

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **18 October 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**

**Public Redacted Version of “Urgent application for redaction lift in  
document CAR-OTP-2130-0140”, 7 October 2022, ICC-01/14-01/18-1599-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. Pursuant to paragraph six of the “Protocol governing the redaction of evidence at trial” (“Redaction Protocol”),<sup>1</sup> the Defence team for Mr Alfred Rombhot Yekatom Defence (“Defence”) hereby respectfully requests Trial Chamber V to order the Prosecution to lift two redactions contained within its investigation report bearing ERN CAR-OTP-2130-0140 (“Report”).
2. In her interview with Prosecution investigators, witness P-1839 made allegations regarding the alleged detention and torture of [REDACTED]. The Report details Prosecution investigators’ attempts to call [REDACTED] via a phone number provided for him by P-1839. The contested redactions are applied to the name of the individual who answered the Prosecution investigators’ calls to this phone number (redacted as “B.3 – 0335”), and to another phone number on which this individual subsequently called Prosecution investigators back.
3. This application is filed on an urgent basis, in light of the imminent testimony of P-1839, who is currently scheduled to commence her evidence on 21 October 2022.<sup>2</sup>

## **PROCEDURAL HISTORY**

4. On 22 December 2020, the Defence requested the Prosecution to lift all redactions contained in the Report.<sup>3</sup>
5. On 20 January 2021, the Prosecution declined to proceed with the sought redaction lift.<sup>4</sup>

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<sup>1</sup> [ICC-01/14-01/18-677-Anx3](#).

<sup>2</sup> See, Email from Prosecution of 16 September 2022 at 10.47.

<sup>3</sup> Letter ARY-2020-0157 sent to the Prosecution from the Defence on 22 December 2020, at 19.34.

<sup>4</sup> Email sent to the Defence from the Prosecution on 20 January 2021, at 15.33.

6. On 30 September 2022, prior to the scheduled testimony of P-1839, the Defence reiterated its request to the Prosecution.<sup>5</sup>
7. On 4 October 2022, the Prosecution agreed to lift the redaction for the phone number of [REDACTED], but declined to lift the remaining redactions corresponding to the identity of “B.3 – 0335”, i.e. the individual who initially answered the phone, and the phone number on which he called Prosecution investigators back.<sup>6</sup>
8. On 4 October 2022, the Defence reiterated its request for the remaining contested redactions, and asked the Prosecution to revise its position.<sup>7</sup>
9. On 4 October 2022, the Prosecution stated it maintained its position.<sup>8</sup>
10. On 6 October 2022, the Defence sought confirmation that the Prosecution had not been in contact with [REDACTED].<sup>9</sup>
11. On 7 Friday 2022, the Prosecution confirmed that, following the Report, they had not been in contact with [REDACTED].<sup>10</sup>

## **SUBMISSIONS**

### **A. The identifying information of “B.3 – 0335” is subject to disclosure.**

12. During her interview with the Prosecution, P-1839 alleged that a [REDACTED] with [REDACTED]<sup>11</sup> had been arrested by Mr. Yekatom’s elements [REDACTED];<sup>12</sup> and further, that [REDACTED] had been tortured and tied up, and that as a result, he had trouble walking.<sup>13</sup>

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<sup>5</sup> Email sent to the Prosecution from the Defence on 30 September 2022, at 16.32.

<sup>6</sup> Email sent to the Defence from the Prosecution on 4 October 2022, at 16.32.

<sup>7</sup> Email sent to the Prosecution from the Defence on 4 October 2022, at 17.07.

<sup>8</sup> Email sent to the Defence from the Prosecution on 4 October 2022, at 18.13.

<sup>9</sup> Email sent to the Prosecution from the Defence on 6 October 2022, at 18.49.

<sup>10</sup> Email sent to the Defence from the Prosecution on 7 October 2022, at 11.20.

<sup>11</sup> Also referred to as ‘[REDACTED]’ (see CAR-OTP-2122-6776), ‘[REDACTED]’ (see CAR-OTP-2072-0946, at 0948)

<sup>12</sup> CAR-OTP-2072-0946, at p. 0947.

<sup>13</sup> CAR-OTP-2072-0946, at p. 0970.

13. After her interview, P-1839 sent an email to the Prosecution and provided [REDACTED] phone number.<sup>14</sup> She was asked if she knew his real name and said she did not.<sup>15</sup>
14. On 19 February 2018, the Prosecution called the phone number of [REDACTED] and an individual (i.e. "B.3 – 0335") answered.<sup>16</sup> He gave his name to the Prosecution, and alleged that he was a victim of the Anti-Balaka and that he had been tortured, leaving him with a permanent handicap.<sup>17</sup> After the battery of his phone died, "B.3 – 0335" called the Prosecution back on another phone number; he then stated that the phone number he had initially answered belonged to [REDACTED].<sup>18</sup>
15. The Report states that the "investigators concluded that [REDACTED] is *likely* to be [REDACTED] [emphasis added]".<sup>19</sup>
16. Prosecution investigators do not appear to have inquired as to whether "B.3 – 0335" knew of any individual who went by the name [REDACTED] (or [REDACTED]). Nor do they appear to have inquired as to other background information regarding [REDACTED] provided by P-1839 such as whether he is [REDACTED].
17. No reference to further inquiries or attempts to verify this conclusion are contained in the Report and the Prosecution confirmed that its investigators did not establish contact with [REDACTED] following this Report.<sup>20</sup>

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<sup>14</sup> CAR-OTP-2130-0140.

<sup>15</sup> CAR-OTP-2130-0140.

<sup>16</sup> CAR-OTP-2130-0140-R01.

<sup>17</sup> CAR-OTP-2130-0140-R01.

<sup>18</sup> CAR-OTP-2130-0140-R01.

<sup>19</sup> CAR-OTP-2130-0142, at p. 0141.

<sup>20</sup> Email sent to the Defence from the Prosecution on 7 October 2022, at 11.20.

18. In any event, the apparently unverified conclusion of Prosecution investigators as to the identity of [REDACTED] has no bearing on the materiality of “B.3 – 0335’s” identifying information.
19. P-1839’s allegations regarding [REDACTED] arrest and torture at the hands of Mr Yekatom’s group are highly prejudicial. It is self-evident that the identity of [REDACTED] is thus material to Defence investigations and preparations. By extension, and Prosecution investigators’ conclusions notwithstanding, the identity of “B.3 – 0335”, who answered the phone number of [REDACTED], is material to Defence preparation, pursuant to Rule 77. In the same vein, the phone number on which “B.3 – 0335” called Prosecution investigators back<sup>21</sup> is relevant to Defence investigations into the true identity of “B.3 – 0335” and thus likewise material to defence preparation.
20. On the basis of the Report, there are reasonable grounds to believe that “B.3 – 0335” is himself [REDACTED]. The Defence should not be hamstrung in its attempts to pursue this investigative lead, including through “B.3 – 0335” himself, simply because the Prosecution has opted to dismiss it – notably, in the face of contrary indications, and on the word of a single individual. In this regard, the Defence notes that accepting the Prosecution’s conclusion would mean, by extension, accepting that it is mere coincidence that the individual who happened to answer the phone number of [REDACTED] was not in fact [REDACTED]; and further, that he, like [REDACTED], was also allegedly tortured by the Anti-Balaka, and was rendered handicapped (whether permanently or otherwise) as a result.
21. Should the inverse be true – i.e. if “B.3 – 0335” is not in fact [REDACTED] – this would suggest that the number provided by P-1839 to Prosecution investigators is not that of [REDACTED], which would then potentially affect the credibility

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<sup>21</sup> *Supra*, para. 17; see also, CAR-OTP-2130-0140, at 0141.

of P-1839's broader allegations regarding the latter. Here too, the apparently coincidental parallels between on the one hand, "B.3 – 0335's" account of his treatment at the hands of the Anti-Balaka, as provided to Prosecution investigators; and on the other, P-1839's account of [REDACTED] alleged treatment by the Anti-Balaka, give rise to the need for further investigations. By extension, the identifying information of "B.3 – 0335" is therefore subject to disclosure, pursuant to Article 67(2). At the very least, the question of whether the phone number provided by P-1839 for [REDACTED] is in fact attributable to him warrants further investigation; and information in this regard is thus material to defence preparation pursuant to Rule 77.

**B. Maintaining the contested redactions is unjustified.**

22. As set out in the Redaction Protocol,

Under Rule 81(4) of the Rules, the disclosing party may withhold information falling under any of the following categories: [...] Category 'B.3': Identifying and contact information of 'other persons at risk as a result of the activities of the Court' ('innocent third parties'), insofar as necessary to protect their safety [emphasis added].<sup>22</sup>

23. The Prosecution's claim that maintaining the redaction to the identity of "B.3 – 0335" is "necessary to protect the safety" of that individual should be dismissed.<sup>23</sup>

24. At the outset, it remains entirely unsubstantiated. In this regard the Prosecution has not met its burden as the "disclosing party", under the Redaction Protocol.<sup>24</sup> Further, in accordance with appellate jurisprudence, the Defence submits that particular care must be taken when balancing the interests of "B.3 – 0335" against those of Mr Yekatom, in light of the material and potentially

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<sup>22</sup> ICC-01/14-01/18-677, para. 65.

<sup>23</sup> See, Email from Prosecution to Defence, 4 October 2022 at 16.32.

<sup>24</sup> See, ICC-01/14-01/18-677, para. 73.

exculpatory nature of the identifying information of “B.3 – 0335” as set out above.<sup>25</sup>

25. In any event, “B.3 – 0335” does not qualify as an ‘innocent third party’ whose identifying information warrants redaction. The Chamber in its *Decision on Protocols at Trial*, further clarified in relation to category B.3 redactions that:

identifying information of individuals, [...] who were physically present at the scene of an alleged crime or individuals who have in any other way acquired or established knowledge of the events or circumstances part of a witness’s narrative cannot be redacted pursuant to these two categories [B.2 and B.3] as no standard justification applies.<sup>26</sup>

26. Again, on the facts, the evidence would appear to suggest that “B.3 – 0335” is himself [REDACTED]. On this basis, it can be inferred that “B.3 – 0335” would fall squarely within the above exception to category B.3 redactions.
27. Nor should the Defence be bound by the Prosecution’s conclusion that [REDACTED], and not “B.3 – 0335”, is [REDACTED]. While the Prosecution is free to believe the apparently unverified word of “B.3 – 0335” in this regard, it should be barred from relying on this unsound conclusion in attempting to justify its obstruction of legitimate Defence investigations into highly prejudicial allegations made against Mr Yekatom. This is especially the case where the Prosecution does not appear to have conducted any further follow-up inquiries with the aim of verifying “B.3 – 0335’s” claims; and by extension, verifying the allegations of P-1839 in this regard.
28. Indeed, granting the Prosecution the prerogative to unilaterally designate individuals whose names and identifying information have come up in its investigations as ‘innocent third parties’ – even in the face of contrary evidence

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<sup>25</sup> See, *Prosecutor v Katanga*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, [ICC-01/04-01/07-475 \(OA\)](#), 13 May 2008 (‘Katanga Decision’), para. 72(c).

<sup>26</sup> ICC-01/14-01/18-677, para. 71.

– would create a problematic disincentive to pursue investigative leads that would suggest the contrary, so as to obstruct Defence investigations.

29. Lastly, even if “B.3 – 0335” was not in fact [REDACTED], his claim to have been tortured at the hands of the Anti-Balaka disqualifies him as an “innocent third party”, given that it implies he was “physically present at the scene of an alleged crime”. Nor should the absence of further specific details as to which Anti-Balaka group and/or elements were responsible for “B.3 – 0335’s” treatment affect this determination, given that the Prosecution’s central allegation that Mr Yekatom was himself a member of the Anti-Balaka. Further, the well-established “overriding principle [...] that full disclosure should be made” and its corollary, that authorization for nondisclosure is the exception, rather than the rule,<sup>27</sup> further militates against an unduly expansive definition of “innocent third parties” in the context of redactions.

### **CONFIDENTIALITY AND URGENCY**

30. This Urgent Application is filed on a confidential basis as it contains reference to confidential evidence. A public redacted version will be filed simultaneously.
31. The Defence notes that the Redaction Protocol envisages that the Prosecution file submissions in response to this application within three days of notification, “unless otherwise decided by the Chamber”.<sup>28</sup> Given that P-1839’s is scheduled to commence her testimony on 21 October 2022, the Defence respectfully submits that this deadline be maintained. The Defence submits that any ensuing prejudice to the Prosecution is minimal, as the latter has been on notice of the contested nature of the redactions in question since at least 30 September 2022,<sup>29</sup> and of the Defence’s intention to file this application since 6 October 2022.<sup>30</sup>

<sup>27</sup> See e.g., Katanga Decision, para. 70.

<sup>28</sup> [ICC-01/14-01/18-677-Anx3](#), para. 6.

<sup>29</sup> *Supra*, paras 4-9.

<sup>30</sup> Email from Defence to Prosecution, 6 October 2022, at 18.49.

**RELIEF SOUGHT**

32. In light of the above, the Defence respectfully requests Trial Chamber V to:

**ORDER** that the Prosecution lift redactions applied to the identity of “B.3 – 0335”, and the phone number on which he called Prosecution investigators, in the Report; and,

**ORDER** that any submissions in response to this application be filed within three days, pursuant to paragraph 6 of the Redaction Protocol.

**RESPECTFULLY SUBMITTED ON THIS 18<sup>th</sup> DAY OF OCTOBER 2022**



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