 had the opportunity to act diligently and submit material from the bar table in a timely manner, in this instance, he chose to delay until now, resulting in a disclosure that is neither timely nor limited in nature. Unlike the previous bar table motion, where the items submitted were characterized as limited and unlikely to cause substantial prejudice¹⁰⁴, the current material is extensive and has the potential to significantly impact the Defence's strategy.

58. Moreover, in the earlier decision, the Yekatom Defence was provided the opportunity to present further submissions and introduce additional evidence.¹⁰⁵ In contrast, the current

⁹⁸ ICC-01/14-01/18-2222-Conf-Anx1.

⁹⁹ Email from CLRV1 to Yekatom Defence dated 29 August 2023 at 11:34 and email from Yekatom Defence to CLRV1 dated 30 August 2023 at 14:13. Available upon request.

¹⁰⁰ CAR-V45-0000027, para. 11, CAR-V45-00000039, par. 12 and 22.

¹⁰¹ Email from CLRV1 to Trial Chamber V, Parties and Participants dated 26 August 2024 at 15:33 with attachment 'CLRV1 Disclosure of evidence - Courtesy copy 26 August 2024'.

¹⁰² ICC-01/14-01/18-2412, Conf, para. 8.

¹⁰³ ICC-01/14-01/18-2520-Conf, para. 13.

¹⁰⁴ ICC-01/14-01/18-2412, Conf, para. 8.

¹⁰⁵ ICC-01/14-01/18-2520-Conf, para. 13.

proceedings are approaching their conclusion, effectively depriving Mr. Yekatom of the opportunity to submit further responses or evidence to adequately address this newly disclosed material. As a result, the potential prejudice to Mr. Yekatom's rights is substantial and cannot be deemed "relatively limited" as it was in the Chamber's previous ruling. The lack of opportunity to fully investigate and respond to the new material significantly undermines the fairness of the proceedings and Mr. Yekatom's right to a fair trial.

59. Despite this, the Trial Chamber's directive was clear that any request for leave to present rebuttal evidence must be brought '**as soon as practicable**, and at the latest, five days after the last Defence witness has testified (emphasis added).'¹⁰⁶ The CLRV1 strategically chose not to disclose this material or request their submission through a bar table as they did with similar evidence,¹⁰⁷ thereby depriving Mr. Yekatom of his right to sufficient time to investigate, scrutinize, and challenge this evidence. The Request fails to explain why it was **impracticable** for the CLRV1, whose role differs fundamentally from that of the Prosecution,¹⁰⁸ to disclose the material at an earlier stage, thereby impairing Mr. Yekatom's ability to effectively and meaningfully verify the veracity of the material.
60. Furthermore, the facts contained in the prior recorded testimony and associated materials that the CLRV1 now seeks to present before the Chamber through the Request were already known to the CLRV1 and in his possession as early as 23 January 2024. For instance, while questioning D29-P-6036, the CLRV1 [REDACTED].¹⁰⁹ In the interest of fairness, the CLRV1 should have collected the prior recorded testimony and disclosed them at that time to allow Mr. Yekatom the opportunity to fully exercise his right to a fair trial.
61. The same applied for the prior recorded testimony and material related to V45-P-0001 contained in the Request. As early as January 2024, CLRV1 questioned Defence witness D29-P-6025 about the new theory presented in the prior recorded testimony of the witnesses included in the Request, specifically that V45-P-0001 was allegedly part of the [REDACTED], albeit for different reasons—namely, because [REDACTED].¹¹⁰
62. Therefore, the strategic decision to delay the submission until after the Defence has called its last witness, particularly by withholding 29 prior recorded statements and associated material, appears to be a calculated move designed to prevent the Defence from conducting

¹⁰⁶ Email from Trial Chamber V to Parties and Participants dated 7 February 2024 at 15:11.

¹⁰⁷ ICC-01/14-01/18-2222-Conf.

¹⁰⁸ ICC-01/14-01/18-631, para. 19.

¹⁰⁹ ICC-01/14-01/18-T-262-CONF-ENG : [REDACTED].

¹¹⁰ ICC-01/14-01/18-T-264-CONF-ENG ET : [REDACTED].

a thorough investigation. This strategy fundamentally undermines the accused's right to adequately prepare his defence, and the Request should be denied on this basis.

ii) Mr Yekatom's right to be tried without undue delay

63. The Request is being made at a late stage. Allowing this application would cause significant delays due to the required investigations, thereby seriously violating Mr. Yekatom's right to a speedy trial. While CLRV1 argues that submitting the proposed rebuttal evidence would not prejudice the Mr Yekatom's rights because the Defence can later seek leave to present rejoinder evidence',¹¹¹ it fails to consider the accused's right to be tried without undue delay.
64. The Prosecution indicated that it does not intend to respond to the Request.¹¹² Therefore, the onus would again fall on the Defence to investigate and produce evidence demonstrating the fabrication of evidence that CLRV1 intends to submit and rely on. This would require a significant allocation of time and resources on the eve of the trial's conclusion.
65. The Defence is currently operating at full capacity to meet all of the Chamber's deadlines, including the preparation of: (1) the final trial brief; (2) investigations for collecting prior recorded testimony under Rule 68(2) of the Rules; (3) requests for the submission of additional evidence relevant to potential sentencing; (4) closing statements; (5) materials for use in closing statements; (6) written submissions relevant to potential sentencing; and (7) oral submissions relevant to potential sentencing. Should the Chamber decide to grant the Request, the Defence will risk missing deadlines in order to focus on preparing a request for rejoinder evidence. This would involve scrutinizing the material, consulting with Mr. Yekatom, coordinating with the field team, organizing vehicles for missions, arranging travel from the Host State to Bangui, interviewing several rejoinder witnesses, taking their statement, requesting interpreters from the Court, and preparing the rejoinder Request. When the CLRV1 filed its leave to to submit into evidence material from the "bar table" which contained several items,¹¹³ the Defence outlined the specific steps required for investigating these items.¹¹⁴ The current Request will require similar steps but will take significantly more time due to the number of items, the volume of prior recorded testimony, and the numerous names mentioned in these testimonies..

¹¹¹ Request, para. 54.

¹¹² Email from Prosecution to Trial Chamber V on 2 September 2024 at 17h53.

¹¹³ ICC-01/14-01/18-2222-Conf-Anx1.

¹¹⁴ ICC-01/14-01/18-2252-Conf, para. 63.

iii) Mr Yekatom's right to examine the witnesses against him

66. Furthermore, the Defence opposes the portion of the request that invokes Rule 68(2). Should the Chamber consider grant this request, it is imperative that the Defence be allowed to challenge CLRV1's evidence. This is essential to uphold Mr. Yekatom's right to examine the witnesses against him under Article 67(1)(e) of the Statute. Allowing him to exercise this right would likely require additional hearing dates and further investigations, depending on the witnesses' responses during examination.
67. There is a considerable risk that these proceedings could extend beyond the expiry of the Judges' mandate,¹¹⁵ a situation that would undermine the interests of justice and efficiency—the very scenario the Chamber has sought to avoid in these proceedings.¹¹⁶

C. The rebuttal evidence cannot be introduced under rule 68(2)(b)

68. Even if the Chamber were minded to grant the Request, the material does not meet the criteria under rule 68(2)(b) which is still applicable for rebuttal and rejoinder evidence.
69. First, the statements do go towards the acts of conduct of Mr. Yekatom. V45-P-0003,¹¹⁷ V45-P-0005,¹¹⁸ and V45-P0008¹¹⁹ all expressly refer to Mr. Yekatom by name and/or speak to the alleged recruitment of child soldiers by Mr. Yekatom for his group.
70. Second, and without exception, the rebuttal evidence goes towards issues which are materially in dispute and concern the serious allegations with regard the fabrication of evidence including, *inter alia*, the false identification of V45-P-0001 and V45-P-0002,¹²⁰ as well as highly prejudicial allegations which are being raised for the first time.¹²¹ In this regard, the Defence maintains that it seeks to cross-examine the proposed witnesses and requests that should the Chamber be minded to hear the evidence, it does so under rule 68(3).

¹¹⁵ See ICC-01/14-01/18-2600, fn. 3 and ICC-02/05-01/12-44, fn. 12.

¹¹⁶ Chamber's Sentencing Procedure Decision, para. 2.

¹¹⁷ CAR-V45-00000023, paras 25-26.

¹¹⁸ CAR-V45-00000027, paras. 35, 36, 38, 39.

¹¹⁹ CAR-V45-00000039, paras. 22-24.

¹²⁰ See *inter alia* ICC-01/14-01/18-2222-Conf, ICC-01/14-01/18-2240-Conf, ICC-01/14-01/18-2428-Conf, ICC-01/14-01/18-2460-Conf, ICC-01/14-01/18-2468-Conf, ICC-01/14-01/18-2519, ICC-01/14-01/18-2611, ICC-01/14-01/18-2213-Conf, ICC-01/14-01/18-2252-Conf, ICC-01/14-01/18-2321-Conf, ICC-01/14-01/18-2449-Conf, ICC-01/14-01/18-2535-Conf, ICC-01/14-01/18-2541-Conf, ICC-01/14-01/18-2555-Conf, ICC-01/14-01/18-2581-Conf, ICC-01/14-01/18-2593-Conf.

¹²¹ The Defence notes that the allegation of [REDACTED] for having testified against Mr Yekatom has not previously been brought to the Defence's attention despite the CLRV1's request for an order towards WVU in relation to V45-P-0002 see ICC-01/14-01/18-2305-Conf-Red, see also ICC-01/14-01/18-2376-Conf, para. 18.

71. Third, and as set out above, the statements are neither internally consistent nor corroborated by other material on record including the sworn testimonies of V45-P-0001 and P-0002 and lack sufficient *indicia* of reliability.¹²²

72. Fourth, and relatedly, the Defence notes CLRV1's efforts to circumvent both the contact protocol,¹²³ and seemingly the requirement for accompanying declarations under rule 68(2)(b)(iii). The introduction of an unknown [REDACTED] who is not a Registry staff member and has not been authorised to witness such a declaration falls foul of the formal requirements of rule 68 and should not be permitted.

CONCLUSION

73. The Request is yet another attempt by the CLRV1 to lead material before this Court which it has not itself tested and which, upon even a cursory review, demonstrates a degree of such unreliability so as to raise serious concerns as to the basis of such material and continued efforts to lead fabricated material against Mr. Yekatom. As such the Request should be rejected.

74. Whilst the Defence has borne the brunt of having to investigate the material led by CLRV1, the repeated efforts by CLRV1 to ignore the warning signs raised by the Defence leads to serious questions as to the thoroughness of CLRV1's investigations. Given that the individuals responsible for collecting, investigating, or presenting this evidence all fall under the Registry's responsibility, whether as intermediaries, field counsel, or staff members, the Registry should formally investigate the matter.

CLASSIFICATION

75. This response is filed on a confidential basis as it responds to a filing of the same designation. The Yekatom Defence does not oppose the public reclassification of this filing.

RELIEF

76. For the foregoing reasons, the Defence respectfully requests that Trial Chamber V.

REJECT the Request for the introduction of rebuttal evidence, or in the alternative **ORDER** that the proposed witnesses are heard under rule 68(3).

¹²² See supra paras 21-46; The Defence further notes that the proposed evidence further contradicts the summary of anticipated testimony as provided by CLRV1 in relation to V45-P-0001 and V45-P-0002 see ICC-01/14-01/18-1969-Conf-AnxA-Red-Corr-Red.

¹²³ The Defence recalls that the contact protocol is in place for the protection and security of its witnesses. This safeguard is rendered impossible if the CLRV1 is permitted to direct third parties to meet with Defence witnesses for the purposes of these proceedings and without prior notice to the Defence.

RESPECTFULLY SUBMITTED ON THIS 26th DAY OF SEPTEMBER 2024¹²⁴



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¹²⁴ The Defence is grateful for Legal Intern Ms Lina Hammi's assistance in the drafting of this filing.