

ANNEX 41
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 24 April 2024 16:19
To: OTP CAR IIB; D29 Yekatom Defence Team
Cc: D30 Ngaissona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer; Trial Chamber V Communications; Chamber Decisions Communication
Subject: Decision on the Yekatom Defence's views on the Prosecution's proposed public redacted versions of prior recorded testimonies introduced under Rule 68

Dear Counsel,

The Single Judge takes note of the Yekatom Defence's email below, containing a substantial number of opposed redactions and additional redactions (the 'Contested Redactions').

The Single Judge considers that most of the Contested Redactions could be resolved between the parties and do not require the Chamber's intervention. Therefore, he orders the Prosecution to review the Contested Redactions and, to the extent that it agrees, implement them by 31 May 2024. For the remainder of the Contested Redactions, the parties are instructed to resolve them through *inter partes* consultations. Should no agreement be found on certain Contested Redactions, the parties may seize the Chamber by 14 June 2024. However, the Single Judge emphasises in this regard that he expects there to be only a very limited number of Contested Redactions left at this stage - if any.

Noting that the Yekatom Defence did not oppose a number of statements (*see* email from the Yekatom Defence below, 'Unopposed redactions') and that no objections were received from the other participants, the Single Judge instructs the Prosecution to make the public redacted versions of these statements available and the Registry to publish them on the Court's website with their assigned ERN, in accordance with the Chamber's initial order (*see* email from the Chamber, 3 June 2021, at 15:58).

Kind regards, TCV

From: [REDACTED]
Sent: Friday, April 12, 2024 3:58 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; OTP CAR IIB [REDACTED]; V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: Yekatom Defence views on the Prosecution's proposed public redacted versions of prior recorded testimonies introduced under Rule 68

[ICC] RESTRICTED

Dear Trial Chamber V,
Dear Parties and Participants,

The Yekatom Defence ("Defence") hereby sends its views on the Prosecution's proposed public redacted versions of prior recorded testimonies introduced under Rule 68 of the Rules of Procedure and Evidence ("Rules") in accordance with Trial Chamber V's "Decision on the Prosecution's Second Request for Extension of Time to Propose Public Redacted Versions of Rule 68(2) Testimonies" (ICC-01/14-01/18-2197).

The Defence provides in the following link the individual prior recorded testimonies for which it opposes redactions suggested by the Prosecution: [REDACTED] The redactions opposed are outlined by a black box. Where additional redactions are proposed, the Defence has highlighted the relevant portions in blue.

General observations

The Defence makes the following observations as a result of its detailed review of the redactions proposed by the Prosecution.

First, the Defence notes that regarding seven Prosecution witnesses that signed two or more statements, the Prosecution neglected to provide a proposed redacted version of the second subsequent statement (see the statements of P-1962: CAR-OTP-2071-0003, P-0888: CAR-OTP-2108-0333; P-1974: CAR-OTP-2122-8673; P-1813: CAR-OTP-2083-0279; P-0992: CAR-OTP-2122-6499, CAR-OTP-2128-0288; P-1528: CAR-OTP-2121-2831; P-0808: CAR-OTP-2093-0010).

Second, the statements provided by the Prosecution do not reflect the corrections and annotations applied by witnesses to their statements as part of their familiarisation process when applicable (see ICC-01/14-01/18-677-Anx1, para. 80). Given that over 30 Prosecution witnesses have made corrections to their statements and given the importance of some of the corrections applied by witnesses and the broader impact they have had on the proceedings, the Defence submits that a redacted version of these statement corrections should be made public.

Third, there are several instances where, although a lesser redacted version of the statements has been disclosed, the Prosecution has proposed redactions based on an outdated version of a statement, even after a version with fewer redactions had been disclosed. This approach results in suggesting redactions from a version that is more heavily redacted than necessary (see, as an example, P-2377's statement CAR-OTP-2108-0609 where the Prosecution proposed redactions on the R01 version although a lesser redacted R02 version was subsequently disclosed). The Defence recalls that the Chamber has previously ordered that the Prosecution propose redactions to the least redacted version available of a witness' prior recorded testimony (see ICC-01/14-01/18-2170-Conf-Red, paras. 27-28).

Fifth, and more broadly, the Defence submits that it is evident the Prosecution has failed to rigorously and comprehensively review the statements when applying its redactions. This has meant that the majority of redactions proposed by the Prosecution are often unwarranted, being unnecessary and/or inconsistently applied and do not reflect the procedural advancements and developments of these proceedings. Indeed, many topics which were redacted by the Prosecution in the statements have been elicited during hearings in public session or are included in evidence which is part of the public case record. The Defence stresses the importance of ensuring the principle of publicity and the fact that if permitted, the unwarranted redactions as proposed by the Prosecution would unjustifiably limit the Defence's ability to provide its closing arguments in public.

Redaction categories

Given the aforementioned issues with the Prosecution's approach towards its proposed redactions, as well as the extensive scope of unwarranted redactions, the Defence has been unable to conduct its review in an efficient manner in order to submit its observations on a rolling basis with individualised comments justifying its position for each redaction. Therefore, to fully assist the Trial Chamber, the Defence has instead identified the following five categories which group common issues in order to justify the opposed redactions as individually marked within each statement. The Defence has selected various examples from the statements it has analysed to illustrate each category but underscores that these examples are far from being exhaustive. The Defence has provided in attachment a table indicating which categories were attributed to each statement.

- I. Category I: Where no threat to the security situation of the relevant witness has been established either because the proposed redacted information is part of the public domain and/or the security situation has changed
- Non-exhaustive examples:*
- General details on key events such as the evacuation of Muslims from Mbaïki and the meeting at the St Jeanne d'Arc Church are part of the public domain and are publicly available information in the case file justifying the Defence's opposition of redactions applied by the Prosecution in that regard especially when the witnesses' accounts are sufficiently broad, posing no risk of identification (regarding the evacuation, see *inter alia* P-2354's statement, CAR-OTP-2105-0991, paras. 51-61; P-2353's statement, CAR-OTP-2100-0226, paras. 60-68; regarding the meeting, see *inter alia* P-2354's statement, CAR-OTP-2105-0991, paras. 62-69; P-2353's statement, CAR-OTP-2100-0226, para. 52; P-2041's statement, CAR-OTP-2104-0003, paras. 52-56).
 - Considering that P-1172 is deceased (see ICC-01/14-01/18-1677-Red, paras. 10-15; ICC-01/14-01/18-1975-Conf, paras. 75-91), the Defence considers that there are no security concerns which justify lifting most of the redactions suggested by the Prosecution (see P-1172's statements, CAR-OTP-2046-1003 and CAR-OTP-2082-1058).
 - Details relating to the size, division, and geographical location of the Pissa commune and identity of the mayor of Pissa do not warrant redaction since they are part of the public domain (see *inter alia* P-2389's statement, CAR-OTP-2104-0033, paras. 12-16. A similar reasoning can also be applied to redactions concerning the Mbaïki locality: see *inter alia* P-2041's statement CAR-OTP-2104-0003, para. 48). Further, the Pissa mayor (P-2084) testified publicly in these proceedings, and therefore this information was elicited from him in public session.
 - The fact that the Ledger hotel was renovated after it had been damaged by the Seleka elements after their arrival in Bangui is public information. It does not endanger the safety of P-0876 and there is no possible justification for the Prosecution's redaction of this information (see P-0876's interview summaries, at para. 24).
- II. Category II: Where an individual is not a witness in these proceedings and/or his identity is publicly available
- Non-exhaustive examples:*
- The redaction of the name "Rambo" in P-2476's statement is unwarranted given that the information regards one of the accused in this case (see P-2476's statement, CAR-OTP-2114-0149, paras 25-30, 39, 41, 43, 56, and 64).
 - All references made by P-1838, a public witness, to Moussa ANOUR, a publicly known Seleka Colonel in Mbaïki at the time of the events, were redacted by the Prosecution (see P-1838's statement, CAR-OTP-2100-0252, paras. 41-46). This information has been elicited in these proceedings in public session (see for example, ICC-01/14-01/18-T-106-Red-ENG, at [14:05:48], [14:23:15], and [14:40:43]).
 - [REDACTED] the fact that he was the Environment Minister during President SAMBA-PANZA's last government is publicly available information (see the summary of P-0876's interviews, at para. 128).
- III. Category III: Where no identifying detail is disclosed or the information relates to general activities of a collected group
- Non-exhaustive examples:*
- The fact that P-1962 speaks French and Sango, the two official languages of the Central African Republic, is not in itself identifying information (see P-1962's statement, CAR-OTP-2068-0037, witness contact sheet and para. 4). Further, there is no reason to redact the witness' pseudonym which was attributed to him precisely to avoid his identification. In this regard, the Defence recalls the Chamber's assertion that "redactions to pseudonyms should only be applied in exceptional circumstances where the pseudonym could lead to a witness's identification" (ICC-01/14-01/18-906-Conf-Red, para. 106).
 - General information on the FACA as a collective group and their whereabouts during the events is not identifying (see *inter alia* P-0974's statement, CAR-OTP-2058-0165, paras. 15, 39).

IV. Category IV: Where redactions are applied inconsistently within the statement itself, or in comparison to information available in public filings and/or public court transcripts

Non-exhaustive examples:

- The fact that P-2419 is [REDACTED] as well as his knowledge of key events having taken place there such as Mr Yekatom's arrival and the Bimon attack is information that is currently publicly available in filings submitted by the Prosecution itself (see *inter alia* ICC-01/14-01/18-1360-Red, paras. 2, 9, 11 and 12; ICC-01/14-01/18-1576-Red, para. 9) and court transcripts (see ICC-01/14-01/18-T-176-Red2-FRA; ICC-01/14-01/18-T-177-Red2-FRA). Therefore, the Prosecution's suggested redactions of every mention of [REDACTED] in the witness' statement are without merit (CAR-OTP-2112-0036, *inter alia* paras. 11, 15, 17-21, 35-48, 69-102). The Defence submits that the redactions outlined can be lifted without revealing the witness's identity. In a similar vein, the Prosecution has proposed to redact the fact that P-2354 [REDACTED] as well as his occupation [REDACTED] contradicting publicly available information in filings and court transcripts (see P-2354's statement, CAR-OTP-2105-0991, paras. 11, 13, 15-17, 23-27, 31-33, 41-50. See also Chamber email dated 11 April 2024, at 17:02 in which the Single Judge did not consider it justified to maintain redactions of information identifying P-2354's occupation [REDACTED]).
- Although the Defence notes that part of P-2354's account of the Bangui-Bouchia events needs to be redacted from his prior recorded testimony, the fact that the events took place in Bangui-Bouchia and the names of the individuals killed form part of the public case record (see for example, CAR-D29-0016-0056, an open source press release which has been recognized as formally submitted) and therefore should not be redacted (see P-2354's statement, CAR-OTP-2105-0991, paras. 34-40). Further, this information was mentioned in public session during the course of P-2354's testimony (see ICC-01/14-01/18-T-210-Red-FRA, from [14:14:28] to [14:22:06]).
- With regard to witnesses having testified on the Yamwara school charges (P-1704, P-1716, P-1811), the Defence submits that the Prosecution's proposed redactions are not in conformity with information publicly available in the case file. For instance, the Defence observes that in P-1704's statement, redactions regarding the identification of St Cyr Lapo can be lifted (see P-1704's statement, CAR-OTP-2054-1136, para. 35), as this information is currently available in public filings (see ICC-01/14-01/18-1181-Red, para. 25). The same applies to the mention of the Anti-Balaka elements in P-1716's statement (see P-1716's statement, see CAR-OTP-2053-0062, paras 30, 40, 47, 48) which are addressed in public filings (see ICC-01/14-01/18-1169-Red, para. 16). General information related to the Yamwara School Base in P-1704's statement (see P-1704's statement, CAR-OTP-2054-1136, para. 31) is not in itself identifying information (see ICC-01/14-01/18-403-Red-Corr, para. 113). Further, the reference to the [REDACTED] should not be redacted (see P-1811's statement, CAR-OTP-2058-0003, para. 50) as it has been addressed in public session over the course of P-0952's testimony (see ICC-01/14-01/18-T-249-ENG, from [10:10:52] to [10:11:53]), and P-0884's testimony (see ICC-01/14-01/18-T-056-Red2-ENG, from [12:10:05] to [12:10:42]).

V. Category V: Where redactions are inconsistent with an order issued by the Trial Chamber V

Non-exhaustive examples:

- The Defence has yet to receive the public redacted version of P-1654's statement (CAR-OTP-2053-0112) in accordance with the Chamber's directions ordering the Prosecution to modify the redactions it initially proposed by 15 November 2023 (ICC-01/14-01/18-2170-Conf-Red, para. 22).
- The Defence has yet to receive the Prosecution's proposed redactions to the least redacted version available of P-0567's statement (CAR-OTP-2057-0084) contrary to the Chamber's order to proceed as such by 15 November 2023 (ICC-01/14-01/18-2170-Conf-Red, paras. 27-28).

Unopposed redactions

The Defence has no objections to the redactions proposed by the Prosecution in relation to the statements of P-0505 (CAR-OTP-2014-0129) and P-2973 (CAR-OTP-2122-9874) and the reports produced by P-2193 (CAR-OTP-2127-6617), P-0925 (CAR-OTP-2127-6805) and P-2927 (CAR-OTP-2122-9082; CAR-OTP-2122-9155).

The Defence notes that whilst it did not review the statements of the following 16 witnesses- as they do not directly concern the charges against Mr. Yekatom, this does not mean that the proposed redactions therein are not objectionable: P-0520 (CAR-OTP-2050-0788); P-2486 (CAR-OTP-2116-0281); P-1598 (CAR-OTP-2057-0892); P-2133 (CAR-OTP-2093-0267); P-1676 (CAR-OTP-2066-0105); P-1739 (CAR-OTP-2054-1089); P-2453 (CAR-OTP-2111-0415); P-2556 (CAR-OTP-2112-1300); P-2658 (CAR-OTP-2126-0012); P-0975 (CAR-OTP-2033-7885); P-2200 (CAR-OTP-2088-2146); P-0595 (CAR-OTP-2018-0761); P-1773 (CAR-OTP-2064-0063); P-2652 (CAR-OTP-2126-0175); and the summaries of P-1042 and P-1077's interview transcripts.

Concluding views

Lastly, as a closing remark, the Defence notes with concern that the Prosecution's insufficient thoroughness in proposing public redacted versions of its witnesses' statements has resulted in an extremely time-consuming exercise for the Defence in the midst of the presentation of its case. The Defence has effectively had to rectify the Prosecution's proposed redactions by meticulously reviewing all public information in the case record. This was undertaken to safeguard Mr. Yekatom's entitlement to a public trial and, as mentioned above, to enable the Defence to present its closing arguments publicly. The Defence therefore respectfully requests that the Trial Chamber adopt the corrected redactions as proposed by the Defence.

Kind regards,


Yekatom Defence

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