

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **24 July 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 PROSECUTOR *v.* ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA**

Confidential

**Prosecution's Response to Yekatom Defence "Additional Submissions on
Redaction Protocol, (ICC-01/14-01/18-587-Conf)"**

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**

Ms Fatou Bensouda
 Mr James Stewart
 Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
 Mr Peter Robinson

Counsel for Patrice-Edouard Ngaissona

Mr Geert-Jan Alexander Knoops

Legal Representatives of Victims

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

Legal Representatives of Applicants**Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****States Representatives****Amicus Curiae****REGISTRY****Registrar**

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**

I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the YEKATOM Defence’s request to amend the Redaction Protocol.¹ The Defence’s proposed amendments to the current redaction regime are unnecessary and duplicative of existing safeguards. Moreover, they unreasonably limit the information that can be redacted pursuant to established standardised categories.

II. CONFIDENTIALITY

2. The submission is classified as “Confidential” as it responds to a filing with that classification. The Prosecution does not object to the reclassification of this filing as public.

III. SUBMISSIONS

A. The Current Redaction Protocol Strikes a Reasonable Balance

3. The Redaction Protocol adopted in this case² contains standard redaction categories that are “well-founded in the case-law and practice of this Court across instances.”³ There is no need to amend them. The Pre-Trial Chamber struck a reasonable balance between the rights of the Defence and the interests of witnesses and others to be protected when adopting the current redaction regime. Amending standard categories B.1, B.2, and B.3, as the Defence proposes, would adversely affect this considered balance.⁴ Moreover, as previously stated,⁵ the proposed amendments are unnecessary and duplicative of existing safeguards incorporated into the current Redaction Protocol and under the statutory framework.

¹ ICC-01/14-01/18-587-Conf; ICC-01/14-01/18-64, paras. 23-32 (“Redaction Protocol”).

² ICC-01/14-01/18-459, para. 8.

³ ICC-01/14-01/18-64, para. 28.

⁴ ICC-01/14-01/18-64, para. 28, where the Single Judge noted arguments made by the Defence in relation to the standard redaction categories (see Defence Observations ICC-01/14-01/18-45-Conf, in particular at para. 50).

⁵ ICC-01/14-01/18-486, paras. 16-17.

4. Concerns raised by the Defence, namely that information that is material to their preparation is being redacted pursuant to standard redaction categories, are already safeguarded by the Prosecution's statutory disclosure obligations pursuant to article 67(2) of the Rome Statute and rule 77 of the Rules of Procedure and Evidence.

5. Redactions need to be assessed individually, on a case by case basis. In doing so, the Prosecution redacts names and contact details of individuals in line with the B.1, B.2 and B.3 redaction categories only insofar as necessary to protect their safety, while complying with its disclosure obligations. The Prosecution also regularly reviews existing redactions with a view to lifting those that become redundant as the case develops and reasons justifying them cease to exist. Some redactions have also been lifted upon a substantiated request from the Defence, following the process envisaged in the Redaction Protocol, as described in section B below.

6. The current Redaction Protocol has been in place since 23 January 2019. Since then, the Prosecution has adapted its disclosure review process and applied redactions in line with the established redaction regime. Were the Chamber to alter the balance struck in the Redaction Protocol by amending it at this stage of the proceedings, this would adversely affect the Prosecution's disclosure process, create inefficiency, and cause potential delays.

B. Mechanism to Address Disputed Redactions

7. An effective mechanism to address any disputed redactions already exists within the current system. The Redaction Protocol expressly states that "the receiving party may challenge any specific redaction, in accordance with the regime established in this decision"⁶ and further provides that "[s]hould the receiving party consider that a particular redaction is unwarranted or should be lifted as a result of

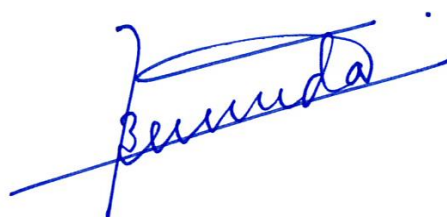
⁶ ICC-01/14-01/18-64, para. 28.

changed circumstances, it shall approach the disclosing party directly. The disputing parties shall consult in good faith with a view to resolving the matter [...]. If they are unable to agree, the receiving party may apply to the Chamber for a ruling.”⁷

8. This mechanism has been successfully used by the parties to date and, as the Defence points out,⁸ has led to the Prosecution lifting additional redactions in the past. The Defence and the Prosecution have met and conferred to discuss disputed redactions pursuant to this provision on several occasions. As a result, individual redactions were addressed and lifted or maintained, on a case by case basis, upon compelling reasons provided by the parties. This process is both appropriate and sufficient, especially given that standard redactions comprise judicially recognised *exceptions* to disclosure.⁹ In any case, all such *inter partes* discussions were fruitful and did not result in any disputes that required the intervention of the Chamber, further demonstrating that the current system is effective and requires no change.

IV. RELIEF SOUGHT

9. For the above reasons, the Prosecution requests the Chamber to reject the Defence request.



Fatou Bensouda, Prosecutor

Dated this 24th day of July 2020
At The Hague, The Netherlands

⁷ ICC-01/14-01/18-64, para. 30.

⁸ ICC-01/14-01/18-587-Conf, para. 5.

⁹ ICC-01/14-01/18-64-Red, p. 5 (item 5).