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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of

**Decision on the Urgent Yekatom Defence Application to Lift Redactions in
Document CAR-OTP-2130-0140**

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

The Office of the Prosecutor

Counsel for Alfred Yekatom

Counsel for Patrice-Edouard Ngaïssona

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2) and (6)(c), 67(2) and 68(1) of the Rome Statute (the ‘Statute’), and Rules 77 and 81(4) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Urgent Yekatom Defence Application to Lift Redactions in Document CAR-OTP-2130-0140’.

I. Procedural history

1. On 7 October 2022, the Yekatom Defence (the ‘Defence’) filed an ‘Urgent application for redaction lift in document CAR-OTP-2130-0140’, requesting that the Chamber, *inter alia*, order the Office of the Prosecutor (the ‘Prosecution’) ‘to lift two redactions contained within its investigation report bearing ERN CAR-OTP-2130-0140’, which contains additional information regarding witness P-1839 (the ‘Report’ and the ‘Request’). In particular, the Defence argues that redactions to the identifying and contact information of an individual mentioned in the Report (the ‘Redacted Information’) should be lifted.¹
2. On 10 October 2022,² the Common Legal Representative of the Former Child Soldiers and the Common Legal Representative of the Victims of Other Crimes (the ‘CLRV’) informed the Chamber that they did not intend to file a response.³
3. On 11 October 2022, the Prosecution responded to the Request, requesting that the Chamber reject it (the ‘Response’).⁴

II. Analysis

¹ Request, ICC-01/14-01/18-1599-Conf, paras 1-2, 32.

² Noting that, ‘pursuant to the Redaction Protocol, the disclosing party “shall file submissions [...] within three days from notification of the application made by the receiving party” (ICC-01/14-01/18-677-Anx3, para. 6)’ and that P-1839 is scheduled to commence her testimony on 21 October 2022, the Single Judge instructed the participants to submit responses to the Request, if any, by the same deadline (email from the Chamber, 7 October 2022, at 15:31).

³ Email from the CLRV, 10 October 2022, at 18:52.

⁴ Prosecution’s Response to the Yekatom Defence Urgent application for redaction lift in document CAR-OTP-2130-0140 (ICC-01/14-01/18-1599-Conf), ICC-01/14-01/18-1606-Conf, paras 1, 30.

4. The Single Judge recalls the applicable law on the Prosecution's disclosure obligations and the restrictions on disclosure as previously set out.⁵ Further, he recalls that, in its 'Decision on Protocols at Trial', the Chamber adopted, *inter alia*, the 'Protocol governing the redaction of evidence at trial', which updated some of the terms included in the protocol adopted by Pre-Trial Chamber II that had remained in place until then (the 'Redaction Protocol').⁶
5. Turning to the Request, the Single Judge notes that the Report indicates that (i) P-1839 provided the Prosecution with the phone number of [REDACTED] [REDACTED] according to the witness, and who [REDACTED] [REDACTED] (ii) upon calling this phone number, Prosecution investigators spoke with an individual who, after introducing himself, stated that 'he had been a victim of the Anti-Balaka' and 'is handicapped because of the torture he underwent at their hands' (the 'Individual'); and (iii) the Individual later called the Prosecution back from another number, indicating that the phone he had answered their initial call on belonged to his employee, [REDACTED]. The Single Judge further notes that the Report indicates that '[t]he investigators concluded that [REDACTED] is likely to be the [REDACTED] that they sought to screen'.⁷
6. As regards the Defence's submissions on the materiality of the Redacted Information, the Single Judge notes that, according to the Defence, 'P-1839's allegations regarding [REDACTED] arrest and torture at the hands of Mr Yekatom's group are highly prejudicial' and that it is 'self-evident that the identity of [REDACTED] is thus material to Defence investigations and preparations' pursuant to Rule 77 of the Rules. He further notes its submissions that, since there are 'reasonable grounds' to believe that the Individual is himself [REDACTED] the identity of the Individual as well as the phone number on which the

⁵ Decision on the Ngaïssona Defence Request for Disclosure of Reports related to Seizure of Digital Materials from P-0889, 30 May 2022, ICC-01/14-01/18-1438-Conf (public redacted version notified on 30 September 2022, ICC-01/14-01/18-1438-Red), paras 6-9; Decision on the Common Legal Representative of the Former Child Soldiers Request to Maintain Redactions to Identifying and Contact Information of Intermediaries mentioned in Victim Application Forms, 21 September 2022, ICC-01/14-01/18-1578-Conf (public redacted version notified the same day, ICC-01/14-01/18-1578-Red), paras 23-26.

⁶ Annex 3 to the Decision on Protocols at Trial, 8 October 2020, ICC-01/14-01/18-677-Anx3. *See also* Decision on Protocols at Trial, ICC-01/14-01/18-677, paras 71-79, p. 31.

⁷ *See* CAR-OTP-2130-0140.

latter called Prosecution investigators are, by extension, material to the defence's preparation.⁸

7. With regard to P-1839's allegations concerning [REDACTED]
[REDACTED]⁹ the Single Judge notes that this alleged incident does not form part of the confirmed charges against Mr Yekatom nor of 'the narrative underpinning the charged events in this case'.¹⁰ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹¹ The Single Judge therefore agrees with the Prosecution's submission that the Redacted Information 'concerns a *collateral* issue, at best'.¹²
8. Moreover, the Single Judge takes note of the Defence's submissions concerning the Prosecution's lack of further enquiry about the identity of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹³ However, the Single Judge considers the Defence's submission that [REDACTED]
[REDACTED]
In any event, and for the reasons stated above, the Single Judge does not consider the identity of [REDACTED] material for the preparation of the defence at this stage.
9. Further, the Single Judge notes that, following *inter partes* consultations, the Prosecution lifted a redaction applied to 'the phone number of [REDACTED] in the Report'.¹⁴ He therefore trusts that the Prosecution has reviewed all of the

⁸ Request, ICC-01/14-01/18-1599-Conf, paras 19-20.

⁹ See CAR-OTP-2072-0521, at 0528; CAR-OTP-2072-0946, at 0947-0949, 0951-0952, 0966, 0968-0973; CAR-OTP-2072-1134, at 1144; CAR-OTP-2122-6762, at 6776.

¹⁰ See also Response, ICC-01/14-01/18-1606-Conf, para. 8.

¹¹ See Final Witness List in Annex A to Prosecution's List of Witnesses and Evidence, 10 November 2020, ICC-01/14-01/18-724-Conf-AnxA, pp. 14-15, entry 4.

¹² Response, ICC-01/14-01/18-1606-Conf, para. 9.

¹³ Request, ICC-01/14-01/18-1599-Conf, paras 16-20.

¹⁴ Request, ICC-01/14-01/18-1599-Conf, para. 7.

redactions applied to the Report in good faith to ensure that it has fully discharged its disclosure obligations, and is in compliance with the Redaction Protocol.

10. Turning to the Defence's submissions concerning the potential exculpatory nature of the Redacted Information, the Single Judge notes that the Defence submits that [REDACTED] this would suggest that P-1839 did not provide [REDACTED] to Prosecution investigators, 'potentially affect the credibility of P-1839's broader allegations regarding the latter' and thus be subject to disclosure pursuant to Article 67(2) of the Statute.¹⁵
11. The Single Judge, however, is unconvinced by these arguments, which speculatively assume that P-1839 consciously and knowingly provided the Prosecution with [REDACTED].¹⁶ The Single Judge notes that, in any event, the Defence will have the opportunity to examine P-1839 and explore this and any other issues with her in the courtroom, including the allegations related to the incident in question.
12. In light of the above, the Single Judge finds that the Redacted Information is not subject to disclosure pursuant to Article 67(2) of the Statute.
13. Accordingly, the Single Judge considers that, in light of the information currently available, the disputed redactions are justified under the Redaction Protocol and should be maintained. The Request is thus rejected.

¹⁵ Request, ICC-01/14-01/18-1599-Conf, para. 21.

¹⁶ See also Response, ICC-01/14-01/18-1606-Conf, para. 19.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request; and

ORDERS the Yekatom Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-1599-Conf, and the Response, ICC-01/14-01/18-1606-Conf, within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.

/Signed/

Judge Bertram Schmitt

Single Judge

Dated 13 April 2026

At The Hague, The Netherlands