

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **12 October 2020**

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 “Motion for Finding of Disclosure Violation
of Exculpatory Material”, 12 October 2020**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully move for a finding that the Prosecution has, for the sixth time, violated its obligation to timely disclose exculpatory material, in this instance, the statement of Witness P-2428.
2. As a remedial measure for this violation, the Defence respectfully requests that the Trial Chamber draws a presumption that the children listed on CAR-OTP-2071-0279-R01 (“the List”), which was shown to Witness P-2428, were not enlisted in Mr. Yekatom’s group and were not under the age of fifteen years old at the relevant time covered by the charges. In light of this sixth violation, the Prosecution bears the burden of rebutting this presumption.

RELEVANT PROCEDURAL HISTORY

3. On 11 November 2018, Pre-Trial Chamber II issued an arrest warrant for Mr. Alfred Rombhot Yekatom, finding reasonable grounds to believe that Mr. Yekatom committed the war crime of conscription, enlistment and use of children under the age of fifteen years to participate actively in hostilities pursuant to and prohibited by article 8(2)(e)(vii) and a number of other offences based on a finding of, *inter alia*, the following facts:

Lastly, at least from December 2013 children were enlisted in the group, and until at least August 2014, boys under the age of 15 were stationed at the Yamwara School and other bases and checkpoints controlled by Yekatom, including in Sekia and Pissa. [REDACTED].¹

¹ [ICC-01/14-01/18-1-Conf-Exp](#), para. 18(g); Public redacted version: [ICC-01/14-01/18-1-Red](#).

4. The arrest warrant referenced the statements of Prosecution Witnesses P-1792, P-1974, P-2013 and P-2018 to support this finding.²
5. On 19 August 2019, the Prosecution filed its Document Containing the Charges (“DCC”).³ It included the following allegations:

From at least December 2013 through August 2014, children under age 15 and were stationed at the YAMWARA School Base and other bases and Checkpoints controlled by YEKATOM, including in BOEING, along the PK9 – MBAIKI axis in SEKIA and PISSA, and along the PISSA – MONGOUMBA axis, [REDACTED]. These children carried out a variety of tasks such as manning the checkpoints and participating in hostilities, including the 5 December 2013 Attack. [REDACTED].⁴

6. The DCC referenced the statements of Prosecution Witnesses [REDACTED] to support these allegations.⁵ The statements of those eight witnesses were disclosed to the Defence in advance of the confirmation hearing.
7. The confirmation hearing was held between 19 September and 11 October 2019. On 11 December 2019, the Pre-Trial Chamber issued its confirmation decision.⁶ It included the following:

The evidence before the Chamber demonstrates that, between December 2013 and August 2014, children, some of whom were under 15 years of age, were present within the armed groups taking part in the CAR’s conflict, including in the ranks of the Anti-Balaka. This has been (i) widely reported by national and international NGOs, which testify to having witnessed large numbers of child soldiers in the ranks of the Anti-Balaka during several missions in the field; (ii) relayed in the media; and (iii) signalled by several international organizations, which reported about the waves of widespread child recruitment in villages by the Anti-Balaka’. Specifically, the evidence shows the presence of children, including those

² [ICC-01/14-01/18-1-Conf-Exp](#), fns. 106-107 referencing [CAR-OTP-2075-1743-R01](#), [CAR-OTP-2075-1751-R01](#), [CAR-OTP-2068-0558](#) and [CAR-OTP-2071-0279-R01](#); Public redacted version: [ICC-01/14-01/18-1-Red](#); [REDACTED].

³ [ICC-01/14-01/18-282-Conf-AnxB1](#); Public redacted version: [ICC-01/14-01/18-282-AnxB1-Red](#).

⁴ *Id.*, paras. 359-360.

⁵ [REDACTED].

⁶ [ICC-01/14-01/18-403-Conf-Corr](#); Public redacted version: [ICC-01/14-01/18-403-Red-Corr](#).

under the age of 15, among Yekatom's elements. [REDACTED] he was 13 years old when he was forced to join the Anti-Balaka and brought from [REDACTED] to the [REDACTED] base, where he was introduced to the chiefs, including Yekatom. [REDACTED] there 'were about 20-25 children in the entire group in the camp', including at least four children who he asserts were under 15 years of age.⁷

8. The Pre-Trial Chamber based its findings on the statements of Prosecution Witnesses [REDACTED].⁸
9. In particular, Prosecution Witness [REDACTED] claimed that [REDACTED].⁹
10. The Prosecution and the Pre-Trial Chamber both based this allegation on the Annex 3 of P-2018's Statement. The List contains identities of [REDACTED] children supposedly part of the Anti-Balaka.¹⁰ The Defence raised more than once issues regarding the accuracy of this List.¹¹
11. On December 13, 2019, the Defence engaged *inter partes* discussion with the Prosecution and requested, pursuant to Rule 77, any information in their possession tending to show that any of the children on P-2018's List had not been enlisted within the Anti-Balaka and/or had not actively taken part in the hostilities.¹²
12. Five month later, on May 13, 2020, the Prosecution specifically answered that "information of the nature you describe has been disclosed. Should the

⁷ *Id.*, paras. 144-145.

⁸ *Id.*, fns. 323, 325-340.

⁹ [CAR-OTP-2071-0259-R01](#), at 0267, 0269, 0272-0274; [CAR-OTP-2071-0279-R01](#); [CAR-OTP-2071-0285](#), at 0291; [CAR-OTP-2071-0302-R01](#), at 0303-0306; [CAR-OTP-2071-0308](#).

¹⁰ [CAR-OTP-2071-0279-R01](#).

¹¹ [ICC-01/14-01/18-472](#), paras. 51-53; ICC-01/14-01/18-554-Conf, paras. 30-31, 34; Public redacted version: [ICC-01/14-01/18-554-Red](#).

¹² ARY-2019-0093, Annex B.3, correspondence available upon request.

Prosecution review any further similar information it will disclose the exhibit(s) containing the information”.¹³

13. On April 8, 2020, the Defence raised, in its *Submissions for the First Status Conference*, the fact that “the list contains identities of children over 15 years old as well as children who were not conscripted and did not participate in military activity”.¹⁴
14. On June 15, 2020, the Defence filed a *Motion for Additional Details*, contesting the precision of the List as [REDACTED].¹⁵
15. On July 13, 2020, the Trial Chamber issued its decision on the Defence Motion for Additional Details affirming “that the factual findings of the Confirmation Decision underlying this count provide additional details and the evidence in support of these findings, including multiple witness statements and reports by several organizations.”¹⁶ The List provided by P-2018 was included as part of the evidence in support of the Chamber’s ruling.¹⁷
16. At no time during the pre-confirmation stage did the Prosecution inform the Defence that it had exculpatory evidence concerning the List of alleged child soldiers. It was only a year after confirmation hearing, on 2nd October 2020, after the disclosure of the PEXO 09 batch that the Yekatom Defence heard for the first time of Prosecution Witness P-2428 whose statement had been obtained by the Prosecution, prior to confirmation, in April 2019.¹⁸

¹³ 200512-0956 [Redacted] Second Prosecution Response to ARY-2019-0093, correspondence available upon request.

¹⁴ [ICC-01/14-01/18-472](#), para. 52.

¹⁵ [ICC-01/14-01/18-554-Conf](#), para. 31; Public redacted version: [ICC-01/14-01/18-554-Red](#).

¹⁶ [ICC-01/14-01/18-585](#), para. 31.

¹⁷ *Id.*, fn. 49.

¹⁸ [ICC-01/14-01/18-671-Conf-Anx](#); [CAR-OTP-2105-0970-R01](#), at 0970.

17. The statement of P-2428 contradicts the evidence of Witness P-2018 as the latter knowingly asked the former to join the [REDACTED] program even if P-2428 was not a child soldier, so he could have a free education.¹⁹ Moreover, P-2428 contradicts the veracity of the ages provided on the List.²⁰ P-2428's statement also contradicts P-1974's statement in which he affirmed that everyone on the 153 children taking part in the [REDACTED] program were former Anti-Balaka child soldiers.²¹
18. As far back as 23 January 2019, the Single Judge of the Pre-Trial Chamber ordered the Prosecutor to disclose exculpatory evidence "*immediately* after having identified any such evidence, unless some justifiable reasons prevent her from doing so", and in advance of the confirmation hearing.²²
19. On 20 August 2019, when the Defence had filed a motion for disclosure of exculpatory material for a category of discrete material not related to child soldiers,²³ the Prosecution responded the next day without containing its response to the material listed in the Defence motion. The Prosecution stated that the motion was unnecessary because "throughout the pre-confirmation process, the Prosecution has abided by the Chamber's Order and directions regarding disclosure as well as its statutory obligations in good faith, including with respect to potentially exculpatory material".²⁴
20. On 28 August 2019, the Pre-Trial Chamber nevertheless directed the Prosecutor to verify whether she has in her possession any additional

¹⁹ *Id.*, para. 50.

²⁰ *Id.*, paras. 67-68, 70-72.

²¹ [CAR-OTP-2068-0222-R02](#), para. 60 ["My colleagues and I interviewed all of the children. We tried to obtain their life story, and always asked them their age, their town or village of residence, how they were integrated into the Anti-Balaka, how they were treated by the Anti-Balaka, and what their role was in the Anti-Balaka."]

²² [ICC-01/14-01/18-64-Conf](#), para. 16; Public redacted version: [ICC-01/14-01/18-64-Red](#).

²³ [ICC-01/14-01/18-284](#).

²⁴ [ICC-01/14-01/18-286](#), para. 3.

evidence that falls within the scope of article 67(2) of the Statute.²⁵ The Prosecution never disclosed witness P-2428's exculpatory statement throughout the confirmation phase.

RELEVANT PROVISIONS

Article 67(2) – Rights of the accused

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

ARGUMENT

21. The Prosecution collected many statements concerning the alleged presence of children under the age of fifteen enlisted and/or used in Mr. Yekatom's group to participate actively in hostilities. The Prosecution disclosed the incriminating statements and withheld the exonerating ones. This is a classic violation of Article 67(2)'s requirement that mandates disclosure of material that may affect the credibility of Prosecution evidence as soon as practicable.
22. The right of an accused to a fair trial requires that the Prosecution disclose to the Defence all material evidence in their possession against and for the accused. Prosecution's duty to disclose exculpatory material is as important as its obligation to prosecute.²⁶ The fairness of the proceedings relies on the respect by the Prosecution of its obligation to disclose exculpatory material to

²⁵ [ICC-01/14-01/18-296](#), para. 14.

²⁶ *Ndindabahizi v. Prosecutor*, [Judgement](#), 16 January 2007, No. ICTR-01-71-A, para. 72; *Prosecutor v. Kordic & Cerkez*, [Judgement](#), 17 December 2004, No. IT-65-14/2-A, paras. 183, 242.

the defence.²⁷ This obligation to disclose exculpatory material has always been interpreted broadly.²⁸

23. When claiming a violation of the Prosecution's duty to disclose exculpatory material, the party is expected to: (i) identify the materials in dispute; (ii) satisfy the Chamber on a *prima facie* basis of the Prosecutor's custody or control of the materials requested; and (iii) satisfy the Chamber on a *prima facie* basis of the exculpatory or potentially exculpatory character of the materials requested.²⁹
24. The first page of P-2428's statement indicates that the Prosecution's interview took place in April 2019.³⁰ This intends that the Prosecution has the statement in its possession since but never disclosed it to the Defence until a year and a half later. No reason was provided by the Prosecution for failing to disclose the statement, let alone a sound justification.
25. Article 67(2) clearly includes material "which may affect the credibility of prosecution evidence". The ICTY Appeals Chamber has held that material will affect the credibility of the Prosecution's evidence if it undermines the Prosecution's case.³¹ This includes information that contradicts the evidence of Prosecution witnesses in intends to rely upon and/or documentary evidence the Prosecution intends to submit.

²⁷ *Prosecutor v. Oric*, [Decision on Ongoing Complaints About Prosecutorial Non-Compliance With Rule 68 of the Rules](#), 13 December 2005, No. IT-03-68-T at para. 20.

²⁸ *Prosecutor v. Lukic & Lukic*, [Decision on Milan Lukic's Motion for Remedies Arising out of Disclosure Violations by the Prosecution](#), 12 May 2011, No. IT-98-32/1-A, at para. 13.

²⁹ *Prosecutor v. Karemera et al.*, [Decision on Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion](#), 14 May 2008, No. ICTR-98-44-AR73.13, at para. 9.

³⁰ [CAR-OTP-2105-0970-R01](#).

³¹ *Prosecutor v. Krstic*, [Judgement](#), 19 April 2004, No. IT-98-33-A, at para. 178.

26. Trial Chambers at the ICTY have found that a statement of a person that contradicted testimony of Prosecution witnesses was exculpatory in nature and should have been disclosed.³²
27. In his statement, P-2428 mentions that P-2018 has registered him in the [REDACTED] program even if he knew that P-2428 was not part of any Anti-Balaka's group.³³ During his interview with the Prosecution, P-2428 was shown the List, he recognized a few children, and flagged many errors on the ages of the children.³⁴ It is clear that P-2428's statement directly contradicts P-2018's statement. P-2018 told the Prosecution that all the children were members of Anti-Balaka's group³⁵ and that all the required verifications were done in order to establish the children's ages.³⁶ Furthermore, P-2428 implies that P-2018 may have taken the program's money from him.³⁷

³² *Prosecutor v. Oric*, [Decision on Alleged Prosecution Non-Compliance With Disclosure Obligations Under Rule 66\(B\) and 68\(i\)](#), 29 September 2005, No. 03-68-T; *Prosecutor v. Karadzic*, [Decision on Accused's Ninety-Fourth Disclosure Violation Motion](#), 13 October 2014, No. IT-95-5/18-T, at para. 14.

³³ [CAR-OTP-2105-0970-R01](#), paras. 51 [“[REDACTED] spoke to me and my mother at my house. He told me that I was one of the youths who joined the group with the machetes and, he said [REDACTED] had formed a project to assist such children and that was the reason he came to me. He knew I was not part of the ANTI BALAKA. He wrote my name and said I should meet them at [REDACTED]. I was 14 years old at this time.”], 53 [“When I arrived there it was the coordinator [REDACTED] who asked me questions and I answered them truthfully. He told me that the training is for those who were in ANTI BALAKA for more than a month, but he will put my name so that I will benefit from the training.”]

³⁴ [CAR-OTP-2105-0970-R01](#), paras. 67 [“I recognise the following names: No. 1 [REDACTED]. I know him from the [REDACTED]. He is described as 13 years of age, however he was an adult, approximately 20 years plus. He had a little beard. A lot of the adults at the [REDACTED] lied about their age stating they were younger, when they stood up and presented themselves and stated their ages. It was obvious to me that they were older”], 68 [“No 11 is [REDACTED], who I have referred to earlier and was one of the groups who robbed us of our possessions in [REDACTED]. The list states that he was 15 but again he looked much older, about 20 years of age.”], 70 [“No 20 [REDACTED], the list again states that he was 15 years but he was much older about 30 years.”] 71 [“[REDACTED] again was an adult, over 20 years of age and had a beard. I am on the list at No 39, however I have never heard of [REDACTED]. **Again another error**”], 72 [“No 43 [REDACTED], who is shown as being 17 years of age, again another adult over 20 years of age. He is the [REDACTED] that I stated earlier that I knew from the [REDACTED].”]

³⁵ [CAR-OTP-2071-0259-R01](#), paras. 58 [“The names and other information of the [REDACTED] children who were released in August 2014 are enumerated in Annex 3”]; [CAR-OTP-2122-8673-R01](#), para. 21 [“The total of [REDACTED] children was reached after an [REDACTED] assessment was made from information that was collated by my colleague, [REDACTED], in coordination with the Anti-Balaka Zone Commanders (ComZones). The information was collated from the villages of [REDACTED]. **It was the total number of children who had been identified as being associated with the Anti-Balaka.**”]

³⁶ [CAR-OTP-2071-0259-R02](#), paras. 59 [“The list includes information on the age of the children at the time of their release. Some children knew their age, others knew their exact date of birth while others knew only the year of their birth. We also tried to retrieve the birth certificates of these children in order to establish or verify their age. It was however quite difficult to retrieve birth certificates as many of the town halls had been looted or

28. P-2428's statement also contradicts the allegation made by Prosecution Witness P-1974, namely the fact that all the [REDACTED] children admitted in the [REDACTED] program were part of the Anti-Balaka, including the [REDACTED] children from the List.³⁸ P-1974's stated that all the children were interviewed by him to see what was their role in the Anti-Balaka.³⁹ Although, P-2428 clearly established that, during the interviews with the coordinators of the program, he always told the truth about his presence in the Anti-Balaka,⁴⁰ hence P-1974 could not ignore the fact that some children were not Anti-Balaka.

29. The Defence respectfully submits to the Court that the statement of Prosecution Witness P-2428 directly contradicts the accuracy of the evidence provided by Witness P-2018 namely the List enumerating alleged child soldiers who would have been released from Mr. Yekatom's group. It also affects the credibility of P-2018 as he led P-2428 towards [REDACTED]

destroyed. Additionally the children did not have any form of ID on them that could indicate their age", 60 ["There were some children who did not know when they were born. If a child did not have any knowledge of their age, and the birth certificate could not be retrieved, we asked for the assistance of doctor who would provide a certificate of 'apparent age'. These certificates of 'apparent age' were then brought to the town hall so as to issue birth certificates for the children.,"], 61 ["The doctors who provided these certificates of 'apparent age' were from the hospital of [REDACTED]. We, as the verifiers of the project, would gather all the children for whom we did not have any indication of their age and bring them to the hospital to be assessed by the doctors."]

³⁷ [CAR-OTP-2105-0970-R01](#), para. 61 ["After the training they distributed money to everyone who attended, they provided 50,000 CFA, however, I only received 10,000 CFA. They did not explain why, but only later I discovered that other beneficiaries received 50,000 CFA. [REDACTED] was handing over the money. It was for income generating activities for the young people."]

³⁸ [CAR-OTP-2122-8673-R01](#), paras. 21 ["The total of [REDACTED] children was reached after an [REDACTED] assessment was made from information that was collated by my colleague, [REDACTED], in coordination with the Anti-Balaka Zone Commanders (ComZones). The information was collated from the villages of [REDACTED]. **It was the total number of children who had been identified as being associated with the Anti-Balaka.**"] 26 ["was shown a document with reference [CAR-OTP-2071-0279](#) to 2071-0281. I recognise the document as the list of the [REDACTED] children that took part in the process in [REDACTED]."]

³⁹ [CAR-OTP-2068-0222-R02](#), para. 60 ["My colleagues and I interviewed all of the children. We tried to obtain their life story, and always asked them their age, their town or village of residence, how they were integrated into the Anti-Balaka, how they were treated by the Anti-Balaka, and what their role was in the Anti-Balaka."]

⁴⁰ [CAR-OTP-2105-0970-R01](#), para. 53 ["When I arrived there it was the coordinator [REDACTED] who asked me questions and I answered them truthfully. He told me that the training is for those who were in ANTI BALAKA for more than a month, but he will put my name so that I will benefit from the training.,"]; 57 ["I was not involved with the ANTI BALAKA; I was only involved with the group of local youths with machetes in [REDACTED]. The group described themselves as ANTI BALAKA, but they did not let me join them, they tried to chase me away saying I was too young just a kid. I followed the group keeping about 3 to 4 metres from the main group. **Whenever I was questioned concerning my involvement with the group I always told the truth.**"]

program knowing that P-2428 has never been part of any armed group but this may allowed him to benefit from money. Furthermore, the credibility of P-1974's statement is affected, as P-2428 stated always being truthful about the fact that he was never part of any Anti-Balaka's group.

30. The Chamber's Decision on the Defence Request Concerning Disclosure Violation and Disclosure of Exculpatory Material found that a violation of Article 67(2) can be constituted if the Prosecution does not disclose a statement containing both exculpatory and incriminatory information. For the purpose of this Motion, it should be duly noted that P-2428 provides exculpatory information only. The Prosecution even included his statement and annexes in disclosure batches classified as PEXO,⁴¹ conceding that they were well aware of the exculpatory nature of the evidence provided by this witness.
31. The Trial Chamber in its Decision on the Defence Request Concerning Disclosure Violation and Disclosure of Exculpatory Material stated that it was "confident that the Prosecution will abide by its obligations and sees no need for sanctions to be envisioned for any potential violations of this nature in the future".⁴²
32. However, the Prosecution's failure to disclose the statement of Witness P-2428 as soon as practicable and at the very least prior to the confirmation hearing violates its disclosure obligations pursuant to Article 67(2).
33. The Defence was prejudiced by this late disclosure because it was prevented from using it at the confirmation hearing to contest the accuracy and the reliability of the List as well as to contradict P-2018's evidence. This same List

⁴¹ [ICC-01/14-01/18-671-Conf-Anx](#); [ICC-01/14-01/18-676-Conf-Anx](#).

⁴² *Id.*, para. 22.

was used in Chamber's rulings on the Confirmation of Charges and on the Motion for Additional Details.

34. When considering an appropriate remedy for this violation of the Prosecution's disclosure obligations, the Trial Chamber should take into account that the Prosecution has already been found to have violated its disclosure obligations on five separate occasions in this case,⁴³ despite the Trial Chamber's vote of confidence that the Prosecution would abide by its disclosure obligation.

35. In light of this sixth violation, the suggested sanction is reasonable. Moreover, it is in line with the search of the truth as the Prosecution already has a witness pointing on the unreliability of the List. Indeed, Prosecution witness's P-2475 was shown photographs from an annex of another statement.⁴⁴ Although P-2475 was not shown the List, the photographs showed were taken during the children's participation in [REDACTED] program, the photographs are pictures of children from the List.⁴⁵ Prosecution witness P-2475, while looking at the photographs, established in that "[t]he majority of people on this photograph [were] not ANTI BALAKA."⁴⁶ While P-2475's statement was disclosed prior to the confirmation hearings, the relevant paragraphs were heavily redacted, in accordance with the Prosecution's Urgent Request for the Non-Disclosure of Witness Identities.⁴⁷ The Prosecution can therefore not

⁴³ [ICC-01/14-01/18-315-Conf](#), para. 78; Public redacted version: [ICC-01/14-01/18-315-Red](#); [ICC-01/14-01/18-342](#), paras. 18 and 21; [ICC-01/14-01/18-551-Conf](#); Public redacted version: [ICC-01/14-01/18-551-Red](#), para. 31; Public version: [ICC-01/14-01/18-595](#), para. 21.

⁴⁴ [CAR-OTP-2068-0558](#).

⁴⁵ [CAR-OTP-2071-0259-R02](#), para. 70 ["The investigators showed me two [REDACTED] reports with ERNs [CAR-OTP-2068-0558](#) and [CAR-OTP-2068-0568](#). I recognize these reports and they provide a summary of the meetings, statistics, updates and a general overview of the project for the release of the children from the armed groups."]

⁴⁶ [CAR-OTP-2110-0556-R03](#), para. 200. *See also*: [CAR-OTP-2110-0556-R03](#), paras. **201** ["They are all coming from [REDACTED]. They were not ANTI BALAKA. They were sent back to [REDACTED] the next morning."] **202** ["Some are ANTI-BALAKA, others are orphans."] **202** ["The reminder of those in the photograph I do not recognize anyone as ANTI BALAKA."] **205** ["All the others were not in the ANTI BALAKA but were orphans."].

⁴⁷ [ICC-01/14-01/18-267-Conf](#).

claim that the Defence was not prejudiced by its belated disclosure of P-2428's statement by arguing that the Defence already had the statement of P-2475 at the confirmation hearing, since the redaction applied on P-2475's statement related to his evidence that the children in the [REDACTED] program were not all part of the Anti-Balaka.

36. The Defence suggests that the remedy for this disclosure violation should include an express finding that the Prosecution has once again violated its disclosure obligations. The Trial Chamber is also requested to draw a presumption that the children listed on CAR-OTP-2071-0279-R01, which was shown to Witness P-2428, were not enlisted in Mr. Yekatom's group and/or were not under the age of fifteen years old at the relevant time covered by the charges. In light of this sixth violation, the Prosecution bears the burden of rebutting this presumption.

CONFIDENTIALITY

37. This motion is being filed on a confidential basis as it refers to confidential portions of filings and decisions. A public redacted version is being filed simultaneously.

CONCLUSION

38. For all of the above reasons, the Trial Chamber is respectfully requested to find that the Prosecution violated its obligations to disclose exculpatory evidence pursuant to Article 67(2) of the Statute by failing to disclose the statement of Witness P-2428 as soon as practicable. The Chamber is further requested to draw a presumption that the children listed on CAR-OTP-2071-0279-R01, which was shown to Witness P-2428, were not enlisted in Mr. Yekatom's group and/or were not under the age of fifteen years old at the

relevant time covered by the charges. In light of this sixth violation, the Prosecution bears the burden of rebut this presumption.

RESPECTFULLY SUBMITTED ON THIS 12th DAY OF OCTOBER 2020



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