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**International
Criminal
Court**

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

Date: **23 March 2022**

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 with confidential Annex A

**Public redacted version of “Motion for Finding of Disclosure Violation”,
21 March 2021, ICC-01/14-01/18-1318-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Counsel representing Mr Alfred Rombhot Yekatom (“Defence”) respectfully submit the present motion for a finding of disclosure violation by the Office of the Prosecutor (“Prosecution”) following its failure to timely disclose exculpatory material to the Defence in accordance with Article 67(2) of the Statute.
2. While the Defence had previously been provided with a redacted version of P-2620’s victim application form completed on [REDACTED] (“Initial Form”),¹ the Prosecution failed to disclose the complete victim application form of P-2620 bearing ERN number CAR-OTP-2135-2412 (“Complete Victim Application”) which contains, in addition to the Initial Form, an un-redacted version the of the proof of identity information appended to the victim application form of P-2620 (“Proof of ID Information”);² and an additional three pages of P-2620’s victim application form, comprising supplementary information provided by P-2620 on [REDACTED] (“Supplementary Pages”);³ until 4 March 2022.⁴

PROCEDURAL HISTORY

3. On 11 November 2018, Pre-Trial Chamber II (“Pre-Trial Chamber”) issued an arrest warrant against Mr. Alfred Yekatom.
4. On 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.⁵

¹ [CAR-OTP-2123-0072](#), disclosed on 14 December 2020 in INCRIM package 73.

² Also individually disclosed on 25 February 2022 as [CAR-OTP-2135-2230](#).

³ [CAR-OTP-2135-2412](#), Annex A.

⁴ Email from OTP to the Yekatom Defence sent on 4 March 2022 at 18:53; see Annex A; to the date of this motion CAR-OTP-2135-2412 still has not been formally disclosed due to ongoing *inter partes* discussion between the Prosecution, VPRS and the CLR for Child Soldiers regarding the remaining redactions contained in this document.

⁵ [ICC-01/14-01/18-64-Conf](#); Public redacted version: [ICC-01/14-01/18-64-Red](#).

5. On 19 August 2019, the Prosecution filed its Document Containing the Charges (“DCC”).⁶
6. On 20 August 2019, the Defence filed a motion requesting the Chamber to order the Prosecution to immediately disclose all exculpatory material.⁷ The Prosecution responded indicating that the request was unnecessary as it had performed its disclosure obligation in good faith.⁸
7. On 28 August 2019, the Pre-Trial Chamber issued its Decision on the Defence Motion and directed the Prosecution to verify if it had “any additional evidence that falls within the scope of article 67(2) of the Statute”.⁹
8. On 13 December 2019, through *inter partes* correspondence, the Defence requested a significant number of lifting of redactions and the disclosure of “*inter alia* all exculpatory material in the Prosecution’s possession and any information tending to show that children identified on the List did not take part in the hostilities and/or were not enlisted with the Anti-Balaka”¹⁰ which initiated a great deal of follow up requests whereby the Defence sought further information in relation to the children who participated in the ESF program.¹¹
9. On 14 May 2020, the Prosecution requested to amend the charges against Mr Yekatom to add charges of rape and sexual slavery as war crimes on the basis of [REDACTED].¹²

⁶ [ICC-01/14-01/18-282-Conf-AnxB1](#); Public redacted version: [ICC-01/14-01/18-282-AnxB1-Red](#).

⁷ [ICC-01/14-01/18-284](#).

⁸ [ICC-01/14-01/18-286](#), para. 3.

⁹ [ICC-01/14-01/18-296](#), para. 14.

¹⁰ Letter Ref. ARY-2019-0093 from the Defence to the Prosecution sent on 13 December 2019, available upon request.

¹¹ See Email from the Yekatom Defence to the Prosecution on 21 January 2020 at 10:19; Email from the Yekatom Defence to the Prosecution on 18 February 2020 at 13:29; Letter Ref. ARY-2020-0112 sent by the Defence to the Prosecution on 9 March 2020 at 16:52; Phone conversation between the Prosecution and the Yekatom Defence dated 27 March 2020 at 14:34; Phone conversation between the Prosecution and the Yekatom Defence dated 3 April 2020 at 14:30; Letter Ref. ARY-2020-0122 sent by the Yekatom Defence to the Prosecution on 20 April 2020; Letter Ref. ARY-2020-0127 sent by the Yekatom Defence to the Prosecution on 4 May 2020, all available upon request.

¹² [ICC-01/14-01/18-518-Conf](#); Public redacted version [ICC-01/14-01/18-518-Red](#).

10. On 1 June 2020, the Pre-Trial Chamber rejected the Prosecution's request.¹³
11. On 8 June 2020, the Prosecution sought reconsideration of the decision rejecting the amendment of the charges,¹⁴ which was denied.¹⁵ It then sought leave for delayed disclosure of [REDACTED] identities and redacted statements,¹⁶ which was granted.¹⁷
12. On 16 July 2020, Trial Chamber V set the disclosure deadline in the case to 9 November 2020 stating that "[b]y this date, the Prosecution must review all the materials in its possession and disclose all materials falling under its disclosure obligations".¹⁸
13. On 22 July 2020, following a Defence request to find that the Prosecution had violated its obligation under Article 67(2),¹⁹ the Chamber found a disclosure violation by the Prosecution; the Chamber underlined that it was nevertheless confident that the Prosecution would abide by its obligations.²⁰
14. On 12 October 2020, the Defence filed a motion for a finding of disclosure violation²¹ following the failure of the Prosecution to disclose a statement containing exculpatory evidence in relation to Count 29.²² On 25 November 2020, the Chamber found that the Prosecution had violated its disclosure obligations pursuant to article 67(2) of the Statute.²³

¹³ [ICC-01/14-01/18-538](#).

¹⁴ [ICC-01/14-01/18-545](#).

¹⁵ [ICC-01/14-01/18-560](#).

¹⁶ [ICC-01/14-01/18-628-Conf-Red](#).

¹⁷ [ICC-01/14-01/18-648-Conf-Red](#).

¹⁸ [ICC-01/14-01/18-589](#), para. 10.

¹⁹ [ICC-01/14-01/18-566-Conf](#); Public redacted version: [ICC-01/14-01/18-566-Red](#).

²⁰ [ICC-01/14-01/18-595](#), para. 22.

²¹ [ICC-01/14-01/18-681-Conf](#); Public redacted version: [ICC-01/14-01/18-681-Red](#).

²² [CAR-OTP-2105-0970-R01](#).

²³ [ICC-01/14-01/18-740-Conf](#).

15. On 9 November 2020, the Prosecution filed its Trial Brief, and relied on P-2620's testimony to support various allegations against Mr. Yekatom forming the basis for Count 29.²⁴
16. On 8 January 2021, the Prosecution filed its Sixth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), seeking *inter alia* the formal submission of the evidence provided by P-2671 and P-0365 ("Sixth Rule 68(2)(b) Request").²⁵
17. On 21 January 2021, the Defence responded to the Prosecution's request, *inter alia* asking the Chamber to reject it in relation to P-2671 and P-0365.²⁶
18. On 22 January 2021, in order to minimise the prejudice resulting from the delayed disclosure of these witnesses, the Defence requested the Prosecution to disclose, *inter alia*, "items material to the preparation of the defence as well as material that may affect the credibility of the Prosecution's evidence pursuant to Article 67 (2) of the Statute, regarding witness P-2620 and P-2582 who were recently disclosed to the Defence", including information "tending to affect the credibility of the allegations by P-2582 and P-2620 of sexual gender-based crimes" ("22 January 2021 Defence Request").²⁷
19. At an unknown date in January 2021, the Victims Participation and Reparations Section ("VPRS") sent to the Prosecution, via a "document link", the un-

²⁴ [ICC-01/14-01/18-723-Conf](#), para. 203, "Some children were subject to sexual violence"; para. 484, "Children, including those under 15, joined YEKATOM's Group both through forcible conscription and voluntary enlistment"; para. 486, "Children in YEKATOM's Group were forced to participate in military-style training, taught how to use weapons, and how to behave in combat"; para. 486, "To control fear and hunger, children were given drugs at the Anti-Balaka camps, as well as during the execution of enemies and in combat"; para. 486, "Some children enlisted in YEKATOM's Group were also subject to sexual abuse by his elements"; para. 487, "[That the children demobilised from Mr. Yekatom's group] comprised at least 15 children under the age of 15 years at the time of their demobilisation".

²⁵ [ICC-01/14-01/18-802-Conf-Corr](#).

²⁶ [ICC-01/14-01/18-845-Conf-Corr](#).

²⁷ Letter ARY-2021-0158, Annex 2, sent on 22 January 2021.

redacted versions of two victim applications, including the Complete Victim Application of P-2620.²⁸

20. On February 2021, the Prosecution responded to the Defence disclosure request specifying that any material related to P-2582 and P-2620's credibility and anticipated evidence had already been disclosed.²⁹
21. On 20 October 2021, the Defence filed a request for a finding of disclosure violation by the Prosecution in relation to Count 29.³⁰
22. On 7 December 2021, the Chamber found that the Prosecution had violated its disclosure obligations pursuant to Rule 77. The Chamber partially granted the remedy sought by the Defence and ordered the Prosecution to "review the evidence in its possession, and confirm on the record that all documents falling within its disclosure obligations have indeed been disclosed"³¹ ("Order to Review").
23. On 24 December 2022, the Prosecution filed submissions indicating that it had completed the review of material in its possession as ordered and that it had identified 44 items falling within its disclosure obligation.³²
24. On 19 January 2022, the Defence, through *inter partes* correspondence, requested the Common Legal Representative of Former Child Soldiers ("CLR1") to provide a lesser redacted version of P-2582 and P-2620's victim applications.³³ The CLR1 responded that they partially contested the request, and that the request should be addressed to the Prosecution.³⁴

²⁸ See Email from the Prosecution to the Yekatom Defence on 4 March 2022, at 18:53.

²⁹ Email from the Yekatom Defence to the Prosecution on 12 February 2021 at 17:28.

³⁰ [ICC-01/14-01/18-1142-Conf](#), Public redacted version: [ICC-01/14-01/18-1142-Red](#).

³¹ [ICC-01/14-01/18-1202-Conf](#), para. 22, Public redacted version: [ICC-01/14-01/18-1202-Red](#).

³² [ICC-01/14-01/18-1230](#).

³³ Letter ARY-2022-0200 from the Yekatom to CLR1 sent on 19 January 2022, at 16:54.

³⁴ Email from CLR1 to the Yekatom Defence sent on 20 January 2022, at 08:12.

25. On 20 January 2022, the Defence addressed its lifting of redaction request to the Prosecution.³⁵
26. On 11 February 2022, the Prosecution responded that it was not in possession of un-redacted versions of the victim applications and invited the Defence to revert back to the CLR1,³⁶ which the Defence did.³⁷
27. On 15 February 2022, the CLR1 responded to the Defence that although it still partially contested the request, it had just provided un-redacted versions of the victims application to the Prosecution.³⁸ Ten days later, on 25 February 2022, the Prosecution disclosed a courtesy copy of the Proof of ID Information,³⁹ which previously had been entirely redacted from P-2620's victim application form.
28. On 4 March 2022, following a Defence request that the unopposed redaction lift be processed by the Prosecution,⁴⁰ the Prosecution provided the Defence with the courtesy copy of a lesser redacted version of P-2620's victim application, which contained the Proof of ID Information and the Supplementary Pages. The Prosecution explained that it had been provided with the un-redacted of the Complete Victim Application of P-2620 in January 2021 by VPRS via "a document link", but that "this was overlooked and the material was never downloaded".⁴¹
29. On 9 March 2022, following a motion filed by the Defence for a finding of disclosure violation by the Prosecution,⁴² the Chamber found that the Prosecution had violated its obligation pursuant to Rule 77 and noted that it

³⁵ Email from the Yekatom Defence to the Prosecution sent on 20 January 2022, at 09:12.

³⁶ Email from the Prosecution to the Yekatom Defence sent on 11 February 2022, at 12:59.

³⁷ Email from the Yekatom to CLR1 sent on 14 February 2022, at 14 :25.

³⁸ Email from CLR1 to the Yekatom Defence sent on 15 February 2022, at 11 :23.

³⁹ Email from the Prosecution to the Yekatom Defence sent on 25 February 2022, at 20:36.

⁴⁰ Email from the Yekatom Defence to the Prosecution sent on 23 February 2022, at 14:26.

⁴¹ Email from the Prosecution to the Yekatom Defence on 4 March 2022, at 18:53.

⁴² [ICC-01/14-01/18-1246-Conf](#), Public redacted version: [ICC-01/14-01/18-1246-Red](#).

was “troubled by the Prosecution’s numerous and repeated disclosure violations, as emphasised on previous occasions.”⁴³

SUBMISSIONS

30. The Supplementary Pages and the Proof of ID Information are exculpatory pursuant to article 67(2), as their content affects the credibility of P-2620, of P-2671 and P-0365; in the alternative, they are material to the Defence pursuant to Rule 77. By failing to timely disclose them to the Defence, the Prosecution violated its disclosure obligations, thereby prejudicing Mr Yekatom’s fair trial rights.⁴⁴
31. This violation is further aggravated as it follows a failure by the Prosecution to investigate exculpatory evidence, and to properly comply with the Order to Review.

A. Prosecution disclosure and investigation obligations

32. Article 67(2) provides that evidence “which may affect the credibility of prosecution evidence” consists of exculpatory material. It is well established that the duty of the Prosecution to disclose exculpatory material is necessary to guarantee the right of the accused to a fair trial.⁴⁵ The obligation to disclose exculpatory material in particular has consistently benefited from a broad interpretation.⁴⁶

⁴³ [ICC-01/14-01/18-1309-Conf](#), para. 9, Public redacted version: ICC-01/14-01/18-1309-Red.

⁴⁴ *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, para. 9.

⁴⁵ See e.g., *Prosecutor v. Abdallah Banda*, [Decision on Article 54\(3\)\(e\) Documents](#), 23 November 2011, ICC-02/05-03/09-25, para. 14; [ICC-01/14-01/18-296](#), para. 12; [ICC-01/14-01/18-551-Conf](#), para. 29; Public redacted version: [ICC-01/14-01/18-551-Red](#).

⁴⁶ [ICC-01/14-01/18-551-Conf](#), para. 29; Public redacted version: [ICC-01/14-01/18-551-Red](#); *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, para. 13; *Prosecutor v. Krstic*, [Judgement](#), 19 April 2004, No. IT-98-33-A, para. 180.

33. Further, Article 54(1)(a) requires the Prosecution to investigate incriminating and exonerating circumstances equally. The violation of this Prosecution duty may affect the fairness of the proceedings.⁴⁷
34. In relation to the Prosecution's obligations applicable to dual status witnesses, the jurisprudence of the Court is that Article 54(1)(a) and the disclosure regime imposes on the Prosecution "to obtain and provide the Defence with all the disclosable information in a dual status witness's victim application".⁴⁸

B. Exculpatory and/or material nature of the Supplementary Pages and Proof of ID Information

35. The Supplementary Pages and the Proof of ID Information are exculpatory in nature as they contain information which directly contradicts information provided by P-2620, as well as the tendered evidence of P-2671 and P-0365, thereby substantially affecting the credibility of their evidence.

i) Inconsistencies in the identity of family members

36. In the Supplementary Pages, P-2620 confirms that her father's name is [REDACTED] and her mother's name [REDACTED].⁴⁹ This information is consistent with the Proof of ID Information, which appears to be stamped and signed by the *Chef de quartier* of [REDACTED]. However, in her Prosecution witness interview 3 months later, P-2620 indicated that her father's name was [REDACTED] and her mother's name was [REDACTED].⁵⁰

⁴⁷ See *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, para. 20; *Prosecutor v. Krstic*, [Judgement](#), 19 April 2004, No. IT-98-33-A, para. 178.

⁴⁸ *Prosecutor vs. Ntaganda*, [Decision on victims' participation in trial proceedings](#), 6 February 2015, ICC-01/04-02/06-449, para. 40 [emphasis added].

⁴⁹ [CAR-OTP-2135-2412](#), p. 2419.

⁵⁰ [CAR-OTP-2123-0057-R03](#), p. 0057.

37. The Prosecution subsequently met with [REDACTED] (P-2671), [REDACTED], who confirmed that [REDACTED] P-2620, and provided further information in relation to [REDACTED] and [REDACTED].⁵¹

ii) Time in the Anti-Balaka

38. In the Supplementary Pages, P-2620 describes “[REDACTED]” as the Comzone who taught her how to use weapons;⁵² however during her subsequent interview with the Prosecution, she stated that she does not know anyone of the name [REDACTED].⁵³

39. Further, in the Supplementary Pages, P-2620 explains that she [REDACTED].⁵⁴ However, during her meeting with the Prosecution, she stated that [REDACTED];⁵⁵ that [REDACTED].⁵⁶ In her statement she claims that she decided to “[REDACTED]”⁵⁷ of the Anti-Balaka while they were [REDACTED] and soon after “some people from UNICEF came”⁵⁸, while in her Supplementary Pages, P-2620 explains that [REDACTED].⁵⁹

40. In her Supplementary Pages, P-2620 reaffirms that [REDACTED]⁶⁰ while in her Statement she denies [REDACTED].⁶¹

iii) Discrepancies of identifying information

41. In the Initial Form and the Proof of ID Information, P-2620 is identified as “[REDACTED]”;⁶² and in the Supplementary Pages she expressly confirms that

⁵¹ [CAR-OTP-2125-0348-R04](#), paras. 11-22.

⁵² [CAR-OTP-2135-2412](#) at 2418.

⁵³ [CAR-OTP-2123-0057-R03](#), para. 78.

⁵⁴ [CAR-OTP-2135-2412](#), p. 2418.

⁵⁵ [CAR-OTP-2123-0057-R03](#), para. 77.

⁵⁶ [CAR-OTP-2123-0057-R03](#), paras. 15, 38.

⁵⁷ [CAR-OTP-2123-0057-R03](#), para. 69.

⁵⁸ [CAR-OTP-2121-2567-R06](#), para. 37.

⁵⁹ [CAR-OTP-2135-2412](#), p. 2418.

⁶⁰ [CAR-OTP-2135-2412](#), p. 2418.

⁶¹ [CAR-OTP-2123-0057-R03](#), para. 79.

⁶² [CAR-OTP-2123-0072](#), p. 0072.

her name is "[REDACTED]" or "[REDACTED]".⁶³ When P-2620 met with the Prosecution in November 2019 however, she stated her first name was "[REDACTED]",⁶⁴ which is confirmed by P-2671.⁶⁵

42. There are further material discrepancies as to the information regarding P-2620's date and place of birth, which varies from [REDACTED] in the Initial Form⁶⁶ and Proof of ID Information to [REDACTED] in the Supplementary Pages,⁶⁷ to [REDACTED] in the Prosecution's statement,⁶⁸ and finally to [REDACTED] according to P-2671⁶⁹ and [REDACTED].⁷⁰
43. In the Supplementary Pages the witness confirms that [REDACTED], as indicated in the Initial Form; however she expressly denies this in her statement.⁷¹

i) Identity of the victim of rape

44. Within the Supplementary Pages, P-2620 indicates that [REDACTED], but that "[REDACTED]", implying that she was not [REDACTED]. This suggests another contradiction between her Initial Form to the victims' representative where she states having been raped,⁷² and with her statement signed three months later where she describes that "[REDACTED]" assaulted her.⁷³

ii) The Supplementary Pages is material to the Defence

45. Moreover, as P-2620 expressly denied having been aware that her victim's application had been filled out for her, the fact that she would now have filled

⁶³ [CAR-OTP-2135-2412](#), p. 2419.

⁶⁴ [CAR-OTP-2123-0057-R03](#), para. 11.

⁶⁵ [CAR-OTP-2125-0348-R04](#), para. 12.

⁶⁶ [CAR-OTP-2123-0072](#), p. 0072.

⁶⁷ [CAR-OTP-2135-2412](#), p. 2419.

⁶⁸ [CAR-OTP-2123-0057-R03](#), para. 11.

⁶⁹ [CAR-OTP-2125-0348-R04](#), para. 12.

⁷⁰ [CAR-OTP-2122-9042-R02](#), para. 24.

⁷¹ [CAR-OTP-2123-0057-R03](#), para. 76.

⁷² [CAR-OTP-2123-0072](#), p. 0072.

⁷³ [CAR-OTP-2123-0057-R03](#), paras. 28-32.

out a Supplementary Pages during a second meeting with the Legal representative affects the credibility of her anticipated evidence.

46. The presence of such contrasted contradictions, which cannot be mere typos or errors as they are twice confirmed in the Initial Form and Supplementary Pages, clearly demonstrates that the latter fell well into the ambit of the Prosecution's disclosure obligation pursuant to Article 67 (2) .

C. The Supplementary Pages and the Proof of ID Information were in the possession or control of the Prosecution

47. As the Prosecution has conceded in *inter partes* correspondence, it has been in possession of both the Proof of ID Information and the Supplementary Pages documents since January 2021 at the latest, when VPRS shared the Complete Victim Application form through a "document link". The fact that the Prosecution failed to download the link is yet another example of a certain level of disorganisation.
48. The fact that the Prosecution's possession of this manifestly exculpatory information only came to light following repeated Defence *inter partes* requests in relation to the form – as opposed to following the 22 January 2021 Defence Request, or the Order to Review to review the Prosecution's holdings - is deeply concerning. In this regard, the Prosecution's stated confidence "that it has, to the best of its ability, appropriately identified and disclosed all documents material to the proceedings within its possession"⁷⁴ appears misplaced.
49. Moreover, the Prosecution was on notice of the existence of the Proof of ID Information and of the potential existence of the Supplementary Pages since it first interviewed the witness. The Prosecution showed P-2620 a redacted and incomplete version of the form during its first meeting with her in [REDACTED]. On this occasion, P-2620 told the Prosecution that she had met

⁷⁴ [ICC-01/14-01/18-1230](#).

“twice” with a legal representative for victims, whereas the Initial Form provided one meeting date; and more importantly, she denied being aware that a victim application had been filled out for her.⁷⁵

50. P-2620’s claims in this regard clearly gave rise to a need for clarification, the first step of which would have been to immediately contact VPRS and/or the CLR1 following P-2620’s interview, to seek disclosure of the un-redacted Form in its entirety. Indeed, while the fact that the Prosecution failed to disclose exculpatory material because a “document link” was “overlooked” is egregious in itself, the Prosecution’s culpability for this disclosure violation is compounded by the fact that, had it diligently pursued these discrepancies in accordance with its statutory responsibilities, it necessarily would have come into (knowing) possession of the Proof of ID Information and the Supplementary Pages, following its interview of P-2620.
51. The Prosecution’s multi-faceted failures in this regard are especially concerning given its decision to rely on the evidence of P-2620 as support for Count 29 in these proceedings; the Prosecution’s ultimately unsuccessful attempt to add rape and sexual slavery charges against Mr. Yekatom post-confirmation, [REDACTED];⁷⁶ and the fact that, through the 22 January 2021 Defence Request, disclosure of information “tending to affect the credibility of the allegations [...] P-2620 [REDACTED]” was specifically sought by the Defence.
52. As such, the Prosecution clearly could and should have obtained the un-redacted “victim application forms and related material” collected by VPRS from P-2620 in accordance with the Redaction Protocol⁷⁷ and Article 54 (1) (a) of the Rome Statute long before January 2021.

⁷⁵ [CAR-OTP-2123-0057-R03](#), paras 72-80.

⁷⁶ [ICC-01/14-01/18-518-Conf.](#)

⁷⁷ [ICC-01/14-01/18-677-Anx3](#), para. 9.

D. Prejudice

53. This violation has occurred during the Trial Phase, after several findings by the Chamber that the Prosecution had violated its disclosure obligations, and notably, following the Chamber's Order to Review.
54. While the full extent of the prejudice caused by this violation is yet difficult to determine, it is clear at this stage that the Defence has spent a substantial proportion of its limited resources in investigating allegations and/or information relating to witness P-2620. This information would have allowed the Defence to conduct more focussed and streamlined investigations had the Proof of ID Information and Supplementary Pages been timely disclosed.
55. It is also clear that the Defence was deprived of the possibility to fully respond to the Sixth Rule 68(2)(b) Request, as the information contained in the Supplementary Pages and Proof of ID Information was not in the possession of the Defence at the time of its response.
56. Both P-2671 and P-0365 [REDACTED], which is itself a highly contested material element underlying Count 29. P-2672 does so [REDACTED] of P-2620,⁷⁸ and P-0365 does so in his capacity as [REDACTED].⁷⁹ However, the Proof of ID Information and Supplementary Pages contradict the very [REDACTED] P-2620 and P-2671, [REDACTED]. Further, the Proof of ID Information appears to be signed and sealed by the *Chef Quartier* from [REDACTED], providing [REDACTED] authority which indicate a date of birth differing from the allegedly an "original" birth certificate of P-2620. The Defence would have raised these material discrepancies in its response to the Sixth Rule 68(2)(b) Request, as further compelling grounds for its argument that the evidence of P-

⁷⁸ [ICC-01/14-01/18-724-Conf-AnxA](#), no. 27.

⁷⁹ [ICC-01/14-01/18-724-Conf-AnxA](#), no. 27.

2671 and P-0365 should not be formally submitted without allowing the opportunity for cross-examination of these witnesses.

E. Conclusion and Remedy

57. The conduct of the Prosecution with regard to the Supplementary Pages and the Proof of ID Information amounts to a worrying failure to comply with its investigation and disclosure obligations, and with the Chamber's Order to Review.
58. In this particular instance, to safeguards the rights of Mr. Yekatom, and given the material discrepancies between the various accounts and information provided by P-2620 as set out above, the Defence requests that the Prosecution formal submission of P-2671 and P-0365 be denied, and that both witnesses instead be called to testify *viva voce* in full. It is in the interest of justice that those witnesses be examine so as to fully assess the credibility of the evidence they provide.

CONFIDENTIALITY

59. This motion is being filed on a confidential basis as it refers to confidential information contained in material disclosed by the Prosecution. A public redacted version will be filed in due course.

RELIEF SOUGHT

For all of the above reasons, the Defence respectfully requests Trial Chamber V to:

FIND that the Prosecution has violated its disclosure obligations;

DENY the introduction of the prior recorded testimony of P-2671 and P-0365 under Rule 68(2)(b).

RESPECTFULLY SUBMITTED ON THIS 23rd DAY OF MARCH 2022



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