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Date: **21 December 2018**

PRE-TRIAL CHAMBER II

Before: Judge Tomoko Akane, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM***

Public with Public Annex A

Prosecution's Request for a Protocol on Redactions

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Pre-Trial Chamber II (“Chamber”) to adopt the model protocol provided in the May 2017 Chambers Practice Manual (“Model Redactions Protocol”)¹ with one variation, namely: that the protocol apply to all Parties and Participants to the proceedings unless otherwise indicated.

2. Adopting a redactions protocol at this stage will facilitate the discharge of disclosure obligations by all Parties and Participants. It will also promote an efficient disclosure process, create consistency and coherence between the pre-trial and potential trial phases of the proceedings, and produce a common understanding of the nature of redactions between all Parties and Participants and the Chamber. Adopting the Model Redactions Protocol with the proposed variation will ensure that the Parties and Participants and the Chamber benefit from the cumulative experience and practice regarding protocols implemented by Chambers in previous cases.

3. Annex A depicts the changes proposed by the Prosecution to the Model Redactions Protocol in track changes that should be adopted in this case.

II. SUBMISSIONS

A. The Chamber Should Adopt a Redactions Protocol in this Case

4. The Model Redactions Protocol outlines an *inter partes* disclosure system whereby the disclosing party: (i) applies redactions to information according to a set of categories pre-approved by the Chamber; (ii) similarly relies on a pre-approved standard set of justifications for each redaction category; (iii) lifts certain categories

¹ See [Chambers Practice Manual](#), May 2017, pp. 28-30.

of redactions according to a fixed timeline determined by the Chamber; and (iv) only in limited cases falling outside the pre-approved categories or requiring exceptional measures, applies to the Chamber for redactions on a case-by-case basis. While the Model Redactions Protocol is not binding on this Chamber, it reflects best practices “based on the experience and expertise of judges across trials at the Court” and serves as an appropriate standard for redactions in this case.²

5. A streamlined redaction procedure is essential to an efficient disclosure process. In preparation for the confirmation of charges proceedings, rule 77 of the Rules of Procedure and Evidence (“Rules”) requires the Prosecution to disclose evidence it intends to rely on, or that is material to the preparation of the Defence. Article 61(6)(c) permits the Defence to present evidence to object to charges presented by the Prosecution or challenge the evidence supporting those charges. Article 68(3) also allows the Chamber to permit the views and concerns of victims whose personal interests are affected.³

6. Generally, disclosable material should be “served in full” unless redactions are authorised.⁴ Rule 81(1) permits the Parties and Participants to withhold internal work product. Rule 81(2) authorises the Prosecution to redact information to protect the integrity of continuing or further investigations, and rule 81(4) authorises redactions to protect victims, witnesses, their families, or any other “persons at risk on account of the activities of the Court.”⁵

7. A redactions procedure applicable to all Parties and Participants accounts for all the above requirements. It also provides for a clear and predictable process through which the Chamber can fairly and efficiently manage the complexities of the disclosure and redactions process. A comprehensive and clear protocol adopted

² [Chambers Practice Manual](#), May 2017, p. 3.

³ See e.g. ICC-02/11-01/11-138, paras. 46-52.

⁴ ICC-01/04-02/06-411, para. 13.

⁵ ICC-01/04-01/07-475, para. 56.

early in the proceedings will also help position the Parties and Participants, particularly the Prosecution, to meet their disclosure obligations on time.

B. The Model Redactions Protocol Should be Changed to Apply to all Parties and Participants

8. The Model Redactions Protocol should apply to all Parties and Participants to the proceedings unless otherwise indicated. As it stands, it only applies to the Prosecution. It does not account for the fact that the Statute and Rules contemplate disclosure by *all* Parties and Participants to the proceedings to varying degrees.

9. While the Prosecution, as the chief investigative and prosecutorial body, bears the greatest disclosure burden, the Defence and putative victims have disclosure obligations that arise depending on whether they wish to present evidence during the confirmation proceeding or at trial (articles 61(6)(c) and 68(3) and rules 78 and 79, for instance). Further, rules 81(1) and (4) permit redactions or exceptions to disclosure by all parties and participants to the case, and not just the Prosecution. Rule 81(2), on the other hand, only applies to information or material “in the possession or control of the Prosecutor” whose “disclosure may prejudice further or ongoing investigations.” For these reasons, the Prosecution has proposed no changes to the text concerning redactions permitted in the Model Redactions Protocol under rule 81(2); whereas textual changes are proposed in respect of redactions permitted under rule 81(1) and (4) to apply more broadly to all Parties and Participants.

10. Adjusting the Model Redactions Protocol to apply to all Parties and Participants ensures that there is a singular governing document establishing a consistent redactions process throughout the case. This further ensures predictability, certainty, and that Parties and Participants apply redactions fairly and uniformly under the Chamber’s clear guidance.

III. RELIEF SOUGHT

11. For the above reasons, the Prosecution requests that the Chamber adopt the Model Redactions Protocol with the changes identified at annex A.



Fatou Bensouda, Prosecutor

Dated this 21st day of December 2018
At The Hague, The Netherlands