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**International
Criminal
Court**

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

Date: **31 July 2024**

TRIAL CHAMBER V

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

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

Public with Confidential Annex

Public Redacted Version of the 'Yekatom Defence Third Consolidated Request for Leave to amend its Witness and Evidence Lists and for formal submission of prior recorded testimony via Rule 68(2)(b)', ICC-01/14-01/18-2581-Conf, 8 July 2024

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor

Mr Karim Asad Ahmad Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel
Mr Gyo Suzuki

Counsel for Mr. Ngaissona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**
Ms Marie O'Leary

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') respectfully seeks i) leave to amend its lists of witnesses and evidence¹ to add one witness (D29-P-6048) and her prior recorded testimony, comprised of two witness statements² ('Witness Statements') and five associated exhibits³ (together, 'Testimonial Material')⁴ ('Amendment Request'); and ii) formal recognition of the Testimonial Material pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence ('Rule 68(2)(b) Request') (together, 'Requests').
2. The Testimonial Material comprises relevant and probative exculpatory evidence in respect of the presence and day-to-day activities of Prosecution witness P-2475 in [REDACTED] during the Seleka/Anti-Balaka periods, which contradicts his highly contested account as to his purported forced enrolment and participation as a 'child soldier' and/or member of Mr Yekatom's group.
3. There is good cause for the timing of the Amendment Request, especially given the prevailing exceptional circumstances; and granting it would not cause undue procedural prejudice.
4. Further, should the Amendment Request be granted, the Testimonial Material should be recognised as formally submitted via rule 68(2)(b), as the relevant requirements therein are fulfilled.
5. Notwithstanding the fact that the Defence herein tenders the Testimonial Material via rule 68(2)(b), should the Prosecution wish to cross-examine D29-P-6048 and/or should the Chamber deem it suitable to *proprio motu* introduce the

¹ ICC-01/14-01/18-2212-Conf, filed on 17 November 2023.

² CAR-D29-0009-0797 and CAR-D29-0009-0804.

³ CAR-D29-0009-0813, CAR-D29-0009-0814, CAR-D29-0009-0815, CAR-D29-0009-0816, and CAR-D29-0009-0817.

⁴ See, Annex A.

Testimonial Material pursuant to rule 68(3) and have D29-P-6048 appear for examination, the Defence would not oppose.

PROCEDURAL HISTORY

6. On 29 May 2023, Trial Chamber V issued its 'Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)' in which it *inter alia* directed the Defence to file its final lists of witnesses and evidence, and any rule 68(2) applications, by 17 November 2023; and directed that the first defence witness be called, whether by the Yekatom or Ngaissona defence, on 11 December 2023.⁵
7. On 17 November 2023, the Defence filed its 'List of Witnesses and Evidence'.⁶ In its submissions, the Defence alerted the Chamber to several concrete obstacles encountered during its preparations and investigations ahead of the Defence presentation of evidence, on which basis the Defence expressly reserved its right to amend its witness list 'as necessary to ensure the effective exercise of Mr Yekatom's fair trial rights'.⁷
8. From 11 to 13 December 2024, the Defence called the first defence witness, D29-P-5015.

SUBMISSIONS

A. The Amendment Request should be granted.

9. Granting the Amendment Request would be in the interest of justice and is necessary for the determination of the truth; and further, it would not cause undue procedural prejudice, in accordance with the relevant factors to be

⁵ ICC-01/14-01/18-1892, paras 21(i) and (iii), 23-24.

⁶ ICC-01/14-01/18-2212-Conf.

⁷ *Ibid.*, paras 7-16.

considered.⁸ In the circumstances, the Defence submits that it would be unreasonable and inconsistent with the Chamber's truth-seeking function to disallow the Defence from relying on the Testimonial Material.⁹

i) The timing of the Amendment Request is not unreasonable in the circumstances.

10. While the Defence acknowledges that the Sought Amendment comes over seven months after its Witness List was filed, the Defence submits that there is sufficient cause for the timing of this request, especially given prevailing exceptional circumstances;¹⁰ and in any event, the timing is not so unreasonable as to preclude granting the Sought Amendment.
11. The Amendment Request arises from recent Defence interviews with D29-P-6048, conducted as part of ongoing Defence investigations into individuals who would be willing and able to provide probative evidence as to the whereabouts and activities of P-2475 in the period [REDACTED], during which period P-2475 claims to have been a child soldier¹¹ forcibly recruited into Mr Yekatom's group.
12. The Defence's pursuit of leads specifically in respect of [REDACTED] of [REDACTED]¹² of P-2475, [REDACTED], followed the Defence's confirmation that [REDACTED].¹³ Following this development and investigative shift, the Defence was able to arrange indirect contact with D29-P-6048 for the first time on 9 June 2024. The Defence was able to conduct an initial interview on 10 June

⁸ Namely *inter alia*, the extent to which the requested addition is opposed, the time when the addition was sought, the nature and amount of the material concerned, the intended purpose of the requested reliance on such material, and its prospective significance in light of the charges brought against the accused and the rest of the available evidence; see, ICC-01/14-01/18-2506, para. 5, citing ICC-01/14-01/18-1118-Conf, paras 8-9.

⁹ ICC-01/14-01/18-989-Conf, para. 6.

¹⁰ *Prosecutor v Ongwen*, Decision on Defence Request to Add Two Witnesses to its List of Witnesses and Accompanying Documents to its List of Evidence, [ICC-02/04-01/15-1565](#), 13 August 2019 ('First Ongwen Decision'), para. 13.

¹¹ Regarding the fact that the Prosecution has since effectively conceded that P-2475 perjured himself and lied about his age during his testimony, see *infra*, para. 23.

¹² See, ICC-01/14-01/18-2240-Conf, paras 13, 18, 22.

¹³ See also, CAR-D29-0009-9797, paras 16 [REDACTED] and 36 [REDACTED].

2024,¹⁴ i.e. the last day of a Defence investigative mission in BANGUI; and to conduct a follow-up interview during a subsequent investigative mission, on 24 and 27 June 2024.¹⁵

13. The timing of the present Request is also reasonable in the context of these proceedings. The Chamber has previously granted the Prosecution leave to add a witness to its list of witnesses despite this amendment having been sought ‘more than seven months after the [witness list filing] Deadline and after the commencement of the trial, when the Prosecution had already called its first 13 witnesses’.¹⁶ The Chamber also recently granted a Ngaissona Defence request for addition of a witness to its list, filed ‘more than five months after the time limit set for the Defence’s List of Witnesses and in the midst of its evidence presentation’.¹⁷ Jurisprudence of the Court further demonstrates that trial chambers have granted amendments to parties’ witness lists sought at greater (or at least similar) intervals.¹⁸
14. Moreover, the reasonableness of the timing of the Sought Amendment must be assessed in light of the prevailing exceptional circumstances: specifically, the ongoing large-scale conspiracy to present fabricated evidence and pervert the course of justice in these proceedings.¹⁹ Indeed, the Defence has repeatedly and consistently alerted the Chamber and parties to the degree to which this evidence fabrication scheme, and especially the fabricated testimonial and documentary evidence called and tendered by the CLR1, has improperly

¹⁴ See, CAR-D29-0009-0797.

¹⁵ See, CAR-D29-0009-0804.

¹⁶ ICC-01/14-01/18-1118-Conf, para. 10.

¹⁷ ICC-01/14-01/18-2506, para. 6.

¹⁸ See, e.g., First Ongwen Decision, para. 3-4, 26 (addition of a witness **over one year** after the deadline); *Prosecutor v Ongwen*, Decision on Defence Request to Add D-0157 to its List of Witnesses, [ICC-02/04-01/15-1639](#), 16 October 2019 (‘Second Ongwen Decision’), paras 5, 13 (addition of a witness **16 months** after the deadline); *Prosecutor v Ntaganda*, Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior recorded testimony of Witness P-0551, [ICC-01/04-02/06-1733](#), 19 January 2017, paras 15, 19 (addition of a witness ‘**almost twenty months**’ after the deadline)’ *Prosecutor v Ntaganda*, Decision on Defence Request to add Witnesses D-0251 and D-0257 to its List of Witnesses, [ICC-01/04-02/06-2079](#), 20 October 2017, paras 21, 27 (addition of witnesses ‘**over five months**’ after the deadline);

¹⁹ See, ICC-01/14-01/18-2240-Conf. See also, First Ongwen Decision, para. 13.

burdened the Defence and disproportionately consumed the limited time and resources made available to Mr Yekatom for the preparation of his defence, in a manner that would affect (and ultimately has affected) the finality of its witness and evidence lists.²⁰ Recently-filed Defence witness and evidence list amendment and rule 68(2) requests also evidence the manner in which witness interference on the part of former Prosecution / Registry / CLR1 intermediaries has continued to materially hinder Defence investigations, as expressly forewarned by the Defence.²¹ Further, this burden remains active, following the Chamber's denial of a Defence request for the exclusion of the fabricated evidence tendered by the Prosecution and CLR1, given the Defence's

²⁰ See e.g., ICC-01/14-01/18-2004-Conf-Corr, paras 54, 56-61, 66-69 (where the Defence opposed the CLR1's request for leave to present evidence, citing the 'meticulous and time-consuming' nature of the investigative work required to counter the Prosecutions allegations brought under Count 29, as well as the manner in which the ongoing evidence fabrication conspiracy would compound the prejudicial effect of allowing the CLR1 to present evidence; and where the Defence unsuccessfully sought alternative relief in the form of a six-month adjournment of proceedings, which it submitted was necessary to allow it to continue its broader investigations ahead of the 17 November 2023 deadline for filing its witness and evidence lists, as well as to commence new investigations to address the highly incriminating claims of the witnesses that CLR1 sought to call; and where the Defence expressly informed the Chamber that said new investigations could give rise to the need for the Defence to seek amendments to its list of evidence); ICC-01/14-01/18-2212-Conf, paras 7-16 (where in the Defence's covering submissions filed with its witness and evidence lists, it expressly reserved its right to add witnesses to its Witness List, on the basis of the multiple obstacles encountered during Defence preparations and investigations, including i) the monopolisation of Defence resources necessitated by the scheduling of the CLR1's presentation of evidence; and ii) the fact that Defence investigations had been impeded by witness interference on the part of at least three Prosecution/Registry witnesses and intermediaries, as a result of which 'a disproportionate amount of time and resources had to be redirected in order to secure the cooperation and ensure the safety of Defence witnesses); ICC-01/14-01/18-2240-Conf, para. 116 (where in its 5 December 2023 motion seeking exclusion of fabricated evidence, the Defence cited the impact of the Prosecution's multiple statutory investigative failures vis-à-vis the evidence fabrication scheme on the Defence's trial preparations, arguing that it unjustly required the Defence 'to essentially correct the work of the OTP and ensure that fraudulent evidence is not placed before this Chamber. ... [A]s a result of the poor quality of OTP investigations, the Defence has been forced to allocate considerable resources to verify evidence relied upon by the OTP to defend against allegations based on fabricated material.');

ICC-01/14-01/18-2252-Conf, paras 3, 35-65 (where the Defence opposed the CLR1's request for leave to submit evidence via the bar table, citing *inter alia* the fact that the documentary evidence submitted by the CLR1 was fabricated, like the testimony of his witnesses; and citing the fact that granting the CLR1's request would result in the Defence being required 'to spend a significant amount of time and resources to investigate the sought documents on the eve of the presentation of its case and testimony of its witnesses before the Chamber', and set out some of the concrete investigative steps that it would be required to pursue in this regard; and reiterating that, given the Prosecution's demonstrable unwillingness to meet its statutory obligations and duly investigate the evidence fabrication conspiracy, this burden would once again unjustly fall upon the Defence, drawing the Chamber's attention to consequent 'knock-on effects on the Defence's ability to continue with the presentation of its case in an uninterrupted manner – as afforded to the Prosecution – and contrary to the expeditiousness of these proceedings'); and ICC-01/14-01/18-2449-Conf, paras 9-10, 33 (where the Defence opposed the CLR1's bar table motion, citing the undue impact that allowing the submission of the tendered fabricated evidence would have on Defence preparations, arguing that as a result, it was '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 tendered evidence).

²¹ See, ICC-01/14-01/18-2541-Conf, para. 19, and fn. 23; and ICC-01/14-01/18-2555-Conf, para. 34 and fn. 43.

professional and ethical obligation to continue to ensure the due preservation of Mr Yekatom's right to a fair trial.²²

15. In this regard, the Defence notes that, following the Chamber's decision to allow the CLR1 to present evidence while denying the Defence request for an adjournment,²³ the Chamber granted the CLR1 leave to submit evidence from the bar table, while noting that the Defence was 'free to determine if it considers the presentation of any additional evidence in this context necessary'.²⁴ Further, in subsequently recognising the CLR1's tendered evidence as submitted, the Chamber dismissed Defence objections *inter alia* on the express basis that Defence investigations in respect of fabricated nature of the tendered evidence 'are "underway"'; this, on 4 June 2024, i.e. approximately six and a half months after the filing of Defence Witness List.²⁵ The Chamber has thus not only been aware of the fact that these burdensome investigations were taking place both in the lead-up to, and in parallel with, the Defence's presentation of evidence, but has expressly taken these investigations into account in relevant decisions.
16. Moreover, while the Testimonial Material is predominantly relied upon to counter the evidence of P-2475 specifically, as opposed to the evidence brought via the CLR1 Witnesses, this has no bearing on the question as to the reasonableness of the timing of the Amendment Request. The expenditure of time and resources allocated to Defence is effectively zero-sum in nature: every minute that was spent on investigations into the CLR1's fabricated evidence – i.e. *inter alia* analysing and assessing the testimonial and documentary evidence; preparing investigative missions, including concomitant administrative preparation; determining, tracking down, and establishing contact with potential leads, (themselves often living in remote areas and/or not in

²² See, ICC-01/14-01/18-2460-Red. The Defence's request for leave to appeal the Chamber's decision was also denied; see, ICC-01/14-01/18-2468-Red and ICC-01/14-01/18-2519.

²³ See, *supra*, fn. 20.

²⁴ ICC-01/14-01/18-2412, para. 8.

²⁵ ICC-01/14-01/18-2520-Conf, para. 13.

possession of mobile phones); drafting and sending cooperation requests to obtain documents or interview witnesses; accessing and searching (non-digitised) administrative records and archives; planning and conducting witness interviews; and preparing, signing and certifying statements – was a minute that was irrevocably diverted from the Defence’s pursuit of other investigative leads, including those directly related to the matter of P-2475’s whereabouts and activities in the Seleka/Anti-Balaka periods. The same applies with respect to the time and resources that have been spent investigating the broader evidence fabrication conspiracy that has affected these proceedings.²⁶ The time and resources expended in this regard cannot be neatly cordoned off from the remainder of the time and resources available to Mr Yekatom for the preparation of his defence: it is all drawn from the same finite pool. As such, in effectively being obligated to conduct these additional investigations, the Defence has been forced to slow or pause investigations into other aspects of the case being brought against Mr Yekatom.

17. Lastly, given that the Defence tenders the Testimonial Material via rule 68(2)(b), the timing of this Amendment Request will not detrimentally impact expeditiousness, the advanced stage of the proceedings notwithstanding.²⁷
18. Even if the Chamber were to require that D29-P-6048 appear for examination, the Defence submits that the addition of one live witness ‘would not prolong the proceedings in an unreasonable manner’,²⁸ especially given the limited

²⁶ The Defence takes note of the CLR1’s recent argument that the Defence was ‘not obliged to redirect investigations into what is alleged to be an evidence fabrication scheme’ (ICC-01/14-01/18-2575-Conf, para. 20). This argument is worthless and appears to be based on the CLR1’s basic failure to grasp the ethical and professional obligations of the Defence. Where the Prosecution and the CLR1 continue to tender and rely on fabricated evidence that has been systematically produced and introduced into these proceedings pursuant to a wide-ranging evidence fabrication scheme, it is self-evidently necessary for the Defence to bring all relevant details of that scheme to the attention of the Chamber – especially given the Prosecution’s regrettable failure to do so. The fact that the perpetrators of this criminal scheme – notably including the CLR1’s own witnesses and intermediaries – also likely fall within the ambit of the Prosecution’s article 70 powers has no bearing whatsoever on this, not least given the Prosecution’s similarly regrettable failure to take any meaningful steps in this regard (see also, ICC-01/14-01/18-2555-Conf, fn. 42).

²⁷ See also, Second Ongwen Decision, paras 12-13.

²⁸ See also, First Ongwen Decision, para. 24.

scope and amount of her prospective evidence.²⁹ In this regard, the Defence notes that the Chamber has recently set 30 August 2024 as the deadline for the last day of live witness testimony.³⁰

ii) *The nature and amount of D29-P-6048's prospective evidence, and the intended purpose of the Defence's reliance thereon, will not cause undue prejudice.*

19. The Defence intends to rely on the Testimonial Material primarily for the purpose of demonstrating the fabricated nature of P-2475's account of his forced enrolment and experience as a 'child soldier' and/or member of Mr Yekatom's group. Specifically, it is intended to be relied upon to establish *inter alia* that:

- D29-6048 is [REDACTED] and [REDACTED] (P-2475);³¹ and she recognised and identified P-2475 in multiple photographs, as well as P-2475's [REDACTED], [REDACTED] (D29-P-6018).³²
- D29-P-6048 believes that P-2475 and [REDACTED] began their relationship [REDACTED];³³ and D29-P-6048 discovered this during [REDACTED].³⁴
- D29-P-6048 had previously known P-2475 for a long time, through his activities at the [REDACTED]; he was an '[REDACTED]'.³⁵
- After initially living with [REDACTED] (and specifically in the home [REDACTED]), once their relationship became 'official' P-2475 and [REDACTED] started staying more frequently at [REDACTED].³⁶
- Following DJOTODIA's resignation, a Muslim PISSA resident informed D29-P-6048 that the Seleka had told the PISSA Muslims that the Seleka were leaving, and that PISSA Muslims had to leave within two days.³⁷

²⁹ See *infra*, regarding the Prosecution's cross-examinations of D29-P-6016 and D29-P-6036 on matters relating to P-2475.

³⁰ ICC-01/14-01/18-2571, para. 4.

³¹ CAR-D29-0009-0797, paras 14 and 16.

³² CAR-D29-0009-0804, paras 34-35, 37-38; see also, *ibid.*, para. 27.

³³ CAR-D29-0009-0797, para. 17.

³⁴ CAR-D29-0009-0804, para. 19.

³⁵ CAR-D29-0009-0804, para. 18; see also, *infra*.

³⁶ CAR-D29-0009-0797, paras 19, 38; and CAR-D29-0009-0804, para. 20.

³⁷ CAR-D29-0009-0804, paras 21-22.

- After the departure of the Seleka from PISSA, but before the arrival of the Anti-Balaka, local youths destroyed the Muslims' homes and the mosque.³⁸
- D29-P-6048 remembers the arrival of the Anti-Balaka in PISSA; she witnessed the locals were celebrating their arrival by singing, dancing, and shouting.³⁹ P-2475 and [REDACTED] were staying at [REDACTED]'s house at that time, and P-2475 also described the scene to [REDACTED].⁴⁰
- There were only adults among the Anti-Balaka in PISSA.⁴¹
- During the Seleka / Anti-Balaka period, including in the period when P-2475 started seeing [REDACTED], he was in [REDACTED]; he was at the [REDACTED].⁴² During this period, D29-P-6048 would see him on a daily basis; and after the arrival of the Anti-Balaka, P-2475 continued to sleep at [REDACTED]'s house and to work at the [REDACTED].⁴³
- P-2475 did not join (and was not a member of) Mr Yekatom's group during the Seleka / Anti-Balaka period.⁴⁴ He was not absent from [REDACTED] in the Seleka period, nor in Anti-Balaka period (except when he left to [REDACTED]⁴⁵).⁴⁶
- During the caterpillar-collecting season, a 'child soldier programme' came to [REDACTED] looking to enrol children; and when D29-P-6048 sought to enrol her children in the programme she was told that it was for orphans only.⁴⁷
- [REDACTED].⁴⁸

³⁸ Ibid, paras 23-24.

³⁹ CAR-D29-0009-0804, paras 26-28. See also, CAR-D29-0009-0797, para. 28.

⁴⁰ CAR-D29-0009-0804, para. 28.

⁴¹ CAR-D29-0009-0797, para. 31.

⁴² CAR-D29-0009-0797, paras 33-35.

⁴³ CAR-D29-0009-0804, paras 30-31.

⁴⁴ CAR-D29-0009-0797, para. 32. See also, CAR-D29-0009-0804, para. 30.

⁴⁵ See, CAR-D29-0009-0797, para. 26 (see also *infra*).

⁴⁶ CAR-D29-0009-0804, para. 30.

⁴⁷ CAR-D29-0009-0797, para. 26.

⁴⁸ Ibid., para. 26.

- P-2475 and [REDACTED] separated after [REDACTED]; they fought, he assaulted her and kicked her out of his home.⁴⁹
- The ENDJIO family is well known in PISSA and [REDACTED].⁵⁰
- D29-P-6048 recognises [REDACTED] (D29-P-6036) in a [REDACTED] as an individual in the [REDACTED], who was working at a market stall operated by the latter along with the [REDACTED].⁵¹

20. The intended purpose of this evidence will not cause undue prejudice to the Prosecution. The Defence's outright contestation of P-2475's account has long been a central pillar of the Defence counter-case, and has been repeatedly and consistently telegraphed to the Prosecution since at latest June 2022, via Defence cross-examination,⁵² witnesses,⁵³ and oral and written submissions.⁵⁴ The Prosecution has also been long aware of the Defence's contestation of the allegation that there were child soldiers in Mr Yekatom's group, including vis-à-vis the specific matter of the fraudulent nature of the ESF demobilisation programme.⁵⁵ Further, the Defence's position on the fact that V45-P-0002 testified under a false identity has been known to the Parties since (at latest) his appearance before the Chamber in September 2023.⁵⁶
21. Lastly, the prospective evidence of D29-P-6048 is limited in scope and subject-matter, as it relates primarily to the whereabouts and activities of P-2475 during

⁴⁹ Ibid., paras 24-25, 36.

⁵⁰ Ibid., paras 22-23.

⁵¹ CAR-D29-0009-0804, para. 36.

⁵² See e.g., T-133-CONF-FRA CT, 66:26-74:7 (regarding the Defence position that P-2475 falsified his age with the aim of participating in the proceedings) and 74:9-75:7 (regarding the Defence position that P-2475 was only in a position to recognise certain members of Mr Yekatom's group [REDACTED], and not due to his alleged membership of the group).

⁵³ See, D29-P-6018, D29-P-6016, D29-P-6036.

⁵⁴ See e.g., ICC-01/14-01/18-2212-Conf-AnxC, pp. 20-22; ICC-01/14-01/18-2213-Conf, paras 57-64; T-253 ENG ET, 33:7-40:9; and ICC-01/14-01/18-2240-Conf.

⁵⁵ See e.g., Defence Disclosure Request of 13 December 2019 (ART-2019-0093), 13 December 2019, at Annex B.3, p. 23 (wherein the Defence seeks *inter alia* exculpatory information regarding ESF Programme participants, in which the Defence's case i.e. that a number of participants were not in fact child soldiers, is set out; available on request); see also, ICC-01/14-01/18-1237-Conf, paras 12-21; ICC-01/14-01/18-1456-Conf, paras 10-22; ICC-01/14-01/18-1479-Conf, paras 10-16; see also, ICC-01/14-01/18-1142-Conf, para. 12.

⁵⁶ See, T-248-CONF-FRA CT2, 29:3-38:11.

the Seleka and Anti-Balaka periods; and otherwise, to the broader allegation as to the presence of child soldiers in Mr Yekatom's group generally, brought under Count 29. Likewise, in terms of quantity: combined, the Witness Statements contain only eight pages of substantive evidence.⁵⁷

iii) The prospective evidence of D29-P-6048 is significant in light of the charges brought against Mr Yekatom and the rest of the available evidence.

22. The prospective evidence of D29-6048 is highly significant in that it fundamentally contradicts the incriminating allegations made by P-2475.
23. As the Chamber is aware, despite effectively conceding that P-2475 falsely testified under oath before the Chamber about his age and about his experience as a 'child soldier' in Mr Yekatom's group, the Prosecution nonetheless maintains that P-2475's account of his purported participation in the group remains 'credible and reliable'.⁵⁸
24. The fact that P-2475 is a witness of central importance to the Prosecution case is uncontroversial. P-2475 claims membership of Mr Yekatom's group for the quasi-entirety of the indictment period,⁵⁹ and purports to have directly witnessed key events in three of the four 'crime bases', before and during the 5 December attack in BOEING and CATTIN, and in the context of the group's advance down the PK9-MBAIKI Axis. In fact, his claim to have joined the group before [REDACTED] would make him the second-most 'senior' insider Prosecution witness to have given evidence.⁶⁰ His evidence thus materially underpins the quasi-entirety of the charges and modes of liability brought against Mr Yekatom. Moreover, P-2475 is unique among Prosecution witnesses

⁵⁷ See, CAR-D29-0009-0797 (3.5 pages), CAR-D29-0009-0804 (4.5 pages); see also, Second Ongwen Decision, para. 10.

⁵⁸ See, [REDACTED].

⁵⁹ See, T-132-CONF-FRA CT2, 27:12-28:23 and T-130-CONF-FRA ET, 75:7-15 (where P-2475 claims to have been forcibly recruited in the Anti-Balaka before his [REDACTED] birthday, i.e. before [REDACTED] – though note [REDACTED] indicating P-2475's date of birth as [REDACTED], CAR-D29-0014-0065, 0666); and T-130-CONF-FRA ET, 62:5-65:6 (regarding his 'demobilisation').

⁶⁰ P-2475 would effectively be more 'senior' than insider witnesses P-1839, P-1647, and P-1786.

in his claim to have participated in, and thus directly witnessed, both the alleged [REDACTED]⁶¹ and the killing of [REDACTED].⁶² Indeed, the Prosecution's decision to continue to rely on P-2475, notwithstanding the central premise of his account having been shown to be fabricated (including via the Prosecution's own belated investigation⁶³), is itself testament to P-2475's position as linchpin in the Prosecution case.

25. D29-P-6048's account of P-2475's whereabouts and activities during the relevant period is thus highly significant in that it is irreconcilable with P-2475's claims of membership in the group, and by extension, undermines the key allegations underpinning the Prosecution charges as set out above.
26. While D29-P-6048's evidence is indeed corroborative of that of certain Defence witnesses,⁶⁴ this is a factor *for* granting the Amendment Request and does not constitute a factor against. D29-P-6048's (and each corroborative Defence witnesses') evidence regarding P-2475's whereabouts and activities comprises information obtained via the distinct perspectives⁶⁵ of his [REDACTED]. Their evidence, properly understood, comprises of individual and separate sightings of (and/or interactions with) him throughout the Seleka / Anti-Balaka period. It must also be borne in mind that the primary fact that the Defence seeks to establish through the evidence of D29-P-6048 does not comprise a single event, e.g. the presence of P-2475 at a specific event. On the contrary, it is continuous in nature: specifically, the Defence seeks to establish the continuous presence of P-2475 and the day-to-day civilian activities in which he continuously engaged in that period. As such, to suggest that D29-P-6048's evidence is merely repetitive of other Defence witnesses, or that it covers aspects that have already

⁶¹ See e.g., T-129-CONF-FRA ET, 39:27-49:20.

⁶² See e.g., T-130-CONF-FRA ET, 23:2-10.

⁶³ See, CAR-OTP-00000320; see also, CAR-OTP-00000332, CAR-OTP-00000333, and CAR-OTP-00000334.

⁶⁴ Regarding corroboration, see *infra*, para. 40.

⁶⁵ See also, Second Ongwen Decision, para. 11.

been treated, would therefore be to fail to correctly appreciate both the nature and probative value of her evidence.

iv) Any opposition to the requested amendment on the part of the Prosecution or CLR1 should be afforded minimal weight, if any.

27. First, any opposition on the part of the Prosecution would be fundamentally contrary to the fairness of these proceedings, given that the timing of the Amendment Request is a direct consequence of the additional burden of investigating the mass evidence fabrication conspiracy, which latter arises from Prosecution's consistent failure to meet its statutory obligation to investigate exculpatory circumstances.⁶⁶
28. Affording weight to any Prosecution opposition would effectively amount to rewarding it for having neglected its statutory duties, and would send a problematic message: i.e. that not only is the Prosecution free to shift onto the Defence its statutory burden of investigating exculpatory circumstances, including plainly obvious indications of fabricated evidence and manufactured testimony elicited and tendered by the CLR1;⁶⁷ but that it also is free to take strategic advantage of the drain on Defence time and resources that have result from the shifting of this burden, by blocking the Defence's efforts to put material exculpatory evidence before the Chamber.
29. The same applies *mutatis mutandis* to the CLR1, who had himself repeatedly contaminated the trial record with clearly fabricated evidence, which improperly monopolised the Defence's time and resources.⁶⁸

⁶⁶ See, ICC-01/14-01/18-2240-Conf.

⁶⁷ Most recently, see e.g., the Prosecution's opposition to the Defence request that the Chamber reconsider its decision to return the mobile phone of CLR1 witness V45-P-0001, notwithstanding the Registry having formally informed the Chamber that the phone contained messages indicating that V45-P-0001 had perjured himself *inter alia* in testifying under a false identity and denying his [REDACTED] link to [REDACTED], himself a central figure in the evidence fabrication conspiracy who has been involved in an array of potential article 70 misconduct, including intimidation of Defence witnesses and interference with Defence investigations; see, ICC-01/14-01/18-2505-Conf and ICC-01/14-01/18-2500-Conf; see also, *supra*, fn. 21, and ICC-01/14-01/18-2240-Conf, paras 9-11, 16, 25-26.

⁶⁸ See *supra*, paras 14-16, and references cited therein.

30. Second, the Prosecution has had full opportunity to investigate and test the Defence case as to the whereabouts and activities of P-2475 in the Seleka / Anti-Balaka period, including in respect of details provided by D29-P-6048.
31. Since 17 November 2023, it has been in possession of i) witness statements of D29-P-6018, in which it is stated that P-2475 was not a member of the Anti-Balaka, and that in the relevant period [REDACTED], both prior to and after the arrival of the Anti-Balaka;⁶⁹ ii) witness statements of D29-P-6016, in which it is stated that P-2475 and [REDACTED] were in a relationship prior to the [REDACTED];⁷⁰ and iii) the summary of D29-P-6036's anticipated evidence, stating that the latter was expected to testify that P-2475 was [REDACTED], before and after [REDACTED].⁷¹
32. On 22-23 January 2024, the Prosecution cross-examined D29-P-6036 for a period of under three hours;⁷² and it specifically tested aspects of his evidence regarding the (lack of) presence of children in the Anti-Balaka in [REDACTED];⁷³ [REDACTED];⁷⁴ and the ESF 'child soldier' demobilisation programme.⁷⁵ Subsequently, on 9 April 2024, the Prosecution briefly cross-examined D29-P-6016, primarily in respect of her relationship with [REDACTED].⁷⁶ However, the Prosecution notably omitted to cross-examine either witness on the whereabouts and activities of P-2475 in the relevant period; the fact that P-2475 and [REDACTED] were in a relationship [REDACTED]; or indeed, whether P-2475 was a member of the Anti-Balaka. Having thus passed up the opportunity to test this aspect of the Defence case

⁶⁹ See, ICC-01/14-01/18-2213-Conf, paras. 58

⁷⁰ See, *Ibid.*, para. 61 and CAR-D29-0009-0533, para. 17.

⁷¹ See, ICC-01/14-01/18-2212-Conf-AnxC, pp 20-22, paras 18-25.

⁷² See, T-261 CONF ENG, 3:14-40:18 and T-262 CONF ENG 3:9-19:4. The Prosecution had initially requested five hours to cross-examine D29-P-6036; see, Email from Defence to Chamber and parties of 16 January 2024 at 12:52 (circulating updated Defence 'Witness Order and Schedule for Block 28').

⁷³ T-261 CONF ENG, 23:18-33:24

⁷⁴ T-262 CONF ENG, 3:22-4:22.

⁷⁵ T-262 CONF ENG, 7:10-14:15.

⁷⁶ T-276 CONF FRA ET, 2:24-12:18. The cross-examination lasted approximately 45 minutes.

through these witnesses, the Prosecution cannot now reasonably suggest that the Amendment Request should be denied on the basis of purported prejudice arising from a lack of notice or opportunity.⁷⁷

33. Further, as has previously been set out,⁷⁸ the Prosecution has studiously refused to test the central premise of P-2475's claims – i.e. his membership of Mr Yekatom's group – with the various insider witnesses that it has called in these proceedings, whether during their interviews or during their testimony. This includes its failure to take P-1839 and P-1786 to a contemporary photograph of P-2475, despite the fact that both recalled the presence of [REDACTED]⁷⁹ [REDACTED]; and despite the fact that during his examination by Prosecution counsel, P-1786 expressly stated that he would be able to recognise [REDACTED].⁸⁰ Having thus deliberately skirted verification of the central premise of P-2475's claims with its own well-placed witnesses, it cannot now reasonably claim prejudice from any inability to test it with D29-P-6048.
34. In the same vein, the CLR1 has had sufficient opportunity to examine multiple Defence witnesses in respect of the Defence case as to the false identity under which V45-P-0002 provided a fabricated account of his purported membership of the group – including the fact that he was in fact not a member of the Anti-Balaka [REDACTED].⁸¹ It should also be borne in mind that despite the CLR1 having opposed a previous Defence rule 68(2) request in respect of D29-P-6016, arguing that he should be able to cross-examine her, he ultimately did not do so when she subsequently appeared before the Chamber.⁸² Any opposition on

⁷⁷ The same applies *mutatis mutandis* in respect of the CLR1, who did not cross-examine D29-P-6036 on said aspect of the Prosecution case (see, T-262-CONF-FRA ET, 22:2-38:6); and did not cross-examine D29-P-6016 at all.

⁷⁸ ICC-01/14-01/18-2240-Conf, paras 80-82.

⁷⁹ See, ICC-01/14-01/18-T-129-CONF-FRA, 7:14-16. [REDACTED].

⁸⁰ See, (P-1839) [REDACTED]; and (P-1786) [REDACTED].

⁸¹ See, (D29-P-6036) T-262-CONF ENG, 21:9-37:9; see esp, 28:14-25, and 31:19-32:1.

⁸² ICC-01/14-01/18-2250-Conf, paras 1-2.

his part should thus carry no weight in the Chamber's assessment of this request.

35. Lastly, the tendered associated exhibits will not cause undue prejudice to Prosecution preparations, as they comprise two documents originally disclosed by the Prosecution;⁸³ photographs of two Defence witnesses;⁸⁴ and a photograph originally disclosed on 20 November 2024.⁸⁵

B. The Rule 68(2)(b) Request should be granted.

36. Should the Chamber grant the Sought Amendments, the Defence requests that the Testimonial Material be formally recognised as submitted via rule 68(2)(b), as the relevant requirements therein are fulfilled.
37. First, the Testimonial Material constitutes prior recorded testimony within the meaning of rule 68(2), as it comprises of the Witness Statements and five associated exhibits that were used with and/or explained by D29-P-6048 and thus constitute an integral part of her testimony.⁸⁶
38. Second, the Testimonial Material goes to proof of a matter other than the acts and conduct of the accused.⁸⁷ Reference to Mr Yekatom therein is limited and peripheral and does not constitute the core of her testimony, and the Defence does not seek to rely on D29-P-6048 to establish the fact of the personal arrival of Mr Yekatom in PISSA.⁸⁸ She does not mention Mr Ngaissona.

⁸³ See, CAR-D29-0009-0813 (originally CAR-OTP-00025616) and CAR-D29-0009-0814 (originally CAR-OTP-2068-0568 at 0581).

⁸⁴ See, CAR-D29-0009-0815 and CAR-D29-0009-0816.

⁸⁵ See, CAR-D29-0009-0817 (originally CAR-D29-0010-0203).

⁸⁶ See, ICC-01/14-01/18-1833-Conf-Corr, para. 24.

⁸⁷ See, *ibid*, paras 27-29.

⁸⁸ See *ibid*, para. 19, and ICC-01/14-01/18-2424-Conf, para. 61. See also, CAR-D29-0009-0797, para. 31 (where she refers to Mr Yekatom having arrived in PISSA accompanied by multiple unidentified people); and CAR-D29-0009-0804, paras 26 (where D29-P-6048 states that the first time she saw Mr Yekatom was when he introduced himself to the population in PISSA to announce that he was running for parliament); and para. 39 (where D29-P-6048 recognises Mr Yekatom in a video and reiterates that she first saw him when he ran for parliament).

39. Third, the Witness Statements have sufficient indicia of reliability.⁸⁹ Each was: (i) taken in the ordinary course of Defence investigations; (ii) fingerprinted by the witness and the Defence team members conducting the interview, (iii) given voluntarily; (iv) obtained in the presence of a qualified interpreter; (v) verified by the witness at the time of the statement-taking; and (vi) includes information that the witness was given an explanation of the procedure before the ICC and was informed of the significance of providing the statement to the Defence.⁹⁰ Further, the Witness Statements contain acknowledgements attesting to the truth of their contents to the best of D29-P-6048's knowledge, and certifications in accordance with rule 68(2)(b)(ii) will be submitted in due course.⁹¹ Nor do the Witness Statements exhibit any issues pertaining to the credibility of the information therein that are so manifest and of such a nature that questioning of D29-P-6048 would be necessary.
40. Fourth, the Witness Statements are internally consistent⁹² and are sufficiently and materially corroborated by other evidence on the trial record;⁹³ specifically: on the fact that P-2475 was not a member of the Anti-Balaka;⁹⁴ on the fact that during the Seleka/Anti-Balaka period, P-2475 [REDACTED], [REDACTED];⁹⁵ on the fact that P-2475 and [REDACTED] were in a relationship [REDACTED];⁹⁶ on the fact that the departure of the Muslim residents of PISSA preceded the departure of the Seleka, which in turn preceded the arrival of the Anti-Balaka;⁹⁷ on the celebrations of the PISSA locals on the arrival of the Anti-Balaka (by

⁸⁹ See, ICC-01/14-01/18-1833-Conf-Corr, paras 42-47.

⁹⁰ See, CAR-D29-0009-0797 and CAR-D29-0009-0804.

⁹¹ See, rule 68(2)(b)(ii); CAR-D29-0009-0797, 0802-0803 and CAR-D29-0009-0804, 0811.

⁹² See also, CAR-D29-0009-0804, paras 15-16 (where D29-P-6048 clarifies the date of birth of one of her daughters).

⁹³ See, ICC-01/14-01/18-1833-Conf-Corr, paras 42-47.

⁹⁴ By **D29-P-6018** ([REDACTED]), **D29-P-6036** ([REDACTED]), and **D29-P-6016** ([REDACTED]); see also, **D29-6042** ([REDACTED]).

⁹⁵ By **D29-P-6018** ([REDACTED]); **D29-P-6036** ([REDACTED]); and **D29-P-6039** ([REDACTED]); and partially, by **D29-P-6016** ([REDACTED]) and photographic evidence ([REDACTED]).

⁹⁶ By **D29-P-6016** ([REDACTED]) and **D29-P-6043** ([REDACTED]).

⁹⁷ By **D29-6036** (see, T-259-CONF-FRA CT, 36:5-18).

contemporary video footage⁹⁸ and D29-6036);⁹⁹ on the fact that [REDACTED];¹⁰⁰ on the fact that [REDACTED] (V45-P-0002) was a [REDACTED];¹⁰¹ and on the fact that [REDACTED] (D29-P-6036) was part of the [REDACTED] and working in the family stall along with the [REDACTED].¹⁰²

41. Fifth, the interests of justice are best served by the introduction of the Testimonial Material via rule 68(2).¹⁰³ Its introduction would streamline the presentation of evidence and safeguard expeditiousness and would minimise cumulative in-court testimony on the matter of P-2475's presence and activities in [REDACTED] during the relevant period. It would also save the Chamber and Parties' resources that may instead be utilised for other activities, notably those related to the Defence's closure of its case and the Chamber and parties' preparations ahead of the final arguments.
42. Sixth, while the Testimonial Material relates to issues that are materially in dispute, the Defence recalls that this factor should not be understood to provide the Prosecution with 'veto power' over its introduction into evidence;¹⁰⁴ and further, that the Chamber has previously formally recognised similar Defence evidence introduced via rule 68(2), over Prosecution opposition on *inter alia* this ground.¹⁰⁵ In any event, the Prosecution's above-noted failure to challenge the primary fact of P-2475's presence and day-to-day activities in [REDACTED] during its cross-examination of previous Defence witnesses should preclude any Prosecution opposition on the basis of this factor.¹⁰⁶

⁹⁸ CAR-OTP-2094-7613, at 21:04 to 21:30 (depicting crowd of onlookers in PISSA).

⁹⁹ T-259-CONF-FRA CT, 41:24-42:12

¹⁰⁰ By **D29-6036** ([REDACTED]).

¹⁰¹ By **D29-P-6036** (see, T-262-CONF-FRA ET, 29:8-15, 33:11-15, 36:7-11).

¹⁰² By **D29-P-6036** ([REDACTED]).

¹⁰³ See, ICC-01/14-01/18-1833-Conf-Corr, paras 40-41.

¹⁰⁴ See, *Ibid.*, para. 39.

¹⁰⁵ See, ICC-01/14-01/18-2424-Conf, paras 63-64. The Chamber will also recall that the Defence withdrew its rule 68(2) application in respect of D29-P-6016 *proprio motu* and tendered her evidence via rule 68(3); see, para. 11, and Email from Defence to Chamber and Parties, 15 March 2024 at 16:00.

¹⁰⁶ See *supra*, paras 30-33.

CONFIDENTIALITY

43. This request and Annex A are filed on a confidential basis due to the references to the confidential witness information. A public redacted version of the request will be filed forthwith.

RELIEF SOUGHT

44. In light of the above, the Defence respectfully requests that Trial Chamber V:
- GRANT** leave to amend the Defence Witness List to add D29-P-6048;
- GRANT** leave to amend the Defence Evidence List to add the Testimonial Material; and,
- GRANT** the Rule 68(2)(b) Request.

RESPECTFULLY SUBMITTED ON THIS 31st DAY OF JULY 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands