

ANNEX 1

Public Redacted

Version

From: Trial Chamber V Communications
Sent: 16 July 2024 11:50
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Submitted Materials for V45-0001 and V45-0002
Attachments: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001; Re: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001; RE: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001; RE: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001; RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001; RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001; Re: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001; Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001; CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0002; Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002; RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002; Re: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0002; RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002; Re: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

Follow Up Flag: Follow up
Flag Status: Flagged

[ICC] RESTRICTED

Dear Counsel,
 dear colleagues from the Registry,

The Chamber takes note of the emails on the submission of evidence following the examination of V45-0001 and V45-0002 by the CLRV1 and the Yekatom Defence, as well as the objections and responses thereto, including by the Prosecution (for V45-0001, see emails from the CLRV1, 22 September 2023, at 17:10; 28 September 2023, at 11:36; and 29 September 2023, at 18:47; emails from the Yekatom Defence, 26 September 2023, at 09:24 and 21:05; and 2 October 2023, at 15:23; and emails from the Prosecution, 28 September 2023, at 14:13; and 29 September 2023, at 11:57 and for V45-0002, see emails from the CLRV1, 28 September 2023, at 12:31; 3 October 2023, at 17:55; and 4 October 2023, at 19:27; emails from the Yekatom Defence, 28 September 2023, at 13:22; 3 October 2023, at 10:44; and 4 October 2023, at 14:46; and email from the Prosecution, 3 October 2023, at 10:33).

At the outset, the Chamber notes that items CAR-D29-0016-0109, CAR-OTP-00001073, CAR-OTP-00001381, CAR-D29-0010-0139, CAR-D29-0016-0125, CAR-D29-0016-0123, CAR-OTP-00000320, CAR-D29-0016-0157, CAR-V45-00000008 and CAR-V45-00000009 have already been recognised as formally submitted. The Chamber therefore need not rule on these items again.

First, the Chamber notes that the CLRV1 opposes the submission of items **CAR-D29-0013-0254, CAR-D29-0013-0256, CAR-D29-0013-0252, CAR-D29-0013-0265, CAR-D29-0014-0152 and CAR-D29-0014-0165** through V45-0001 and **CAR-D29-0010-0162, CAR-D29-0010-0163 and CAR-D29-0014-0169** through V45-0002 on the basis that they are not authentic, reliable, relevant, and/or probative. The Chamber considers that the CLRV1's submissions concern matters

which will be assessed in the context of the deliberations of the judgment. In the absence of any procedural bars, the Chamber recognises these items as formally submitted through V45-0001 and V45-0002, respectively.

Second, the Chamber notes the Prosecution's and CLRV1's objections to the submission of items **CAR-D29-0013-0250** and **CAR-D29-0013-0253**, which consist of handwritten certificates drafted and signed by [REDACTED], respectively. In particular, the Prosecution and the CLRV1 argue that these documents are testimonial in nature. The Chamber notes that it has already recognised as formally submitted annotated copies of these items in its 'Second Decision on the Yekatom Defence Requests for the Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) and Related Requests', ICC-01/14-01/18-2424-Conf (the 'Rule 68(2)(b) Decision') (see *items* CAR-D29-0009-0267 and CAR-D29-0009-0497). Therefore, the Chamber sees no need in this specific instance to also formally recognise **CAR-D29-0013-0250** and **CAR-D29-0013-0253** as formally submitted.

Third, the Chamber notes that the Yekatom Defence seeks the submission of **CAR-V45-00000004** – the victim participation form of [REDACTED] – at pages 4 and 6 only, and **CAR-V45-00000007** – the victim participation form of [REDACTED] – at pages 3 and 5 only. It argues that they can be read and understood on their own. It further requests the withdrawal of its requests for their submission should the Chamber be minded to recognise them in their entirety, as in the Yekatom Defence's view, the items in their entirety are testimonial in nature. The CLRV1 opposes the partial submission of these specific pages, but not the withdrawal request regarding **CAR-V45-00000004**, and the Prosecution considers that the items should be submitted as a whole.

The Chamber is of the view that these specific pages cannot be read and understood on their own. Furthermore, it observes that the Yekatom Defence questioned V45-0001 extensively on **CAR-V45-00000004**, and showed him additional pages to those presently requested for submission (see T-246-CONF-ENG, p. 21, line 13 to p. 32, line 23). The Yekatom Defence also questioned V45-0002 extensively on **CAR-V45-00000007**, and discussed the content of another page of the item (see T-247-CONF-ENG, p. 54, line 5 – p. 64, line 8). The Chamber sees no impediment for the submission of **CAR-V45-00000004** and **CAR-V45-00000007** as a whole, and therefore recognises them as formally submitted in their entirety (see *also* items CAR-OTP-2135-2405 and CAR-OTP-2135-2412 in Decision on Submitted Materials for P-1813, email from the Chamber, 1 June 2023, at 10:28).

Fourth, the Chamber notes the Prosecution's objections to the submission of items **CAR-D29-0014-0159**, **CAR-D29-0014-0160**, **CAR-D29-0014-0162**, **CAR-OTP-2123-0071**, **CAR-OTP-00000737**, **CAR-D29-0010-0009**, **CAR-D29-0016-0135**, **CAR-D29-0016-0136**, **CAR-D29-0016-0145**, **CAR-D29-0001-0546** and **CAR-OTP-00001600** on the basis that the witnesses did not provide 'any meaningful testimony' on them. The CLRV1 also opposes the submission of **CAR-OTP-2123-0071**, **CAR-OTP-00000737**, **CAR-D29-0001-0546**, **CAR-D29-0016-0155**, **CAR-D29-0016-0145**, **CAR-D29-0013-0266** and **CAR-OTP-00001600** on the same grounds.

The Chamber observes that, with the exception of **CAR-D29-0010-0009**, **CAR-D29-0016-0136**, **CAR-D29-0016-0155** and **CAR-OTP-00001600**, these items were not shown to the witnesses, but merely mentioned for the record. It also recalls the Presiding Judge's remarks during the hearing, including his direction that the documents be submitted through a written application (see T-246-CONF-ENG, p. 35, lines 7-15; p. 46, lines 11 to p. 47, line 4; p. 50, lines 3-23; p. 67, lines 5-8) (see *e.g.* Decision on Submitted Materials for P-2018, email from the Chamber, 12 October 2023, at 15:03). The Chamber therefore rejects the submission of **CAR-D29-0014-0159**, **CAR-D29-0014-0160**, **CAR-D29-0014-0162**, **CAR-OTP-2123-0071**, **CAR-OTP-00000737**, **CAR-D29-0016-0135**, **CAR-D29-0016-0145**, **CAR-D29-0001-0546** and **CAR-D29-0013-0266**, without prejudice to any written application. Consequently, the Chamber will not entertain the CLRV1's and Yekatom Defence's additional submissions on authenticity and reliability concerning these items, as well as issues related to Article 69(7) of the Statute concerning **CAR-D29-0016-0135** at this stage.

With regard to **CAR-D29-0016-0136**, the Chamber notes the CLRV1's submissions that the item should be declared inadmissible pursuant to Article 69(7) of the Statute. The Chamber already addressed these submissions in its Rule 68(2)(b) Decision (see ICC-01/14-01/18-2424-Conf, paras 36-40). Recalling its findings therein, the Chamber recognises **CAR-D29-0016-0136** as formally submitted.

With regard to **CAR-D29-0010-0009** and **CAR-D29-0016-0155**, the Chamber considers that the fact that they each consist of a snapshot taken from a Facebook account does not *per se* mean that they 'should more properly be submitted' through a written application, as argued by the CLRV1 (see *also* Decision on Submitted Materials for P-2018, email from the Chamber, 12 October 2023, at 15:03). It also does not mean that such a written application is necessary to fully address their relevance and probative value, as contended by the Prosecution regarding **CAR-D29-0010-0009**. The Chamber notes that the items have been shown to and used with the witnesses (see T-246-CONF-ENG, p. 54, lines 9-13 and T-248-CONF-ENG, p. 30, lines 5-9), and that it will assess their probative weight in the context of its judgment deliberations (see *also* Decision on Submitted Materials for P-2018, email from the Chamber,

12 October 2023, at 15:03). The Chamber therefore recognises items **CAR-D29-0010-0009** and **CAR-D29-0016-0155** as formally submitted.

With regard to **CAR-OTP-00001600**, the Chamber notes that although the item was not shown to the witness, it was discussed with him to the extent whether the witness was aware of the contents of this item (see T-248-CONF-ENG, p. 33, lines 6-19). The Chamber also notes the CLRV1's submission that he does not have access to **CAR-OTP-00001600** (and **CAR-OTP-00000320**, which is already formally submitted) and could not make submissions on the item. The Chamber finds that there are no procedural bars to its submission, and therefore, recognises it as formally submitted. Furthermore, the Chamber directs the Registry to grant the CLRV1 access to items **CAR-OTP-00001600** and **CAR-OTP-00000320**.

Fifth, the Chamber notes that the Yekatom Defence opposes the submission of **CAR-V45-00000005** and **CAR-V45-00000006**, which consist of the '*jugement de reconstitution d'acte de naissance*' and the '*transcription de jugement supplétif d'acte de naissance*', respectively, of [REDACTED]. In particular, the Yekatom Defence argues that they are unreliable, lack probative value and do not corroborate each other, referring *inter alia* to alleged inconsistencies between their metadata, the witness's testimony and other documentary evidence. Alternatively, it submits that they should be excluded pursuant to Article 69(7) of the Statute 'in light of the collusive nature in which child soldiers have been selected and brought forward to participate and testify in these proceedings'. In this regard, the Yekatom Defence submits that their formal submission would be 'prejudicial to the fairness of these proceedings and/or if not excluded at this juncture, would be antithetical to and would seriously damage the integrity of the proceedings'. It contends that 'the material submitted by the CLRV1 speaks to the wider fabrication of evidence concerning child soldiers in this case and is inconsistent with the rights of the accused and a fair and impartial trial in accordance with article 68(3)'.

The Chamber notes that the Yekatom Defence's submissions pertain to the reliability and probative value of the items, which will be assessed in the context of the judgment deliberation.

As to the issues related to Article 69(7) of the Statute, the Chamber recalls that it must first be determined whether the evidence at issue was obtained by means of a violation of the Statute or internationally recognised human rights. Only then must a chamber consider whether the violation casts substantial doubt on the reliability of the evidence or whether the admission of such evidence would be antithetical to and would seriously damage the integrity of the proceedings (see ICC-01/14-01/18-2199-Conf, para. 13). Further recalling its Decision on the Yekatom Defence Request for the Exclusion of Allegedly Fabricated Evidence (ICC-01/14-01/18-2460-Conf), the Chamber notes that, under the two-prong analysis, the Yekatom Defence has not shown that evidence was obtained by means of a violation of the Statute or an internationally recognised human right. It will therefore not address whether the submission of the items would be antithetical to or seriously damage the integrity of the proceedings. In the absence of any procedural bars, the Chamber therefore recognises the formal submission of **CAR-V45-00000005** and **CAR-V45-00000006** through V45-0001.

Moreover, the Chamber recalls that, in its Rule 68(2)(b) Decision, it deferred its decision on the submission of **CAR-D29-0009-0227** through D29-6022 under Rule 68(2)(b) of the Rules, noting that it is a copy of CAR-V45-00000005 (see ICC-01/14-01/18-2424-Conf, para. 46). Recalling its findings, notably, that the prior recorded testimony of D29-6022 was introduced under Rule 68(2)(b) of the Rules, and that CAR-D29-0009-0227 forms an integral part thereof (see ICC-01/14-01/18-2424-Conf, paras 24, 34, 52, p. 32), and in the absence of any procedural bars, the Chamber hereby recognises **CAR-D29-0009-0227** as formally submitted through D29-6022 under Rule 68(2)(b) of the Rules.

Sixth, the Chamber notes that the CLRV1 opposes the submission of **CAR-D29-0010-0161** as a whole. It argues that the item consists of two pictures but since only the picture on the right was shown to V45-0002, only that picture should be submitted. The Chamber does not find it necessary to recognise as formally submitted only a part of the item and therefore recognises the formal submission of **CAR-D29-0010-0161** as a whole.

In light of the above, and in the absence of any procedural bars, the Chamber recognises as formally submitted the following items:

Doc ID	Title	Type	Submitted through
CAR-V45-00000005	"Jugement de Reconstitution d'Acte de Naissance [REDACTED]"	National judicial document (Non ICC)	V45-0001

Doc ID	Title	Type	Submitted through
	██████████ ██████████		
CAR-V45-00000006	"REPUBLIQUE CENTRAFRICAINE TRANSCRIPTIONS JUGEMENTS SUPPLETIFS D'ACTE DE NAISSANCE"	Identifying document	V45-0001
CAR-V45-00000011	Photo of CAR-V45-P-0002	Photograph	V45-0001
CAR-V45-00000004	Formulaire de demande à titre individuel	Text Document	V45-0001
CAR-D29-0014-0151	Liste du chef et notables du ██████████	List / table	V45-0001
CAR-D29-0016-0136	Exported Whatsapp conversation between ██████████ ██████████	Communication – E- message	V45-0001
CAR-D29-0010-0009	Photographie de l'enfant de ██████████	Photograph/s	V45-0001
CAR-D29-0014-0165	Registre d'appel et d'inventaire de l'école ██████████ meilleure qualité	List / table	V45-0001
CAR-D29-0013-0265	Certificat de scolarité de ██████████ ██████████	Certificate	V45-0001
CAR-D29-0014-0152	Répertoire du 1er Cycle - ██████████ ██████████	List / table	V45-0001
CAR-D29-0013-0252	Attestation de fréquentation scolaire ██████████	Certificate	V45-0001
CAR-D29-0013-0254	Acte de naissance ██████████	Certificate	V45-0001
CAR-D29-0013-0256	Fiche d'inscription ██████████ ██████████ ██████████	Certificate	V45-0001
CAR-D29-0009-0227	Annexe 2 de CAR-D29-0009-0217	Legal, Administration and Court document – non ICC	D29-6022
CAR-V45-00000008	Jugement de Reconstitution d'Acte de Naissance ██████████ ██████████ ██████████	National judicial document (Non ICC)	V45-0002
CAR-V45-00000009	"REPUBLIQUE CENTRAFRICAINE TRANSCRIPTIONS JUGEMENTS SUPPLETIFS D'ACTE DE NAISSANCE"	Identifying document	V45-0002
CAR-D29-0010-0161	Montage photo concernant CAR- V45-P-0001	Photograph	V45-0002
CAR-V45-00000007	Formulaire de demande de participation à titre individuel	Text document	V45-0002
CAR-D29-0014-0169	Ecole ██████████ ██████████	List / Table	V45-0002
CAR-D29-0010-0162	Photograph of ██████████ ██████████	Photograph	V45-0002
CAR-D29-0010-0163	Photograph of ██████████	Photograph	V45-0002
CAR-D29-0016-0155	Screenshot Facebook - ██████████ ██████████	Communication - E- message	V45-0002

Doc ID	Title	Type	Submitted through
CAR-OTP-00001600	P-2580 - investigator's report .doc	ICC Investigation notes / report / correspondence	V45-0002

The Registry is directed to proceed in accordance with paragraph 63(v) of the Initial Directions, ICC-01/14-01/18-631.

It is further directed to grant the CLR1 access to items **CAR-OTP-00001600** and **CAR-OTP-00000320**.

Kind regards, TC V

From: Suprun, Dmytro [REDACTED]
Sent: Wednesday, October 4, 2023 7:27 PM
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED]
 D30 Ngaissona Defence Team [REDACTED] V44 LRV Team [REDACTED]
 [REDACTED] V44 LRV Team OPCV [REDACTED] V45 LRV Team [REDACTED]
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with para. 63(iii) of the [Initial Directions](#), the Common Legal Representative of the former child soldiers (the "CLR1") hereby submits his observations on the Yekatom Defence's response dated 03 October 2023 at 10:44 to the CLR1's request for the formal submission of Items **CAR-V45-00000008** and **CAR-V45-00000009** dated 28 September 2023 at 12:30.

At the outset, the CLR1 notes with concern the Yekatom Defence's direct and numerous accusations of alleged CLR1 involvement in "*the wider fabrication of evidence concerning child soldiers*", to "*cover[...] fraudulent means to obtain official identification documents and/or efforts to fabricate evidence*", and even the CLR1 team's involvement in a "*immigration fraud*". The CLR1 is also surprised by the unsubstantiated remarks and grave allegations about the CLR1 allegedly "*circumventing domestic procedures*". The unfortunate language and tone used by the Yekatom Defence in addressing the CLR1 lacks collegiality and is disrespectful of the integrity and work of the whole team of legal representation.

It is regrettable that the Yekatom Defence does not consider a breach of its deontological and collegial obligations its access to the correspondence [REDACTED], its dissemination together with private information about [REDACTED] and the use of said correspondence in court. The Defence disclosed to all participants in the proceedings the identity of [REDACTED], who did not testify before the Court and whose protective measures were ordered by the Chamber. The Defence justified the above as an "*inadvertent disclosure*" and failed to recognise that the correspondence of [REDACTED] [REDACTED] was deemed to be confidential [REDACTED].

When accessing [REDACTED] [REDACTED] the Yekatom Defence opted not to inform [REDACTED] that it "*inadvertently*" accessed information not only about the two dual status individuals, but also on [REDACTED] [REDACTED]. As previously submitted, the Yekatom Defence conduct was in breach of the Code of Professional Conduct for Counsel before the Court, which requires that counsel actively ensure the respect for professional secrecy (art. 8.1.), not reveal protected information (art. 8.3.) and, in particular, not disclose the identity of protected victims and witnesses (art. 8.4.).

In relation to the above conduct, the CLR1 respectfully requests the Chamber to warn and instruct the Yekatom Defence to act fairly, respectfully and courteously in its relations with the opposing Counsel and all Participants.

As regards the merits of the Yekatom Defence's observations on Items **CAR-V45-00000008** and **CAR-V45-00000009**, the CLR1 opposes the entirety of the arguments advanced and maintains that these Items were obtained in accordance with the CAR applicable law and practice in the matter; they are authentic and contain sufficient indicia of reliability.

The Yekatom Defence's allegations that both documents were obtained in violation of the relevant national law are baseless as there is no ambiguity about their provenance.

The Yekatom Defence extensively refers to the CAR law to demonstrate that the CLR1 was allegedly not in compliance with it when making their request before [REDACTED]. However, CAR judicial authorities have the primary duty to properly apply and interpret the national applicable law, and to ensure that the proceedings as a whole are in full compliance with all procedural requirements.

[REDACTED] submitted all information requested by [REDACTED] to be able to decide on the reconstitution of the birth certificates. At no point in the relevant proceedings, the [REDACTED] considered that (i) the means through the application was submitted were not appropriate; or (ii) there was a lack of information or requested further information to [REDACTED]. Instead, the [REDACTED] diligently proceeded in assessing the information before it and in issuing the relevant judgments on reconstitution of the birth certificates. Similarly, the [REDACTED] found that all requirements were properly met before stamping the reconstituted birth certificates. Furthermore, the [REDACTED] confirmed the existence of the judgments pertaining to both Witnesses [REDACTED]
[REDACTED]

[REDACTED] did not and could not have any influence on the overall procedure and in the assessment of the [REDACTED] and of the [REDACTED].

Whether the Yekatom Defence alleges that the Registrar and [REDACTED] were also involved in the alleged "*wider collusion*" scheme, remains unclear.

In the CAR, as in many other countries, proceedings in the subject of personal status are of a declaratory nature. Pursuant to article 167 of the CAR Family Code, both judgments on reconstitution of identification documents and the identification documents themselves are presumed authentic when they have a signature and a stamp of the competent authority. They are enforceable against everybody. Any attempt to nullify judgments on reconstitution of identification documents can only be done by third persons through a judge, according to article 181 of the same Code.

Nonetheless, the CLR1 recalls that when deciding on the admissibility of evidence, the Court shall not rule on the application of the State's national law pursuant article 69(8) of the Statute.

Further, the Yekatom Defence opposes the authenticity of Items **CAR-V45-00000008** and **CAR-V45-00000009** on the basis of the correspondence between [REDACTED]. The CLR1 reiterates his previous submissions that said correspondence was obtained in violation of the Statute and of the internationally recognized individual rights to private correspondence and privacy (see the CLR's Email correspondence dated 3 October 2023 at 17:55). As noted, the Defence disguised its "request of cooperation" in a binding request coming from the Court, by making explicit reference "*à l'esprit et à la lettre*" of article 93 of the Statute. Thereby, implying both an obligation to cooperate and a sort of reassurance that sensitive data could be disclosed and provided in their entirety to a third party.

Lastly, in relation to the Defence's arguments on the fact that V45-P0002 did not travel to [REDACTED] to obtain V45-00000009 and did not provide a signed request to [REDACTED] to initiate and/or obtain CAR-V45-00000008, the CLR1 recalls that his mandate to act as Legal Representative includes the ability to legally request and obtain official documents on behalf of the victims he represents. In this regard, the CLR1 recalls that in relation to:

- **Item CAR-V45-00000008:** The Witness recognised the document (T-247-CONF-ENG, p. 39 line 24), and confirmed that [REDACTED] [REDACTED] on the victim's behalf (see T-247-CONF-ENG, p. 40 line 24).
- **Item CAR-V45-00000009:** The Witness recognised the document as belonging to him (see T-247-CONF-ENG, p. 42 line 4).

To conclude, it is submitted that the two Items are authentic, and provide sufficient indicia of reliability. Therefore, they should be recognised as formally submitted. Their formal recognition as submitted evidence is not prejudicial to the fairness of these proceedings. On the contrary, their non-admission will prevent a fair evaluation of the Witness' testimony, pursuant to article 69(4) of the Statute.

Kind regards,
Dmytro Suprun

From: [REDACTED]
Sent: Tuesday, October 3, 2023 10:44
To: Suprun, Dmytro [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team <[REDACTED]>
 D30 Ngaissona Defence Team [REDACTED] V44 LRV Team
 [REDACTED] V44 LRV Team OPCV [REDACTED]; V45 LRV Team
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: Re: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0002

Some people who received this message don't often get email from [REDACTED] [learn why this is important](#)

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear All,

The Yekatom Defence opposes the formal submission of CAR-V45-00000008 (National Judicial Document (Non-ICC)) and CAR-V45-00000009 (Identifying Document) on the basis that the provenance of the items and the information therein has not been established through V45-P0002 and there is considerable ambiguity as to the means by which the items were obtained.

The submission approach adopted in these proceedings does not foreclose an assessment of the standard evidentiary criteria at this juncture particularly where it is overwhelmingly evident that the items have no weight and that there is no discernible reason to defer the assessment to a later stage. Given that the items are purportedly 'official' identification documents, and in light of evidence which demonstrates identification fraud in the provision of identity documents, the

underlying information was not verified by the testimony of V45-P0002 and cannot be established merely by what he may or may not have said to the CLR1 outside of the courtroom.

The Defence recalls that in similar instances in this case where the provenance of an identification document is under investigation or in question, the parties have either withdrawn or qualified their reliance on the item (see e.g. Prosecution email, 'Yekatom Defence Submission of Evidence following P-2475's testimony' dated 6 June 2022 21:00 whereby the Prosecution sought to withdraw CAR-OTP-2128-1197, CAR-OTP-2128-1201, and CAR-OTP-2128-1202 "pending an inquiry, given the issues raised regarding their provenance"; see also Yekatom Defence email, 'Yekatom Defence submission of evidence following the examination of P-2084' dated 30 May 2023 18:07 in which the Defence submitted that it did not rely on the veracity of the contents of CAR-D29-0013-0087 following the testimony of P-2084 and the doubts raised with regard to the official stamp).

In the presence circumstances, no such inquiry appears to be underway as CLR1 maintains its full reliance on both items.

As set out with regard to V45-P0001, the CLR's approach to obtaining CAR-V45-00000008 and CAR-V45-00000009 is seriously flawed and contrary to domestic procedures:

- Neither V45-P0002 nor ██████████ appeared before or attended the ██████████ to either testify or to even collect CAR-V45-00000008 (T-248-ENG, p. 7 lines 8 to 11. See also CAR-D29-0016-0136). This is in violation of article 187 of the CAR Family Code (see CAR-D29-00010436) which requires a public hearing (*contra* also CAR-V45-00000008 which refers to a public hearing).
- Contrary to V45-P0002's understanding (T-248-ENG, p. 7 lines 3 to 7) as well as the CLR1's repeated assertions, at no point in the process to obtain CAR-V45-00000008 did ██████████. The process was initiated and completed entirely via WhatsApp messages exchanged between ██████████ (CAR-D29-0016-0136). The Defence addresses the CLR1's arguments with respect to the alleged criminality and/or professional misconduct of ██████████, in its 'Observations to the CLR1's response to 'Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001' dated 2 October 2023 15:23). However, at this point it is noted that the CLR1 does not dispute the accuracy of the content of the WhatsApp exchange or the description of the events as depicted in the messages.
- V45-P0002 did not provide a signed request to ██████████ in order to initiate and/or obtain CAR-V45-00000008 contrary to the express language set out in article 185 of the CAR Family Code (*contra* the CLR1's submission as to the application of article 179 of the CAR Family Code as set out in its observations dated 28 September 2023 11:36).
- The WhatsApp exchange between ██████████ (CAR-D29-00010436) demonstrates that the initial request for CAR-V45-00000008 from ██████████ did not contain any official declaration(s) necessary for the reconstitution of the birth certificate in violation of article 185 of the CAR Family Code and nor was it communicated to the Public Prosecutor's Office by ██████████.
- The WhatsApp exchange between ██████████ (CAR-D29-00010436) further demonstrates that the ██████████ was not provided with all the relevant information which would have allowed the tribunal to assess the veracity of the information provided to it in relation to CAR-V45-00000008, contrary to article 187 of the CAR Family Code.

- The initial trigger for the reconstitution of the birth certificate was seemingly based on false premises noting that CAR-V45-00000008 refers to the theft of V45-P0002's birth certificate. V45-P0002 did not at any point in his testimony mention the theft of his birth certificate (T-247-ENG, p. 41 lines 1 to 12 and T-248-ENG, p. 5 lines 8 to 12) and no 'certificate de carence', as referenced in CAR-V45-00000008, was produced or submitted by the CLR1.

The improper manner in which the CLR1 obtained CAR-V45-00000008 evidently has a direct effect on the validity of the transcription of the birth certificate submitted as CAR-V45-00000009 noting further that V45-P0002 also did not travel to [REDACTED] to obtain V45-00000009 (T-248-ENG, p. 7 lines 22 to 24, p. 8 lines 4 to 7 and p. 9 lines 2 to 14) contrary to the metadata and clear email from CLR1 (see Annex 1 to Defence email dated 26 September 2023 at 09:23).

The so-called 'presumption of authenticity' of the items cannot be based purely on the presence of a signature and a stamp of the competent authority given the aforementioned circumstances which plainly demonstrate that the proper procedures were circumvented by the CLR1 in obtaining the items. This is further supported by article 167 of the CAR Family Code which nullifies the authenticity of civil judgments bearing the official stamp and seal following contrary proof of the veracity of the declarations received by the civil tribunal. The situation is also distinct from the production of CAR-D29-0001-0426 (formally submitted at pages 0428-0429 only), whereby the Defence had demonstrated that the proper procedures were followed i.e. [REDACTED] before [REDACTED] (see *procès-verbal* initially submitted at CAR-D29-0001-0426 at 0426-0427) thereby confirming the validity of the corresponding official stamp and seal.

Issues concerning the provenance of the two items are also not overcome by the CLR1's position that CAR-V45-00000008 and CAR-V45-00000009 were obtained "on behalf" of V45-P0002 (T-247-ENG, p. 39 lines 17 to 23). As with V45-P0001, V45-P0002 also did not know [REDACTED] despite this information appearing in CAR-V45-00000008 (see T-248-ENG, p. 6 lines 16 to 20 and *contra* misleading citation by the CLR1 in its observations dated 28 September 2023 11:36). The source of this specific information remains unknown and further invalidates CAR-V45-00000008 and CAR-V45-00000009 as formal identification documents.

Further, at no point has the CLR1 produced any corroborating document which would certify or support the identifying details purportedly submitted by CLR1 on behalf of V45-P0002 which would reasonably explain the CLR1's circumvention of the domestic procedures or establish that the CLR1 obtained the documents in full confidence that the underlying information was accurate. It was V45-P0002's evidence that he did not provide nor show the CLR1 his birth certificate (see T-247-ENG, p. 41 lines 10 to 15, p. 42 lines 5 to 15) and during the course of his testimony, CLR1 opted again to lead the evidence (T-247-ENG, p. 39 lines 17 to 23; p. 41 lines 24 to 25 and p. 42 lines 1 to 3). The CLR1's approach is further aggravated by the fact that V45-P0002's identity was also not properly ascertained nor corroborated during the victim application process and that he was not asked for copies of his ID document, voting registration document, baptism certificate, school certificate or seek a witness to certify V45-P0002's identity (T-247-ENG, p. 59 lines 5 to 12, p. 61 lines 14 to 18; T-248-ENG, p. 24 lines 3 to 6).

Given that the CLR1 took it upon themselves to obtain the documents for V45-P0002, and as officers of this Court, it is insufficient for the CLR1 to shirk its obligation to verify information it tenders on the grounds that it was not informed by [REDACTED] that it was not in compliance with the CAR applicable law. It was and is incumbent on the CLR1 to have ensured that it was acting in accordance with domestic laws particularly if by the same token, it is the CLR1's position that the same individual has allegedly engaged in criminal activity and/or professional misconduct. It is also implausible for [REDACTED] to take the position that formal identification documents can be produced by an official court by way of WhatsApp exchanges alone.

This point is particularly emphasised when taking into account the fact that the CLR1 had notice of: (i) evidence with regard to the misuse of official stamps on birth certificates in CAR (see further "Yekatom Defence submission of evidence following the examination of P-2084" email dated 30 May 2023 18:07 following testimony of P-2084) as well as the existence of false certificates (see e.g. CLR's observations dated 28 September 2023 11:36 in relation to birth certificate produced in court by V45-P0001) and (ii) the glaring inconsistencies with regard to V45-P0002's identity as set out in CAR-V45-00000007.

It is for this very reason that the lack of clarity in the metadata supplied by the CLR1 does have a clear bearing on the provenance of CAR-V45-00000008 and CAR-V45-00000009 given that both items were obtained by [REDACTED] without any further documentary verification. The CLR1's repeated attempts to obfuscate and/or diminish [REDACTED] role in

obtaining the items (see also Defence observations to ‘CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001’ dated 28 September 2023 11:36) is itself telling of the fact that the CLR1 has some awareness that it should not have circumvented domestic procedures in obtaining the identifying documents on behalf of the witness and without assuring itself of corroborating and official documentation.

It is also insufficient to rely solely on V45-P0002’s testimony in order to support the provenance of CAR-V45-00000008 and CAR-V45-00000009 when he evidently had very little to do with the process and/or, where there is doubt with regard to the information supplied. In this case, and bearing in mind the inconsistent information supplied in V45-P0002’s victim application form, the Defence notes that there is information which would establish that V45-P0002’s real identity is [REDACTED], his [REDACTED], his parents name are [REDACTED], and that he is [REDACTED] (see CAR-D29-0013-0266, CAR-D29-0014-0169, CAR-D29-0016-0155 and CAR-D29-0016-0157).

Finally, any argument that the two items were obtained for travel purposes and have been purportedly “validated by the CAR immigration authorities and the Ministry of Foreign Affairs” (see CLR’s observations dated 28 September 2023 11:36) is misguided and does not rectify the matter at hand. There is no evidence that the CAR immigration authorities and the Dutch Ministry of Foreign Affairs were aware of the true manner in which the two items were drawn up in violation of domestic procedures so as to independently authenticate or corroborate the identifying information. This raises serious questions with regard to the possibility of immigration fraud and [REDACTED] ensuing obligation to inform immigration authorities and the Host State that it obtained the identification documents without formal assurance that the information therein was accurate.

Kind regards

[REDACTED]

From: Suprun, Dmytro [REDACTED]

Sent: Thursday, September 28, 2023 12:30 PM

To: Trial Chamber V Communications [REDACTED]

Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]

D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team

[REDACTED] V44 LRV Team OPCV [REDACTED]; V45 LRV Team

[REDACTED] Associate Legal Officer-Court Officer [REDACTED]

Subject: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the “Initial Directions on the Conduct of the Proceedings”, the CLR1 submits the documents listed below relating to the testimony of Witness CAR-V45-P-0002. The CLR1 respectfully requests that these documents be recognized as formally submitted.

	Type	Submitted through witness	Date used
CAR-V45-00000008	National Judicial Document (Non ICC)	CAR-V45-P-0002	26 September 2023
CAR-V45-00000009	Identifying Document	CAR-V45-P-0002	26 September 2023

Kind regards,
Dmytro Suprun

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From: Suprun, Dmytro
Sent: 22 September 2023 17:10
To: Trial Chamber V Communications
Cc: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the “Initial Directions on the Conduct of the Proceedings”, the CLR1 submits the documents listed below relating to the testimony of Witness CAR-V45-P-0001. The CLR1 respectfully requests that these documents be recognised as formally submitted.

	Type	Submitted through witness	Date used
CAR-V45-00000005	National Judicial Document (Non ICC)	CAR-V45-P-0001	21 September 2023
CAR-V45-00000006	Identifying Document	CAR-V45-P-0001	21 September 2023

The hard copy of the present request will be provided to the Trial Chamber and Participants on Tuesday 26 September 2023.

Kind regards,
Dmytro Suprun

From: Dimitri, Mylene [REDACTED]
Sent: 26 September 2023 09:24
To: Suprun, Dmytro; Trial Chamber V Communications
Cc: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: Re: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001
Attachments: 230908-1026 [CLR1] Re [YEKATOM] Clarification relativmeent à deux items - chaine de possession.pdf

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear All,

The Yekatom Defence opposes the CLR1's request for the formal submission of CAR-V45-00000005 (National Judicial Document (Non-ICC)) and CAR-V45-00000006 (Identifying Document).

Whilst the documents submitted by the CLR1 purport to provide identifying information in relation to CAR-V45-P0001 (a/20722/21), there are substantial concerns in relation to the methods employed in obtaining the two items and the veracity of the information therein.

As such, and in accordance with article 69(4), the material submitted is unreliable and lacks probative value, and formal recognition of the items submitted would be prejudicial to the fairness of these proceedings. Additionally, or in the alternative, the Defence submits that the items should be excluded pursuant to article 69(7) in light of the collusive nature in which child soldiers have been selected and brought forward to participate and testify in these proceedings.

The Defence contends that there are serious flaws with respect to the reliability of both CAR-V45-00000005 and CAR-V45-00000006.

First, the Defence draws the Trial Chamber's attention to recent correspondence between the Defence and CLR1 concerning the metadata associated with both items (see Annex 1). Upon request, the CLR1 expressly stated that "[t]he judgment was [REDACTED]

[REDACTED] for the purpose of the issuance of the birth certificate. During the whole process the witnesses were assisted by [REDACTED]". As set out below, this is plainly false when read against V45-P0001's oral testimony and CAR-D29-0016-0136.

At best, even if one were to characterise the errors in the metadata as straightforward mistakes, this would necessarily undermine the provenance of the documents as presently posited by the CLR1. Regrettably, however, it would appear that certain members of the CLR1 had knowledge of the fact that the documents were not obtained by the witness and yet this was not put forward or clarified by the CLR1 even when pressed by the Defence. Indeed the CLR1 opted to perpetuate the same error during V45-P0001's testimony with Mr. Suprun effectively maintaining that the documents were not directly obtained by [REDACTED] (T-246-ENG, p. 52 lines 11 to 18). The course of action undertaken by the CLR1 with respect to its description of the chain of custody strikes at the very core of the provenance and reliability of CAR-V45-00000005 and CAR-V45-00000006.

The Defence further submits that the two items are not corroborative of one another given that they seem to have been subject to the same opaque processes which did not involve V45-P0001.

Second, despite the metadata correspondence referred above, the provenance of the items was also not established via V45-P0001, who repeatedly stated during the course of his testimony that:

- he was not present during the issuance of CAR-V45-00000005 (T-246-ENG, p. 44 lines 10 to 22, p.55 lines 1 to 15 and p. 56 lines 13 to 23) nor CAR-V45-00000006 (T-246-ENG, p. 55 lines 16 -22)
- he did not provide any of the details as set out in the information sheet relied upon to obtain CAR-V45-00000005 (T-246-ENG p. 45 lines 10-17)

- he had no knowledge of the process involved in obtaining CAR-V45-00000006 (T-246-ENG, p. 58 lines 3 to 5, p. 60 lines 18-25 and p. 61 lines 1 -2)
- he did not travel to the [REDACTED] to retrieve CAR-V45-00000005 (T-246-ENG, p. 55 lines 1 to 5, p. 56 lines 15 to 25) nor to [REDACTED] to collect CAR-V45-00000006 (T-246-ENG, p. 57 lines 1 to 13)

Indeed, it was V45-P0001's evidence that CAR-V45-00000005 and CAR-V45-00000006 were both provided to him by his lawyers (as above see also T-246-ENG, p. 55, lines 21 to 22) and that consequently, he could not explain key discrepancies or anomalies in relation to either document. For example, V45-P0001 was unable to explain the delay in the issuance of CAR-V45-00000005 between [REDACTED] (see T-246-ENG, p. 56 lines 1 to 12). Nor was V45-P0001 able to shed light on how identifying detail such as [REDACTED] appeared in CAR-V45-00000005 given that it does not appear in CAR-V45-00000006 (contra V45-P0001's explanation that [REDACTED] could only [REDACTED] see T-246-ENG p. 20 lines 17 to 24 and p. 21 lines 1 to 3 and p.46 lines 1 to 16) and noting further his position that he did not know [REDACTED] (T-246-ENG, p. 19 lines 6 to 7). V45-P0001's inability to answer basic questions concerning both items further demonstrates that he had nothing to do with the production of either item.

The provenance of the items is also further muddled by the production of another birth certificate by V45-P0001 [REDACTED] which he stated was a copy of his original birth that he had obtained from [REDACTED], approx. [REDACTED] (T-246-ENG, pp. 13 to 15). This birth certificate does not match CAR-V45-00000006 [REDACTED] (which V45-P0001 states he [REDACTED] CAR-V45-00000006; T-246-ENG, p. 66 lines 8 to 17) and the numerical reference on the top right-hand side.

The Defence does not take the position that the certificate [REDACTED] is authentic or that the information therein is accurate but rather that by V45-P0001's own account, [REDACTED]

[REDACTED] (T-246-ENG p. 16 lines 20 to 22). The Defence notes that a copy of the certificate [REDACTED] does appear to have been within the possession of the CLR1 at one point (see CAR-D29-0016-0136, p. 6).

V45-P0001's inability to speak to the processes involved in obtaining CAR-V45-00000005 and CAR-V45-00000006 is further critical given the significant inconsistencies between his testimony and his initial victim application form (CAR-V45-00000004). These are not mere discrepancies but rather go to the core of his substantive testimony concerning his alleged role in the Anti-balaka and notable differences concerning his identification. As set out below, it is the Defence's position that V45-P0001 has fabricated identifying details in order [REDACTED].

Third, as exhibited in CAR-D29-0016-0136, CAR-V45-00000005 was produced by the [REDACTED] upon direct request from the CLR1 [REDACTED]. The entire exchange between the CLR1 and [REDACTED] took place over Whatsapp i.e. the CLR1 did not attend the [REDACTED] in person to obtain CAR-V45-00000005.

Further, the information sheet provided by the CLR1 (CAR-D29-0016-0136, pp. 2-4) used for the issuance of CAR-V45-00000005 did not come from V45-P0001 (T-246-ENG, p. 45 lines 13 to 17) and there remains significant uncertainty as to where the CLR1 obtained the identifying detail set out in the information sheet. The process adopted by the CLR1 to obtain CAR-V45-00000005 falls far short of the domestic legal and procedural requirements (see e.g. CAR-D29-00010436, page 0451 and CAR-D29-0001-0546, p. 0549) and it is apparent that CAR-V45-00000005 was drawn up solely in preparation of V45-P0001's testimony (noting that the request of CLR1 was sent [REDACTED] with amendments [REDACTED] i.e. one day prior to the CLR1's request for leave to present evidence (ICC-01/14-01/18-1972-Conf-Red)).

Fourth, and relatedly, significant adverse inferences are to be drawn with respect to the CLR1's lack of interrogation concerning the detail as set out in CAR-V45-00000005 and CAR-V45-00000006.

The CLR1 was well aware of the extent and scope of the discrepancies in relation to both the substance of V45-P0001's testimony and his identifying details [REDACTED] when compared to the victim application form (CAR-V45-00000004).

Rather than seek to test the veracity of V45-P0001's account prior to his testimony in particular concerning his identity (see T-246-ENG, p. 79 lines 19 to 25 and p. 80 lines 4 to 9), when pressed, the CLR1 asserted that the "birth certificates therefore clarify any alleged doubt concerning the victims' identity and, in particular, [REDACTED]" (see email of CLR1 dated 31 August 2023 15:53). This is despite the fact that the CLR1 had knowledge and possession of a birth certificate that differs from CAR-V45-00000006 as set out above (see also T-246-ENG p. 17 lines 8 to 14) and that the CLR1 was involved in correcting V45-P0001's [REDACTED] as subsequently seen in CAR-V45-00000005 (i.e. from [REDACTED] see CAR-D29-0016-0136, p. 1 and T-246-ENG, p. 60 lines 18-25 and p. 61 lines 1-2). Although there was no obligation for the CLR1 to confront V45-P0001 with discrepancies as to his identity during the examination in chief, it is incumbent on all counsel to test the veracity of its witness' account prior to calling them in furtherance of the administration of justice. In these circumstances, the leading manner in which the CLR1 chose to introduce CAR-V45-00000005 and CAR-V45-00000006 (T-245-ENG, pp. 42-43) undermines the CLR1's current efforts to formal submit either item.

Additionally, the formal submission of CAR-V45-00000005 and CAR-V45-00000006 would be prejudicial to the fairness of these proceedings and/or if not excluded at this juncture, would be antithetical to and would seriously damage the integrity of the proceedings. In this regard, the Defence underscores the fact that the reliability and probative value of documents concerning the CLR1's case is not merely limited to the Chamber's assessment of the nature and extent of harm suffered by V45-P0001. Rather, the material submitted by CLR1 speaks to the wider fabrication of evidence concerning child soldiers in this case and is inconsistent with the rights of the accused and a fair and impartial trial in accordance with article 68(3).

As set out in cross-examination, it is the Defence's position that V45-P0001 fabricated his substantive testimony (noting e.g. that he was not familiar with key incidents and locations as pled by the Prosecution in this case) and his identity.

In particular, it is the Defence's position that V45-P0001's real identity is [REDACTED]. Despite V45-P001's denials, this is established by virtue of, *inter alia*,

- the victim application form refers to [REDACTED] as the mother of V45-P0001 (CAR-V45-00000004-006) and bears [REDACTED] (CAR-V45-00000004-004 and CAR-OTP-00001073-000003). [REDACTED] had several children together, all of whom were born in [REDACTED] (CAR-D29-0013-0253 See also CAR-D29-0014-0159, CAR-D29-0014-0160, CAR-D29-0014-0162). Further two different individuals (CAR-V45-00000004-001 and 006) certify that V45-P0001's date of birth is [REDACTED] and not [REDACTED] on the same application form.
- school records which establish that a [REDACTED] attended [REDACTED] and that his teacher was [REDACTED] (CAR-D29-0014-0165 and CAR-D29-0013-0265). V45-P0001 testified that he had attended [REDACTED] and that his teacher [REDACTED] (T-246-ENG p. 18 line 25, p. 19 lines 1 and p.68 lines 14 to 17 although it is V45-P001's position that he only attended [REDACTED]). There is no school record for the attendance of [REDACTED] for any period.
- a birth certificate held on record by [REDACTED] in the name of [REDACTED], born [REDACTED], and parents identified as [REDACTED] (CAR-D29-0013-0254).
- school registration forms obtained from [REDACTED] which establish the attendance of [REDACTED] (CAR-D29-0013-0256). The [REDACTED] also includes a photograph which bears more than a striking resemblance to V45-P0001.

V45-P001's attempt to disguise [REDACTED] name (T-246-ENG, p. 25 lines 14 to 23 - the Chamber will recall that [REDACTED]) provides further *indicia* of the existence of a wider collusion which goes towards the fabrication of evidence as part of the enrolment of child soldiers in the ESF and ICC victim programme seemingly for fraudulent reasons.

Kind regards,
Mylène Dimitri

From: Suprun, Dmytro [REDACTED]
Sent: 22 September 2023 17:09
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]
 D30 Ngaissona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED]
 [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
 Associate Legal Officer-Court Officer [REDACTED]
Subject: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the "Initial Directions on the Conduct of the Proceedings", the CLR1 submits the documents listed below relating to the testimony of Witness CAR-V45-P-0001. The CLR1 respectfully requests that these documents be recognised as formally submitted.

	Type	Submitted through witness	Date used
CAR-V45-00000005	National Judicial Document (Non ICC)	CAR-V45-P-0001	21 September 2023
CAR-V45-00000006	Identifying Document	CAR-V45-P-0001	21 September 2023

The hard copy of the present request will be provided to the Trial Chamber and Participants on Tuesday 26 September 2023.

Kind regards,
Dmytro Suprun

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From: Suprun, Dmytro
Sent: 28 September 2023 11:36
To: Trial Chamber V Communications
Cc: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: RE: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with para. 63(iii) of the [Initial Directions](#), the Common Legal Representative of the former child soldiers (the "CLR1") hereby submits his observations on the Yekatom Defence's response dated 26 September 2023 at 9:24 (the "Response") to the CLR1's request (the "Submission of Evidence") for the formal submission of CAR-V45-00000005 and CAR-V45-00000006 (the "Documents") dated 22 September 2023 at 17:09.

As a preliminary observation, the CLR1 notes that in its Response the Yekatom Defence not only challenges the admissibility of the Documents, but also addresses the probative value thereof, which is a matter not to be dealt with at this stage. Moreover, the Yekatom Defence seems alleging the CLR1 involvement in documents fabrication. The CLR1, therefore, will first and foremost address the admissibility of the Documents, and then the other issues and allegations raised by the Yekatom Defence.

During his testimony, CAR-V45-P-0001 (the "Witness") mentioned four different documents as being his 'birth certificates'. In order to avoid any further confusions, the CLR1 therefore wishes to clarify, with reference to the Witness's statements, as follows.

1. Birth certificate obtained by the Witness himself at [REDACTED] this is a birth certificate the Witness [REDACTED]. The Witness spoke about said document to the CLR1, but it was a false certificate as its number was not authenticated (T-246-CONF-ENG ET, p. 12 line 19 to p. 14 line 16).
2. First reconstitution of the birth certificate produced [REDACTED]: this is the first birth certificate that was [REDACTED]. This birth certificate had a material error, as it referred to [REDACTED]. The Witness has the original of this certificate in [REDACTED] (T-246-CONF-ENG ET, p. 56, lines 8-23). The procedure to obtain this birth certificate was prompted by [REDACTED] on behalf of the victim [REDACTED], as the above birth certificate no. 1 was not authenticated. This document has, on the top right, [REDACTED], which corresponds to [REDACTED]. That is why the corrected birth certificate (CAR-V45-00000006) has [REDACTED], which means that [REDACTED].
3. Second reconstitution of the birth certificate produced [REDACTED] (CAR-V45-00000006) (T-245-CONF-ENG ET, p. 43 lines 6-19): this is the birth certificate that was reconstructed and then [REDACTED], referring to the name [REDACTED]. This document has, on the top right, [REDACTED], which corresponds to [REDACTED].
4. Copy of the birth certificate that the witness [REDACTED] (CAR-REG-0001-0020): this is a copy of the first reconstitution of the birth certificate. [REDACTED]. The Witness has [REDACTED] the original of the first reconstruction of the first certificate with [REDACTED] thereon (T-246-CONF-ENG ET, p. 56 lines 13-23).

The CLR1 thus clarifies that CAR-V45-00000006 is the only valid birth certificate of the Witness and, therefore, the only one submitted by the CLR1 as evidence in the present case.

In accordance with the established practice of several Chambers of the Court, in the "Initial Directions on the Conduct of the Proceedings", this Chamber has stated it will adopt the so-called "Submission Approach" (see the "Initial

Directions on the Conduct of the Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-631](#), 26 August 2020, para. 53). According to the jurisprudence of the Court, at this stage, the Chamber will need to assess whether the Documents are *prima facie* relevant to and probative of issues at trial for the Documents to be considered as “formally submitted” (see, *inter alia*, the “Corrigendum to Decision on the Admissibility of Four Documents” (Trial Chamber I), [No. ICC-01/04-01/06-1399](#), 20 January 2011, paras. 26-28). The Chamber will need to do a more attentive analysis of the authenticity and probative value of the Documents at a later stage.

It is submitted that the Documents are of clear relevance to the issues at trial. Being identifying documents of the Witness, they in fact relate to the matters that are properly to be considered by the Chamber in its investigation of the charges against the accused persons and the views and concerns of participating victims, in accordance with the jurisprudence on the matter (see, *inter alia*, the “Corrigendum to Decision on the Admissibility of Four Documents” (Trial Chamber I), [No. ICC-01/04-01/06-1399](#), 20 January 2011, para. 27).

Moreover, it is submitted that the Documents have probative value. According to the jurisprudence, while the Chamber could use numerous possible criteria to assess the probative value of an item, among the most important of them there are *indicia* of reliability, including authenticity (see, for instance, the “Corrigendum to Decision on the Admissibility of Four Documents” (Trial Chamber I), [No. ICC-01/04-01/06-1399](#), 20 January 2011, para. 29 and the “Decision on the Prosecution’s Request for Admission of Documentary Evidence” (Trial Chamber V(a)), [No. ICC-01/09-01/11-1353](#), 10 June 2014, para. 15).

Indeed, the Documents are authentic and provide sufficient *indicia* of reliability. The Documents, CAR-V45-00000005 and CAR-V45-00000006, were produced by competent national authorities, respectively [REDACTED] [REDACTED]. These documents are signed and stamped by the competent authorities, and therefore contain all *indicia* of authenticity and reliability. Moreover, these documents have been produced in accordance with the procedure envisaged in the article 179 of CAR’s Family Code (*Loi No. 97.013*).

The request for the reconstitution of the birth certificate with respect to the Witness was submitted by [REDACTED] on behalf of the Witness and based on the information the Witness provided him with. As clarified by the Witness, the Documents were requested and obtained on his behalf by his lawyers, on the basis of the information the Witness himself provided (T-246-CONF-ENG ET, p. 49, lines 3-6), including [REDACTED] (T-246-CONF-ENG ET, p. 39 line 15 to p. 40 line 5). The CLR1 wishes to further clarify that during one of the CLR1’s interactions with the Witness, the Witness, when asked about [REDACTED], declared he could not remember it exactly. However, since this information was needed, he nevertheless provided [REDACTED]. Indeed, in the CAR, as in many other countries, proceedings in the subject of personal status are of a declaratory nature (originating from a unilateral declaration) and do not require the physical presence of the concerned persons or their testimony. Pursuant to article 167 of the CAR Family Code, both judgments on reconstitution of identification documents and the identification documents themselves are presumably authentic when they have a signature and a stamp of the competent authority. They are enforceable for everybody. Any attempt to nullify judgments on reconstitution of identification documents can only be done by third persons through a judge, according to article 181 of the same Code. The data contained in the Documents have been further validated by the CAR immigration authorities and the Ministry of Foreign Affairs, which [REDACTED].

Accordingly, it is submitted that since the Documents are authentic in accordance with the CAR law and contain sufficient *indicia* of reliability as required by the applicable law of the Court, they should be considered as admissible evidence.

As regards the metadata of the Documents and, in particular, their chain of custody, initially, the CLR1 reported a chain of custody, later corrected by via email after the Yekatom’s Defence prompt on this issue, as summarized below:

	[REDACTED] (NUIX)	Email 08-09-2023
CAR-V45-00000005	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
CAR-V45-00000006	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

During his testimony, the Witness confirmed that both Documents were received by his lawyers at [REDACTED] [REDACTED] respectively. [REDACTED] acted on the Witness’s behalf during the entire process has the

originals of the Documents in the CAR, and the [REDACTED] have the corresponding registers. Even though the CLR1 did not make crystal clear that the Witness received the Documents from [REDACTED] rather than directly from the relevant authorities, in his correction of the metadata, the CLR1 indicated that through the entire process pertaining to the issuance of the birth certificate the Witness was assisted by [REDACTED]. It is submitted that a certain lack of clarity in the chain of custody of the Documents has no bearing on the authenticity of the Documents, as both of them remain authentic documents produced by the competent authorities, and during his testimony, the Witness confirmed the correctness of his personal data contained thereon.

The CLR1 informed the Witness about the procedure to obtain the his birth certificate and the reasons why the procedure was launched on his behalf. The Witness, indeed, was not personally present when [REDACTED] requested and received the Documents and he was not made aware of all steps performed to obtain such documents, as this was neither necessary nor required by the CAR applicable law. As already discussed *supra*, according to art. 179 of the CAR's Family Code, the procedure for reconstitution of birth certificate can be launched by any person with a signed request. The initial request was submitted by [REDACTED] on the Witness's behalf before [REDACTED] and was later complemented via WhatsApp, in particular [REDACTED] (CAR-D29-0016-0136). The [REDACTED] never indicated that complementing [REDACTED] initial request with information conveyed via WhatsApp is not in compliance with the CAR applicable law or can any bearing on the authenticity of the judgment.

The Yekatom Defence further attempts to challenge the admissibility of the authentic Documents produced by the competent judicial and administrative authorities by referring to school documentation and another a birth certificate under the name of [REDACTED], which the Witness did not recognise. Furthermore, the other documents presented by the Yekatom Defence contain different names: CAR-D29-0013-0254 - [REDACTED]; CAR-D29-0013-0265 - [REDACTED]; CAR-D29-0014-0165 - [REDACTED] and CAR-D29-0013-0256 - [REDACTED]. With these four documents alone, the Yekatom Defence introduced four different names, where none corroborates the other. Since these documents amongst others have been submitted by the Yekatom Defence as evidence in its request dated 26 September 2023 at 9:05, the CLR1 will further address the admissibility of those documents in a separate email.

Finally, in its Response, the Yekatom Defence argues that the Documents should be excluded pursuant to article 69(7) of the Statute *"in light of the collusive nature in which child soldiers have been selected and brought forward to participate and testify in these proceedings"*. Although the Yekatom Defence fails to elaborate on the matter, it seems alluding to a possible involvement of the CLR1 in *"the fabrication of evidence as part of the enrolment of child soldiers in the ESF and ICC victim programme seemingly for fraudulent reasons"*. The CLR1 takes issue with such serious allegations and rejects them upright as being purely speculative.

Consequently, it is submitted that the Documents are authentic, provide sufficient indicia of reliability and therefore should be formally considered as submitted and admitted for the Chamber's later assessment on their probative value in the judgment. Their formal recognition as submitted evidence is not prejudicial to the fairness of these proceedings. On the contrary, their non-admission will be prejudicial to a fair evaluation of the testimony of the Witness – an element that the Chamber needs to take into account, according to article 69(4) of the Statute.

Kind regards,

Dmytro Suprun

From: Dimitri, Mylene [REDACTED]

Sent: Tuesday, September 26, 2023 09:24

To: Suprun, Dmytro [REDACTED] Trial Chamber V Communications [REDACTED]

Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]

D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]

[REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]

Associate Legal Officer-Court Officer [REDACTED]

Subject: Re: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear All,

The Yekatom Defence opposes the CLR1's request for the formal submission of CAR-V45-00000005 (National Judicial Document (Non-ICC)) and CAR-V45-00000006 (Identifying Document).

Whilst the documents submitted by the CLR1 purport to provide identifying information in relation to CAR-V45-P0001 (a/20722/21), there are substantial concerns in relation to the methods employed in obtaining the two items and the veracity of the information therein.

As such, and in accordance with article 69(4), the material submitted is unreliable and lacks probative value, and formal recognition of the items submitted would be prejudicial to the fairness of these proceedings. Additionally, or in the alternative, the Defence submits that the items should be excluded pursuant to article 69(7) in light of the collusive nature in which child soldiers have been selected and brought forward to participate and testify in these proceedings.

The Defence contends that there are serious flaws with respect to the reliability of both CAR-V45-00000005 and CAR-V45-00000006.

First, the Defence draws the Trial Chamber's attention to recent correspondence between the Defence and CLR1 concerning the metadata associated with both items (see Annex 1). Upon request, the CLR1 expressly stated that "[t]he judgment was [REDACTED]

[REDACTED] for the purpose of the issuance of the birth certificate. During the whole process the witnesses were assisted by [REDACTED]". As set out below, this is plainly false when read against V45-P0001's oral testimony and CAR-D29-0016-0136.

At best, even if one were to characterise the errors in the metadata as straightforward mistakes, this would necessarily undermine the provenance of the documents as presently posited by the CLR1. Regrettably, however, it would appear that certain members of the CLR1 had knowledge of the fact that the documents were not obtained by the witness and yet this was not put forward or clarified by the CLR1 even when pressed by the Defence. Indeed the CLR1 opted to perpetuate the same error during V45-P0001's testimony with Mr. Suprun effectively maintaining that the documents were not directly obtained by [REDACTED] (T-246-ENG, p. 52 lines 11 to 18). The course of action undertaken by the CLR1 with respect to its description of the chain of custody strikes at the very core of the provenance and reliability of CAR-V45-00000005 and CAR-V45-00000006.

The Defence further submits that the two items are not corroborative of one another given that they seem to have been subject to the same opaque processes which did not involve V45-P0001.

Second, despite the metadata correspondence referred above, the provenance of the items was also not established via V45-P0001, who repeatedly stated during the course of his testimony that:

- he was not present during the issuance of CAR-V45-00000005 (T-246-ENG, p. 44 lines 10 to 22, p.55 lines 1 to 15 and p. 56 lines 13 to 23) nor CAR-V45-00000006 (T-246-ENG, p. 55 lines 16 -22)
- he did not provide any of the details as set out in the information sheet relied upon to obtain CAR-V45-00000005 (T-246-ENG p. 45 lines 10-17)
- he had no knowledge of the process involved in obtaining CAR-V45-00000006 (T-246-ENG, p. 58 lines 3 to 5, p. 60 lines 18-25 and p. 61 lines 1 -2)
- he did not travel to the [REDACTED] to retrieve CAR-V45-00000005 (T-246-ENG, p. 55 lines 1 to 5, p. 56 lines 15 to 25) nor to [REDACTED] to collect CAR-V45-00000006 (T-246-ENG, p. 57 lines 1 to 13)

Indeed, it was V45-P0001's evidence that CAR-V45-00000005 and CAR-V45-00000006 were both provided to him by his lawyers (as above see also T-246-ENG, p. 55, lines 21 to 22) and that consequently, he could not explain key discrepancies or anomalies in relation to either document. For example, V45-P0001 was unable to explain the delay in the issuance of CAR-V45-00000005 between [REDACTED] (see T-246-ENG, p. 56 lines 1 to 12). Nor was V45-P0001 able to shed light on how identifying detail such as [REDACTED] appeared in CAR-V45-00000005 given that it does not appear in CAR-V45-00000006 (contra V45-P0001's explanation that [REDACTED] could only [REDACTED] see T-246-ENG p. 20 lines 17 to 24 and p. 21 lines 1 to 3 and p.46 lines 1 to 16) and noting further his position that he did not know [REDACTED] (T-246-ENG, p. 19 lines 6 to 7). V45-P0001's inability to answer basic questions concerning both items further demonstrates that he had nothing to do with the production of either item.

The provenance of the items is also further muddled by the production of another birth certificate by V45-P0001 [REDACTED] [REDACTED] [REDACTED], approx. [REDACTED] (T-246-ENG, pp. 13 to

15). This birth certificate does not match CAR-V45-00000006 [REDACTED] (which V45-P0001 states he [REDACTED] CAR-V45-00000006; T-246-ENG, p. 66 lines 8 to 17) and the numerical reference on the top right-hand side. The Defence does not take the position that the certificate [REDACTED] is authentic or that the information therein is accurate but rather that by V45-P0001's own account, [REDACTED] [REDACTED] (T-246-ENG p. 16 lines 20 to 22). The Defence notes that a copy of the certificate [REDACTED] does appear to have been within the possession of the CLR1 at one point (see CAR-D29-0016-0136, p. 6).

V45-P0001's inability to speak to the processes involved in obtaining CAR-V45-00000005 and CAR-V45-00000006 is further critical given the significant inconsistencies between his testimony and his initial victim application form (CAR-V45-00000004). These are not mere discrepancies but rather go to the core of his substantive testimony concerning his alleged role in the Anti-balaka and notable differences concerning his identification. As set out below, it is the Defence's position that V45-P0001 has fabricated identifying details in order [REDACTED].

Third, as exhibited in CAR-D29-0016-0136, CAR-V45-00000005 was produced by the [REDACTED] [REDACTED] upon direct request from the CLR1 [REDACTED]. The entire exchange between the CLR1 and [REDACTED] court took place over Whatsapp i.e. the CLR1 did not [REDACTED] in person to obtain CAR-V45-00000005.

Further, the information sheet provided by the CLR1 (CAR-D29-0016-0136, pp. 2-4) used for the issuance of CAR-V45-00000005 did not come from V45-P0001 (T-246-ENG, p. 45 lines 13 to 17) and there remains significant uncertainty as to where the CLR1 obtained the identifying detail set out in the information sheet. The process adopted by the CLR1 to obtain CAR-V45-00000005 falls far short of the domestic legal and procedural requirements (see e.g. CAR-D29-00010436, page 0451 and CAR-D29-0001-0546, p. 0549) and it is apparent that CAR-V45-00000005 was drawn up solely in preparation of V45-P0001's testimony (noting that the request of CLR1 was sent to [REDACTED] with amendments [REDACTED] i.e. one day prior to the CLR1's request for leave to present evidence (ICC-01/14-01/18-1972-Conf-Red).

Fourth, and relatedly, significant adverse inferences are to be drawn with respect to the CLR1's lack of interrogation concerning the detail as set out in CAR-V45-00000005 and CAR-V45-00000006. The CLR1 was well aware of the extent and scope of the discrepancies in relation to both the substance of V45-P0001's testimony and his identifying details [REDACTED] [REDACTED] when compared to the victim application form (CAR-V45-00000004). Rather than seek to test the veracity of V45-P0001's account prior to his testimony in particular concerning his identity (see T-246-ENG, p. 79 lines 19 to 25 and p. 80 lines 4 to 9), when pressed, the CLR1 asserted that the "birth certificates therefore clarify any alleged doubt concerning the victims' identity and, in particular, [REDACTED]" (see email of CLR1 dated 31 August 2023 15:53). This is despite the fact that the CLR1 had knowledge and possession of a birth certificate that differs from CAR-V45-00000006 as set out above (see also T-246-ENG p. 17 lines 8 to 14) and that the CLR1 was involved in correcting V45-P0001's [REDACTED] as subsequently seen in CAR-V45-00000005 (i.e. [REDACTED] [REDACTED] see CAR-D29-0016-0136, p. 1 and T-246-ENG, p. 60 lines 18-25 and p. 61 lines 1-2). Although there was no obligation for the CLR1 to confront V45-P0001 with discrepancies as to his identity during the examination in chief, it is incumbent on all counsel to test the veracity of its witness' account prior to calling them in furtherance of the administration of justice. In these circumstances, the leading manner in which the CLR1 chose to introduce CAR-V45-00000005 and CAR-V45-00000006 (T-246-ENG, pp. 42-43) undermines the CLR1's current efforts to formally submit either item.

Additionally, the formal submission of CAR-V45-00000005 and CAR-V45-00000006 would be prejudicial to the fairness of these proceedings and/or if not excluded at this juncture, would be antithetical to and would seriously damage the integrity of the proceedings. In this regard, the Defence underscores the fact that the reliability and probative value of documents concerning the CLR1's case is not merely limited to the Chamber's assessment of the nature and extent of harm suffered by V45-P0001. Rather, the material submitted by CLR1 speaks to the wider fabrication of evidence concerning child soldiers in this case and is inconsistent with the rights of the accused and a fair and impartial trial in accordance with article 68(3).

As set out in cross-examination, it is the Defence's position that V45-P0001 fabricated his substantive testimony (noting e.g. that he was not familiar with key incidents and locations as pled by the Prosecution in this case) and his identity.

In particular, it is the Defence's position that V45-P0001's real identity is [REDACTED]. Despite V45-P001's denials, this is established by virtue of, *inter alia*,

- the victim application form refers to [REDACTED] as the mother of V45-P0001 (CAR-V45-00000004-006) and bears [REDACTED] (CAR-V45-00000004-004 and CAR-OTP-00001073-000003). [REDACTED] had several children together, [REDACTED] (CAR-D29-0013-0253 See also CAR-D29-0014-0159, CAR-D29-0014-0160, CAR-D29-0014-0162). Further two different individuals (CAR-V45-00000004-001 and 006) certify that V45-P0001's date of birth is [REDACTED] on the same application form.
- school records which establish that a [REDACTED] attended [REDACTED] and that his teacher was [REDACTED] (CAR-D29-0014-0165 and CAR-D29-0013-0265). V45-P0001 testified that he had attended [REDACTED] (T-246-ENG p. 18 line 25, p. 19 lines 1 and p.68 lines 14 to 17 although it is V45-P001's position that he only attended [REDACTED]). There is no school record for the attendance of [REDACTED] for any period.
- a birth certificate held on record by [REDACTED] in the name of [REDACTED], born [REDACTED], and parents identified as [REDACTED] (CAR-D29-0013-0254).
- school registration forms obtained from [REDACTED] which establish th [REDACTED] (CAR-D29-0013-0256). The [REDACTED] also includes a photograph which bears more than a striking resemblance to V45-P0001.

V45-P001's attempt to disguise [REDACTED] name (T-246-ENG, p. 25 lines 14 to 23 - the Chamber will recall that [REDACTED]) provides further *indicia* of the existence of a wider collusion which goes towards the fabrication of evidence as part of the enrolment of child soldiers in the ESF and ICC victim programme seemingly for fraudulent reasons.

Kind regards,
Mylène Dimitri

From: Suprun, Dmytro [REDACTED]

Sent: 22 September 2023 17:09

To: Trial Chamber V Communications [REDACTED]

Cc: OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED]

D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]

[REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]

Associate Legal Officer-Court Officer [REDACTED]

Subject: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the "Initial Directions on the Conduct of the Proceedings", the CLR1

submits the documents listed below relating to the testimony of Witness CAR-V45-P-0001. The CLR1 respectfully requests that these documents be recognised as formally submitted.

	Type	Submitted through witness	Date used
CAR-V45-00000005	National Judicial Document (Non ICC)	CAR-V45-P-0001	21 September 2023
CAR-V45-00000006	Identifying Document	CAR-V45-P-0001	21 September 2023

The hard copy of the present request will be provided to the Trial Chamber and Participants on Tuesday 26 September 2023.

Kind regards,
Dmytro Suprun

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From: OTP CAR IIB
Sent: 28 September 2023 14:13
To: Trial Chamber V Communications
Cc: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; Associate Legal Officer-Court Officer; Suprun, Dmytro
Subject: RE: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber,

Dear All

The Prosecution takes no position on the tendered documents and defers to the Chamber's discretion. The Chamber has repeatedly indicated that it will defer its assessment of the standard evidentiary criteria of all items tendered in accordance with the submission approach adopted in these proceedings. The Prosecution sees no reason to depart from this practice in this instance.

It bears noting that the Yekatom Defence has itself previously sought the submission of similar birth certificates and related or derivative documents whose provenance is not established in the record of the case, nor are the circumstances under which they were obtained attested to under oath in any way (see e.g., Yekatom Defence Submission of Evidence following P-2475's testimony, 2 June 2022, at 13:22; and the Defence's response to Prosecution opposition to such submission, 7 June 2022, at 17:17).

On the basis of the evidence adduced during the proceedings, these types of records are of limited value (if any) absent clear evidence as to their provenance, reliability, or that of the process involved in obtaining them — and particularly, in contrast to sworn testimony regarding the subject matter to which they attend. Thank you.

Kind regards,
 On behalf of OTP Trial Team

De : Suprun, Dmytro [REDACTED]
Envoyé : jeudi 28 septembre 2023 11:36
À : Trial Chamber V Communications [REDACTED]
Cc : OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Objet : RE: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with para. 63(iii) of the [Initial Directions](#), the Common Legal Representative of the former child soldiers (the "CLR1") hereby submits his observations on the Yekatom Defence's response dated 26 September 2023 at 9:24 (the "Response") to the CLR1's request (the "Submission of Evidence") for the formal submission of CAR-V45-00000005 and CAR-V45-00000006 (the "Documents") dated 22 September 2023 at 17:09.

As a preliminary observation, the CLR1 notes that in its Response the Yekatom Defence not only challenges the admissibility of the Documents, but also addresses the probative value thereof, which is a matter not to be dealt with at this stage. Moreover, the Yekatom Defence seems alleging the CLR1 involvement in documents fabrication. The CLR1, therefore, will first and foremost address the admissibility of the Documents, and then the other issues and allegations raised by the Yekatom Defence.

During his testimony, CAR-V45-P-0001 (the “Witness”) mentioned four different documents as being his ‘birth certificates’. In order to avoid any further confusions, the CLR1 therefore wishes to clarify, with reference to the Witness’s statements, as follows.

1. Birth certificate obtained by the Witness himself at [REDACTED]: this is a birth certificate the Witness [REDACTED]. The Witness spoke about said document to the CLR1, but it was a false certificate as its number was not authenticated (T-246-CONF-ENG ET, p. 12 line 19 to p. 14 line 16).
2. First reconstitution of the birth certificate produced [REDACTED]: this is the first birth certificate that was [REDACTED]. This birth certificate had a material error, as it referred to [REDACTED]. The Witness has the original of this certificate [REDACTED] (T-246-CONF-ENG ET, p. 56, lines 8-23). The procedure to obtain this birth certificate was prompted by [REDACTED] on behalf of the victim [REDACTED], as the above birth certificate no. 1 was not authenticated. This document has, on the top right, [REDACTED], which corresponds to [REDACTED]. That is why the corrected birth certificate (CAR-V45-00000006) has [REDACTED], which means that [REDACTED].
3. Second reconstitution of the birth certificate produced [REDACTED] (CAR-V45-00000006) (T-245-CONF-ENG ET, p. 43 lines 6-19): this is the birth certificate that [REDACTED]. This document has, on the top right, [REDACTED], which corresponds to [REDACTED].
4. Copy of the birth certificate that the witness [REDACTED] (CAR-REG-0001-0020): this is a copy of the first reconstitution of the birth certificate. [REDACTED]. The Witness has [REDACTED] the original of the first reconstruction of the first certificate with [REDACTED] thereon (T-246-CONF-ENG ET, p. 56 lines 13-23).

The CLR1 thus clarifies that CAR-V45-00000006 is the only valid birth certificate of the Witness and, therefore, the only one submitted by the CLR1 as evidence in the present case.

In accordance with the established practice of several Chambers of the Court, in the “Initial Directions on the Conduct of the Proceedings”, this Chamber has stated it will adopt the so-called “Submission Approach” (see the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-631](#), 26 August 2020, para. 53). According to the jurisprudence of the Court, at this stage, the Chamber will need to assess whether the Documents are *prima facie* relevant to and probative of issues at trial for the Documents to be considered as “formally submitted” (see, *inter alia*, the “Corrigendum to Decision on the Admissibility of Four Documents” (Trial Chamber I), [No. ICC-01/04-01/06-1399](#), 20 January 2011, paras. 26-28). The Chamber will need to do a more attentive analysis of the authenticity and probative value of the Documents at a later stage.

It is submitted that the Documents are of clear relevance to the issues at trial. Being identifying documents of the Witness, they in fact relate to the matters that are properly to be considered by the Chamber in its investigation of the charges against the accused persons and the views and concerns of participating victims, in accordance with the

jurisprudence on the matter (see, *inter alia*, the “Corrigendum to Decision on the Admissibility of Four Documents” (Trial Chamber I), [No. ICC-01/04-01/06-1399](#), 20 January 2011, para. 27).

Moreover, it is submitted that the Documents have probative value. According to the jurisprudence, while the Chamber could use numerous possible criteria to assess the probative value of an item, among the most important of them there are *indicia* of reliability, including authenticity (see, for instance, the “Corrigendum to Decision on the Admissibility of Four Documents” (Trial Chamber I), [No. ICC-01/04-01/06-1399](#), 20 January 2011, para. 29 and the “Decision on the Prosecution’s Request for Admission of Documentary Evidence” (Trial Chamber V(a)), [No. ICC-01/09-01/11-1353](#), 10 June 2014, para. 15).

Indeed, the Documents are authentic and provide sufficient *indicia* of reliability. The Documents, CAR-V45-00000005 and CAR-V45-00000006, were produced by competent national authorities, respectively by [REDACTED] [REDACTED]. These documents are signed and stamped by the competent authorities, and therefore contain all *indicia* of authenticity and reliability. Moreover, these documents have been produced in accordance with the procedure envisaged in the article 179 of CAR’s Family Code (*Loi No. 97.013*).

The request for the reconstitution of the birth certificate with respect to the Witness was submitted by [REDACTED] on behalf of the Witness and based on the information the Witness provided him with. As clarified by the Witness, the Documents were requested and obtained on his behalf by his lawyers, on the basis of the information the Witness himself provided (T-246-CONF-ENG ET, p. 49, lines 3-6), including [REDACTED] (T-246-CONF-ENG ET, p. 39 line 15 to p. 40 line 5). The CLR1 wishes to further clarify that during one of the CLR1’s interactions with the Witness, the Witness, when asked about [REDACTED], declared [REDACTED]. However, since this information was needed, he nevertheless provided [REDACTED]. Indeed, in the CAR, as in many other countries, proceedings in the subject of personal status are of a declaratory nature (originating from a unilateral declaration) and do not require the physical presence of the concerned persons or their testimony. Pursuant to article 167 of the CAR Family Code, both judgments on reconstitution of identification documents and the identification documents themselves are presumably authentic when they have a signature and a stamp of the competent authority. They are enforceable for everybody. Any attempt to nullify judgments on reconstitution of identification documents can only be done by third persons through a judge, according to article 181 of the same Code. The data contained in the Documents have been further validated by the CAR immigration authorities and the Ministry of Foreign Affairs, which [REDACTED]. [REDACTED].

Accordingly, it is submitted that since the Documents are authentic in accordance with the CAR law and contain sufficient *indicia* of reliability as required by the applicable law of the Court, they should be considered as admissible evidence.

As regards the metadata of the Documents and, in particular, their chain of custody, initially, the CLR1 reported a chain of custody, later corrected by via email after the Yekatom’s Defence prompt on this issue, as summarized below:

	[REDACTED] (NUIX)	Email 08-09-2023
CAR-V45-00000005	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
CAR-V45-00000006	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]

During his testimony, the Witness confirmed that both Documents were received by his lawyers at [REDACTED] [REDACTED] respectively. [REDACTED] who acted on the Witness’s behalf during the entire process has the originals of the Documents in the CAR, and [REDACTED] have the corresponding registers. Even though the CLR1 did not make crystal clear that the Witness received the Documents from [REDACTED]

rather than directly from the relevant authorities, in his correction of the metadata, the CLR1 indicated that through the entire process pertaining to the issuance of the birth certificate the Witness was [REDACTED]. It is submitted that a certain lack of clarity in the chain of custody of the Documents has no bearing on the authenticity of the Documents, as both of them remain authentic documents produced by the competent authorities, and during his testimony, the Witness confirmed the correctness of his personal data contained thereon.

The CLR1 informed the Witness about the procedure to obtain his birth certificate and the reasons why the procedure was launched on his behalf. The Witness, indeed, was not [REDACTED] [REDACTED] requested and received the Documents and he was not made aware of all steps performed to obtain such documents, as this was neither necessary nor required by the CAR applicable law. As already discussed *supra*, according to art. 179 of the CAR's Family Code, the procedure for reconstitution of birth certificate can be launched by any person with a signed request. The initial request was submitted by [REDACTED] on the Witness's behalf before [REDACTED] [REDACTED] and was later complemented via WhatsApp, in particular to point out a mistake in the name (CAR-D29-0016-0136). The [REDACTED] never indicated that complementing [REDACTED] initial request with information conveyed via WhatsApp is not in compliance with the CAR applicable law or can any bearing on the authenticity of the judgment.

The Yekatom Defence further attempts to challenge the admissibility of the authentic Documents produced by the competent judicial and administrative authorities by referring to school documentation and another a birth certificate under the name of [REDACTED], which the Witness did not recognise. Furthermore, the other documents presented by the Yekatom Defence contain different names: CAR-D29-0013-0254 - [REDACTED] [REDACTED]; CAR-D29-0013-0265 - [REDACTED] [REDACTED]; CAR-D29-0014-0165 - [REDACTED] [REDACTED] and CAR-D29-0013-0256 - [REDACTED] [REDACTED]. With these four documents alone, the Yekatom Defence introduced four different names, where none corroborates the other. Since these documents amongst others have been submitted by the Yekatom Defence as evidence in its request dated 26 September 2023 at 9:05, the CLR1 will further address the admissibility of those documents in a separate email.

Finally, in its Response, the Yekatom Defence argues that the Documents should be excluded pursuant to article 69(7) of the Statute "*in light of the collusive nature in which child soldiers have been selected and brought forward to participate and testify in these proceedings*". Although the Yekatom Defence fails to elaborate on the matter, it seems alluding to a possible involvement of the CLR1 in "*the fabrication of evidence as part of the enrolment of child soldiers in the ESF and ICC victim programme seemingly for fraudulent reasons*". The CLR1 takes issue with such serious allegations and rejects them outright as being purely speculative.

Consequently, it is submitted that the Documents are authentic, provide sufficient indicia of reliability and therefore should be formally considered as submitted and admitted for the Chamber's later assessment on their probative value in the judgment. Their formal recognition as submitted evidence is not prejudicial to the fairness of these proceedings. On the contrary, their non-admission will be prejudicial to a fair evaluation of the testimony of the Witness – an element that the Chamber needs to take into account, according to article 69(4) of the Statute.

Kind regards,
Dmytro Suprun

From: Dimitri, Mylene [REDACTED]
Sent: Tuesday, September 26, 2023 09:24
To: Suprun, Dmytro [REDACTED]; Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED]; D29 Yekatom Defence Team [REDACTED];
 D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]
 [REDACTED] V44 LRV Team [REDACTED]; V45 LRV Team [REDACTED]
 Associate Legal Officer-Court Officer [REDACTED]
Subject: Re: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear All,

The Yekatom Defence opposes the CLR1's request for the formal submission of CAR-V45-00000005 (National Judicial Document (Non-ICC)) and CAR-V45-00000006 (Identifying Document).

Whilst the documents submitted by the CLR1 purport to provide identifying information in relation to CAR-V45-P0001 (a/20722/21), there are substantial concerns in relation to the methods employed in obtaining the two items and the veracity of the information therein.

As such, and in accordance with article 69(4), the material submitted is unreliable and lacks probative value, and formal recognition of the items submitted would be prejudicial to the fairness of these proceedings. Additionally, or in the alternative, the Defence submits that the items should be excluded pursuant to article 69(7) in light of the collusive nature in which child soldiers have been selected and brought forward to participate and testify in these proceedings.

The Defence contends that there are serious flaws with respect to the reliability of both CAR-V45-00000005 and CAR-V45-00000006.

First, the Defence draws the Trial Chamber's attention to recent correspondence between the Defence and CLR1 concerning the metadata associated with both items (see Annex 1). Upon request, the CLR1 expressly stated that "[t]he judgment was [REDACTED] for the purpose of the issuance of the birth certificate. During the whole process the witnesses were assisted by [REDACTED]". As set out below, this is plainly false when read against V45-P0001's oral testimony and CAR-D29-0016-0136.

At best, even if one were to characterise the errors in the metadata as straightforward mistakes, this would necessarily undermine the provenance of the documents as presently posited by the CLR1. Regrettably, however, it would appear that certain members of the CLR1 had knowledge of the fact that the documents were not obtained by the witness and yet this was not put forward or clarified by the CLR1 even when pressed by the Defence. Indeed the CLR1 opted to perpetuate the same error during V45-P0001's testimony with Mr. Suprun effectively maintaining that the documents were not directly obtained by [REDACTED] (T-246-ENG, p. 52 lines 11 to 18). The course of action undertaken by the CLR1 with respect to its description of the chain of custody strikes at the very core of the provenance and reliability of CAR-V45-00000005 and CAR-V45-00000006.

The Defence further submits that the two items are not corroborative of one another given that they seem to have been subject to the same opaque processes which did not involve V45-P0001.

Second, despite the metadata correspondence referred above, the provenance of the items was also not established via V45-P0001, who repeatedly stated during the course of his testimony that:

- he was not present during the issuance of CAR-V45-00000005 (T-246-ENG, p. 44 lines 10 to 22, p.55 lines 1 to 15 and p. 56 lines 13 to 23) nor CAR-V45-00000006 (T-246-ENG, p. 55 lines 16 -22)
- he did not provide any of the details as set out in the information sheet relied upon to obtain CAR-V45-00000005 (T-246-ENG p. 45 lines 10-17)
- he had no knowledge of the process involved in obtaining CAR-V45-00000006 (T-246-ENG, p. 58 lines 3 to 5, p. 60 lines 18-25 and p. 61 lines 1 -2)
- he did not travel to [REDACTED] to retrieve CAR-V45-00000005 (T-246-ENG, p. 55 lines 1 to 5, p. 56 lines 15 to 25) nor to [REDACTED] to collect CAR-V45-00000006 (T-246-ENG, p. 57 lines 1 to 13)

Indeed, it was V45-P0001's evidence that CAR-V45-00000005 and CAR-V45-00000006 were both provided to him by his lawyers (as above see also T-246-ENG, p. 55, lines 21 to 22) and that consequently, he could not explain key discrepancies or anomalies in relation to either document. For example, V45-P0001 was unable to explain the delay in the issuance of CAR-V45-00000005 between [REDACTED] (see T-246-ENG, p. 56 lines 1 to 12). Nor was V45-P0001 able to shed light on how identifying detail such as [REDACTED] appeared in CAR-V45-00000005 given that it does not appear in CAR-V45-00000006 (contra V45-P0001's explanation that [REDACTED] could only [REDACTED] see T-246-ENG p. 20 lines 17 to 24 and p. 21 lines 1 to 3 and p.46 lines 1 to 16) and noting further his position that he did not know [REDACTED] (T-246-ENG, p. 19 lines 6 to 7). V45-P0001's inability to answer basic questions concerning both items further demonstrates that he had nothing to do with the production of either item.

The provenance of the items is also further muddled by the production of another birth certificate by V45-P0001 [REDACTED] which he stated was a copy of his original birth that he had obtained from [REDACTED], approx. [REDACTED] (T-246-ENG, pp. 13 to 15). This birth certificate does not match CAR-V45-00000006 [REDACTED] (which V45-P0001 states he [REDACTED] CAR-V45-00000006; T-246-ENG, p. 66 lines 8 to 17) and the numerical reference on the top right-hand side.

The Defence does not take the position that the certificate [REDACTED] is authentic or that the information therein is accurate but rather that by V45-P0001's own account, [REDACTED] [REDACTED] (T-246-ENG p. 16 lines 20 to 22). The Defence notes that a copy of the certificate [REDACTED] does appear to have been within the possession of the CLR1 at one point (see CAR-D29-0016-0136, p. 6).

V45-P0001's inability to speak to the processes involved in obtaining CAR-V45-00000005 and CAR-V45-00000006 is further critical given the significant inconsistencies between his testimony and his initial victim application form (CAR-V45-00000004). These are not mere discrepancies but rather go to the core of his substantive testimony concerning his alleged role in the Anti-balaka and notable differences concerning his identification. As set out below, it is the Defence's position that V45-P0001 has fabricated identifying details in order [REDACTED].

Third, as exhibited in CAR-D29-0016-0136, CAR-V45-00000005 was produced by [REDACTED] upon direct request from the CLR1 [REDACTED]. The entire exchange between the CLR1 and [REDACTED] took place over Whatsapp i.e. the CLR1 did not attend [REDACTED] in person to obtain CAR-V45-00000005.

Further, the information sheet provided by the CLR1 (CAR-D29-0016-0136, pp. 2-4) used for the issuance of CAR-V45-00000005 did not come from V45-P0001 (T-246-ENG, p. 45 lines 13 to 17) and there remains significant uncertainty as to where the CLR1 obtained the identifying detail set out in the information sheet. The process adopted by the CLR1 to obtain CAR-V45-00000005 falls far short of the domestic legal and procedural requirements (see e.g. CAR-D29-00010436, page 0451 and CAR-D29-0001-0546, p. 0549) and it is apparent that CAR-V45-00000005 was drawn up solely in preparation of V45-P0001's testimony (noting that the request of CLR1 was sent to [REDACTED] with amendments [REDACTED] [REDACTED] (ICC-01/14-01/18-1972-Conf-Red).

Fourth, and relatedly, significant adverse inferences are to be drawn with respect to the CLR1's lack of interrogation concerning the detail as set out in CAR-V45-00000005 and CAR-V45-00000006.

The CLR1 was well aware of the extent and scope of the discrepancies in relation to both the substance of V45-P0001's testimony and his identifying details [REDACTED] when compared to the victim application form (CAR-V45-00000004).

Rather than seek to test the veracity of V45-P0001's account prior to his testimony in particular concerning his identity (see T-246-ENG, p. 79 lines 19 to 25 and p. 80 lines 4 to 9), when pressed, the CLR1 asserted that the "birth certificates therefore clarify any alleged doubt concerning the victims' identity and, in particular, [REDACTED]" (see email of CLR1 dated 31 August 2023 15:53). This is despite the fact that the CLR1 had knowledge and possession of a birth certificate that differs from CAR-V45-00000006 as set out above (see also T-246-ENG p. 17 lines 8 to 14) and that the CLR1 was involved in correcting V45-P0001's [REDACTED] as subsequently seen in CAR-V45-00000005 (i.e. from [REDACTED] see CAR-D29-0016-0136, p. 1 and T-246-ENG, p. 60 lines 18-25 and p. 61 lines 1-2). Although there was no obligation for the CLR1 to confront V45-P0001 with discrepancies as to his identity during the examination in chief, it is incumbent on all counsel to test the veracity of its witness' account prior to calling them in furtherance of the administration of justice. In these circumstances, the leading manner in which the CLR1 chose to introduce CAR-V45-00000005 and CAR-V45-00000006 (T-245-ENG, pp. 42-43) undermines the CLR1's current efforts to formally submit either item.

Additionally, the formal submission of CAR-V45-00000005 and CAR-V45-00000006 would be prejudicial to the fairness of these proceedings and/or if not excluded at this juncture, would be antithetical to and would seriously damage the integrity of the proceedings. In this regard, the Defence underscores the fact that the reliability and probative value of documents concerning the CLR1's case is not merely limited to the Chamber's assessment of the nature and extent of harm suffered by V45-P0001. Rather, the material submitted by CLR1 speaks to the wider fabrication of evidence concerning child soldiers in this case and is inconsistent with the rights of the accused and a fair and impartial trial in accordance with article 68(3).

As set out in cross-examination, it is the Defence's position that V45-P0001 fabricated his substantive testimony (noting e.g. that he was not familiar with key incidents and locations as pled by the Prosecution in this case) and his identity.

In particular, it is the Defence's position that V45-P0001's real identity is [REDACTED]. Despite V45-P001's denials, this is established by virtue of, *inter alia*,

- the victim application form refers to [REDACTED] as the mother of V45-P0001 (CAR-V45-00000004-006) and bears [REDACTED] (CAR-V45-00000004-004 and CAR-OTP-00001073-000003). [REDACTED] had several [REDACTED] (CAR-D29-0013-0253 See also CAR-D29-0014-0159, CAR-D29-0014-0160, CAR-D29-0014-0162). Further two different individuals (CAR-V45-00000004-001 and 006) certify that V45-P0001's date of birth is [REDACTED] and not [REDACTED] on the same application form.
- school records which establish that a [REDACTED] attended [REDACTED] and that his teacher was [REDACTED] (CAR-D29-0014-0165 and CAR-D29-0013-0265). V45-P0001 testified that he had attended [REDACTED] and that his teacher [REDACTED] (T-246-ENG p. 18 line 25, p. 19 lines 1 and p.68 lines 14 to 17 although it is V45-P001's position that he only attended [REDACTED]). There is no school record for the attendance of [REDACTED]

- a birth certificate held on record by [REDACTED] in the name of [REDACTED], born [REDACTED], and parents identified as [REDACTED] (CAR-D29-0013-0254).
- school registration forms obtained from [REDACTED] which establish the attendance of [REDACTED] (CAR-D29-0013-0256). The [REDACTED] also includes a photograph which bears more than a striking resemblance to V45-P0001.

V45-P001's attempt to disguise [REDACTED] name (T-246-ENG, p. 25 lines 14 to 23 - the Chamber will recall that [REDACTED]) provides further *indicia* of the existence of a wider collusion which goes towards the fabrication of evidence as part of the enrolment of child soldiers in the ESF and ICC victim programme seemingly for fraudulent reasons.

Kind regards,
Mylène Dimitri

From: Suprun, Dmytro [REDACTED]
Sent: 22 September 2023 17:09
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED] D29 Yekatom Defence Team [REDACTED];
 D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED];
 [REDACTED]; V44 LRV Team [REDACTED] V45 LRV Team [REDACTED];
 Associate Legal Officer-Court Officer [REDACTED]
Subject: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the "Initial Directions on the Conduct of the Proceedings", the CLR1 submits the documents listed below relating to the testimony of Witness CAR-V45-P-0001. The CLR1 respectfully requests that these documents be recognised as formally submitted.

	Type	Submitted through witness	Date used
CAR-V45-00000005	National Judicial Document (Non ICC)	CAR-V45-P-0001	21 September 2023
CAR-V45-00000006	Identifying Document	CAR-V45-P-0001	21 September 2023

The hard copy of the present request will be provided to the Trial Chamber and Participants on Tuesday 26 September 2023.

Kind regards,
Dmytro Suprun

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From: OTP CAR IIB
Sent: 29 September 2023 11:57
To: [REDACTED] Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; OTP CAR IIB; D30 Ngaissona Defence Team; V45 LRV Team; V44 LRV Team OPCV; Associate Legal Officer-Court Officer; V44 LRV Team
Subject: RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear All,

The Prosecution opposes the formal submission of the following documents:

Items 16 (CAR-D29-0016-0109), 18 (CAR-D29-0010-0139) and 22 (CAR-D29-0016-0125): they have already been submitted through P-2018 (see Email “Yekatom Defence submission of evidence following the examination of P-2018”, 25 April 2023 at 18:38). The Chamber has not yet ruled on their formal recognition. The Prosecution reiterates its arguments of 25 April 2023 at 18:38 in relation to P-2018 (see Email “RE: Yekatom Defence submission of evidence following the examination of P-2018” of 1 May 2023 at 17:39). Indeed, they represent Facebook conversations or snapshots taken from various Facebook accounts. In accordance with the Chamber’s previous guidance related to Facebook material (see Decisions on submitted materials for P-2841, P-2027, and 2673, emails from TCV, 2 July 2021, at 14:07; 19 July 2021, at 11:37; and 27 August 2021, at 08:10, respectively), these items should more properly be submitted from the bar table.

Items 12 (CAR-D29-0016-0135-R01), 13 (CAR-D29-0016-0136), 14 (CAR-D29-0016-0145), 15 (CAR-D29-0001-0546): CAR-V45-P-0001 did not provide any meaningful testimony regarding the contents of the Whatsapp conversations in which he was not a participant, or on the procedural law of the CAR. As such, the documents should be submitted from the bar table, in order for their relevance and probative value to be more fully addressed by the Parties. This includes, but is not limited to, their documents’ provenance and the circumstances under which they were obtained. The mere fact that some were put on the record of the hearing does not automatically render their submission formally recognisable (see ICC-01/14-01/18-T-246-CONF-ENG, pp. 49-50, at [12:17:53-12:21:35]).

Items 9 (CAR-D29-0014-0159), 10 (CAR-D29-0014-0160), 11 (CAR-D29-0014-0162), 19 (CAR-OTP-2123-0071-R02), 20 (CAR-OTP-00000737-R01), 21 (CAR-D29-0010-0009): as the witness did not provide any meaningful testimony on such documents, they have no apparent evidentiary value in relation to this witness at this stage. As such, the Prosecution considers that they should be submitted from the bar table, in order for their relevance and probative value to be more fully addressed by the Parties.

Items 6 (CAR-D29-0013-0250) and 8 (CAR-D29-0013-0253-R01): these documents have been drawn up specifically for the purpose of these proceedings and are clearly ‘testimonial’ in nature within the meaning of Rule 68(2). As such, there is a procedural bar to their submission through witness CAR-V45-P-0001.

As regards the other tendered items, the Prosecution recalls that the Chamber will defer its assessment of the standard evidentiary criteria of all items tendered in accordance with the submission approach adopted in these proceedings. That said, their authenticity, provenance, probative value and reliability has not been shown by the Defence. In particular, as regards item 23 (CAR-D29-0013-0254), on the basis of the evidence adduced during the proceedings, these types of records are of limited value (if any) absent clear evidence as to their provenance, reliability, or that of the process involved in obtaining them — and particularly, in contrast to sworn testimony regarding the subject matter to which they attend.

Regarding item 1 (CAR-V45-00000004), for which the Defence requests the formal submission of pages 4 and 6 exclusively, the Prosecution is of the view that should the Chamber accept such submission, the document should be recognised as submitted as a whole so that it can be analysed and understood in context. Thank you.

Kind regards,

On behalf of OTP Trial Team

De : [REDACTED]

Envoyé : mardi 26 septembre 2023 21:05

À : Trial Chamber V Communications [REDACTED]

Cc : D29 Yekatom Defence Team [REDACTED]; OTP CAR IIB [REDACTED]

D30 Ngaissona Defence Team [REDACTED] V45 LRV Team [REDACTED]

[REDACTED] V44 LRV Team OPCV [REDACTED] Associate Legal Officer-Court Officer

[REDACTED]; V44 LRV Team <V44LRVTeam@iccepn.org>

Objet : Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom (the Defence) respectfully seeks the formal submission of the following documents used during its examination of witness CAR-V45-P-0001.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
1	CAR-V45-00000004, p. 004 and 006	Formulaire de demande à titre individuel	Text Document	D29	CAR-V45-P-0001
2	CAR-D29-0013-0252	Attestation de fréquentation scolaire [REDACTED]	Certificate	D29	CAR-V45-P-0001
3	CAR-D29-0014-0152	Répertoire du [REDACTED]	List / table	D29	CAR-V45-P-0001
4	CAR-OTP-00001073	Identifying information in Registry's possession [REDACTED]	Report	D29	CAR-V45-P-0001
5	CAR-OTP-00001381	VPRS\Implementation of ICC-01/14-01/18-1828-Conf	Communication - E-mail	D29	CAR-V45-P-0001
6	CAR-D29-0013-0250	Attestation - [REDACTED]	Certificate	D29	CAR-V45-P-0001
7	CAR-D29-0014-0151	Liste du chef et notables du [REDACTED]	List / table	D29	CAR-V45-P-0001
8	CAR-D29-0013-0253-R01	Attestation [REDACTED]	Certificate	D29	CAR-V45-P-0001
9	CAR-D29-0014-0159	Registre de vaccination du [REDACTED]	List / table	D29	CAR-V45-P-0001
10	CAR-D29-0014-0160	Registre de naissance du [REDACTED]	List / table	D29	CAR-V45-P-0001
11	CAR-D29-0014-0162	Registre de vaccination du [REDACTED]	List / table	D29	CAR-V45-P-0001
12	CAR-D29-0016-0135-R01	Email on WhatsApp discussion with [REDACTED]	Communication - E-mail	D29	CAR-V45-P-0001
13	CAR-D29-0016-0136	Exported Whatsapp conversation between [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
14	CAR-D29-0016-0145	Document explicatif des messages Whatsapp entre [REDACTED] (CAR-D29-0016-0136)	Notes (other)	D29	CAR-V45-P-0001
15	CAR-D29-0001-0546	Code de procédure civile de la République Centrafricaine - articles 1 à 39	Legal, Administration and Court document – non ICC	D29	CAR-V45-P-0001

16	CAR-D29-0016-0109	Facebook Screenshot - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
17	CAR-V45-00000011	Photo of CAR-V45-P-0002	Photograph	D29	CAR-V45-P-0001
18	CAR-D29-0010-0139	Photograph	Photograph	D29	CAR-V45-P-0001
19	CAR-OTP-2123-0071-R02	ANNEX A / VOLUNTARY AND INFORMED PARENTAL CONSENT FOR INTERVIEW	ICC Statement - Acknowledgement	D29	CAR-V45-P-0001
20	CAR-OTP-00000737-R01	Investigator's Report additional info re [REDACTED].doc	ICC Investigation notes / report / correspondence	D29	CAR-V45-P-0001
21	CAR-D29-0010-0009	Photographie de l'enfant [REDACTED]	Photograph/s	D29	CAR-V45-P-0001
22	CAR-D29-0016-0125	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
23	CAR-D29-0013-0254	Acte de naissance [REDACTED]	Certificate	D29	CAR-V45-P-0001
24	CAR-D29-0013-0256	Fiche d'inscription [REDACTED]	Certificate	D29	CAR-V45-P-0001
25	CAR-D29-0013-0265	Certificat de [REDACTED]	Certificate	D29	CAR-V45-P-0001
26	CAR-D29-0014-0165	Registre d'appel et d'inventaire de l'école [REDACTED]	List / table	D29	CAR-V45-P-0001

The Defence respectfully requests the submission of pages 4 and 6 of CAR-V45-00000004 which constitutes the victim application form of CAR-V45-P-0001. The Defence submits that the victim application form in its entirety is testimonial evidence as it comprises information that was taken by an ICC representative in the context of proceedings against an accused and thus only requests the submission of two pages.

The Defence recalls that the Chamber previously held that pages that can be read and understood without requiring the item in its entirety for context warrant to depart from the general rule of submission of items as a whole (see email from Trial Chamber V, dated 2 July 2021 at 14:07; email from Trial Chamber V, dated 23 August 2022 at 08:32; email from Trial Chamber V, dated 9 November at 13:52; email from Trial Chamber V, dated 29 November 2022, at 10:08).

Should the Chamber reject the submission of only pages 4 and 6 of CAR-V45-00000004 and is instead minded to recognize the entire item as formally submitted, the Defence withdraws its request for the submission of this item.

Kind regards,

[REDACTED]
Yekatom Defence

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From: Suprun, Dmytro
Sent: 29 September 2023 18:47
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; OTP CAR IIB; D30 Ngaissona Defence Team; V45 LRV Team; V44 LRV Team OPCV; Associate Legal Officer-Court Officer; V44 LRV Team
Subject: RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with para. 63(ii) of the Initial Directions, the Common Legal Representative of the former child soldiers (the "CLR1") hereby submits his response to the Yekatom Defence's request for formal submission of 26 items, sent by email on 26 September 2023 at 21:05.

The CLR1 does not oppose the recognition as formally submitted of items 7. **CAR-D29-0014-0151** and 17. **CAR-V45-00000011**.

The CLR1, however, opposes the recognition as formally submitted of the remaining items for the following reasons.

First, the CLR1 opposes the recognition as formally submitted of items 5. **CAR-OTP-00001381**, 15. **CAR-D29-0001-0546**, 4. **CAR-OTP-00001073**, 19. **CAR-OTP-2123-0071-R02** and 20. **CAR-OTP-00000737-R01**. These items were not shown to nor discussed with the witness CAR-V45-P-0001 (the "Witness"), therefore they cannot be considered as formally submitted through this witness (see Trial Chamber V's Email correspondence dated 2 July 2021 at 14:07).

Item 4. **CAR-OTP-00001073** is an *inter partes* document and the CLR1 has no access to it in NUIX. The CLR1 received a hard copy of this document the day before the Witness' testimony, however, the CLR1 still has no access to it through NUIX, and, as a consequence, cannot see the document's metadata. Although the CLR1 had requested access, the OTP did not grant it. Therefore, the document cannot be considered as formally submitted through the Witness because the CLR1 has not had the possibility to analyse its reliability. The relevance of item 15. **CAR-D29-0001-0546** is contested since the applicability of the 39 articles of the *Code de Procédure Civile de la République Centrafricaine* has not been explained by the Yekatom Defence.

Second, the CLR1 opposes the partial recognition as formally submitted of item 1. **CAR-V45-00000004**. The first of the three pages for which recognition is sought is the last page of the Witness's participation form as victim. The other two are a declaration of the Witness and a declaration of identity, both attached to the form. The CLR1 argues that it is not possible to recognise the document partially. Indeed, a document has to be read and understood in its entire context (see Trial Chamber V's Email correspondence dated 23 August 2022 at 10:08). If only a part of the document is recognised, the information would be taken out of the context and therefore it will not be possible to infer conclusions from it. Furthermore, in this regard, the Witness explained during his testimony that the form was not read back to him after having been filed in by another person (T-246-CONF-ENG, p. 22, lines 7-8). The CLR1 therefore opposes the partial recognition of the item, but he does not oppose the Yekatom Defence withdrawal of its request shall the Chamber decides to recognise the entire item.

Third, item 23. **CAR-D29-0013-0254** is not authentic and reliable as it seems to be inconsistent with the law. In fact, while having the stamp of a tribunal, it is not a reconstitution of a birth certificate. Therefore, it is unclear what this stamp means or stands for since the Yekatom Defence did not provide the related reconstitution judgment. Had a reconstitution judgment been issued, a regular birth certificate would have been entitled *Transcriptions jugements supplétifs d'acte de naissance*. Since the document is entitled *Acte de naissance*, it should not have the stamp of a tribunal as it is the case for any original birth certificate. The item is neither a duplicate of the birth certificate. Moreover, the birth certificate presents an additional name ("**[REDACTED]**"), which is not corroborated

by any other document. Some parts of the documents are barely readable, and others seem to have been erased (for example, the line below “nationality”). Also, the date of *reçu* attached to the document seems [REDACTED].

Fourth, the CLR1 opposes the recognition of the items supposedly concerning the education of the Witness. In particular, item 24. **CAR-D29-0013-0256** raises doubts on its reliability and authenticity. The CLR1 notes that the picture [REDACTED] is much clearer than the rest of the form and the colours are more vivid. The handwritten parts of the document seem to be over-written or re-written. In addition, this document attests of the enrolment to [REDACTED]. According to the attendance attestation submitted by the Yekatom Defence (item 2. **CAR-D29-0013-0252**), [REDACTED] [REDACTED] [REDACTED]. Finally, [REDACTED] signature at the bottom of the document is different from the one of the Witness on his victim’s application form.

Furthermore, item 2. **CAR-D29-0013-0252** raises doubts concerning its reliability and authenticity. The CLR1 notes that the attestation is filled in with two different pens [REDACTED]), and it is therefore not possible to exclude the possibility that it was filled in by different persons and/or at different times. Similar issues can be found in item 25. **CAR-D29-0013-0265**.

Items 2. **CAR-D29-0013-0252**, 3. **CAR-D29-0014-0152**, 25. **CAR-D29-0013-0265** and 26. **CAR-D29-0014-0165** are to be considered not relevant, not authentic, unreliable or do not have any probative value, as the names reported on these documents do not comply with any of the names provided in the birth certificate belonging to the Witness or the one tendered by the Yekatom Defence. This is the case, in particular, for item 24. **CAR-D29-0013-0256**, where an endnote makes clear that the personal information must be consistent with those on the birth certificate.

Fifth, with regard to the documents related to [REDACTED], the CLR1 opposes the admission of the following ones. Item 10. **CAR-D29-0014-0160** is supposed to be [REDACTED]. The document, however, does not mention the name [REDACTED], and, therefore, lacks of relevance. Item 11. **CAR-D29-0014-0162** is allegedly a register of [REDACTED]. However, the document is barely readable and, therefore, lacks of reliability.

Item 6. **CAR-D29-0013-0250** is also unreliable. This item is an attestation claiming that the Witness and his father do not [REDACTED]. It is unclear from this document what kind of register, if any, was used to make this assertion or if this was just a testimonial declaration. This unclarity undermines the reliability of the document. Item 8. **CAR-D29-0013-0253-R01** presents a similar issue since it also contains a declaration of a testimonial nature.

Sixth, the CLR1 opposes the recognition because of the apparent lack of clarity of the chain of custody of some of the items. Some of the documents, to be authentic and reliable, should have been obtained from an educational institution. However, the chain of custody claims that said documents, in particular, items 3. **CAR-D29-0014-0152**, 8. **CAR-D29-0013-0253-R01**, 9. **CAR-D29-0014-0159**, 10. **CAR-D29-0014-0160**, 11. **CAR-D29-0014-0162**, 23. **CAR-D29-0013-0254**, 24. **CAR-D29-0013-0256**, 25. **CAR-D29-0013-0265** and 26. **CAR-D29-0014-0165**, were directly produced by a Defence’s individual source (A.6.1), according to the Protocol governing the redaction of evidence at trial ([No. CC-01/14-01/18-677-Anx3](#)). This lack of clarity does not allow the CLR1 to assess the reliability and authenticity of the documents, since the essential information is missing on how they were produced and obtained by the Yekatom Defence.

Seventh, numerous and paramount are the reasons against the possibility to consider as formally submitted items 12. **CAR-D29-0016-0135-R01** and 13. **CAR-D29-0016-0136**. At the outset, it is not clear on which basis [REDACTED] [REDACTED] forwarded his WhatsApp exchanges with [REDACTED] to [REDACTED], [REDACTED], [REDACTED]. The WhatsApp exchanges at stake constitute [REDACTED] and contain private information [REDACTED].

As a result of the transmission of the WhatsApp exchanges at stake, the Yekatom Defence obtained in its possession not only [REDACTED] CAR-V45-P-0001 and CAR-V45-P-0002 whose identity it was already aware of, but also [REDACTED].

The Yekatom Defence then revealed the correspondence of [REDACTED], then used said correspondence and the attached documents during the testimony of both Witnesses CAR-V45-P-0001 and CAR-V45-P-0002 and finally requested the recognition as formally submitted into evidence the correspondence and documents at stake.

As a consequence, the Yekatom Defence revealed to the participants in the present proceedings the identifying information on [REDACTED]. They did not consent to the disclosure of their identity to the Yekatom Defence or other participants. The disclosure of their identity was neither authorised nor ordered by the Chamber. The CLR1 clarifies that there are evident typos (subsequently corrected) [REDACTED], the Yekatom Defence was in breach of their duty to respect professional secrecy and confidentiality under article 8(1), (2) and (4) of the Code of professional conduct for counsel. Even assuming that [REDACTED] the Defence should have inquired with the CLR1 of [REDACTED]. Indeed, article 8(1) of the Code of professional conduct for counsel requires counsel not only to respect but also to actively exercise all care to ensure respect for professional secrecy and confidentiality of information.

It is irrelevant that the [REDACTED] In fact, the provision of article 8(4) of the Code is deemed breached by the very fact of revealing of the identity of the protected victims and witnesses unless counsel has been authorised to do so by an order of the Court. It is also worth noting that [REDACTED] (see CAR-D29-0016-0135-R01) rather than her much more secured Court iccpn.org email address.

For all the above reasons, it is submitted that items 12. **CAR-D29-0016-0135-R01** and 13. **CAR-D29-0016-0136** are evidence obtained by means of a violation of internationally recognised human rights and their admission would be antithetical to and would seriously damage the integrity of the proceedings, and they are therefore subject to the exclusionary rule of article 69(7) of the Statute. These items should not be even considered as formally submitted: according to the “Initial Directions on the Conduct of the Proceedings” (see the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-631](#), 26 August 2020, para. 54) and to the consistent practice of the Court (see the “Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgement pursuant to Article 74 of the Statute”” (Appeals Chamber), [No. ICC-01/05-01/08-3636-Red](#), 8 June 2018 and the “Judgement on the Appeals Mr Jean-Pierre Bemba Gombo, Mr Aime Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidele Babala Wandu and Mr Narcisse Arido against the Decision of Trial Chamber VII entitled “Judgement pursuant to Article 74 of the Statute” (Appeals Chamber), [No. ICC-01/05-01/13-2275-Red](#), 8 March 2018), the Chamber should rule these items inadmissible prior to its assessment of evidence for the purpose of article 74 of the Statute.

Finally, as regards items 16. **CAR-D29-0016-0109**, 18. **CAR-D29-0010-0139**, 22. **CAR-D29-0016-0125**, and 21. **CAR-D29-0010-0009**, they represent Facebook conversations or snapshots taken from various Facebook accounts. In accordance with the Chamber’s previous guidance related to Facebook material, these items should more properly be submitted from the bar table.

Kind regards,
Dmytro Suprun

From: [REDACTED]
Sent: Tuesday, September 26, 2023 21:05

To: Trial Chamber V Communications [REDACTED]

Cc: D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED]
D30 Ngaissona Defence Team [REDACTED] V45 LRV Team [REDACTED]
[REDACTED] V44 LRV Team OPCV [REDACTED] Associate Legal Officer-Court Officer
[REDACTED] V44 LRV Team [REDACTED]

Subject: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom (the Defence) respectfully seeks the formal submission of the following documents used during its examination of witness CAR-V45-P-0001.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
1	CAR-V45-00000004, p. 004 and 006	Formulaire de demande à titre individuel	Text Document	D29	CAR-V45-P-0001
2	CAR-D29-0013-0252	Attestation de fréquentation scolaire du [REDACTED]	Certificate	D29	CAR-V45-P-0001
3	CAR-D29-0014-0152	Répertoire du [REDACTED]	List / table	D29	CAR-V45-P-0001
4	CAR-OTP-00001073	Identifying information in Registry's possession pertaining to [REDACTED]	Report	D29	CAR-V45-P-0001
5	CAR-OTP-00001381	VPRS\Implementation of ICC-01/14-01/18-1828-Conf	Communication - E-mail	D29	CAR-V45-P-0001
6	CAR-D29-0013-0250	Attestation - [REDACTED]	Certificate	D29	CAR-V45-P-0001
7	CAR-D29-0014-0151	Liste du chef et notables [REDACTED]	List / table	D29	CAR-V45-P-0001
8	CAR-D29-0013-0253-R01	Attestation [REDACTED]	Certificate	D29	CAR-V45-P-0001
9	CAR-D29-0014-0159	Registre de [REDACTED]	List / table	D29	CAR-V45-P-0001
10	CAR-D29-0014-0160	Registre de naissance [REDACTED]	List / table	D29	CAR-V45-P-0001
11	CAR-D29-0014-0162	Registre de [REDACTED]	List / table	D29	CAR-V45-P-0001
12	CAR-D29-0016-0135-R01	Email on WhatsApp discussion with [REDACTED]	Communication - E-mail	D29	CAR-V45-P-0001
13	CAR-D29-0016-0136	Exported Whatsapp conversation [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
14	CAR-D29-0016-0145	Document explicatif des messages Whatsapp entre [REDACTED] (CAR-D29-0016-0136)	Notes (other)	D29	CAR-V45-P-0001

15	CAR-D29-0001-0546	Code de procédure civile de la République Centrafricaine - articles 1 à 39	Legal, Administration and Court document – non ICC	D29	CAR-V45-P-0001
16	CAR-D29-0016-0109	Facebook Screenshot - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
17	CAR-V45-00000011	Photo of CAR-V45-P-0002	Photograph	D29	CAR-V45-P-0001
18	CAR-D29-0010-0139	Photograph	Photograph	D29	CAR-V45-P-0001
19	CAR-OTP-2123-0071-R02	ANNEX A / VOLUNTARY AND INFORMED PARENTAL CONSENT FOR INTERVIEW	ICC Statement - Acknowledgement	D29	CAR-V45-P-0001
20	CAR-OTP-00000737-R01	Investigator's Report additional info re-[REDACTED].doc	ICC Investigation notes / report / correspondence	D29	CAR-V45-P-0001
21	CAR-D29-0010-0009	Photographie de l'enfant de [REDACTED]	Photograph/s	D29	CAR-V45-P-0001
22	CAR-D29-0016-0125	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
23	CAR-D29-0013-0254	Acte de naissance [REDACTED]	Certificate	D29	CAR-V45-P-0001
24	CAR-D29-0013-0256	Fiche d'inscription [REDACTED]	Certificate	D29	CAR-V45-P-0001
25	CAR-D29-0013-0265	Certificat de scolarité de [REDACTED]	Certificate	D29	CAR-V45-P-0001
26	CAR-D29-0014-0165	Registre d'appel et d'inventaire de l'école [REDACTED]	List / table	D29	CAR-V45-P-0001

The Defence respectfully requests the submission of pages 4 and 6 of CAR-V45-00000004 which constitutes the victim application form of CAR-V45-P-0001. The Defence submits that the victim application form in its entirety is testimonial evidence as it comprises information that was taken by an ICC representative in the context of proceedings against an accused and thus only requests the submission of two pages.

The Defence recalls that the Chamber previously held that pages that can be read and understood without requiring the item in its entirety for context warrant to depart from the general rule of submission of items as a whole (see email from Trial Chamber V, dated 2 July 2021 at 14:07; email from Trial Chamber V, dated 23 August 2022 at 08:32; email from Trial Chamber V, dated 9 November at 13:52; email from Trial Chamber V, dated 29 November 2022, at 10:08).

Should the Chamber reject the submission of only pages 4 and 6 of CAR-V45-00000004 and is instead minded to recognize the entire item as formally submitted, the Defence withdraws its request for the submission of this item.

Kind regards,

Alexandra Baer

Yekatom Defence

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erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.

From: [REDACTED]
Sent: 02 October 2023 15:23
To: Suprun, Dmytro; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; OTP CAR IIB; D30 Ngaissona Defence Team; V45 LRV Team; V44 LRV Team OPCV; Associate Legal Officer-Court Officer; V44 LRV Team
Subject: Re: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001
Attachments: ARY_2023_0271_demande de coopération [REDACTED].df

Some people who received this message don't often get email from [REDACTED] [learn why this is important](#)

[ICC] RESTRICTED

Dear Trial Chamber V,

Dear All,

The Yekatom Defence provides the following submissions in reply to the CLR1's response dated 29 September 2023 18:47.

As a preliminary point, the Defence notes that the CLR1's objections with respect to CAR-OTP-00001381, CAR-D29-0001-0546, CAR-OTP-00001073, CAR-OTP-2123-0071-R02, CAR-OTP-00000737-R01, CAR-D29-0013-0254, CAR-D29-0013-0256, CAR-D29-0013-0252, CAR-D29-0013-0265, CAR-D29-0014-0152, CAR-D29-0014-0165, CAR-D29-0014-0160, CAR-D29-0014-0162, CAR-D29-0013-0250, CAR-D29-0013-0253-R01, CAR-D29-0014-0159, CAR-D29-0016-0109, CAR-D29-0010-0139, CAR-D29-0016-0125, and CAR-D29-0010-0009 do not present a procedural bar to the submission of the items and/or do not provide any basis as to why an assessment of the standard evidentiary criteria is required or would be more efficient at this stage.

The Defence does however contest the CLR1's reliance on the Trial Chamber V's email correspondence dated 2 July 2021 at 14:07 as a means to oppose the submission of items which it states were not shown or discussed with the witness. The Trial Chamber's decision concerned the submission of over one thousand pages of digital communications, the majority of which had no discernible relevance to the testimony of P-2841. In contrast, the items objected to by the CLR1 (i.e. CAR-OTP-00001381, CAR-D29-0001-0546, CAR-OTP-00001073, CAR-OTP-2123-0071-R02 and CAR-OTP-00000737-R01) are of limited content and the submission of such items is sought to facilitate the Chamber's understanding of the Defence's cross-examination and by extension V45-P0001's testimony in this regard. The Chamber will recall that the items were not directly shown to V45-P0001 during the course of his testimony for efficiency purposes.

The Defence further observes that the CLR1's trivial submissions concerning the reliability and authenticity of CAR-D29-0013-0254, CAR-D29-0013-0256, CAR-D29-0013-0252, CAR-D29-0013-0265, CAR-D29-0014-0152, CAR-D29-0014-0165, CAR-D29-0014-0160, CAR-D29-0014-0162, CAR-D29-0013-0250 and CAR-D29-0013-0253-R01 directly undermines its submission of CAR-V45-00000005 and CAR-V45-00000006 through V45-P0001. Indeed the standards advanced by CLR1 with regard to, *inter alia*, the readability of handwritten official documents, the colour of the pens used, or the type of stamp referenced only serves to call into further question its conduct in procuring and subsequently amending V45-P0001's

identification documents via WhatsApp in the context set out by the Defence in its email dated 26 September 2023 at 09:23.

Similarly, the Defence notes the inequitable approach by which the CLR1 opposes the lack of clarity of the chain of custody in relation to CAR-D29-0014-0152, CAR-D29-0013-0253-R01, CAR-D29-0014-0159, CAR-D29-0014-0160, CAR-D29-0014-0162, CAR-D29-0013-0254, CAR-D29-0013-0256, CAR-D29-0013-0265 and CAR-D29-0014-0165 whilst at the same time averring that “a certain lack of clarity in the chain of custody of the Documents has no bearing on the authenticity of the Documents” in relation to CAR-V45-00000005 and CAR-V45-00000006 (CLR1 email dated 28 September 2023 11:36).

In particular, the CLR1’s objection on the basis that it could not assess the reliability and authenticity of the documents due to applied redactions is unwarranted. These 9 documents were not “produced by a Defence’s individual source (A.6.1)”. A.6.1 is a redaction code and the metadata clearly refers to three distinct sources provided with the following pseudonyms D29.48, D29.45 and D29.47. In any case, at no point did the CLR1 seek to clarify the chain of custody or the metadata of the items directly with the Defence prior to the testimony of V45-P0001 (*contra* the Defence in relation to CAR-V45-00000005 and CAR-V45-00000006 see Annex 1 to Defence email dated 26 September 2023 at 09:23). Parties and participants are to be discouraged from raising objections in relation to points which could and should have been raised at an earlier inter partes stage pursuant to the Redaction Protocol (ICC-01/14-01/18-64-Conf para. 30) which was adopted by Trial Chamber V (ICC-01/14-01/18-459 para. 8.)

The Defence will review its redactions concerning these 9 documents and at this point notes that CAR-D29-0013-0254, CAR-D29-0013-0256 and CAR-D29-0013-0252 were part of V45-P0001’s school record held on file and [REDACTED]. Further, with respect to CAR-D29-0013-0256 and CAR-D29-0013-0252, the CLR1’s objections are based on an apparent misunderstanding of the CAR school system which runs from September to June/July of the following year. It is for this reason that the school year is referred to as [REDACTED] in both CAR-D29-0013-0252 and CAR-D29-0013-0256, following V45-P0001’s [REDACTED].

Finally, the Defence takes this opportunity to respond to the CLR’s specious and inaccurate objections to the submission of CAR-D29-0016-0135-R01 and CAR-D29-0016-0136. At the outset, the Defence notes that at no point does the CLR1 object to the accuracy of the contents of the WhatsApp exchange [REDACTED], nor to the description of the events as depicted in the messages.

In objecting to the submission of CAR-D29-0016-0135-R01 and CAR-D29-0016-0136, the CLR1 raises various contradictory and unfounded arguments.

First, the CLR1 asserts the so-called “confidentiality of correspondence” [REDACTED]. This is a rather simplistic assessment when noting that there is nothing to establish that [REDACTED]. [REDACTED] elected to circumvent domestic procedures and communicate [REDACTED] by way of WhatsApp as opposed to, for example, formal correspondence written on official letterhead. This method of correspondence, and indeed request, is contrary to the rules of the Code de Procédure Civile (CAR-D29-0001-0546), the relevance of which is disputed by the CLR1, and which is expressly referenced as a legal basis for CAR-V45-00000005 (at page 1).

The CLR1’s argument that it is unclear “on which basis [REDACTED] provided the WhatsApp exchange is also without merit. [REDACTED] to obtain documents concerning ICC proceedings. In the same capacity,

██████████ sent the WhatsApp exchange to the Defence following a formal request for cooperation sent by the Defence to ██████████. The Defence attaches this request for reference only.

Further, it is also the CLR1 which has asserted that the application for the reconstitution of the birth certificate was made on behalf of V45-P0001 (T245-ENG-RT, p. 43 lines 2 to 4) and has sought to submit the corresponding judgment as proof of V45-P0001's identity. The 'application' is found within the WhatsApp exchange and the judgment states that it was pronounced in a public hearing (CAR-V45-00000005 at page 2. See also article 187 of the CAR Family Code/CAR-D29-00010436).

Relatedly, whilst it is unclear as to which specific communications the CLR1 is referring to, there is also no breach of ██████████ noting that external correspondence is not covered by ██████████ and that the information sent to ██████████ was the subject of a public judgment. The right to assert legal privilege remains with ██████████, this would have been waived if they had indeed authorised ██████████ to submit the identification information to ██████████ on their behalf (albeit absent any written request for the same). In the event that the clients did not waive this privilege i.e. ██████████

██████████. Further, legal privilege cannot be asserted to protect criminal activity which covers fraudulent means to obtain official identification documents and/or efforts to fabricate evidence.

The CLR1 should not be permitted to hide behind misguided accusations as a means to conceal the flawed manner in which it has conducted itself vis-à-vis ██████████ and the provision of identification documents for V45-P0001 or V45-P0002. Indeed, the CLR1's accusations of criminal and professional misconduct against ██████████ only undermine the CLR1's position concerning the reliability and authenticity of items ██████████ as a result of the very exchange set out in CAR-D29-0016-0135-R01 and CAR-D29-0016-0136.

Second, the CLR1's arguments concerning the inadvertent disclosure of protected victims are untimely. As above, the anonymous or confidential status of these individuals was not immediately apparent given that identifying details were transmitted to ██████████ via informal WhatsApp messages in a collective manner to obtain public judgments for each individual and without any specific warning as to the confidentiality or protected status of the individuals. In this respect, submissions concerning breaches of article 8 of the Code of Professional Conduct are a red herring, and in any case would more appropriately be directed towards the CLR1 which evidently did have awareness of the protected status of the individuals and yet proceeded to disclose this information by WhatsApp with no apparent discerning confidential classification or warning.

Similarly, the CLR1's grievance that "the Defence should have inquired with the CLR1 on the status of the individuals" is mere projection by the CLR1. In fact, the CLR1 had notice of the fact that the Defence intended to rely on CAR-D29-0001-0436 on 20 September 2023, in accordance with the time limits set out in paragraph 42 of the Initial Directions on the Conduct of Proceedings (noting that there is no obligation on the Defence to have revealed its line of questioning prior to this date contra CLR1's submissions). At no point in the intervening 9-day period did the CLR1 alert the Defence as to the inadvertent disclosure pursuant to the Protocol in place (ICC-01/14-01/18-677-Anx5 para. 19-22) or address the matter in Court directly with the Trial Chamber. Instead it has inappropriately opted to leverage the inadvertent disclosure as a means to object to items which reveal the true manner in which the CLR1 has conducted itself in these proceedings.

Having failed to establish the violation of any internationally recognised human right in accordance with article 69(7) of the Statute, there is no procedural bar to the submission of CAR-D29-0016-0135-R01 and CAR-D29-0016-0136.

Kind regards

Sarah Bafadhel

From: Suprun, Dmytro [REDACTED]
Sent: Friday, September 29, 2023 6:47 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED]
 D30 Ngaissona Defence Team [REDACTED] V45 LRV Team [REDACTED]
 [REDACTED]; V44 LRV Team OPCV [REDACTED]; Associate Legal Officer-Court Officer
 [REDACTED]; V44 LRV Team [REDACTED]
Subject: RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with para. 63(ii) of the Initial Directions, the Common Legal Representative of the former child soldiers (the "CLR1") hereby submits his response to the Yekatom Defence's request for formal submission of 26 items, sent by email on 26 September 2023 at 21:05.

The CLR1 does not oppose the recognition as formally submitted of items 7. **CAR-D29-0014-0151** and 17. **CAR-V45-00000011**.

The CLR1, however, opposes the recognition as formally submitted of the remaining items for the following reasons.

First, the CLR1 opposes the recognition as formally submitted of items 5. **CAR-OTP-00001381**, 15. **CAR-D29-0001-0546**, 4. **CAR-OTP-00001073**, 19. **CAR-OTP-2123-0071-R02** and 20. **CAR-OTP-00000737-R01**. These items were not shown to nor discussed with the witness CAR-V45-P-0001 (the "Witness"), therefore they cannot be considered as formally submitted through this witness (see Trial Chamber V's Email correspondence dated 2 July 2021 at 14:07).

Item 4. **CAR-OTP-00001073** is an *inter partes* document and the CLR1 has no access to it in NUIX. The CLR1 received a hard copy of this document the day before the Witness' testimony, however, the CLR1 still has no access to it through NUIX, and, as a consequence, cannot see the document's metadata. Although the CLR1 had requested access, the OTP did not grant it. Therefore, the document cannot be considered as formally submitted through the Witness because the CLR1 has not had the possibility to analyse its reliability. The relevance of item 15. **CAR-D29-0001-0546** is contested since the applicability of the 39 articles of the *Code de Procédure Civile de la République Centrafricaine* has not been explained by the Yekatom Defence.

Second, the CLR1 opposes the partial recognition as formally submitted of item 1. **CAR-V45-00000004**. The first of the three pages for which recognition is sought is the last page of the Witness's participation form as victim. The other two are a declaration of the Witness and a declaration of identity, both attached to the form. The CLR1 argues that it is not possible to recognise the document partially. Indeed, a document has to be read and understood in its entire context (see Trial Chamber V's Email correspondence dated 23 August 2022 at 10:08). If only a part of the document is recognised, the information would be taken out of the context and therefore it will not be possible to infer conclusions from it. Furthermore, in this regard, the Witness explained during his testimony that the form was not read back to him after having been filed in by another person (T-246-CONF-ENG, p. 22, lines 7-8). The CLR1 therefore opposes the partial recognition of the item, but he does not oppose the Yekatom Defence withdrawal of its request shall the Chamber decides to recognise the entire item.

Third, item 23. **CAR-D29-0013-0254** is not authentic and reliable as it seems to be inconsistent with the law. In fact, while having the stamp of a tribunal, it is not a reconstitution of a birth certificate. Therefore, it is unclear what this stamp means or stands for since the Yekatom Defence did not provide the related reconstitution judgment. Had a reconstitution judgment been issued, a regular birth certificate would have been entitled *Transcriptions jugements supplétifs d'acte de naissance*. Since the document is entitled *Acte de naissance*, it should not have the stamp of a tribunal as it is the case for any original birth certificate. The item is neither a duplicate of the birth certificate. Moreover, the birth certificate presents an additional name ("██████████"), which is not corroborated by any other document. Some parts of the documents are barely readable, and others seem to have been erased (for example, the line below "nationality"). Also, the date of *reçu* attached to the document seems to ██████████.

Fourth, the CLR1 opposes the recognition of the items supposedly concerning the education of the Witness. In particular, item 24. **CAR-D29-0013-0256** raises doubts on its reliability and authenticity. The CLR1 notes that the picture ██████████ is much clearer than the rest of the form and the colours are more vivid. The handwritten parts of the document seem to be over-written or re-written. In addition, this document attests of ██████████.

According to the attendance attestation submitted by the Yekatom Defence (item 2. **CAR-D29-0013-0252**), ██████████. Finally, ██████████ signature at the bottom of the document is different from the one of the Witness on his victim's application form.

Furthermore, item 2. **CAR-D29-0013-0252** raises doubts concerning its reliability and authenticity. The CLR1 notes that the attestation is filled in with two different pens (██████████), and it is therefore not possible to exclude the possibility that it was filled in by different persons and/or at different times. Similar issues can be found in item 25. **CAR-D29-0013-0265**.

Items 2. **CAR-D29-0013-0252**, 3. **CAR-D29-0014-0152**, 25. **CAR-D29-0013-0265** and 26. **CAR-D29-0014-0165** are to be considered not relevant, not authentic, unreliable or do not have any probative value, as the names reported on these documents do not comply with any of the names provided in the birth certificate belonging to the Witness or the one tendered by the Yekatom Defence. This is the case, in particular, for item 24. **CAR-D29-0013-0256**, where an endnote makes clear that the personal information must be consistent with those on the birth certificate.

Fifth, with regard to the documents related to ██████████, the CLR1 opposes the admission of the following ones. Item 10. **CAR-D29-0014-0160** is supposed to be ██████████. The document, however, does not mention the name ██████████, and, therefore, lacks of relevance. Item 11. **CAR-D29-0014-0162** is allegedly a register of ██████████. However, the document is barely readable and, therefore, lacks of reliability.

Item 6. **CAR-D29-0013-0250** is also unreliable. This item is an attestation claiming that the Witness and ██████████ not ██████████. It is unclear from this document what kind of register, if any, was used to make this assertion or if this was just a testimonial declaration. This unclarity undermines the reliability of the document. Item 8. **CAR-D29-0013-0253-R01** presents a similar issue since it also contains a declaration of a testimonial nature.

Sixth, the CLR1 opposes the recognition because of the apparent lack of clarity of the chain of custody of some of the items. Some of the documents, to be authentic and reliable, should have been obtained from an educational institution. However, the chain of custody claims that said documents, in particular, items 3. **CAR-D29-0014-0152**, 8. **CAR-D29-0013-0253-R01**, 9. **CAR-D29-0014-0159**, 10. **CAR-D29-0014-0160**, 11. **CAR-D29-0014-0162**, 23. **CAR-D29-0013-0254**, 24. **CAR-D29-0013-0256**, 25. **CAR-D29-0013-0265** and 26. **CAR-D29-0014-0165**, were directly produced by a Defence's individual source (A.6.1), according to the Protocol governing the redaction of evidence at trial ([No. CC-01/14-01/18-677-Anx3](#)). This lack of clarity does not allow the CLR1 to assess the reliability and authenticity of the documents, since the essential information is missing on how they were produced and obtained by the Yekatom Defence.

Seventh, numerous and paramount are the reasons against the possibility to consider as formally submitted items 12. **CAR-D29-0016-0135-R01** and 13. **CAR-D29-0016-0136**. At the outset, it is not clear on which basis ██████████

██████████, forwarded his WhatsApp exchanges with ██████████ to ██████████, being a third party not in any way involved in the proceedings initiated by ██████████. The WhatsApp exchanges at stake constitute ██████████ and contain private information ██████████.

As a result of the transmission of the WhatsApp exchanges at stake, the Yekatom Defence obtained in its possession not only ██████████ of Witnesses CAR-V45-P-0001 and CAR-V45-P-0002 whose identity it was already aware of, but also the full identifying information about ██████████.

The Yekatom Defence then revealed the correspondence of ██████████, then used said correspondence and the attached documents during the testimony of both Witnesses CAR-V45-P-0001 and CAR-V45-P-0002 and finally requested the recognition as formally submitted into evidence the correspondence and documents at stake.

As a consequence, the Yekatom Defence revealed to the participants in the present proceedings the identifying information on ██████████. They did not consent to the disclosure of their identity to the Yekatom Defence or other participants. The disclosure of their identity was neither authorised nor ordered by the Chamber. The CLR1 clarifies that there are evident typos (subsequently corrected) ██████████, the Yekatom Defence was in breach of their duty to respect professional secrecy and confidentiality under article 8(1), (2) and (4) of the Code of professional conduct for counsel. Even assuming that the Defence did not know with certainty that ██████████. Indeed, article 8(1) of the Code of professional conduct for counsel requires counsel not only to respect but also to actively exercise all care to ensure respect for professional secrecy and confidentiality of information.

It is irrelevant that the identity of the ██████████ was revealed to the other participants only. In fact, the provision of article 8(4) of the Code is deemed breached ██████████ unless counsel has been authorised to do so by an order of the Court. It is also worth noting that ██████████ (see CAR-D29-0016-0135-R01) ██████████.

For all the above reasons, it is submitted that items 12. **CAR-D29-0016-0135-R01** and 13. **CAR-D29-0016-0136** are evidence obtained by means of a violation of internationally recognised human rights and their admission would be antithetical to and would seriously damage the integrity of the proceedings, and they are therefore subject to the exclusionary rule of article 69(7) of the Statute. These items should not be even considered as formally submitted: according to the “Initial Directions on the Conduct of the Proceedings” (see the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-631](#), 26 August 2020, para. 54) and to the consistent practice of the Court (see the “Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgement pursuant to Article 74 of the Statute”” (Appeals Chamber), [No. ICC-01/05-01/08-3636-Red](#), 8 June 2018 and the “Judgement on the Appeals Mr Jean-Pierre Bemba Gombo, Mr Aime Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidele Babala Wandu and Mr Narcisse Arido against the Decision of Trial Chamber VII entitled “Judgement pursuant to Article 74 of the Statute” (Appeals Chamber), [No. ICC-01/05-01/13-2275-Red](#), 8 March 2018),

the Chamber should rule these items inadmissible prior to its assessment of evidence for the purpose of article 74 of the Statute.

Finally, as regards items 16. **CAR-D29-0016-0109**, 18. **CAR-D29-0010-0139**, 22. **CAR-D29-0016-0125**, and 21. **CAR-D29-0010-0009**, they represent Facebook conversations or snapshots taken from various Facebook accounts. In accordance with the Chamber's previous guidance related to Facebook material, these items should more properly be submitted from the bar table.

Kind regards,
Dmytro Suprun

From: [REDACTED]

Sent: Tuesday, September 26, 2023 21:05

To: Trial Chamber V Communications [REDACTED]

Cc: D29 Yekatom Defence Team [REDACTED] OTP CAR IIB [REDACTED]

D30 Ngaissona Defence Team [REDACTED]; V45 LRV Team [REDACTED]

[REDACTED]; V44 LRV Team OPCV [REDACTED] Associate Legal Officer-Court Officer

[REDACTED] V44 LRV Team [REDACTED]

Subject: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom (the Defence) respectfully seeks the formal submission of the following documents used during its examination of witness CAR-V45-P-0001.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
1	CAR-V45-00000004, p. 004 and 006	Formulaire de demande à titre individuel	Text Document	D29	CAR-V45-P-0001
2	CAR-D29-0013-0252	Attestation de fréquentation scolaire [REDACTED]	Certificate	D29	CAR-V45-P-0001
3	CAR-D29-0014-0152	Répertoire du [REDACTED]	List / table	D29	CAR-V45-P-0001
4	CAR-OTP-00001073	Identifying information in Registry's possession pertaining to [REDACTED]	Report	D29	CAR-V45-P-0001
5	CAR-OTP-00001381	VPRS\Implementation of ICC-01/14-01/18-1828-Conf	Communication - E-mail	D29	CAR-V45-P-0001
6	CAR-D29-0013-0250	Attestation - [REDACTED]	Certificate	D29	CAR-V45-P-0001
7	CAR-D29-0014-0151	Liste du chef et notables [REDACTED]	List / table	D29	CAR-V45-P-0001
8	CAR-D29-0013-0253-R01	Attestation [REDACTED]	Certificate	D29	CAR-V45-P-0001
9	CAR-D29-0014-0159	Registre de [REDACTED]	List / table	D29	CAR-V45-P-0001
10	CAR-D29-0014-0160	Registre de [REDACTED]	List / table	D29	CAR-V45-P-0001
11	CAR-D29-0014-0162	Registre de [REDACTED]	List / table	D29	CAR-V45-P-0001

12	CAR-D29-0016-0135-R01	Email on WhatsApp discussion with [REDACTED]	Communication - E-mail	D29	CAR-V45-P-0001
13	CAR-D29-0016-0136	Exported Whatsapp conversation [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
14	CAR-D29-0016-0145	Document explicatif des messages Whatsapp [REDACTED] (CAR-D29-0016-0136)	Notes (other)	D29	CAR-V45-P-0001
15	CAR-D29-0001-0546	Code de procédure civile de la République Centrafricaine - articles 1 à 39	Legal, Administration and Court document – non ICC	D29	CAR-V45-P-0001
16	CAR-D29-0016-0109	Facebook Screenshot - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
17	CAR-V45-00000011	Photo of CAR-V45-P-0002	Photograph	D29	CAR-V45-P-0001
18	CAR-D29-0010-0139	Photograph	Photograph	D29	CAR-V45-P-0001
19	CAR-OTP-2123-0071-R02	ANNEX A / VOLUNTARY AND INFORMED PARENTAL CONSENT FOR INTERVIEW	ICC Statement - Acknowledgement	D29	CAR-V45-P-0001
20	CAR-OTP-00000737-R01	Investigator's Report additional info re [REDACTED].doc	ICC Investigation notes / report / correspondence	D29	CAR-V45-P-0001
21	CAR-D29-0010-0009	Photographie de l'enfant de [REDACTED]	Photograph/s	D29	CAR-V45-P-0001
22	CAR-D29-0016-0125	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
23	CAR-D29-0013-0254	Acte de naissance [REDACTED]	Certificate	D29	CAR-V45-P-0001
24	CAR-D29-0013-0256	Fiche d'inscription [REDACTED]	Certificate	D29	CAR-V45-P-0001
25	CAR-D29-0013-0265	Certificat de scolarité de [REDACTED]	Certificate	D29	CAR-V45-P-0001
26	CAR-D29-0014-0165	Registre d'appel et d'inventaire de [REDACTED]	List / table	D29	CAR-V45-0001

The Defence respectfully requests the submission of pages 4 and 6 of CAR-V45-00000004 which constitutes the victim application form of CAR-V45-P-0001. The Defence submits that the victim application form in its entirety is testimonial evidence as it comprises information that was taken by an ICC representative in the context of proceedings against an accused and thus only requests the submission of two pages.

The Defence recalls that the Chamber previously held that pages that can be read and understood without requiring the item in its entirety for context warrant to depart from the general rule of submission of items as a whole (see email from Trial Chamber V, dated 2 July 2021 at 14:07; email from Trial Chamber V, dated 23 August 2022 at 08:32; email from Trial Chamber V, dated 9 November at 13:52; email from Trial Chamber V, dated 29 November 2022, at 10:08).

Should the Chamber reject the submission of only pages 4 and 6 of CAR-V45-00000004 and is instead minded to recognize the entire item as formally submitted, the Defence withdraws its request for the submission of this item.

Kind regards,

[REDACTED]
Yekatom Defence

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From: [REDACTED]
Sent: 26 September 2023 21:05
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; OTP CAR IIB; D30 Ngaissona Defence Team; V45 LRV Team; V44 LRV Team OPCV; Associate Legal Officer-Court Officer; V44 LRV Team
Subject: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom (the Defence) respectfully seeks the formal submission of the following documents used during its examination of witness CAR-V45-P-0001.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
1	CAR-V45-00000004, p. 004 and 006	Formulaire de demande à titre individuel	Text Document	D29	CAR-V45-P-0001
2	CAR-D29-0013-0252	Attestation de fréquentation scolaire [REDACTED]	Certificate	D29	CAR-V45-P-0001
3	CAR-D29-0014-0152	Répertoire du [REDACTED]	List / table	D29	CAR-V45-P-0001
4	CAR-OTP-00001073	Identifying information in Registry's possession pertaining to [REDACTED]	Report	D29	CAR-V45-P-0001
5	CAR-OTP-00001381	VPRS\Implementation of ICC-01/14-01/18-1828-Conf	Communication - E-mail	D29	CAR-V45-P-0001
6	CAR-D29-0013-0250	Attestation - [REDACTED]	Certificate	D29	CAR-V45-P-0001
7	CAR-D29-0014-0151	Liste du chef et notables [REDACTED]	List / table	D29	CAR-V45-P-0001
8	CAR-D29-0013-0253-R01	Attestation [REDACTED]	Certificate	D29	CAR-V45-P-0001
9	CAR-D29-0014-0159	Registre de [REDACTED]	List / table	D29	CAR-V45-P-0001
10	CAR-D29-0014-0160	Registre de [REDACTED]	List / table	D29	CAR-V45-P-0001
11	CAR-D29-0014-0162	Registre de [REDACTED]	List / table	D29	CAR-V45-P-0001
12	CAR-D29-0016-0135-R01	Email on WhatsApp discussion with [REDACTED]	Communication - E-mail	D29	CAR-V45-P-0001
13	CAR-D29-0016-0136	Exported Whatsapp conversation [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001

14	CAR-D29-0016-0145	Document explicatif des messages Whatsapp entre [REDACTED] (CAR-D29-0016-0136)	Notes (other)	D29	CAR-V45-P-0001
15	CAR-D29-0001-0546	Code de procédure civile de la République Centrafricaine - articles 1 à 39	Legal, Administration and Court document – non ICC	D29	CAR-V45-P-0001
16	CAR-D29-0016-0109	Facebook Screenshot - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
17	CAR-V45-00000011	Photo of CAR-V45-P-0002	Photograph	D29	CAR-V45-P-0001
18	CAR-D29-0010-0139	Photograph	Photograph	D29	CAR-V45-P-0001
19	CAR-OTP-2123-0071-R02	ANNEX A / VOLUNTARY AND INFORMED PARENTAL CONSENT FOR INTERVIEW	ICC Statement - Acknowledgement	D29	CAR-V45-P-0001
20	CAR-OTP-00000737-R01	Investigator's Report additional info re [REDACTED].doc	ICC Investigation notes / report / correspondence	D29	CAR-V45-P-0001
21	CAR-D29-0010-0009	Photographie de l'enfant de [REDACTED]	Photograph/s	D29	CAR-V45-P-0001
22	CAR-D29-0016-0125	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0001
23	CAR-D29-0013-0254	Acte de naissance [REDACTED]	Certificate	D29	CAR-V45-P-0001
24	CAR-D29-0013-0256	Fiche d'inscription [REDACTED]	Certificate	D29	CAR-V45-P-0001
25	CAR-D29-0013-0265	Certificat de scolarité de [REDACTED]	Certificate	D29	CAR-V45-P-0001
26	CAR-D29-0014-0165	Registre d'appel et d'inventaire de [REDACTED]	List / table	D29	CAR-V45-P-0001

The Defence respectfully requests the submission of pages 4 and 6 of CAR-V45-00000004 which constitutes the victim application form of CAR-V45-P-0001. The Defence submits that the victim application form in its entirety is testimonial evidence as it comprises information that was taken by an ICC representative in the context of proceedings against an accused and thus only requests the submission of two pages.

The Defence recalls that the Chamber previously held that pages that can be read and understood without requiring the item in its entirety for context warrant to depart from the general rule of submission of items as a whole (see email from Trial Chamber V, dated 2 July 2021 at 14:07; email from Trial Chamber V, dated 23 August 2022 at 08:32; email from Trial Chamber V, dated 9 November at 13:52; email from Trial Chamber V, dated 29 November 2022, at 10:08).

Should the Chamber reject the submission of only pages 4 and 6 of CAR-V45-00000004 and is instead minded to recognize the entire item as formally submitted, the Defence withdraws its request for the submission of this item.

Kind regards,

[REDACTED]
Yekatom Defence

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From: Suprun, Dmytro
Sent: 28 September 2023 12:31
To: Trial Chamber V Communications
Cc: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the “Initial Directions on the Conduct of the Proceedings”, the CLR1 submits the documents listed below relating to the testimony of Witness CAR-V45-P-0002. The CLR1 respectfully requests that these documents be recognized as formally submitted.

	Type	Submitted through witness	Date used
CAR-V45-00000008	National Judicial Document (Non ICC)	CAR-V45-P-0002	26 September 2023
CAR-V45-00000009	Identifying Document	CAR-V45-P-0002	26 September 2023

Kind regards,
Dmytro Suprun

From: [REDACTED]
Sent: 28 September 2023 13:22
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; OTP CAR IIB; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom ("Defence") respectfully seeks the formal submission of the following documents used during its examination of witness CAR-V45-P-0002.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
1	CAR-D29-0010-0161	Montage photo concernant CAR-V45-P-0001	Photograph	D29	CAR-V45-P-0002
2	CAR-D29-0010-0162	Photograph of [REDACTED]	Photograph	D29	CAR-V45-P-0002
3	CAR-D29-0010-0163	Photograph of [REDACTED]	Photograph	D29	CAR-V45-P-0002
4	CAR-D29-0013-0256	Fiche d'inscription au [REDACTED]	Certificate	D29	CAR-V45-P-0002
5	CAR-D29-0013-0266	Certificat de [REDACTED]	Certificate	D29	CAR-V45-P-0002
6	CAR-D29-0014-0169	Ecole [REDACTED]	List / table	D29	CAR-V45-P-0002
7	CAR-D29-0016-0109	Facebook Screenshot - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
8	CAR-D29-0016-0123	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
9	CAR-D29-0016-0125	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
10	CAR-D29-0016-0136	Exported Whatsapp conversation between [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
11	CAR-D29-0016-0145	Document explicatif des messages Whatsapp entre [REDACTED] (CAR-D29-0016-0136)	Notes (other)	D29	CAR-V45-P-0002
12	CAR-D29-0016-0155	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002

13	CAR-D29-0016-0157	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
14	CAR-V45-00000007, pages 003 and 005	Formulaire de demande de participation à titre individuel	Text Document	D29	CAR-V45-P-0002
15	CAR-OTP-00000320-R01	Rapport de mission [REDACTED]	Report	D29	CAR-V45-P-0002
16	CAR-OTP-00001600-R01	P-2580 - investigator's report .doc	ICC Investigation notes / report / correspondence	D29	CAR-V45-P-0002

The Defence respectfully requests the submission of pages 3 and 5 of CAR-V45-00000007 which constitutes the victim application form of CAR-V45-P-0002. The Defence submits that the victim application form in its entirety is testimonial evidence as it comprises information that was taken by an ICC representative in the context of proceedings against an accused and thus only requests the submission of two pages. Further, these were the only pages discussed with the witness during his examination by the Yekatom Defence.

The Defence recalls that the Chamber previously held that pages that can be read and understood without requiring the item in its entirety for context warrant to depart from the general rule of submission of items as a whole (see email from Trial Chamber V, dated 2 July 2021 at 14:07; email from Trial Chamber V, dated 23 August 2022 at 08:32; email from Trial Chamber V, dated 9 November at 13:52; email from Trial Chamber V, dated 29 November 2022, at 10:08).

Should the Chamber reject the submission of only pages 3 and 5 of CAR-V45-00000007 and is instead minded to recognize the entire item as formally submitted, the Defence withdraws its request for the submission of this item.

Kind regards,

[REDACTED]

Yekatom Defence

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From: OTP CAR IIB
Sent: 03 October 2023 10:33
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; OTP CAR IIB; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer; [REDACTED]
Subject: RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63 (ii) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Prosecution opposes the formal submission of the following documents requested by the Defence regarding Witness CAR-V45-P-0002:

Items 10 (CAR-D29-0016-0136) and 11 (CAR-D29-0016-0145)

CAR-V45-P-0002 did not provide any meaningful testimony regarding the contents of the WhatsApp conversations in which he was also not a participant. As such, the documents should be submitted from the bar table, in order for their relevance and probative value to be more fully addressed by the Parties. This includes, but is not limited to, their documents' provenance and the circumstances under which they were obtained.

Items 15 (CAR-OTP-00000320-R01) and 16 (CAR-OTP-00001600-R01)

CAR-V45-P-0002 did not provide any meaningful testimony in regard to these documents. As such, it is inappropriate that they be submitted through this Witness, but instead through a different witness or another procedural mechanism. Regarding **Item number 14**, the Prosecution is of the view that the victim application form of CAR-V45-P-0002 should be recognized as submitted as a whole, so that it can be analysed and understood in context.

The Prosecution defers to the discretion of the Chamber for the remainder of the documents on the Defence's list.

Kind regards,

On behalf of the OTP Trial Team

De : [REDACTED] >

Envoyé : jeudi 28 septembre 2023 13:22

À : Trial Chamber V Communications [REDACTED]

Cc : D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team

[REDACTED] OTP CAR IIB [REDACTED]; V44 LRV Team

[REDACTED] V44 LRV Team OPCV [REDACTED] V45 LRV Team

[REDACTED] Associate Legal Officer-Court Officer [REDACTED]

Objet : Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom ("Defence") respectfully seeks the formal submission of the following documents used during its examination of witness CAR-V45-P-0002.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
1	CAR-D29-0010-0161	Montage photo concernant CAR-V45-P-0001	Photograph	D29	CAR-V45-P-0002
2	CAR-D29-0010-0162	Photograph of [REDACTED]	Photograph	D29	CAR-V45-P-0002

3	CAR-D29-0010-0163	Photograph of [REDACTED]	Photograph	D29	CAR-V45-P-0002
4	CAR-D29-0013-0256	Fiche d'inscription [REDACTED]	Certificate	D29	CAR-V45-P-0002
5	CAR-D29-0013-0266	Certificat de [REDACTED]	Certificate	D29	CAR-V45-P-0002
6	CAR-D29-0014-0169	Ecole [REDACTED]	List / table	D29	CAR-V45-P-0002
7	CAR-D29-0016-0109	Facebook Screenshot - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
8	CAR-D29-0016-0123	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
9	CAR-D29-0016-0125	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
10	CAR-D29-0016-0136	Exported Whatsapp conversation between [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
11	CAR-D29-0016-0145	Document explicatif des messages Whatsapp entre [REDACTED] (CAR-D29-0016-0136)	Notes (other)	D29	CAR-V45-P-0002
12	CAR-D29-0016-0155	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
13	CAR-D29-0016-0157	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
14	CAR-V45-00000007, pages 003 and 005	Formulaire de demande de participation à titre individuel	Text Document	D29	CAR-V45-P-0002
15	CAR-OTP-00000320-R01	Rapport de mission [REDACTED]	Report	D29	CAR-V45-P-0002
16	CAR-OTP-00001600-R01	P-2580 - investigator's report .doc	ICC Investigation notes / report / correspondence	D29	CAR-V45-P-0002

The Defence respectfully requests the submission of pages 3 and 5 of CAR-V45-00000007 which constitutes the victim application form of CAR-V45-P-0002. The Defence submits that the victim application form in its entirety is testimonial evidence as it comprises information that was taken by an ICC representative in the context of proceedings against an accused and thus only requests the submission of two pages. Further, these were the only pages discussed with the witness during his examination by the Yekatom Defence.

The Defence recalls that the Chamber previously held that pages that can be read and understood without requiring the item in its entirety for context warrant to depart from the general rule of submission of items as a whole (see email from Trial Chamber V, dated 2 July 2021 at 14:07; email from Trial Chamber V, dated 23 August 2022 at 08:32; email from Trial Chamber V, dated 9 November at 13:52; email from Trial Chamber V, dated 29 November 2022, at 10:08).

Should the Chamber reject the submission of only pages 3 and 5 of CAR-V45-00000007 and is instead minded to recognize the entire item as formally submitted, the Defence withdraws its request for the submission of this item.

Kind regards,

[REDACTED]
Yekatom Defence

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From: [REDACTED]
Sent: 03 October 2023 10:44
To: Suprun, Dmytro; Trial Chamber V Communications
Cc: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: Re: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0002

Some people who received this message don't often get email from [REDACTED]. [Learn why this is important](#)

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear All,

The Yekatom Defence opposes the formal submission of CAR-V45-00000008 (National Judicial Document (Non-ICC)) and CAR-V45-00000009 (Identifying Document) on the basis that the provenance of the items and the information therein has not been established through V45-P0002 and there is considerable ambiguity as to the means by which the items were obtained.

The submission approach adopted in these proceedings does not foreclose an assessment of the standard evidentiary criteria at this juncture particularly where it is overwhelmingly evident that the items have no weight and that there is no discernible reason to defer the assessment to a later stage. Given that the items are purportedly 'official' identification documents, and in light of evidence which demonstrates identification fraud in the provision of identity documents, the underlying information was not verified by the testimony of V45-P0002 and cannot be established merely by what he may or may not have said to the CLR1 outside of the courtroom.

The Defence recalls that in similar instances in this case where the provenance of an identification document is under investigation or in question, the parties have either withdrawn or qualified their reliance on the item (see e.g. Prosecution email, 'Yekatom Defence Submission of Evidence following P-2475's testimony' dated 6 June 2022 21:00 whereby the Prosecution sought to withdraw CAR-OTP-2128-1197, CAR-OTP-2128-1201, and CAR-OTP-2128-1202 "pending an inquiry, given the issues raised regarding their provenance"; see also Yekatom Defence email, 'Yekatom Defence submission of evidence following the examination of P-2084' dated 30 May 2023 18:07 in which the Defence submitted that it did not rely on the veracity of the contents of CAR-D29-0013-0087 following the testimony of P-2084 and the doubts raised with regard to the official stamp).

In the present circumstances, no such inquiry appears to be underway as CLR1 maintains its full reliance on both items.

As set out with regard to V45-P0001, the CLR's approach to obtaining CAR-V45-00000008 and CAR-V45-00000009 is seriously flawed and contrary to domestic procedures:

- Neither V45-P0002 nor [REDACTED] CAR-V45-00000008 (T-248-ENG, p. 7 lines 8 to 11. See also CAR-D29-0016-0136). This is in violation of article 187 of the CAR Family Code (see CAR-D29-00010436) which requires a public hearing (*contra* also CAR-V45-00000008 which refers to a public hearing).
- Contrary to V45-P0002's understanding (T-248-ENG, p. 7 lines 3 to 7) as well as the CLR1's repeated assertions, at no point in the process to obtain CAR-V45-00000008 [REDACTED]. The process was initiated and completed entirely via WhatsApp messages exchanged [REDACTED] (CAR-D29-0016-0136). The Defence addresses the CLR1's arguments with respect to the alleged criminality and/or professional misconduct of [REDACTED]

[REDACTED], in its ‘Observations to the CLR1’s response to ‘Yekatom Defence submission of evidence following the examination of CAR-V45-P-0001’ dated 2 October 2023 15:23). However, at this point it is noted that the CLR1 does not dispute the accuracy of the content of the WhatsApp exchange or the description of the events as depicted in the messages.

- V45-P0002 did not provide a signed request to [REDACTED] in order to initiate and/or obtain CAR-V45-00000008 contrary to the express language set out in article 185 of the CAR Family Code (*contra* the CLR1’s submission as to the application of article 179 of the CAR Family Code as set out in its observations dated 28 September 2023 11:36).
- The WhatsApp exchange between [REDACTED] (CAR-D29-00010436) demonstrates that the initial request for CAR-V45-00000008 from [REDACTED] did not contain any official declaration(s) necessary for the reconstitution of the birth certificate in violation of article 185 of the CAR Family Code and nor was it communicated to [REDACTED].
- The WhatsApp exchange between [REDACTED] (CAR-D29-00010436) further demonstrates that [REDACTED] was not provided with all the relevant information which would have allowed the tribunal to assess the veracity of the information provided to it in relation to CAR-V45-00000008, contrary to article 187 of the CAR Family Code.
- The initial trigger for the reconstitution of the birth certificate was seemingly based on false premises noting that CAR-V45-00000008 refers to [REDACTED] of V45-P0002’s birth certificate. V45-P0002 did not at any point in his testimony mention [REDACTED] (T-247-ENG, p. 41 lines 1 to 12 and T-248-ENG, p. 5 lines 8 to 12) and no ‘certificate de carence’, as referenced in CAR-V45-00000008, was produced or submitted by the CLR1.

The improper manner in which the CLR1 obtained CAR-V45-00000008 evidently has a direct effect on the validity of the transcription of the birth certificate submitted as CAR-V45-00000009 noting further that V45-P0002 also did not travel to [REDACTED] to obtain V45-00000009 (T-248-ENG, p. 7 lines 22 to 24, p. 8 lines 4 to 7 and p. 9 lines 2 to 14) contrary to the metadata and clear email from CLR1 (see Annex 1 to Defence email dated 26 September 2023 at 09:23).

The so-called ‘presumption of authenticity’ of the items cannot be based purely on the presence of a signature and a stamp of the competent authority given the aforementioned circumstances which plainly demonstrate that the proper procedures were circumvented by the CLR1 in obtaining the items. This is further supported by article 167 of the CAR Family Code which nullifies the authenticity of civil judgments bearing the official stamp and seal following contrary proof of the veracity of the declarations received by the civil tribunal. The situation is also distinct from the production of CAR-D29-0001-0426 (formally submitted at pages 0428-0429 only), [REDACTED]

[REDACTED] (see *procès-verbal* initially submitted at CAR-D29-0001-0426 at 0426-0427) thereby confirming the validity of the corresponding official stamp and seal.

Issues concerning the provenance of the two items are also not overcome by the CLR1’s position that CAR-V45-00000008 and CAR-V45-00000009 were obtained “on behalf” of V45-P0002 (T-247-ENG, p. 39 lines 17 to 23). As with V45-P0001, V45-P0002 also did not know [REDACTED] despite this information appearing in CAR-V45-00000008 (see T-248-ENG, p. 6 lines 16 to 20 and *contra* misleading citation by the CLR1 in its observations dated 28 September 2023 11:36). The source of this specific information remains unknown and further invalidates CAR-V45-00000008 and CAR-V45-00000009 as formal identification documents.

Further, at no point has the CLR1 produced any corroborating document which would certify or support the identifying details purportedly submitted by CLR1 on behalf of V45-P0002 which would reasonably explain the CLR1’s circumvention of the domestic procedures or establish that the CLR1 obtained the documents in full confidence that the underlying information was accurate. It was V45-P0002’s evidence that he did not provide nor show the CLR1 his birth certificate (see T-247-ENG, p. 41 lines 10 to 15, p. 42 lines 5 to 15) and during the course of his testimony, CLR1 opted again to lead the evidence (T-247-ENG, p. 39 lines 17 to 23; p. 41 lines 24 to 25 and p. 42 lines 1 to 3). The CLR1’s approach is further aggravated by the fact that V45-P0002’s identity was also not properly ascertained nor corroborated during the victim application process and that he was not asked for copies of his ID document, voting registration document, baptism certificate, school certificate or seek a witness to certify V45-P0002’s identity (T-247-ENG, p. 59 lines 5 to 12, p. 61 lines 14 to 18; T-248-ENG, p. 24 lines 3 to 6).

Given that the CLR1 took it upon themselves to obtain the documents for V45-P0002, and as officers of this Court, it is insufficient for the CLR1 to shirk its obligation to verify information it tenders on the grounds that it was not informed

by [REDACTED] that it was not in compliance with the CAR applicable law. It was and is incumbent on the CLR1 to have ensured that it was acting in accordance with domestic laws particularly if by the same token, it is the CLR1's position that the same individual has allegedly engaged in criminal activity and/or professional misconduct. It is also implausible for [REDACTED] to take the position that formal identification documents can be produced by an official court by way of WhatsApp exchanges alone.

This point is particularly emphasised when taking into account the fact that the CLR1 had notice of: (i) evidence with regard to the misuse of official stamps on birth certificates in CAR (see further "Yekatom Defence submission of evidence following the examination of P-2084" email dated 30 May 2023 18:07 following testimony of P-2084) as well as the existence of false certificates (see e.g. CLR's observations dated 28 September 2023 11:36 in relation to birth certificate produced in court by V45-P0001) and (ii) the glaring inconsistencies with regard to V45-P0002's identify as set out in CAR-V45-00000007.

It is for this very reason that the lack of clarity in the metadata supplied by the CLR1 does have a clear bearing on the provenance of CAR-V45-00000008 and CAR-V45-00000009 given that both items were obtained by [REDACTED] without any further documentary verification. The CLR1's repeated attempts to obfuscate and/or diminish [REDACTED] role in obtaining the items (see also Defence observations to 'CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0001' dated 28 September 2023 11:36) is itself telling of the fact that the CLR1 has some awareness that it should not have circumvented domestic procedures in obtaining the identifying documents on behalf of the witness and without assuring itself of corroborating and official documentation.

It is also insufficient to rely solely on V45-P0002's testimony in order to support the provenance of CAR-V45-00000008 and CAR-V45-00000009 when he evidently had very little to do with the process and/or, where there is doubt with regard to the information supplied. In this case, and bearing in mind the inconsistent information supplied in V45-P0002's victim application form, the Defence notes that there is information which would establish that V45-P0002's real identity is [REDACTED]

[REDACTED] (see CAR-D29-0013-0266, CAR-D29-0014-0169, CAR-D29-0016-0155 and CAR-D29-0016-0157).

Finally, any argument that the two items were obtained for travel purposes and have been purportedly "validated by the CAR immigration authorities and the Ministry of Foreign Affairs" (see CLR's observations dated 28 September 2023 11:36) is misguided and does not rectify the matter at hand. There is no evidence that the CAR immigration authorities and the Dutch Ministry of Foreign Affairs were aware of the true manner in which the two items were drawn up in violation of domestic procedures so as to independently authenticate or corroborate the identifying information. This raises serious questions with regard to the possibility of immigration fraud and [REDACTED] ensuing obligation to inform immigration authorities and the Host State that it obtained the identification documents without formal assurance that the information therein was accurate.

Kind regards

From: Suprun, Dmytro [REDACTED]
Sent: Thursday, September 28, 2023 12:30 PM
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED] D29 Yekatom Defence Team <[REDACTED]>
D30 Ngaissona Defence Team [REDACTED] V44 LRV Team
[REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team
[REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: CLR1 Submission of evidence following the testimony of Witness CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the "Initial Directions on the Conduct of the Proceedings", the CLR1 submits the documents listed below relating to the testimony of Witness CAR-V45-P-0002. The CLR1 respectfully requests that these documents be recognized as formally submitted.

	Type	Submitted through witness	Date used
CAR-V45-00000008	National Judicial Document (Non ICC)	CAR-V45-P-0002	26 September 2023

CAR-V45-00000009 Identifying Document

CAR-V45-P-0002

26 September 2023

Kind regards,
Dmytro Suprun

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From: Suprun, Dmytro
Sent: 03 October 2023 17:55
To: Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; OTP CAR IIB; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with para. 63(ii) of the Initial Directions, the Common Legal Representative of the former child soldiers (the “CLR1”) hereby submits his response to the Yekatom Defence’s request for formal submission of 16 items, sent by email on 28 September 2023 at 13:22. The CLR1 opposes the Defence Request in its entirety for the following reasons.

Item 1 CAR-D29-0010-0161

The CLR1 opposes the formal submission of **Item 1**. The Yekatom Defence did not show to the witness CAR-V45-P-0002 (the “Witness”) the entirety of the document (two pictures), but only the right-hand side picture (see T-247-CONF-ENG ET, p. 51, lines 8-13). In this sense, the CLR1 opposes the recognition of the entire document, and contends that only the right-hand side picture can be recognised as formally submitted.

Item 2 CAR-D29-0010-0162

The CLR1 opposes the formal submission of **Item 2**. The Witness did not recognise the individual on the photo and indicated that he does not know (i) any individual named [REDACTED] (see T-247-CONF-ENG, p. p. 63, line 15 to p. 64 line 4); and (ii) how the identity *attestation* attached to his victim application form and bearing the name [REDACTED] was produced (see T-248-CONF-ENG, p. 4 lines 7-14). Therefore, the **Item** has no relevance to the Witness’s testimony and if any, should be submitted from the bar table.

Item 3 CAR-D29-0010-0163

The CLR1 opposes the formal submission of **Item 3**, since the Witness did not recognise the individual supposedly named [REDACTED] (see T-248-CONF-ENG ET, p. 30 lines 16-21). The Yekatom Defence did not provide any document to certify the identity of said individual. Furthermore, the name of this individual is not mentioned in any of the Witness’s identifying documents. Accordingly, the item is irrelevant to the Witness’s testimony and if any, should be submitted from the bar table.

Items 4 CAR-D29-0013-0256; 5 CAR-D29-0013-0266; 10 CAR-D29-0016-0136; 11 CAR-D29-0016-0145; 15 CAR-OTP-00000320-R01; and 16 CAR-OTP-00001600-R01

The CLR1 opposes the formal submission of **Items 4; 5; 10; 11; 15; and 16**. These items were not shown to nor discussed with the Witness, and therefore they cannot be considered as formally submitted through this Witness, in accordance with the Chamber’s previous decisions (see Trial Chamber V’s Email correspondence dated 10 May 2023 at 16:50; 16 March 2023 at 09:51; and 2 July 2021 at 14:07).

In addition, the CLR1 particularly opposes the recognition of the items for the subsequent reasons.

Item 4 CAR-D29-0013-0256

The CLR1 opposes the formal submission of **Item 4**. The document has no relevance to the testimony of the Witness. In addition, the Yekatom Defence already requested the formal submission of **Item 4** through the witness CAR-V45-P-0001 since it is the “*Fiche d’inscription* [REDACTED]” (see the Yekatom Defence’s Email correspondence dated 26 September 2023 at 21:05, p. 2).

Item 5 CAR-D29-0013-0266

The CLR1 opposes the formal submission of **Item 5**. The **Item** is irrelevant because the name that appears in the attendance certificate is different from the Witness’s name in the birth certificate CAR-V45-00000009 produced [REDACTED]. The Witness confirmed the correctness of his identifying information contained in said birth certificate (see T-247-CONF-ENG ET, p. 42 lines 12-22). The Yekatom Defence did not provide any other birth certificate or *any* document to certify [REDACTED] identity.

Item 6 CAR-D29-0014-0169

The same considerations apply to **Item 6**. These items do not relate to the Witness. The Witness did not recognise that the name appearing on said documents is his name (see T-248-CONF-ENG ET, p. 33 lines 8-20).

Accordingly, **Items 5 and 6** should be submitted, if any, from the bar table.

Items 7 CAR-D29-0016-0109, 8. CAR-D29-0016-0123, 9. CAR-D29-0016-0125, 12. CAR-D29-0016-0155 and 13. CAR-D29-0016-0157,

The CLR1 opposes the formal submission of **Items 7; 8; 9; 12 and 13**. These **Items** contain Facebook conversations or snapshots taken from various Facebook accounts. In line with the Chamber’s previous guidance on Facebook material, these items should be submitted from the bar table (see Trial Chamber V’s e-mail correspondence dated 2 July 2021 at 14:07; 19 July 2021 at 11:37; and 27 August 2021 at 08:10). Moreover, the Yekatom Defence already requested the formal submission of **Items 7; 9 and 12** through Witness CAR-V45-P-0001 (see the Yekatom Defence’s Email correspondence dated 26 September 2023 at 21:05). The CLR1 reiterates his opposition to the recognition of said items by reference to his Email correspondence dated 29 September 2023 at 18:47.

Lastly, the family name [REDACTED] in the Facebook Screenshot in **Item 13** does not match the identifying information of the Witness contained in either his birth certificate produced [REDACTED] or the identifying document attached to the Witness’s victim application form. In this regard, the Yekatom Defence does not provide any document to certify the identity of [REDACTED] to support the name in the Facebook Screenshot. Therefore, this item is irrelevant to the Witness’s testimony and if any, should be submitted from the bar table.

Items 10 CAR-D29-0016-0136 and 11 CAR-D29-0016-0145

The Yekatom Defence previously requested **Items 10 and 11** to be formally submitted through Witness CAR-V45-P-0001. The CLR1 recalls his Email correspondence on 29 September 2023 at 18:47. He opposes the formal submission of these **Items** and requests the Chamber to find them inadmissible as they are evidence obtained by means of a violation of this Statute and of internationally recognized human rights.

The CLR1 wishes to draw the attention of Chamber on how the Yekatom Defence obtained the WhatsApp excerpts. Through this Email correspondence dated 3 October 2023 at 10:44, the Yekatom Defence indicated that **Items 10 and 11** were provided by [REDACTED] following a “*formal request for Cooperation*” (see the document attached to the Yekatom Defence’s Email correspondence dated 3 October 2023 at 10:44).

First, the CLR1 notes that the first paragraph of the Defence's "*request for cooperation*" makes explicit reference to article 93 of the Statute, according to which "*States Parties shall [...] comply with a request by the Court*".

The Defence addressed its request for cooperation directly to [REDACTED] without seeking any order from the Chamber pursuant to article 64(6)(b) of the Statute. Although nothing prevents the Defence from addressing cooperation requests directly to States or other entities, it is recalled that only the Court has the power to issue binding requests for cooperation under Part 9 of the Statute (see the "Decision on the Defence request pursuant to article 87(5)(b) of the Statute" (Pre-Trial Chamber II), [No. ICC-02/05-01/20-295](#), 9 March 2021, para. 11). As article 34 of the Statute makes clear, the Defence is not an organ of the Court.

In this sense, the Yekatom Defence's request was misleading and implied both an obligation to cooperate and a sort of reassurance that sensitive data could be disclosed and provided in their entirety, [REDACTED]. Moreover, in the WhatsApp exchange [REDACTED] acknowledging *de facto* his confidentiality and privileged communications obligations towards the individuals on behalf of which he made the application. In light of the information newly acquired, far from a professional misconduct – as feared by the CLR1 in his previous submissions – [REDACTED] was simply misled by the wording of the Defence request and its alleged binding nature.

Accordingly, the CLR1 submits that the Yekatom Defence impermissibly disguised its request for cooperation as a request by the Court under article 93 of Statute – implying an obligation to cooperate for States – and as such, obtained **Items 10** and **11** in violation of the Statute.

In the alternative - should the Chamber be minded entertaining the Defence Request for the formal submission of **Items 10** and **11** - the documents could be submitted from the bar table, for their relevance and probative value to be fully addressed by the Participants. In fact, the Witness did not participate - nor he testified on the content of - the WhatsApp conversations. In this regard, see also the OTP's Email correspondence dated 3 October 2023 at 10:33.

Item 14 CAR-V45-00000007

The CLR1 opposes the partial recognition as formally submitted of **Item 14**. The first two pages of the Item for which recognition is sought are the last two pages of the Witness's participation form as victim. The last page is a declaration of identity attached to the form. The CLR1 argues that it is not possible to recognise the document partially. Indeed, a document has to be read and understood in its entire context (see Trial Chamber V's Email correspondence dated 23 August 2022 at 10:08). If only a part of the document is recognised, the information would be taken out of the context and, therefore, it will not be possible to infer conclusions from it. In this regard, the Witness explained that the form was not read back to him after having been filed in by another person (see T-247-CONF-ENG ET, p. 57, lines 7-11).

Items 15 CAR-OTP-00000320-R01 and 16 CAR-OTP-00001600-R01

Items 15 and **16** are *inter partes* documents and the CLR1 has no access to them in NUIX, and, as a consequence, cannot see the documents' metadata. The documents cannot be considered as formally submitted through the Witness because the CLR1 has not had the possibility to analyse their reliability.

Kind regards,
Dmytro Suprun

From: [REDACTED]

Sent: Thursday, September 28, 2023 13:22

To: Trial Chamber V Communications [REDACTED]

Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team

OTP CAR IIB [REDACTED]; V44 LRV Team

V44 LRV Team OPCV [REDACTED] V45 LRV Team

Associate Legal Officer-Court Officer [REDACTED]

Subject: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom ("Defence") respectfully seeks the formal submission of the following documents used during its examination of witness CAR-V45-P-0002.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
1	CAR-D29-0010-0161	Montage photo concernant CAR-V45-P-0001	Photograph	D29	CAR-V45-P-0002
2	CAR-D29-0010-0162	Photograph of [REDACTED]	Photograph	D29	CAR-V45-P-0002
3	CAR-D29-0010-0163	Photograph of [REDACTED]	Photograph	D29	CAR-V45-P-0002
4	CAR-D29-0013-0256	Fiche d'inscription [REDACTED]	Certificate	D29	CAR-V45-P-0002
5	CAR-D29-0013-0266	Certificat de fréquentation scolaire - [REDACTED]	Certificate	D29	CAR-V45-P-0002
6	CAR-D29-0014-0169	Ecole [REDACTED]	List / table	D29	CAR-V45-P-0002
7	CAR-D29-0016-0109	Facebook Screenshot - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
8	CAR-D29-0016-0123	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
9	CAR-D29-0016-0125	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
10	CAR-D29-0016-0136	Exported Whatsapp conversation between [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
11	CAR-D29-0016-0145	Document explicatif des messages Whatsapp entre [REDACTED] (CAR-D29-0016-0136)	Notes (other)	D29	CAR-V45-P-0002
12	CAR-D29-0016-0155	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
13	CAR-D29-0016-0157	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
14	CAR-V45-00000007, pages 003 and 005	Formulaire de demande de participation à titre individuel	Text Document	D29	CAR-V45-P-0002
15	CAR-OTP-00000320-R01	Rapport de mission à [REDACTED]	Report	D29	CAR-V45-P-0002
16	CAR-OTP-00001600-R01	P-2580 - investigator's report .doc	ICC Investigation notes / report / correspondence	D29	CAR-V45-P-0002

The Defence respectfully requests the submission of pages 3 and 5 of CAR-V45-00000007 which constitutes the victim application form of CAR-V45-P-0002. The Defence submits that the victim application form in its entirety is testimonial evidence as it comprises information that was taken by an ICC representative in the context of proceedings against an accused and thus only requests the submission of two pages. Further, these were the only pages discussed with the witness during his examination by the Yekatom Defence.

The Defence recalls that the Chamber previously held that pages that can be read and understood without requiring the item in its entirety for context warrant to depart from the general rule of submission of items as a whole (see email from Trial Chamber V, dated 2 July 2021 at 14:07; email from Trial Chamber V, dated 23 August 2022 at 08:32; email from Trial Chamber V, dated 9 November at 13:52; email from Trial Chamber V, dated 29 November 2022, at 10:08).

Should the Chamber reject the submission of only pages 3 and 5 of CAR-V45-00000007 and is instead minded to recognize the entire item as formally submitted, the Defence withdraws its request for the submission of this item. Kind regards,


Yekatom Defence

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From: [REDACTED]
Sent: 04 October 2023 14:46
To: Suprun, Dmytro; Trial Chamber V Communications
Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; OTP CAR IIB; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer
Subject: Re: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

Some people who received this message don't often get email from [REDACTED] [Learn why this is important](#)

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,
 Dear All,

The Yekatom Defence notes that the objections presented by both the Prosecution and CLR1 do not present a procedural bar to the submission of the items and/or do not provide any basis as to why an assessment of the standard evidentiary criteria is required or would be more efficient at this stage. Accordingly, the Defence maintains its submission of all items as set out in its email 28 September 2023 13:21, particularly as they are relevant and probative in demonstrating the fabrication of V45-P0002's identification and alleged role in the anti-balaka movement.

The Defence however does refute allegations of having mislead [REDACTED]. The arguments raised by the CLR1 (email dated 3 October 2023 17:55) are speculative and the CLR1 lacks standing to make such submissions on behalf of the CAR authorities. The request was also made in the spirit of article 93 and was clearly addressed from Defence counsel representing Mr. Yekatom as an accused before the ICC. The CLR1's persistent efforts to taint the formal routes to secure [REDACTED] are without merit and by comparison, emphasise attempts to suppress items which evidently depict improper and informal processes adopted by the CLR1 during these proceedings.

Kind regards
 [REDACTED]

From: Suprun, Dmytro [REDACTED]
Sent: Tuesday, October 3, 2023 5:55 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team <[REDACTED]> D30 Ngaissona Defence Team [REDACTED]; OTP CAR IIB [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with para. 63(ii) of the Initial Directions, the Common Legal Representative of the former child soldiers (the "CLR1") hereby submits his response to the Yekatom Defence's request for formal submission

of 16 items, sent by email on 28 September 2023 at 13:22. The CLR1 opposes the Defence Request in its entirety for the following reasons.

Item 1 CAR-D29-0010-0161

The CLR1 opposes the formal submission of **Item 1**. The Yekatom Defence did not show to the witness CAR-V45-P-0002 (the “Witness”) the entirety of the document (two pictures), but only the right-hand side picture (see T-247-CONF-ENG ET, p. 51, lines 8-13). In this sense, the CLR1 opposes the recognition of the entire document, and contends that only the right-hand side picture can be recognised as formally submitted.

Item 2 CAR-D29-0010-0162

The CLR1 opposes the formal submission of **Item 2**. The Witness did not recognise the individual on the photo and indicated that he does not know (i) any individual named [REDACTED] (see T-247-CONF-ENG, p. p. 63, line 15 to p. 64 line 4); and (ii) how the identity *attestation* attached to his victim application form and bearing the name [REDACTED] was produced (see T-248-CONF-ENG, p. 4 lines 7-14). Therefore, the **Item** has no relevance to the Witness’s testimony and if any, should be submitted from the bar table.

Item 3 CAR-D29-0010-0163

The CLR1 opposes the formal submission of **Item 3**, since the Witness did not recognise the individual supposedly named [REDACTED] (see T-248-CONF-ENG ET, p. 30 lines 16-21). The Yekatom Defence did not provide any document to certify the identity of said individual. Furthermore, the name of this individual is not mentioned in any of the Witness’s identifying documents. Accordingly, the item is irrelevant to the Witness’s testimony and if any, should be submitted from the bar table.

Items 4 CAR-D29-0013-0256; 5 CAR-D29-0013-0266; 10 CAR-D29-0016-0136; 11 CAR-D29-0016-0145; 15 CAR-OTP-00000320-R01; and 16 CAR-OTP-00001600-R01

The CLR1 opposes the formal submission of **Items 4; 5; 10; 11; 15; and 16**. These items were not shown to nor discussed with the Witness, and therefore they cannot be considered as formally submitted through this Witness, in accordance with the Chamber’s previous decisions (see Trial Chamber V’s Email correspondence dated 10 May 2023 at 16:50; 16 March 2023 at 09:51; and 2 July 2021 at 14:07).

In addition, the CLR1 particularly opposes the recognition of the items for the subsequent reasons.

Item 4 CAR-D29-0013-0256

The CLR1 opposes the formal submission of **Item 4**. The document has no relevance to the testimony of the Witness. In addition, the Yekatom Defence already requested the formal submission of **Item 4** through the witness CAR-V45-P-0001 since it is the [REDACTED]” (see the Yekatom Defence’s Email correspondence dated 26 September 2023 at 21:05, p. 2).

Item 5 CAR-D29-0013-0266

The CLR1 opposes the formal submission of **Item 5**. The **Item** is irrelevant because the name that appears in the attendance certificate is different from the Witness’s name in the birth certificate CAR-V45-00000009 produced [REDACTED]. The Witness confirmed the correctness of his identifying information contained in said birth certificate (see T-247-CONF-ENG ET, p. 42 lines 12-22). The Yekatom Defence did not provide any other birth certificate or *any* document to certify [REDACTED] identity.

Item 6 CAR-D29-0014-0169

The same considerations apply to **Item 6**. These items do not relate to the Witness. The Witness did not recognise that the name appearing on said documents is his name (see T-248-CONF-ENG ET, p. 33 lines 8-20).

Accordingly, **Items 5 and 6** should be submitted, if any, from the bar table.

Items 7 CAR-D29-0016-0109, 8. CAR-D29-0016-0123, 9. CAR-D29-0016-0125, 12. CAR-D29-0016-0155 and 13. CAR-D29-0016-0157,

The CLR1 opposes the formal submission of **Items 7; 8; 9; 12 and 13**. These **Items** contain Facebook conversations or snapshots taken from various Facebook accounts. In line with the Chamber's previous guidance on Facebook material, these items should be submitted from the bar table (see Trial Chamber V's e-mail correspondence dated 2 July 2021 at 14:07; 19 July 2021 at 11:37; and 27 August 2021 at 08:10). Moreover, the Yekatom Defence already requested the formal submission of **Items 7; 9 and 12** through Witness CAR-V45-P-0001 (see the Yekatom Defence's Email correspondence dated 26 September 2023 at 21:05). The CLR1 reiterates his opposition to the recognition of said items by reference to his Email correspondence dated 29 September 2023 at 18:47.

Lastly, the family name [REDACTED] in the Facebook Screenshot in **Item 13** does not match the identifying information of the Witness contained in either his birth certificate produced [REDACTED] or the identifying document attached to the Witness's victim application form. In this regard, the Yekatom Defence does not provide any document to certify the identity of [REDACTED] to support the name in the Facebook Screenshot. Therefore, this item is irrelevant to the Witness's testimony and if any, should be submitted from the bar table.

Items 10 CAR-D29-0016-0136 and 11 CAR-D29-0016-0145

The Yekatom Defence previously requested **Items 10 and 11** to be formally submitted through Witness CAR-V45-P-0001. The CLR1 recalls his Email correspondence on 29 September 2023 at 18:47. He opposes the formal submission of these **Items** and requests the Chamber to find them inadmissible as they are evidence obtained by means of a violation of this Statute and of internationally recognized human rights.

The CLR1 wishes to draw the attention of Chamber on how the Yekatom Defence obtained the WhatsApp excerpts. Through this Email correspondence dated 3 October 2023 at 10:44, the Yekatom Defence indicated that **Items 10 and 11** were provided by [REDACTED] following a "*formal request for Cooperation*" (see the document attached to the Yekatom Defence's Email correspondence dated 3 October 2023 at 10:44).

First, the CLR1 notes that the first paragraph of the Defence's "*request for cooperation*" makes explicit reference to article 93 of the Statute, according to which "*States Parties shall [...] comply with a request by the Court*".

The Defence addressed its request for cooperation directly to [REDACTED] without seeking any order from the Chamber pursuant to article 64(6)(b) of the Statute. Although nothing prevents the Defence from addressing cooperation requests directly to States or other entities, it is recalled that only the Court has the power to issue binding requests for cooperation under Part 9 of the Statute (see the "Decision on the Defence request pursuant to article 87(5)(b) of the Statute" (Pre-Trial Chamber II), [No. ICC-02/05-01/20-295](#), 9 March 2021, para. 11). As article 34 of the Statute makes clear, the Defence is not an organ of the Court.

In this sense, the Yekatom Defence's request was misleading and implied both an obligation to cooperate and a sort of reassurance that sensitive data could be disclosed and provided in their entirety, [REDACTED]. Moreover, in the WhatsApp exchange [REDACTED] acknowledging *de facto* his confidentiality and privileged communications obligations towards the individuals on behalf of which he

made the application. In light of the information newly acquired, far from a professional misconduct – as feared by the CLR1 in his previous submissions – [REDACTED] was simply misled by the wording of the Defence request and its alleged binding nature.

Accordingly, the CLR1 submits that the Yekatom Defence impermissibly disguised its request for cooperation as a request by the Court under article 93 of Statute – implying an obligation to cooperate for States – and as such, obtained **Items 10** and **11** in violation of the Statute.

In the alternative - should the Chamber be minded entertaining the Defence Request for the formal submission of **Items 10** and **11** - the documents could be submitted from the bar table, for their relevance and probative value to be fully addressed by the Participants. In fact, the Witness did not participate - nor he testified on the content of - the WhatsApp conversations. In this regard, see also the OTP's Email correspondence dated 3 October 2023 at 10:33.

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Kind regards,
Dmytro Suprun

From: [REDACTED]
Sent: Thursday, September 28, 2023 13:22
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]
 [REDACTED] OTP CAR IIB [REDACTED]; V44 LRV Team [REDACTED]
 [REDACTED] V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: Yekatom Defence submission of evidence following the examination of CAR-V45-P-0002

[ICC] RESTRICTED

Dear Trial Chamber V,

In accordance with paragraph 63(i) of the Initial Directions of the Conduct of the Proceedings (ICC-01/14-01/18-631), the Defence for Mr Yekatom ("Defence") respectfully seeks the formal submission of the following documents used during its examination of witness CAR-V45-P-0002.

Count	Document ID	Title	Document Type	WIT - Used By	WIT - Used Through
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3	CAR-D29-0010-0163	Photograph of [REDACTED]	Photograph	D29	CAR-V45-P-0002
4	CAR-D29-0013-0256	Fiche d'inscription [REDACTED]	Certificate	D29	CAR-V45-P-0002
5	CAR-D29-0013-0266	Certificat de fréquentation scolaire - [REDACTED]	Certificate	D29	CAR-V45-P-0002
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10	CAR-D29-0016-0136	Exported Whatsapp conversation between [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
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12	CAR-D29-0016-0155	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
13	CAR-D29-0016-0157	Screenshot Facebook - [REDACTED]	Communication - E-message	D29	CAR-V45-P-0002
14	CAR-V45-00000007, pages 003 and 005	Formulaire de demande de participation à titre individuel	Text Document	D29	CAR-V45-P-0002
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16	CAR-OTP-00001600-R01	P-2580 - investigator's report .doc	ICC Investigation notes / report / correspondence	D29	CAR-V45-P-0002

The Defence respectfully requests the submission of pages 3 and 5 of CAR-V45-00000007 which constitutes the victim application form of CAR-V45-P-0002. The Defence submits that the victim application form in its entirety is testimonial evidence as it comprises information that was taken by an ICC representative in the context of proceedings against an accused and thus only requests the submission of two pages. Further, these were the only pages discussed with the witness during his examination by the Yekatom Defence.

The Defence recalls that the Chamber previously held that pages that can be read and understood without requiring the item in its entirety for context warrant to depart from the general rule of submission of items as a whole (see email from Trial Chamber V, dated 2 July 2021 at 14:07; email from Trial Chamber V, dated 23 August 2022 at 08:32; email from Trial Chamber V, dated 9 November at 13:52; email from Trial Chamber V, dated 29 November 2022, at 10:08).

Should the Chamber reject the submission of only pages 3 and 5 of CAR-V45-00000007 and is instead minded to recognize the entire item as formally submitted, the Defence withdraws its request for the submission of this item.

Kind regards,

[REDACTED]
Yekatom Defence

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