

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **10 June 2024**

**TRIAL CHAMBER V**

**Before:** Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF *THE PROSECUTOR v.*  
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

**Public**

**Public Redacted Version of "Defence Response to 'Request of the  
Common Legal Representative of the Former Child Soldiers for the  
submission of evidence from the 'bar table'", 15 April 2024, ICC-01/14-  
01/18-2449-Conf**

**Source:** Defence for Mr. Alfred Rombhot Yekatom

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

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## I. INTRODUCTION

1. The Defence for Mr. Alfred Rombhot Yekatom ('Defence') strongly opposes the Common Legal Representative of the Former Child Soldiers' ('CLRV1') request to submit four items, namely (i) CAR-V45-00000012, (ii) CAR-V45-00000013, (iii) CAR-V45-00000014, and (iv) CAR-V45-00000015 (collectively 'Four Items') from the bar table.<sup>1</sup>
2. The Four Items which purportedly pertain to V45-P-0001's identity include particulars which directly contradict identifying information as attested to by V45-P-0001 in his sworn testimony as well as other identifying documents led and relied upon by CLRV1. The CLRV1 ignores this fact, relying on unsubstantiated arguments to assert a vague position and having evidently failed to investigate or suitably inspect the material it now seeks to introduce into the case record. It does so in the context of serious allegations of fabricated evidence which implicate and concern V45-P-0001 as well as a wider conspiracy concerning other ESF-affiliated witnesses, Prosecution and Registry intermediaries and alleged former child soldiers involved in these proceedings as participating victims.
3. The introduction of the Four Items, six months after the close of the CLRV1 case, is not therefore limited solely to V45-P-0001's identity and should not therefore be treated in isolation. Rather, the Four Items must be assessed against the submissions concerning the targeted efforts to include forged material in these proceedings as raised by the Defence in its Exclusion Request whereby it seeks the exclusion of, *inter alia*, the sworn testimony of P-0001 and other identifying documents associated with his testimony.<sup>2</sup>

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<sup>1</sup> ICC-01/14-01/18-2428-Conf ('Request')

<sup>2</sup> ICC-01/14-01/18-2240-Conf and [ICC-01/14-01/18-2240-Red](#) ('Exclusion Request') and in particular ICC-01/14-01/18-2240-Conf-Anx C, p. 3.

4. It is in these circumstances that the Defence submits that an evidentiary ruling is warranted and that the Request should be denied in accordance with article 69(4) of the Statute.

## II. SUBMISSIONS

- a) *The Four Items are inadmissible in accordance with article 69(4) of the Rome Statute*

- i. An evidentiary decision is warranted at this stage of the proceedings

5. The CLRV1 seeks to introduce the Four Items via the bar table in accordance with the submission approach adopted by the Trial Chamber in these proceedings. In doing so, the CLRV1 asserts that no procedural bars exist for the recognition of the Four Items as formally submitted.<sup>3</sup>
6. However, the submission approach adopted in these proceedings does not foreclose an assessment of the standard evidentiary criteria at this juncture, and an evidentiary ruling is warranted given that the Four Items concern the disputed identity of V45-P-0001 whose testimony is the subject of the Exclusion Request pursuant to article 69(7).
7. Further, whilst Defence investigations concerning the veracity of the Four Items are underway,<sup>4</sup> there is already categorical evidence on the record – as elicited by the CLRV1 during cross-examination of P-6025 - that [REDACTED] is V45-P-0001's [REDACTED].<sup>5</sup> This evidence directly contradicts the position advanced by the CLRV1, both in its Request and prior submissions concerning V45-P-0001's identity, and further undermines the purported chain of custody of the Four Items which the CLRV1 asserts were all provided by V45-P-0001's 'mother and his uncle'.<sup>6</sup> An evidentiary ruling is therefore necessitated at this

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<sup>3</sup> Request, paras 2 and 20.

<sup>4</sup> *Infra.*, paras. 33 - 36.

<sup>5</sup> ICC-01/14-01/18-T-264-CONF-ENG ET [9:42:17] to [9:43:58] (in particular: [REDACTED]). See also CAR-V45-00000004.

<sup>6</sup> Request, para. 19(*sic*) at o. 9. See also *infra*, para. 24.

stage in order to ensure that fraudulent or even misleading documentary material is not recognised on the case record.

8. An evidentiary ruling at this stage is also warranted in light of the delayed timing of the Request. Whilst the Defence notes that the Trial Chamber has permitted the CLRV1 to file its Request at this stage,<sup>7</sup> this does not alter the fact that the Request has been exceptionally filed after the close of the presentation of the CLRV1's case and five months after the opening of the Defence case. The Further Directions on the conduct of proceedings had directed the Prosecution to file all remaining bar tables by 25 August 2023 i.e. before the close of the Prosecution case.<sup>8</sup> Similarly, the CLRV1 had initially been directed to file any request for leave to present evidence no later than 7 July 2023 and to disclose any evidence intended to be presented during its case by 18 August 2023.<sup>9</sup> The deadlines were all set well before the commencement of the Defence's case. The original sequence as set out by the Chamber in the Further Directions safeguarded Mr. Yekatom's protection under article 67(1)(i) and provided the Defence with adequate time to sufficiently investigate all written evidence to be relied on against it, present its arguments in a timely manner and where relevant, challenge the written evidence with relevant witnesses.
9. However, the present Request denies the Defence this opportunity as it is faced with the objectionable consequence of having to direct its already limited investigative resources - currently focused on facilitating the presentation of the Defence case - to properly investigate the Four Items. Having demonstrated the rigorousness of its investigations, this is not a luxury the Defence can afford and clarity as to how the Trial Chamber intends to treat the Four Items prior to the

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<sup>7</sup> ICC-01/14-01/18-2412-Conf.

<sup>8</sup> ICC-01/14-01/18-1892 ('Further Directions') at para. 5.

<sup>9</sup> Further Directions, paras 11 and 12.

close of the Defence case is essential to the direction of ongoing investigations and preparation of the defence.

10. Nor is the Defence in a position to merely overlook or curtail its investigations concerning the veracity of the Four Items given that the disputed identity of V45-P-0001 speaks to a wider issue concerning the systematic fabrication of material concerning Count 29 in this case, which serves to seriously damage the fairness and integrity of these proceedings.
11. This latter point is also compounded by the fact that the identifying detail led by the CLRV1 within the Four Items directly contradicts the sworn testimony of V45-P-0001.<sup>10</sup> As such, by seeking the submission of the Four Items – without any further explanation - the CLRV1 is effectively either leading evidence which it knows to be incorrect in contravention of article 25(1) of the ICC Code of Conduct (applicable to legal representatives for victims),<sup>11</sup> or leading evidence which places V45-P-0001 at risk of proceedings pursuant to article 70(1)(a) of the Statute. Given that CLRV1 is obliged to act with the best interests of the client at all times,<sup>12</sup> it is therefore necessary for the Chamber to determine at this stage whether the CRLV1 is in a position to continue in its representation of V45-P-0001 in accordance with articles 16 and 18 of the ICC Code of Conduct.<sup>13</sup> An evidential ruling on the Four Items will therefore provide clarity to the Chamber, parties and participants as well as V45-P-0001 to this effect.

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<sup>10</sup> *Infra.*, paras 14-18 and 27-30.

<sup>11</sup> ICC-ASP/4/Res.1 Code of Professional Conduct for Counsel ('ICC Code of Conduct') at Article 25(1) ('*Counsel shall at all times maintain the integrity of evidence, whether in written, oral or any other form, which is submitted to the Court. He or she shall not introduce evidence which he or she knows to be incorrect*'). This obligation is an international ethical standard see also e.g. Rule 3.3 American Bar Association Model Rules of Professional Conduct and Principle I of the Council of Bars & Law Societies of Europe, Charter of Core Principles of the European legal profession & Code of Conduct for European Lawyers.

<sup>12</sup> See Rule 1 and 2.7 and Principle E and I of the Council of Bars & Law Societies of Europe, Charter of Core Principles of the European legal profession & Code of Conduct for European Lawyers; see also article 16(1) of the ICC Code of Conduct.

<sup>13</sup> See also Rule 1.16 American Bar Association Model Rules of Professional Conduct and Rule 5 of the Council of Bars & Law Societies of Europe, Charter of Core Principles of the European legal profession & Code of Conduct for European Lawyers.

ii. The Four Items do not establish the purported identity of V45-P-0001

12. In its Request, the CLRV1 asserts that the Four Items address the so-called ‘ambiguity’ concerning the identifying information of V45-P-0001,<sup>14</sup> relying heavily on the Trial Chamber’s consideration that the Four Items ‘would be of assistance in its determination of the truth, particularly, with regard to Count 29’.<sup>15</sup>
13. However, contrary to the positions of the CLRV1 and the Prosecution,<sup>16</sup> the Chamber’s consideration did not dispense of the CLRV1’s obligation to explain how each of the Four Items render V45-P-0001’s claimed identity as [REDACTED] to be more probable.<sup>17</sup> Instead, the CLRV1 makes a general submission that the Four Items are of relevance given that it pertains to the contested identification of V45-P-0001,<sup>18</sup> with no further reference to the identifying particulars therein.
14. The CLRV1’s simplistic approach is telling in that had it undertaken the exercise, it would have been apparent that the purported identifying information within the Four Items directly contradicts V45-P-0001’s sworn testimony as well as other material obtained by the CLRV1 in relation to various aspects of his identification.<sup>19</sup> The CLRV1’s silence in this regard means that it is impossible for the Trial Chamber and parties to determine which version of V45-P-0001’s testimony is to be relied on as concerns his identity – a matter which is ordinarily an objective and clear-cut assessment. As such, the Four Items only serve to create even further ‘ambiguity’ and supports the Defence’s position that V45-P-0001 has intentionally sought to deceive this Court in

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<sup>14</sup> Request, paras. 22 and 19(*sic*) at p. 10.

<sup>15</sup> Request, para. 23 with reference to ICC-01/14-01/18-2412, para. 6.

<sup>16</sup> See Email from Prosecution to Trial Chamber V, parties and participants dated 11 April 2024 at 15:58.

<sup>17</sup> See e.g. ICC-01/04-01/07-2635, para. 16.

<sup>18</sup> Request, para. 19

<sup>19</sup> See also *infra.*, paras. 27-30.

relation to his true identity and his relationship with Registry Intermediary [REDACTED] (P-2638).<sup>20</sup>

15. For example, the CRLV1 seeks to introduce CAR-V45-00000012 which it describes as ‘the “carte de baptême” of V45-P-0001’ (‘Baptism Card’).<sup>21</sup> The Baptism Card itself states that [REDACTED] was born on [REDACTED] and subsequently baptised in [REDACTED]. Additionally, the CRLV1 also seeks to introduce CAR-V45-00000013 which it describes as ‘the “Fiche de vaccination” of V45-P-0001’ (‘Vaccination Card’).<sup>22</sup> The Vaccination Card provides that [REDACTED] was born on [REDACTED] and that he was vaccinated in [REDACTED].
16. The Trial Chamber will recall however, that it was V45-P-0001’s repeated testimony, whilst under oath, that he was born on [REDACTED],<sup>23</sup> and that he had vehemently denied that he was born on [REDACTED] when questioned by the Defence.<sup>24</sup> The CLRV1 was also personally involved in obtaining the *Jugement reconstitutif d’acte de naissance* (CAR-V45-00000005)<sup>25</sup> and subsequently submitted (and continues to rely on) CAR-V45-00000006 which is purportedly

<sup>20</sup> *Infra.*, paras. 32. See also Exclusion Request, paras. 25- 26.

<sup>21</sup> Request, para. 20.

<sup>22</sup> Request, para. 20.

<sup>23</sup> ICC-01/14-01/18-T-245-CONF-ENG [12:11:24] to [12:14:25] (attesting to the veracity of *Jugement reconstitutif d’acte de naissance* (CAR-V45-00000005) and the *d’acte de naissance* (CAR-V45-00000006) which depict birth date of [REDACTED]); ICC-01/14-01/18-T-246-CONF-ENG [11:41:08] to [11:41:40] (confirming that he told [REDACTED] that his birth date was [REDACTED]); ICC-01/14-01/18-T-246-CONF-ENG [11:43:03](asserting that the victim participation form which records birth date as [REDACTED] as incorrect as he had stated he was born on [REDACTED]); ICC-01/14-01/18-T-246-CONF-ENG [11:53:14] to [11:55:32] (confirming that he had provided [REDACTED] with his date of birth as [REDACTED] which was used in order to obtain a copy of his birth certificate/d’acte de naissance).

<sup>24</sup> ICC-01/14-01/18-T-246-CONF-ENG [11:41:08] to [11:43:03] (explaining that he does not know why [REDACTED] appears as his birth date on his victim participation form); ICC-01/14-01/18-T-246-CONF-ENG [14:14:20] to [14:15:54] (denying school records (CAR-D29-0013-0265) obtained by the Defence which depict birth date of [REDACTED]); ICC-01/14-01/18-T-246-CONF-ENG [14:17:58] to [14:19:05] (refuting assertion that he was born on [REDACTED]); ICC-01/14-01/18-T-246-CONF-ENG [14:24:02] to [14:30:22] (denying a copy of birth certificate depicting birth date for ‘[REDACTED]’ as [REDACTED] (CAR-D29-0013-0254).

<sup>25</sup> Email from Defence to Trial Chamber V and Parties, 26 September 2023 at 09:23 (regarding P-0001); and Email from Defence to TC V and Parties, 3 October 2023 at 10:43 (regarding P-0002). See also, CAR-D29-0016-0136.



the birth certificate of V45-P-0001 and which provides his birth date as [REDACTED].<sup>26</sup>

17. Further still, it was V45-P-0001's sworn testimony that he was born in [REDACTED] and 'nowhere else',<sup>27</sup> lived with his mother in [REDACTED],<sup>28</sup> and completed his primary school education [REDACTED],<sup>29</sup> going as far as to testify to the name of his primary school teacher at [REDACTED].<sup>30</sup> At no point did V45-P-0001 raise any association with [REDACTED] during his sworn testimony or make any reference to the Baptism Card and Vaccination Card despite the fact that: (i) the Defence had clearly put its case to him with regard to his false identity during his sworn testimony,<sup>31</sup> (ii) he made clear reference to the existence of identifying documents other than the Four Items and provided an opportunity during his sworn testimony to retrieve a copy of a birth certificate from his hotel room,<sup>32</sup> and (iii) the Baptism Card and Vaccination Card were, according to CLRV1, apparently readily available from 'close family members' and retrieved by CLRV1 within two months after V45-P-0001 had testified.<sup>33</sup>

18. Further, and, notwithstanding its obligation to ascertain the identity of its clients,<sup>34</sup> the CLRV1 also made no earlier attempt to establish that V45-P-0001's birth date was in fact [REDACTED], or that he had any association with

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<sup>26</sup> *Contra* Request, para. 19(sic) at p. 9 whereby the CLRV1 asserts that the Four Items 'confirms the identifying information of V45-P-0001 contained in his birth certificate', citing to CAR-V45-00000006.

<sup>27</sup> ICC-01/14-01/18-T-246-CONF-ENG [9:56:31] and [9:57:04] see also ICC-01/14-01/18-T-245-CONF-ENG [9:43:13] to [9:43:18].

<sup>28</sup> ICC-01/14-01/18-T-245-CONF-ENG [9:44:25]; see also ICC-01/14-01/18-T-246-CONF-ENG [10:50:10] to [10:50:41].

<sup>29</sup> ICC-01/14-01/18-T-246-CONF-ENG [10:10:26] to [10:10:58].

<sup>30</sup> ICC-01/14-01/18-T-246-CONF-ENG [14:12:35] to [14:13:12].

<sup>31</sup> See e.g. ICC-01/14-01/18-T-246-CONF-ENG [14:17:58] to [14:19:05].

<sup>32</sup> ICC-01/14-01/18-T-246-CONF-ENG [9:59:58] to [10:01:20].

<sup>33</sup> ICC-01/14-01/18-2222-Conf-Anx1.

<sup>34</sup> ICC-01/14-01/18-141, para. 21. See also e.g. Rule 3.1.1, Council of Bars & Law Societies of Europe, Charter of Core Principles of the European legal profession & Code of Conduct for European Lawyers ('[...] The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him or her when the specific circumstances show that the identity, competence and authority are uncertain').

[REDACTED] despite the fact that it was also on clear notice of the Defence's challenge of V45-P-0001 specific identity as early as 25 August 2023 (i.e. one month prior to the testimony of V45-P-0001).<sup>35</sup> The Trial Chamber will recall that the CLRV1 had in fact previously opposed the submission of CAR-D29-0013-0265 on the basis that the personal information therein was not consistent with the birth certificates submitted by the CRLV1.<sup>36</sup>

19. It is therefore entirely unclear as to why the CRLV1 has brought this Request or how either the Baptism Card or the Vaccination Card establishes the identity of V45-P-0001 as advanced by the CLRV1.
20. Similarly, the CLRV1 seeks to introduce CAR-V45-00000014 and CAR-V45-00000015 which it respectively describes as 'the birth certificate of V45-P-0001's mother ([REDACTED])' and 'the birth certificate of V45-P-0001's father ([REDACTED])' (collectively 'Birth Certificates').<sup>37</sup> As previously submitted, neither birth certificate establishes any familial link with V45-P-0001 and at most merely depicts the existence of two individuals named [REDACTED] and [REDACTED].<sup>38</sup> Again, the Defence does not necessarily dispute the existence of these two individuals particularly in light of P-6025's categorical testimony [REDACTED].<sup>39</sup>
21. The fact that the Four Items are introduced as identification documents *per se* does not automatically confer relevance for the purposes of its Request, with adverse inferences to be drawn by the fact that the CRLV1 has chosen to remain silent on the identifying particulars of each item.

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<sup>35</sup> Email from the Defence to the CLRV1 dated 25 August 2023 at 18:52. See also ICC-01/14-01/18-1969-Conf-AnxA for the CLRV1's summary of expected testimony for V45-P-0001 which indicates that he was 'born and originated in [REDACTED]' and that he was '[I]iving since the age of seven [...] in [REDACTED] with his grandfather'.

<sup>36</sup> Email from CLRV1 to Trial Chamber V and Parties dated 29 September 2023 at 18:47.

<sup>37</sup> Request, para. 20 (p. 8).

<sup>38</sup> ICC-01/14-01/18-2232-Conf, para. 52.

<sup>39</sup> *Supra.*, paras. 7 and cites therein.

iii. The Four Items do not meet the minimum threshold test for *prima facie* reliability

22. In order for documentary material to be introduced into the case record, a party or participant must, at the very least, establish that the material is *prima facie* reliable. Whilst this is a relatively low threshold to meet at the point of submission it still requires an assessment to be made of various factors of authenticity which include:<sup>40</sup> (i) the origin of the material, (ii) the context in which it was created, (iii) the method with which the information contained therein was compiled and (iv) the availability of corroborative evidence.<sup>41</sup>

23. To address all four of these factors, the CRLV1 advances its position in a single paragraph containing arguments which are inaccurate, insufficient and/or wholly sweeping so as to lose any value.

24. First, seemingly to address the 'origin' criterion, the CRLV1 states that the Four Items bear sufficient *indicia* of reliability and authenticity as '[t]hey have been provided by his mother and uncle'.<sup>42</sup> In doing so, the CLR V1 evidently conflates the chain of custody with the origin of a document,<sup>43</sup> and even in doing so, its submissions or reliance on the chain of custody are insufficient for the purposes of the Request given that: (i) the material was not provided to CLR V1 directly by V45-P-0001 despite the fact that the identifying information therein appears to contradict his sworn testimony, (ii) there is evidence on the record elicited by CLR V1, that [REDACTED] is not V45-P-0001's mother, and (iii) there is no further information as the identity of '[REDACTED]' whom the CLR V1 asserts is V45-P-0001's uncle despite the fact that V45-P-0001 has made no mention of

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<sup>40</sup> See Request, para 24.

<sup>41</sup> See e.g. ICC-01/04-01/06-1399, paras. 36-40; see also ICC-01/04-01/07-1665-Corr, para. 98.

<sup>42</sup> Request, para. 19(*sic*) at p 9.

<sup>43</sup> The E-Court Protocol explicitly outlines the required procedures for establishing the chain of custody from the moment an item comes into the possession of the concerned party. The CLR V1 cannot deviate from the E-Court Protocol to bolster the reliability of the items by introducing evidence in his submission that is not part of the case record.

this name.<sup>44</sup> Given that CLRV1 has opted to rely on the chain of custody to assert the reliability of the Four Items, it was therefore incumbent on it to address such obvious issues and provide the necessary context in which the Baptism Card and Vaccination Card had to be obtained from V45-P-0001's uncle (and not his mother), and how [REDACTED] was able to obtain the birth certificate of V45-P-0001's father following V45-P-0001's testimony that, whilst he lives with his mother, he does not know the whereabouts of his father.<sup>45</sup>

25. Second, in addressing the context in which the Four Items have been created and the method in which the information contained therein was compiled, the CLRV1 makes only brief mention of the fact that '[t]he documents are stamped and signed by the relevant authorities'.<sup>46</sup> Given that the CLRV1 has also previously asserted that 'numerous documents issued in the CAR, presented thus far in the trial, lack adequate indicators of reliability' citing to the 'prevalent level of corruption in the country' as a reason as to why 'it is not uncommon for individuals in the CAR to resort to alternative means in obtaining identification documents to circumvent institutional bureaucracy and reduce costs', it was essential for the CLRV1 to substantiate its arguments with regard to the reliability of the Four Items.

26. The CLRV1's failure to do so is further compounded by the various irregularities associated with each item. For example, whilst the Baptism Card is signed and stamped, the date of issuance is questionably incomplete,<sup>47</sup> the card is ambiguously issued in [REDACTED] and not in [REDACTED], and the handwriting is strikingly similar to that appearing on the Vaccination Card.<sup>48</sup>

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<sup>44</sup> See Request, para. 19(*sic*) at p 9 and ICC-01/14-01/18-2222-Conf-Anx1.

<sup>45</sup> ICC-01/14-01/18-T-246-CONF-ENG [10:42:48].

<sup>46</sup> Request, para. 19(*sic*) at p. 9.

<sup>47</sup> See also, ICC-01/14-01/18-2232-Conf, para. 46 in particular with reference to the fact that the Baptism Card was not submitted to the [REDACTED] Tribunal as evidence to obtain V45-P-0001's Judgment reconstitutif d'acte naissance in [REDACTED] (CAR-V45-00000005).

<sup>48</sup> See for example, distinctive trait in handwritten text of letters 'M' (upper case), 'E' (upper case) and 'g' (lower case), 'y'(lower case) as well as the number '2'.

The Vaccination Card is also not signed (contrary to the CLRV1's submission) and the [REDACTED] stamp is also incomplete with the omission of the name of the city which ordinarily appears at the bottom of the stamp.<sup>49</sup> Similar ambiguities arise in relation to the circumstances in which the two Birth Certificates were produced, noting the irregular method undertaken by the CLRV1 in order to obtain birth certificates for its clients, in their absence and without any formal supporting material.<sup>50</sup>

27. Third, whilst addressing the final authenticity factor, the CLRV1 issues a blanket statement that the Four Items are 'mutually corroborative, and also corroborative of other evidence on the record and the testimony of V45-P-0001'.<sup>51</sup> The CLRV1 offers no further reference or specific example of the available corroborative evidence to which it alludes to, thereby failing to address this final factor.<sup>52</sup>

28. The generic statement is, in any case, evidently contradicted with any review of V45-P-0001's testimony. As set out above, it was V45-P-0001's evidence that: (i) he was born on [REDACTED], (ii) he was not born on [REDACTED], (iii) he was born in [REDACTED], (iv) he lived in and attended school in [REDACTED]. Accordingly, this does not corroborate the information within the Four Items which purports to state that he was born on [REDACTED] and resided in [REDACTED] at least up until the age of 10 years old.<sup>53</sup>

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<sup>49</sup> *Infra.*, para. 34. See also ICC-01/14-01/18-T-263-CONF-ENG [13:01:48].

<sup>50</sup> In this regard, the Defence recalls that the CLRV1 has previously indicated in the chain of custody that its clients were the source of the birth certificates where this was not the case see e.g. Email from Defence to TCV and Parties dated 26 September 2023 at 09:24. A similar inference may therefore be drawn with respect to the present chain of custody which indicates that [REDACTED] provided the Birth Certificates to Mr. [REDACTED] see ICC-01/14-01/18-2222-Conf-Anx1.

<sup>51</sup> Request, para. 19(*sic*) at p. 9.

<sup>52</sup> See also ICC-01/04-02/06-1838, para. 9 ('It does not suffice to argue that its content may be corroborated by other evidence, or that the 'document's appearance, contents, substance and consistency with other documents, and other distinctive features satisfy the indicia of reliability for admission'). See also ICC-01/04-01/07-2635, para. 23.

<sup>53</sup> The Baptism Card seeks to assert that V45-P-0001 was baptised on [REDACTED] whilst the Vaccination Card seeks to assert that V45-P-0001 received vaccinations in [REDACTED] between [REDACTED] and [REDACTED].

29. The Four Items are also not corroborated by other documentary material **led by CLRV1** including (i) both the *Jugement reconstitutif d'acte de naissance* and *d'acte de naissance* seek to asserts that V45-P-0001's birth date is [REDACTED];<sup>54</sup> and (ii) the victim participation form which states that the name of V45-P-0001's mother is [REDACTED] and the name of V45-P0002's father is [REDACTED].<sup>55</sup>

30. Despite the relatively low threshold to be met, it is rather telling that CLRV1 has failed to substantiate its arguments concerning the reliability of the Four Items, whilst at the same time ignoring the serious and extensive allegations raised within the Exclusion Request which address the unreliability of V-45-P-00001's evidence.

iv. The submission of the Four Items through the bar table is significantly prejudicial

31. Contrary to the arguments put forward by the CLRV1,<sup>56</sup> the submission of the Four Items is significantly prejudicial to the rights of Mr. Yekatom. At a minimum, the Four Items serve only to further muddy the waters as concerns the identity of V45-P-0001 thereby denying Mr. Yekatom his fundamental right to know the identities of the witnesses and victims whose evidence is relied on against him in these criminal proceedings. Even if one were to take the CLRV1's case at its highest, it has presented conflicting detail with regard to the name of V45-P-0001's mother, the name of V45-P-0001's father, the date of his birth, the place of his birth and the place of his residence. As stated above, these are all details which are ordinarily clear to decipher and the CLRV1 has presented no cogent reason as to why it has presented such contradictory evidence – opting instead to stay silent despite being granted the opportunity to do so in its Request. This is particularly relevant given that V45-P-0001 completed his

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<sup>54</sup> CAR-V45-00000005 and CAR-V45-00000006.

<sup>55</sup> CAR-V45-00000004.

<sup>56</sup> Request, paras. 2, 18-19.

application form to become a participating victim in this case as early as August 2021.<sup>57</sup> This provided CLRV1 ample time to confirm the identity of his client based on the information contained in the 'déclaration relative à l'identité', which the defence was not privy of until CLRV1 formal disclosure in summer 2023, one month prior to V45-P-0001's testimony.

32. More pertinently, the Four Items go to the deliberate and concerted efforts to present false evidence on the part of Prosecution witnesses, Prosecution and Registry intermediaries, alleged 'former child soldier' participating victims, and other individuals relied on by the Prosecution in its investigation and prosecution of Count 29. As set out in the Exclusion Request, V45-P-0001 is part of this effort having lied about his real name - [REDACTED] - in an attempt to disguise the fact that he is the [REDACTED], [REDACTED] (P-2638),<sup>58</sup> and [REDACTED] (P-2620) and [REDACTED] ([REDACTED]), so as to receive financial benefit and relocation in exchange for fabricating testimony against Mr. Yekatom. In doing so, V45-P-0001 has provided false evidence concerning his name and the names of his parents and submitted various forged identity forms.<sup>59</sup> The Four Items are more of the same, serving to litter the case record with fabricated material. This directly undermines the fairness of these proceedings and the rights of Mr Yekatom, demanding that he defend himself against allegations based upon falsified evidence generated from a deceptive and collusive network. This unfairness is exacerbated by the absence of any investigation and position from the Prosecution, even though the integrity of these proceedings is at stake.

33. Indeed, the Defence has already had to spend inordinate resources to investigate the broad conspiracy to falsify evidence and having been denied the

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<sup>57</sup> See CAR-V45-00000004.

<sup>58</sup> See also ICC-01/14-01/18-2290-Conf, para. 12.

<sup>59</sup> Exclusion Request, paras. 25 to 26. See also ICC-01/14-01/18-T-246-CONF-ENG [14:17:58].

opportunity to test the Four Items with V45-P-0001 directly, is having to again investigate the veracity of the Four Items. Whilst defence investigations in this regard are underway – having had to re-direct its investigations from [REDACTED] to [REDACTED] - initial results already raise serious doubts as to the authenticity of the Four Items. For example, the Defence has received information which establishes that: (i) individuals at the [REDACTED] do not recognise the Baptism Card and (ii) the identity of the pastor named in the Baptism Card [REDACTED].

34. Similarly, defence investigations have also revealed that vaccinations card are [REDACTED] but rather are issued by the local health center, as depicted in other material obtained by the CLRV1 in this case.<sup>60</sup> In this regard, the Defence recalls the fact that [REDACTED] (P-2638), which the Defence submits is [REDACTED].<sup>61</sup>

35. Issues also arise in relation to CAR-V45-00000015 - which is presented as the birth certificate of '[REDACTED]' – and signed by [REDACTED]. The same individual is also responsible for the issuance of the birth certificate of [REDACTED] (P-2620) on [REDACTED] (which the Defence asserts is [REDACTED]),<sup>62</sup> despite the fact that defence investigations revealed that [REDACTED] only worked at Bangui Town Hall for the limited period between 2000 and 2003.

36. The Defence intends to present the formal findings of its investigations upon completion and provides its submissions at this stage in order to facilitate the Trial Chamber's determination of the Request.

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<sup>60</sup> CAR-V45-00000016-001 and CAR-V45-00000017.

<sup>61</sup> CAR-OTP-00001381. See also ICC-01/14-01/18-T-263-CONF-ENG [12:56:17] to [13:02:26].

<sup>62</sup> CAR-OTP-2121-2577.



37. Whilst the introduction of written material through the bar table has become a standard practice in the presentation of evidence, there remains a limit in its application where the introduction of an item is unsuitable through the bar table. This is true whether the submission approach or the admission approach is adopted given that the former does not preclude an evidentiary ruling where warranted.

38. Such limits have been met in this instance. The reliability and authenticity of the Four Items is highly contentious,<sup>63</sup> and the documents all pertain to identifying particulars which should have been introduced through V45-P-0001,<sup>64</sup> rather than to now use them after the fact and in direct contravention of his testimony under oath. As such, the CLRV1 has failed to substantiate specifically how the Four Items would assist the Chamber in its determination of the truth or the additional benefit it seeks to gain given that V45-P-0001 had ample opportunity to clarify any apparent discrepancies in his identification. The fact that he did not and that the CLRV1 has not done so either speaks to the very falsehood of the purported identity of V45-P-0001 as led by CLRV1.

### **III. CLASSIFICATION**

39. Pursuant to regulation 23bis(2) of the Regulations of the Court, this document is filed as 'Confidential' as it responds to a filing of the same classification and contains to confidential material. A public redacted version will be filed in due course.

### **IV. RELIEF**

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<sup>63</sup> ICC-01/14-01/21-694, para. 40; ICC-01/04-01/07-1665, para. 100.

<sup>64</sup> ICC-01/04-02/06-1838, para. 13.

40. For the foregoing reasons, the Defence respectfully requests Trial Chamber V to issue an evidentiary ruling pursuant to article 69(4) of the Statute and **DENY** the Request.

**RESPECTFULLY SUBMITTED ON THIS 10<sup>th</sup> DAY OF JUNE 2024**



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