

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **13 September 2019**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Tomoko Akane  
Judge Rosario Salvatore Aitala

**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 Supplemental Submissions  
in Support of Motion to Lift Redactions**

**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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**Victims Participation and Reparations  
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully provide precise and detailed arguments regarding the remaining points of disagreement in support of its *Motion to Lift Redactions*.

## **CONFIDENTIALITY**

2. This submission is filed confidentially as it refers to confidential filings and decisions and reveals information that can lead to the identities of Prosecution witnesses. A public redacted version is being filed contemporaneously.

## **RELEVANT PROCEDURAL HISTORY**

3. On 19 August 2019, the Prosecution filed its Document Containing the Charges (“DCC”).<sup>1</sup>
4. On 26 August 2019, the Defence filed a *Motion to Lift Redactions*.<sup>2</sup>
5. The Prosecution filed its response on 2 September 2019.<sup>3</sup>
6. On 3 September 2019, the Chamber [REDACTED].<sup>4</sup>
7. On 9 September 2019, the Prosecution responded to the outstanding requests for redactions. On 11 September 2019, the parties conferred and reduced the number of items in dispute.<sup>5</sup>

## **ARGUMENT**

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<sup>1</sup> [ICC-01/14-01/18-282-Conf-AnxB1](#).

<sup>2</sup> [ICC-01/14-01/18-290](#).

<sup>3</sup> [ICC-01/14-01/18-310](#).

<sup>4</sup> [ICC-01/14-01/18-315-Conf](#), para. 89(b).

<sup>5</sup> The Defence did not consult with counsel for the victims because it is not aware of any victims having the dual status of witness, and the Prosecution and counsel for the victims are coordinating on these issues.

8. The remaining points of disagreement involves whether the standard redaction for family members—B.2—or the redaction for innocent third parties—B.3—can be used for persons who are witnesses to the events charged in the DCC, and whether the Prosecution can continue to redact witness statements based on the ongoing nature of its five-year-old investigation of the Seleka.

**A. Family Member and Innocent Third Parties Standard Redactions**

9. The first precise and detailed argument concerning the remaining points of disagreement involves the incident that is the subject of **Counts 11-17**. According to the DCC:

[REDACTED].<sup>6</sup>

10. [REDACTED].<sup>7</sup> However, the identity of the other two women who were with her is redacted under B.2—family members.<sup>8</sup> The identity of the other two women are also redacted from the statements of two other witnesses to this event—Prosecution Witnesses P-1654<sup>9</sup> and P-1704<sup>10</sup> under B.2—family members.
11. While the two women are indeed family members of the three witnesses, they are also eyewitnesses and victims to the events. Two Trial Chambers have held that the standard redaction for family members is inappropriate where the family members are eyewitnesses or victims.<sup>11</sup> The Chamber should follow these precedents and order the Prosecution to lift the redactions of the identities of the two women.

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<sup>6</sup> [ICC-01/14-01/18-282-Conf-AnxB1](#), paras 296-300.

<sup>7</sup> [CAR-OTP-2058-0003-R02](#), paras 38-54.

<sup>8</sup> *Id.*, paras 16, 26, 30-31, 38, 43, 45, 49, 50.

<sup>9</sup> [CAR-OTP-2053-0112-R01](#), paras 20, 21, 25, 28.

<sup>10</sup> [CAR-OTP-2054-1136-R02](#), paras 22, 57.

<sup>11</sup> See [ICC-01/14-01/18-290](#), paras 36-37.

12. The second precise and detailed argument concerning the remaining points of disagreement involves **Count 1**, charging Mr. Yekatom with responsibility for the 5 December 2013 attack on the civilian population in the Boeing and Cattin areas of Bangui.
13. Witness P-1588 indicated in her statement that [REDACTED].<sup>12</sup> The name of her grandfather is redacted under B.2—family member.<sup>13</sup>
14. Because her grandfather is an eyewitness to the crime charged in Count 1, it is inappropriate that his identity be redacted under the family member standard redaction under the precedents of this court referred to above.<sup>14</sup> The Chamber should follow these precedents and order the Prosecution to lift the redactions of the identity of the witness' grandfather.
15. Similarly, Witness P-1588, in her statement, indicated that [REDACTED].<sup>15</sup> The name of her nephew is redacted under B.2—family member. For the same reasons, the Chamber should order the Prosecution to lift the redaction of the identity of the witness' nephew.
16. The third precise and detailed argument concerning the remaining points of disagreement involves **Count 29**, charging Mr. Yekatom with the enlistment and use of child soldiers. Witness P-2442 [REDACTED]. She indicated that [REDACTED]. [REDACTED].<sup>16</sup> The identity of her cousin is redacted under B.2—family member.<sup>17</sup> The Defence has a legitimate right to interview the cousin to determine if in fact the witness went to an Anti-Balaka camp, her age at the time, the relationship of Mr. Yekatom to that camp, as well as any claim

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<sup>12</sup> [CAR-OTP-2047-0257-R01](#), paras 52-64.

<sup>13</sup> *Id.*, paras 52, 78, 90.

<sup>14</sup> See [ICC-01/14-01/18-290](#), paras 36-37.

<sup>15</sup> [CAR-OTP-2056-0412-R02](#), para. 54

<sup>16</sup> [CAR-OTP-2105-0940-R01](#), para. 118, commenting on [CAR-OTP-2071-0279-R01](#).

<sup>17</sup> [CAR-OTP-2105-0940-R01](#), paras 28, 30, 31, 33, 100-101, 118.

of [REDACTED]. The coincidence that a person involved in the offense happens to be a family member of the witness cannot be used to deprive the Defence of the right to investigate and defend this allegation with full equality of arms. The Chamber should order the Prosecution to lift the redaction of the identity of the witness' cousin.

17. The fourth precise and detailed argument concerning the remaining points of disagreement involves **Counts 4 and 5**, charging Mr. Yekatom with forcible transfer and displacement of civilian population from Cattin. Witness P-1528 related that [REDACTED]. The identity of the friend is redacted under B.3—innocent third party.<sup>18</sup> The Defence has the right to know the identity of this individual to determine if the witness in fact was displaced as a result of this event. The Chamber should order the Prosecution to lift the redaction of the identity of the friend.
18. The specific examples above warrant an order from the Chamber that the Prosecution lift these redactions and apply the principle that the B.2 and B.3 standard redactions should not be maintained for family members or third parties who are witnesses to the events that are the subject of the DCC to all other instances in which the B.2 or B.3 redactions have been used.

## **B. Ongoing Investigation**

19. Prosecution Witness P-0627 is an important witness for the Prosecution. [REDACTED].<sup>19</sup> However, wide swaths of the transcript of his interview with the Prosecution have been redacted on the grounds that disclosure would interfere with the Prosecution's Seleka investigation.<sup>20</sup>

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<sup>18</sup> [CAR-OTP-2048-0757-R01](#), para. 37.

<sup>19</sup> See DCC, [ICC-01/14-01/18-282-Conf-AnxB1](#), para. 40, fns 77 and 79; para. 143, fn. 356.

<sup>20</sup> [CAR-OTP-2102-1171-R01](#) at 1172 to 1175; [CAR-OTP-2102-1196-R01](#) at 1177 to 1195; [CAR-OTP-2102-1196-R01](#) at 1198 to 1128; [CAR-OTP-2102-1229-R01](#) at 1230 to 1264; [CAR-OTP-2102-1431-R01](#) at 1432 to 1469; [CAR-OTP-2102-1470-R01](#) at 1471 to 1504.

20. Likewise, Witness P-0291 [REDACTED].<sup>21</sup> Yet wide swaths of his witness statement have been redacted on the grounds that disclosure would interfere with the Prosecution's Seleka investigation.<sup>22</sup>
21. Likewise, Witness P-0567 [REDACTED].<sup>23</sup> But the portions of his statement when he talked about [REDACTED] have been redacted.<sup>24</sup> The activities and capabilities of the Seleka during this period are material to the preparation of the Defence as they may demonstrate that those attacked on 5 December 2013 were not civilians and/or that the Seleka was not sufficiently organised as an armed group at that time.
22. This is as specific and detailed as the Defence can get concerning these redactions because the broad nature of the redactions makes it impossible for the Defence to know precisely what is being redacted. However, the Chamber has access to this information and can examine it in detail.
23. The Defence has explained the relevance of information about the Seleka structure to the *chapeau* element of the war crimes charges that the Seleka had been sufficiently organised for the events charged in the DCC to have been committed as part of a non-international armed conflict,<sup>25</sup> and the relevance of information about Seleka crimes to the issues relating to the alleged attack on civilians on 5 December 2013.<sup>26</sup>
24. The Defence is aware that [REDACTED].<sup>27</sup> It contends that to maintain the redactions through the confirmation hearing violates Mr. Yekatom's rights to a fair confirmation process and at this stage, those rights outweigh any

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<sup>21</sup> See DCC, [ICC-01/14-01/18-282-Conf-AnxB1](#), para. 151, fn. 395.

<sup>22</sup> [CAR-OTP-2034-0104-R02](#), paras 71-99, 112-14.

<sup>23</sup> [CAR-OTP-2107-2771](#), para. 37.

<sup>24</sup> *Id.*, paras 40-64.

<sup>25</sup> [ICC-01/14-01/18-297-Conf](#), paras 7-20 (public redacted version [ICC-01/14-01/18-297-Red](#)).

<sup>26</sup> [ICC-01/14-01/18-284](#), paras 22-33.

<sup>27</sup> [ICC-01/14-01/18-232-Conf-Red](#); [ICC-01/14-01/18-249-Conf-Red](#).

inconvenience to the Prosecution from disclosure of information about its long-running investigation of the Seleka.

25. For all of these reasons, it is respectfully requested that the redactions on account of the on-going Seleka investigation for Witnesses P-0627, P-0291, and P-0567 be lifted and that the Prosecution be ordered to lift all other redactions based on its on-going Seleka investigation.

### CONCLUSION

26. As ordered by the Chamber, the Defence has conducted *inter partes* consultations with the Prosecution and, while progress was made, disputes remain as to the scope of the standard redaction for family members and third parties and the continuing need for redactions due to the Prosecution's Seleka investigation. Armed with the precise and detailed arguments above, the Chamber should order the redactions lifted.

**RESPECTFULLY SUBMITTED ON THIS 13<sup>TH</sup> DAY OF SEPTEMBER 2019**



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