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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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Prosecution's Response to Yekatom Defence's Motion for Finding of Disclosure
Violation (ICC-01/14-01/18-1318-Conf)**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) acknowledges the disclosure failure alleged in the Yekatom Defence’s Motion for Finding of Disclosure Violation,¹ and defers to Trial Chamber V’s (“Chamber”) discretion in its disposition, taking into account the submissions below.

2. Regrettably, as more fully explained below, the error was the result of the unusual circumstances regarding the transmission of victim applications to the Prosecution and the resultant confusion that affected the normal processing of such material.

II. SUBMISSIONS

3. In the frenetic period leading up to the commencement of the trial, on 15 January 2021, the Victims Participation and Reparations Section of the Registry (“VPRS”) notified the Prosecution of certain dual status victim’s applications uploaded to a document link in Record Manager (“RM”) Record Manager by email. In this context, VPRS sent two separate emails containing RM links. Both emails were sent by the same individual, and their timestamps of 15:54 were the same. Although witness numbers for different dual status witnesses were indicated, the content of the two emails was otherwise identical, save the file names of the referenced RM containers — F2021/000006/001¹ and F2021/000006/002², respectively. The recipients indicated were also the same, save that the Common Legal Representative of the Former Child Soldiers was copied in the email referencing RM container F2021/000006/001, whereas the Common Legal Representatives of Victims of Other Crimes was copied in the email related to RM container F2021/000006/002.

¹ ICC-01/04-01/18-1318-Conf (“Request”).

4. Because of its timing, and the unusual means of receiving dual status victim applications (*i.e.*, via RM Link), and given the almost indistinguishable nature and content of the VPRS emails, the two were apparently confused or conflated. The Prosecution thus took action only in respect of one email — that providing the link to RM container F2021/000006/002.² Consequently, only the victim applications resident in RM container F2021/000006/002 were extracted, downloaded, and processed for disclosure. Conversely, the victim applications for P-2620 and P-2582 linked to F2021/000006/001 — was never extracted and downloaded into the Prosecution's Ringtail evidence database.

5. The inadvertence, which the Prosecution duly communicated to the Yekatom Defence on 4 March 2022³ and well before the instant Motion, only came to light recently in respect of the Prosecution's efforts to accommodate the Defence's redaction lifts request concerning P-2620's and P-2582's victim applications. The matter is presently before the Chamber.⁴ Both applications, as provided to the Prosecution by the CLRV albeit *incomplete* and redacted had been disclosed in 2020.⁵ However, as is plain, the Prosecution was never *actually aware* of the existence of the two unredacted complete victims applications subsequently linked by VPRS in RM under the file F2021/000006/001.

6. In respect of the Defence's redaction request, the Prosecution promptly engaged the Common Legal Representative for former Child Soldiers and VPRS regarding their views concerning its intention to disclose lesser redacted versions of the applications.⁶ To facilitate an expedient resolution, the Prosecution forwarded to

² After further victim applications were subsequently added to RM container F2021/000006/002, and the Prosecution was notified by further email from VPRS of 29 January 2021, the Prosecution duly downloaded, registered and disclosed the victim applications contained in that folder at that time.

³ See Email from the Prosecution to the Yekatom Defence on 4 March 2022, at 18:53.

⁴ See ICC-01/14-01/18-1290-Conf-Red; ICC-01/14-01/18-1297-Conf-Exp; ICC-01/14-01/18-1290-Conf-Exp; ICC-01/14-01/18-1304-Conf; and ICC-01/14-01/18-1320.

⁵ See CAR-OTP-2123-0072 (P-2620) and CAR-OTP-2126-0456 (P-2582), disclosed in INCRIM package 73 of 14 December 2020;

⁶ See ICC-01/14-01/18-1318-Conf, paras. 24-28 (noting the Prosecution's prompt engagement with the Defence in respect of its pending request with the CLRV).

VPRS the versions of P-2620's and P-2582's applications in its physical possession. In response, VPRS noted that these versions were not coextensive with those to which it had provided the Prosecution access, as notified in its 15 January 2021 *i.e.*, RM link F2021/000006/001.

7. As the RM link was not exploited or its content extracted and downloaded, the application PDF files were not traceable within Ringtail, as they never came into the Prosecution's physical possession or were processed through its Information and Evidence Unit ("IEU"). That said, the Prosecution acknowledges that the applications were within its control, given its access to the RM link F2021/000006/001. As such, they fell within the Prosecution's disclosure obligations and should have been processed promptly, as was done with the material concerning F2021/000006/002.⁷ The Prosecution considers that this would have been similarly achieved with respect to the applications for P-2620 and P-2582, but for the confusion described above.

8. Although the timing is regrettable, the Prosecution considers that the prejudice resulting from its inadvertence, if any, is curable. P-2620 is currently listed at position number 72 in the Prosecution's expected calling order of witnesses.⁸ The Defence therefore has ample time to investigate the information available in the most recently disclosed version of the application.

9. Further, there is no proper basis to reject outright the introduction of the prior recorded testimony of P-2671 and P-0365 under rule 68(2)(b).⁹ Any prejudice flowing from the Prosecution's Sixth Rule 68(2)(b) Request¹⁰ can be dealt with and mitigated by granting the Defence an extension of time to file a (supplemental) response to that

⁷ See victim applications disclosed under ERNs CAR-OTP-2127-7780, CAR-OTP-2127-7809, CAR-OTP-2127-7822 and CAR-OTP-2127-7833, in Rule 77 package 38 of 25 March 2021.

⁸ See email of the Prosecution to the Chamber, Parties and Participants of 1 March 2022, 18:13.

⁹ See Prosecution's Sixth Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b): ICC-01/14-01/18-802-Conf-Corr ("Prosecution's Sixth Rule 68(2)(b) Request").

¹⁰ See Request, para. 55-56.

request. The Prosecution would not oppose such an application by the Defence, although it notes that this is not as yet forthcoming.

III. CONCLUSION

10. The Prosecution defers to the Chamber's discretion in the disposition of the Request, taking into account its submissions.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan QC, Prosecutor

Dated this 1st day of April 2022
At The Hague, The Netherlands