

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **26 February 2026**

TRIAL CHAMBER V

Before: Judge Beti Hohler , Presiding Judge
Judge Joanna Korner
Judge Keebong Paek

**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 the 'Yekatom Defence Response to Prosecution
Motion for Non-Standard Redactions: Seleka Investigation', 13 August 2020,
ICC-01/14-01/18-623-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

D29

D30

☒ **Legal Representatives of the Victims**

V44

V45

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☐ **The Office of Public Counsel for Victims**

☒ **The Office of Public Counsel for the Defence**

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☐ **Counsel Support Section**

☒ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations Section**

☐ **Other**

INTRODUCTION

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) hereby respond to the *Prosecution’s Request for Non-Standard Redactions under Rule 81(2) for Trial Witnesses P-1143, P-1172, P-2377, P-0992, P-1558, and P-2587*.¹ They respectfully request that the proposed redactions be denied in their entirety.

RELEVANT PROCEDURAL HISTORY

2. On 24 September 2014, the Prosecution opened its investigation into crimes committed since 2012 in the Central African Republic.²
3. On 28 June 2019, over the objection of the Yekatom and Ngaïssona Defence teams,³ the Pre-Trial Chamber authorised the Prosecution to withhold the identities of five witnesses and redact portions of the statements of nine other witnesses because disclosure may prejudice the Prosecution’s ongoing investigation of the Seleka.⁴
4. On 17 July 2019, again over the objection of the Defence teams,⁵ the Pre-Trial Chamber authorised the Prosecution to redact portions of the statements of three additional witnesses for the same reasons.⁶
5. On 3 September 2019, the Pre-Trial Chamber rejected a request by the Yekatom Defence⁷ to lift the Seleka-related redactions.⁸

¹ [ICC-01/14-01/18-609-Conf-Red](#).

² [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening a second investigation in the Central African Republic](#), ICC-OTP-20140924-PR1043, 24 September 2014.

³ [ICC-01/14-01/18-165-Conf](#). A public redacted version can be found at [ICC-01/14-01/18-165-Red](#).

⁴ [ICC-01/14-01/18-232-Conf-Red](#). A public redacted version can be found at [ICC-01/14-01/18-232-Red2](#).

⁵ [ICC-01/14-01/18-230-Conf](#). A public redacted version can be found at [ICC-01/14-01/18-230-Red](#).

⁶ [ICC-01/14-01/18-249-Conf-Red](#). A public redacted version can be found at [ICC-01/14-01/18-249-Red2](#).

⁷ [ICC-01/14-01/18-290](#).

⁸ [ICC-01/14-01/18-315-Conf](#), para. 62. A public redacted version can be found at [ICC-01/14-01/18-315-Red](#).

6. In its decision on the confirmation of charges on 11 December 2019, the Pre-Trial Chamber noted the objections of the Defence to the fairness of the proceedings in light of the failure to lift the Seleka-related redactions,⁹ and reaffirmed that its decision not to lift those redactions did not prejudice the Defence.¹⁰
7. On 5 August 2020, the defence received a confidential redacted version of the *Prosecution's Request for Non-Standard Redactions under Rule 81(2) for Trial Witnesses P-1143, P-1172, P-2377, P-0992, P-1558, and P-2587*.¹¹

RELEVANT PROVISIONS

8. Rule 81(2)—Restrictions on Disclosure

Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence. The matter shall be heard on an ex parte basis by the Chamber. However, the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

ARGUMENT

9. The non-disclosure of portions of witness statements is an exception to the general rule of full disclosure.¹² Redactions may be granted if they satisfy the following requirements: (i) the existence of an objectively justifiable risk to the safety of the person or interest concerned, or which may prejudice further or ongoing investigations; (ii) the risk must arise from disclosing the particular information to the receiving party, as opposed to the public; (iii) the infeasibility or insufficiency of less restrictive protective measures and (iv) an assessment as

⁹ [ICC-01/14-01/18-340-Red](#), para. 25; [ICC-01/14-01/18-347](#), para. 7; Transcript of Hearing, [ICC-01/14-01/18-T-004-Red2-ENG](#), pp. 19-39 (19 September 2019).

¹⁰ [ICC-01/14-01/18-403-Red-Corr](#), para. 48.

¹¹ [ICC-01/14-01/18-609-Conf-Red](#).

¹² *Prosecutor v Katanga and Ngudjolo*, 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", 13 May 2008, [ICC-01/04-01/07-475](#), paras. 61, 70.

to whether the redactions sought are prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.¹³

10. The burden is squarely on the party seeking the redactions to justify the need for them.¹⁴
11. An application of these factors to the Prosecution's proposed redactions should result in a conclusion that the redactions are unwarranted.

(A) Prejudice to Further or Ongoing Investigations

12. The Prosecution's motion does not even attempt, on a witness-by-witness basis, to demonstrate how the disclosure of that particular witness' statement will prejudice its further or ongoing investigation of the Seleka.
13. The Defence, and the Court, are left to imagine the nature of the prejudice. For example, Witness P-1143 is a neighborhood chief. No showing is made that the disclosure of Seleka crimes in his neighborhood would reveal that the Prosecution's Seleka crime base includes crimes within that neighborhood. The Prosecution has disclosed, without redaction, statements which describe Seleka crimes throughout Bangui and other areas.¹⁵ Disclosure of Witness P-1143's description of Seleka crimes in his neighborhood would not necessarily indicate that those crimes were among the crime base of the Seleka investigation or which individuals in particular are the subject of the Prosecution's investigation. And even if it were, the prejudice to the Prosecution's further or ongoing investigation if a suspect learned of one of multiple crime base locations is speculative at best.

¹³ *Prosecutor v Bemba et al*, Decision on Modalities of Disclosure, 22 May 2015, [ICC-01/05-01/13-959](#), para. 11, citing authorities.

¹⁴ *Prosecutor v Gbagbo and Blé Goudé*, Judgment on the Appeal of Mr. Laurent Gbagbo against the Oral Decision on Redactions of 29 November 2016, 31 July 2017, [ICC-02/11-01/15-915-Red](#), paras. 61-62.

¹⁵ See, for example, [CAR-OTP-2073-0775-R01](#), paras. 21-24; [CAR-OTP-2105-0991-R01](#), paras. 17-24; [CAR-OTP-2100-0252-R02](#), paras. 21-35; [CAR-OTP-2041-0741-R01](#), paras. 24-26; [CAR-OTP-2039-0252-R01](#); [CAR-OTP-2083-0263-R01](#).

14. Witness P-1172 is a FACA officer who was captured by the Seleka. No showing is made that disclosure of the identity of those who abducted or mistreated him would reveal the targets of the Prosecution's investigation. The Prosecution has disclosed, without redaction, statements of witnesses claiming that they were abducted by the Seleka.¹⁶ Some of the disclosed statements personally implicate the highest leaders of the Seleka, such as Nouredinne Adam and Ali Darassa, as well as specific Seleka elements such as General Arda or Colonel Achaqui, in crimes.¹⁷
15. Given that the Prosecution is expected to only prosecute those having the greatest responsibility for crimes in CAR, disclosure of Witness P-1172's description of his abduction and mistreatment would not necessarily indicate that those persons are among the targets of the Prosecution's investigation. And even if it did, the prejudice to the Prosecution's further and ongoing investigations if a suspect learned he is under investigation by the OTP is speculative at best. Those at the top of the Seleka have known since 2014 that the ICC would focus on them.
16. Witnesses P-2377, P-1558, and P-2587 are [REDACTED] who witnessed [REDACTED]. No showing is made that the disclosure of their information about Seleka crimes would allow the suspects to learn who or what is under investigation. The Prosecution has disclosed, without redaction, the statements of [REDACTED] who witnessed Seleka crimes¹⁸ and [REDACTED].¹⁹ The prejudice to the Prosecution's further and ongoing investigations from the disclosure of the observations of people [REDACTED] is both speculative and incongruous.

¹⁶ See, for example, [CAR-OTP-2072-0521-R01](#) at 0527, [CAR-OTP-2072-0544-R02](#) at 0545-0551.

¹⁷ See, for example, [CAR-OTP-2016-0652-R01](#), paras. 54-77; [CAR-OTP-2033-8177-R01](#); [CAR-OTP-2099-0165-R01](#), paras. 292-97; [CAR-OTP-2107-3696-R01](#), p. 3719; [CAR-OTP-2078-0059-R02](#), paras. 31-32, 37-38, 46; [CAR-OTP-2033-7885-R02](#), paras. 22-24; [CAR-OTP-2008-1188-R01](#), paras. 47-69; [CAR-OTP-2094-0228-R02](#), paras. 40-43; [CAR-OTP-2082-0299-R03](#), paras. 16-24; [CAR-OTP-2076-0037-R02](#) at 0051-0055.

¹⁸ [REDACTED].

¹⁹ See, for example, [REDACTED]

17. For Witness P-0992, due to the redactions in the Prosecution's Motion, it is impossible to discern the nature of his information about Seleka crimes.²⁰
18. For the above reasons, the Trial Chamber should find that the Prosecution has failed to concretely establish how its Seleka investigation would be prejudiced by disclosure of the redacted material.

(B) Risk from Disclosure to the Defence Teams

19. The Prosecution offers no concrete reason why disclosure to the defence teams, as opposed to disclosure to the public would prejudice its Seleka investigation beyond the general claim that dissemination of the information to the Defence would create the "risk of leaks or inadvertent disclosure".²¹
20. Since this can be said in every case, to credit this blanket statement would be to give the Prosecution carte blanche to redact information at will.
21. It should be recalled that redaction of portions of witness statements to protect an ongoing investigation is unheard of at the *ad hoc* Tribunals. Indeed, more than a dozen defence teams had access to information of crimes committed in Bosnia long before the leaders, Radovan Karadzic and Ratko Mladic, were captured. No prejudice to the Prosecution's ability to prosecute those men was ever claimed or demonstrated.
22. In domestic jurisdictions, redaction of witness statements due to ongoing investigations is also unheard of. The Prosecution knows that when it makes a decision to file charges and decides to call a particular witness, it is going to have to make full disclosure of that witness' statements. It takes those considerations into account in its charging and witness selection decisions. It is

²⁰ [ICC-01/14-01/18-609-Conf-Red](#), para. 26.

²¹ [ICC-01/14-01/18-609-Conf-Red](#), para. 4.

not privileged to withhold that information on the general fear that the accused might leak it to other associates who remain under investigation.

23. In fact, this case presents the weakest facts for the risk of leaks or inadvertent disclosure. Unlike ongoing investigations of other suspects from the same side of the conflict, the Seleka were the enemies of the two accused in this case. The Prosecution has made no showing that the accused or their Defence teams are collaborating with any targets of the Seleka investigation. Therefore, the risks of leaks or inadvertent disclosure to the Seleka targets is zero.
24. In addition, the unprecedented restrictions on telephone communications of the accused has provided the Detention Centre authorities with the opportunity to monitor and discover the disclosure of confidential information by the accused. There has been no such incidents in the almost two years that they have been in detention.
25. Therefore, the Prosecution has failed to demonstrate how disclosure of the redacted information to the defence teams, as opposed to the public, would prejudice its further and ongoing investigation of the Seleka.

(C) Unavailability of Less Restrictive Protective Measures

26. The Appeals Chamber has held that if less restrictive protective measures are sufficient and feasible, a Chamber must choose those measures over more restrictive measures.²²
27. The Prosecution has several options available to it other than infringing on the rights of the accused to a fair trial.

²² *Prosecutor v Lubanga*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81, 14 December 2006, [ICC-01/04-01/06-773](#), para. 33.

28. One option, if the witness seems so important to the Seleka investigation, is to decide not to call the witness in the present case. From the descriptions of the six witnesses' role in the CAR events provided in the motion, compared with the other witnesses included in the Prosecution's preliminary witness list, none of these six witnesses appear to be crucial to the Prosecution's case.
29. When faced with a decision between the Prosecution's discretion and the accused's rights, the Trial Chamber should come down on the side of the rights of the accused to a fair trial.
30. Another option is for the Prosecution to call the witnesses involved at the end of its case, after the Seleka investigation has concluded and in ample time for preparation of cross examination after the redactions have been lifted. The Prosecution has not proposed this alternative. Should the Trial Chamber believe that the redactions are warranted, it should nevertheless order the Prosecution to call these witnesses at the end of its case.
31. Therefore, less restrictive measures are available other than granting the proposed redactions.

(D) Prejudice to the Rights of the Accused

32. The Prosecution, in its motion, takes a myopic view of the utility of the redacted information to the Defence. It limits its consideration to the nature of the material withheld and its relationship to the charged incidents. This approach ignores the fact that the Defence is not limited to cross examining a witness on the subject of the direct testimony, but can question the witness' general credibility by cross-examination on subjects unrelated to the direct examination.²³

²³ *Prosecutor v Katanga and Ngudjolo*, Directions for the Conduct of the Proceedings and Testimony, 20 November 2009, [ICC-01/04-01/07-1665-Corr](#), para. 69.

33. As a result, if the witness has made false statements about his or her experience with the Seleka, that is a proper subject of cross examination that bears on the credibility of the witness regardless of its connection to any of the charged incidents. A witness who lies about his or her experiences with the Seleka might be thought to also be lying about his or her experiences with the Anti-Balaka or the accused. For instance, the Prosecution disclosed an underacted statement of a witness claiming having been abducted and beaten by the Seleka, only to later claim he was in fact abducted and beaten by Mr. Yekatom.²⁴
34. The Prosecution's approach also fails to consider the issue of bias as a reason for disbelieving a witness. It is well established that bias is an important factor in assessing witness credibility.²⁵ A witness who downplays Seleka crimes might be seen to be biased when recounting Anti-Balaka crimes. A witness who exaggerates Seleka crimes might also be exaggerating Anti-Balaka crimes, perhaps with a motive to obtain reparations.
35. Therefore, there are important reasons to reject the proposed redactions without even considering how the subjects of the proposed redactions relate to the events that are the subject of the trial. This is why redactions are so exceptional.
36. Should the Trial Chamber examine the redactions and their relationship to the events in this case, it should first adopt the same rule as the Pre-Trial Chamber did and refuse any redactions related to the time period of the charges—September 2013 through December 2014.²⁶ Seleka crimes during that period can be falsely attributed to the Anti-Balaka,²⁷ and can form the basis of a legitimate

²⁴ [CAR-OTP-2046-0650-R01](#) cf. [CAR-OTP-2121-2788-R01](#), paras. 57-114.

²⁵ *Prosecutor v Katanga*, Judgment pursuant to Article 74 of the Statute, 7 March 2014, [ICC-01/04-01/07-3436](#), para. 85.

²⁶ [ICC-01/14-01/18-232-Conf-Red](#), para. 58.

²⁷ See, for example, [CAR-OTP-2110-0355-R01](#), para. 25 claiming Anti-Balaka killed the patients at the Hôpital de l'Amitié while other material disclosed by the Prosecution indicates this was in fact the done by the Seleka; [CAR-OTP-2045-0348](#); [CAR-OTP-2107-1028-R01](#) at 1035; [CAR-OTP-2014-0129-R01](#), para. 37.

military objective for attacks,²⁸ and reasons for displacement of the population.²⁹ This is particularly true when the subject of the redactions are events that took place in the same location as the crimes charged.

37. In addition, Seleka crimes outside of that time period can form an important part of the context of the crimes and credibility of the witness, including, in the case of Witnesses P-1172 and P-0992, their reasons for joining the Anti-Balaka, in the case of P-2377, P-1558, and P-2587, [REDACTED], and in the case of P-1143, collaboration with or fear of the Seleka.
38. Therefore, even if the Trial Chamber finds it necessary to consider the connection between the Seleka crimes and the events at issue in this case, it should find that the rights of the accused will be prejudiced by redacting material that not only affects the credibility of the witnesses, but impacts on the very events that are the subject of the trial.

CONCLUSION

39. The Trial Chamber is respectfully requested to deny the Prosecution's motion in its entirety.

CONFIDENTIALITY

40. This pleading is filed confidentially because it responds to a motion that has been filed confidentially and for which no public redacted version has yet been filed. The Chamber is requested to issue a public redacted version of its decision and order the parties to file public redacted versions of its submissions.

²⁸ See, for example, [CAR-OTP-2065-1300](#).

²⁹ [CAR-OTP-2104-0033-R01](#), paras. 19-24; [CAR-OTP-2063-0369-R01](#), para. 21; [CAR-OTP-2100-0226-R01](#), paras. 15-19.

RESPECTFULLY SUBMITTED ON THIS 26th DAY OF FEBRUARY 2026



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands