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Pénale
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**International
Criminal
Court**

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

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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 with Confidential Annex A

**Yekatom Defence Submissions on Proposals concerning Redactions
on the Decision on the Confirmation of Charges**

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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**Unrepresented Applicants
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**Victims Participation and Reparations
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully submits its proposals as to the redactions to be applied to the Pre-Trial Chamber (“Chamber”)'s *Decision on the Confirmation of Charges against Alfred Yekatom and Patrice-Edouard Ngaïssona* (“Confirmation Decision”), as ordered by the Chamber in the same decision.¹

CONFIDENTIALITY

2. Annex A to the present submissions containing the excerpts with proposed redactions is classified as confidential due to the sensitivity of the information and the security implications for the individuals concerned and/or their family.

PRELIMINARY REMARKS

3. In light of the similar views expressed by the Common Legal Representatives on reclassification issues in the past, the Defence engaged in an *inter partes* discussion with the CLR in an effort to present joint submissions. Whilst the Defence and the CLR agreed on most of the issues, the logistical constraints and the disagreements on certain details prevented a joint filing. The good faith of the CLR is nevertheless gratefully acknowledged.

SUBMISSIONS

4. It is a well-established principle that the criminal proceedings should be public in nature.² It follows that the records of the proceedings are presumptively public. When a decision resolves a “fundamental issue”, such as the confirmation of charges, additional weight is afforded to the interest of public access.³ This is not only to safeguard one’s right to a fair trial and to promote the transparency of a publicly funded institution, but also to facilitate the searching of the truth.

¹ [ICC-01/14-01/18-403-Conf](#), para. 37 and p. 104.

² See, e.g., International Covenant on Civil and Political Rights, article 14(1); European Convention on Human Rights, article 6(1). For the implementation of this principle in the Court’s statutory framework, see Rome Statute, articles 64(7), 67(1), 68(2); Regulations of the Court, Regulation 8. See also, Chamber’s Practice Manual (29 November 2019), p. 25, para. 74(iii).

³ Rules of Procedure and Evidence, Rule 40(2).

5. Whilst the presumption of public access is not absolute, any restriction thereof is exceptional. It should be “strictly limited to what is necessary to safeguard other interests also protected under the Statute”.⁴ By nature, a decision on the confirmation of charges concerns individuals discussing, purportedly implicated in, or victimised by atrocities. This does not in itself justify redaction. The onus, in this instance, is on the Prosecution to duly demonstrate that the proposed redactions are necessary and proportionate.⁵ Nonetheless, the Prosecution made no such efforts. The proposed redactions are presented with no explanation as to the basis.⁶

6. Whereas the Defence is not in a position to address the propriety of the *considerations* underpinning the Prosecution’s proposals, its submissions are limited to the necessity and proportionality of the redactions based on what is known to the Defence.

A. Witness pseudonyms

7. The Defence opposes the redaction of witness pseudonyms.

8. An individual cannot be identified through his/her pseudonym. That is why the use of pseudonym in lieu of the name is a recognised protective measure against the risk on account of the testimony given by a witness.⁷ In this case, there is no indication that it is insufficient to protect the safety and security of the relevant individuals or that specific circumstances warrant additional measures.⁸ Let alone that the use of pseudonym would pose an objectively justifiable risk to their safety. The redaction of pseudonyms is therefore neither necessary nor proportionate.

⁴ *Prosecutor v. Gbagbo & Blé Goudé*, [Decision on Mr. Gbagbo’s Request for Lifting of Redactions and Reclassification of Documents in the Record \(confidential filing no. 1173\) and related orders](#), ICC-02/11-01/15-1194, 5 July 2018, para. 7. See also Rome Statute, article 68(2).

⁵ *Prosecutor v. Gbagbo & Blé Goudé*, [Second Decision on Objections concerning Access to Confidential material on the Case Record](#), ICC-02/11-01/15-150, 21 July 2015, para. 13.

⁶ [ICC-01/14-01/18-405](#) and [its annex](#).

⁷ Rules of Procedure and Evidence, Rule 87(3)(d).

⁸ Rules of Procedure and Evidence, Rule 88(1).

9. In the event where an individual could reasonably be identified through the content following the pseudonym, the Defence proposes to limit the redaction to the identifying content until the involvement of the individual in the proceedings is publicly known. This is necessary to avoid contaminating the pseudonym.

10. Out of abundance of caution, the Defence does not oppose the redaction of pseudonym for two witnesses. The first witness⁹ is the subject of the confidential litigation discussed in paragraphs 31 to 34 of the Confirmation Decision as well as an ongoing confidential litigation.¹⁰ Pending the resolution of the matter, redacting the pseudonym as well as the circumstances of the dispute appears appropriate. The second witness¹¹ is granted anonymity by the Chamber.¹² Whereas the Defence is not privy to all the details underpinning the security concerns, it defers to the Chamber's discretion.

11. Notwithstanding the above, the Defence respectfully asks that another public version of the Confirmation Decision with these redactions lifted be issued once reasons for non-disclosure no longer stand.

B. Public figures and public information

12. The Defence opposes the redaction of names and functions of publicly known figure, and their publicly reported involvement in certain events. The Defence similarly opposes the redaction of names and affiliation of publicly known organisation, and their publicly reported origin and involvement.¹³

13. Since the information is already widely available on the public domain, it is plainly unnecessary to withhold the relevant parts of the Confirmation Decision. On

⁹ Annex A, para. 3.

¹⁰ [ICC-01/14-01/18-407-Conf.](#)

¹¹ Annex A, para. 4.

¹² [ICC-01/14-01/18-261-Conf-Red.](#)

¹³ This is not to be interpreted as the Defence's concession that such information qualifies as common knowledge within the meaning of Article 69(6) of the Statute.

the contrary, the publicity of the factual findings extrapolated from such information is the quintessential transparency which would serve to better inform the public, particularly the citizens of the Central African Republic, of the Court's work.

14. The Defence notes that such information is redacted from the public version of the Document Containing the Charges ("DCC"). However, this should not be used as a guidance. The redactions are applied unilaterally with no justification provided. The parties and participants were not consulted beforehand. Nor was it subject to judicial review.

15. The Defence therefore urges the Chamber to scrutinise the necessity and proportionality of the proposed redactions of Confirmation Decision *de novo* and, where appropriate, direct the Prosecution to revise the redaction over the DCC accordingly.

C. Deceased persons

16. As a matter of principle, the Defence opposes the redaction of the name of a deceased person.

17. The Defence is mindful that a deceased person's family and/or individuals with knowledge to the circumstances of his/her death may have security concerns. But again, the burden lies with the Prosecution to demonstrate that these individuals would face objectively identifiable risk through the public identification of the deceased person.

18. In the present case, the Prosecution has failed to do so. The Chamber should reject the redactions as unnecessary and disproportionate.

D. Legal findings on Counts 11-17

19. The Defence opposes the redaction of the Chamber's legal findings on Counts

11-17 in relation to the Yamwara school incident,¹⁴ insofar as it does not identify the victims.

20. This is in line with the Chamber's decision granting the lift of redaction over the legal submissions in the transcript of the 23 September 2019 hearing.¹⁵

E. Portions not concerning Mr. Yekatom

21. Apart from the general objections elucidated above, the Defence abstains from making any specific submissions on portions of the Confirmation Decision which do not directly concern Mr. Yekatom.¹⁶ It defers to the Chamber's discretion.

CONCLUSION

22. In light of the above, the Defence urges the Pre-Trial Chamber to carefully scrutinise the redactions proposed by the Prosecution based on the necessity and proportionality in line with the paramount principles of publicity and transparency of the proceedings.

RESPECTFULLY SUBMITTED ON THIS 19TH DAY OF DECEMBER 2019¹⁷



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¹⁴ [ICC-01/14-01/18-403-Conf](#), paras 118-123.

¹⁵ Email from Pre-Trial Chamber II on 21 October 2019 titled "Decision on Request for Reclassification of ICC-01/14-01/18-T-008 of 23-09-2019", relayed to the parties on 17 December 2019 at 16:01.

¹⁶ [ICC-01/14-01/18-403-Conf](#), paras 105-112 (Bossangoa), 157-163 (Mr. Ngaïssona's individual criminal responsibility in relation to child soldiers), 164-213 (Mr. Ngaïssona's contribution; Mr. Ngaïssona's intent and knowledge; Boeing Muslim cemetery; Boy-Rabe; Yaloké, Gaga and Zawa; Bossempaté), 221-239 (Carnot; Berberati; Guen), and pp. 107-112 (disposition concerning Mr. Ngaïssona's criminal responsibility).

¹⁷ The assistance of Legal Interns Pia Savart of France and Justine Bernatchez of Canada in the research for this filing is gratefully acknowledged.