

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **10 January 2019**

**PRE-TRIAL CHAMBER II**

**Before: Judge Rosario Salvatore Aitala, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM***

**Public**

**Prosecution's Request for Leave to Reply to the Defence's Response to the  
Prosecution's Request for a Protocol on Redactions (ICC-01/14-01/18-47)**

**Source: Office of the Prosecutor**

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

**The Office of the Prosecutor**

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**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Prosecution requests leave to reply to the Defence's Response to the Prosecution's Request for a Protocol on Redactions.<sup>1</sup> A limited and focused reply addressing the impact of the Defence proposals and recommendations on (1) the Court's practice governing the implementation of redactions under rules 81(1), (2), and (4) of the Rules of Procedure and Evidence ("Rules"); and (2) the security of witnesses, victims, Court staff members, and other individuals, would assist Pre-Trial Chamber II ("Chamber") in the proper determination of the relevant issues and is otherwise in the interests of justice.

## II. SUBMISSIONS

2. The Prosecution requests leave to reply on two issues advanced in the Response:

(i) whether the Defence's contention that a redactions protocol, on whole, is unnecessary given that Defence Counsel, his staff, and the Suspect are under obligations not to disclose confidential information to third parties, including the public, impedes the Court's obligation to protect the safety of witnesses and victims in accordance with article 68.<sup>2</sup> If leave is granted, the Prosecution will explain why the Chamber should consider other salient factors in determining whether a redactions protocol is warranted, including the history of witness interference and intentional or inadvertent disclosure of confidential material at the Court including in trials currently pending at the Court.<sup>3</sup>

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<sup>1</sup> See ICC-01/14-01/18-47.

<sup>2</sup> See ICC-01/14-01/18-47, paras. 12-14.

<sup>3</sup> See e.g. *Ongwen*, ICC-02/04-01/15-482-Red; *Ntaganda*, ICC-01/04-02/06-1616. See generally Open Society Justice Initiative, [Witness Interference in Cases before the International Criminal Court](#), November 2016 [last

(ii) whether the purported practices of other international tribunals regarding redactions *proprio motu* to the location of witness interviews/accommodations, communication methods, or the identities of individuals, including staff members, translators, stenographers, psycho-social experts, investigators, intermediaries, or leads and sources, should be followed by this Chamber.<sup>4</sup> If leave is granted, the Prosecution will detail why the Defence's reliance on and assertions concerning such purported practices is erroneous, and why the redaction of such information is essential in this case when disclosure implicates the interests protected by rules 81(2) and (4) given the dangers attendant to conducting investigations and witness protection in the Central African Republic ("CAR").

3. The Prosecution considers that a reply focused on these discrete issues will assist the Chamber to develop an efficient and effective system of redaction in line with the Court's established practice – one which has evolved and incorporates the Court's experiences dealing with the threats underlying rules 81(2) and (4). A properly formulated protocol is important at this stage of the proceedings, particularly as the majority of witnesses are vulnerable and the Prosecution's investigation is ongoing. The proposed reply will explain factual circumstances or considerations in investigations specific to CAR and more generally, which the Defence filing mischaracterises, underplays, or omits, which are material to the Chamber's determination.

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accessed 10 January 2019]; International Bar Association, *Offences against the administration of justice and fair trial considerations before the International Criminal Court*, August 2017 [last accessed 10 January 2019].

<sup>4</sup> See ICC-01/14-01/18-47, paras. 21-48.

### III. RELIEF SOUGHT

4. For the above reasons, the Chamber should permit the Prosecution to reply to the Defence's Response to the Prosecution's Request for a Protocol on Redactions.



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**Fatou Bensouda, Prosecutor**

Dated this 10<sup>th</sup> day of January 2019  
At The Hague, The Netherlands