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

Date: **10 March 2021**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

Public redacted version of “Prosecution’s request to maintain redactions to the Decision on the confirmation of charges (ICC-01/14-01/18-403)”, 10 March 2021

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. Pursuant to Trial Chamber V's ("Trial Chamber") 10 March 2021 direction,¹ the Office of the Prosecutor ("Prosecution") requests the maintenance of limited redactions to the public version of Pre-Trial Chamber II's Decision on the confirmation of charges ("Confirmation Decision"),² in accordance with articles 64(2) and (6)(e) and 68(1) ("Request"). These redactions are the least restrictive means to appropriately balance the Accused's right to a fair and public trial against the Court's obligation to protect the physical and psychological well-being, dignity, and privacy, of victims and witnesses who appear before it. The Confidential Annex to this Request provides a highlighted version of the Confirmation Decision indicating these redactions.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Request and its annex are classified as "Confidential" to protect the very information that the Prosecution seeks to keep redacted in the public version of the Confirmation Decision, as well as sensitive security information. A public redacted version of this Request is filed concurrently.

III. SUBMISSIONS

3. The Prosecution incorporates by reference the arguments made about the current security situation of the witnesses in its Request for in-court protective measures

¹ Email sent by Trial Chamber to parties and participants on 23 February 2021, 15:47. The Chamber instructed the Prosecution, should redactions need to be maintained, to "(i) indicate, by way of filing, why these redactions remained justified, and (ii) highlight these redactions in the text of the confidential version of the Confirmation Decision and annex it to its filing."

² ICC-01/14-01/18-403-Conf-Corr; (public redacted version currently: ICC-01/14-01/18-403-Red-Corr).

(“ICPM Request”).³ Since the ICPM Request was filed on 7 December 2020, the security situation in CAR has deteriorated considerably. [REDACTED]⁴

4. Many of the redactions sought to be maintained are aimed at protecting the identities of witnesses for whom in-court protective measures guaranteeing anonymity *vis-à-vis* the public have been granted.⁵ Additionally, in the case of all trial witnesses – even those for whom in-court protective measures have not been requested or granted – the Prosecution maintains that revealing their identities prior to their testimony carries an inherent risk of interference and other misconduct that may interfere with the integrity of the proceedings.

A. Identity of insider witness [REDACTED]

5. Redactions to information that may reveal the identity of trial witness [REDACTED], prior to giving his testimony, remain justified.⁶ The public dissemination of [REDACTED] may be sufficient to identify him to members of the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

B. Identity of insider witness [REDACTED]

6. Redactions to information that may reveal the identity of trial witness [REDACTED] prior to giving his testimony, remain justified.⁷ The witness has been granted in-court protective measures that guarantee his anonymity *vis-à-vis* the public.⁸ The public dissemination of [REDACTED] may identify him to members of

³ ICC-01/14-01/18-757-Red2, paras. 9-23.

⁴ ICC-01/14-01/18-893-Conf, para. 8. *See generally also* ICC-01/14-01/18-893-Conf-Anx-Red.

⁵ *See* ICC-01/14-01/18-906-Conf.

⁶ *See* highlights applied in Confidential Annex at paras. [REDACTED].

⁷ *See* highlights applied in Confidential Annex at [REDACTED].

⁸ *See* ICC-01/14-01/18-906-Conf, p. 45.

the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

C. Identity of insider witness [REDACTED]

7. Redactions to information that may reveal the identity of trial witness [REDACTED] prior to giving his testimony, remain justified.⁹ The witness has been granted in-court protective measures that guarantee his anonymity *vis-à-vis* the public.¹⁰ The public dissemination of [REDACTED], may identify him to members of the public (including members of former and active militias in CAR with whom he was previously associated) by virtue of [REDACTED], and thus expose the witness to an actual and substantial *risk* of harm.

D. Identity of crime base witness [REDACTED]

8. Redaction to information that may reveal the identity of trial witness [REDACTED], remains justified.¹¹ The witness has been granted in-court protective measures that guarantee his anonymity *vis-à-vis* the public.¹² The public dissemination of [REDACTED] may identify [REDACTED] to members of the public and members of the public, and thus expose the witness to an actual *risk* of harm.

E. Identity of [REDACTED]

9. Redactions to information that may reveal the identity of trial witness [REDACTED], remain justified.¹³ The witness has been granted in-court protective

⁹ See highlights applied in Confidential Annex at [REDACTED].

¹⁰ See ICC-01/14-01/18-906-Conf, p. 45.

¹¹ See highlights applied in Confidential Annex at [REDACTED].

¹² See ICC-01/14-01/18-906-Conf, p. 45.

¹³ See highlights applied in Confidential Annex at [REDACTED].

measures that guarantee her anonymity *vis-à-vis* the public.¹⁴ The public dissemination of [REDACTED], is sufficient to identify her to members of the public, and thus expose the witness to an actual *risk* of physical or psychological harm.

F. Identity of insider witness [REDACTED]

10. Redaction to information that may reveal the identity of trial witness [REDACTED], remains justified.¹⁵ The public dissemination of [REDACTED] is sufficient to identify him to members of the public, (including [REDACTED] and other members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

G. Details of the incident at the YAMWARA School

11. Redactions to information that may reveal the identities of witnesses to the YAMWARA School incident, remain justified.¹⁶ Witnesses P-1654, P-1704, P-1705, and P-1811 have all been granted in-court protective measures that guarantee their anonymity *vis-à-vis* the public.¹⁷ The public dissemination of such information [REDACTED], may be sufficient to identify these witnesses to members of the public, and thus expose them to an actual *risk* of harm.

H. Identity of witness [REDACTED]

12. Redactions to information that may reveal the identity of trial witness [REDACTED] remain justified.¹⁸ *Firstly*, the identification of [REDACTED] may be sufficient to identify him to members of the public, given that [REDACTED]. *Secondly*,

¹⁴ See ICC-01/14-01/18-906-Conf, p. 45.

¹⁵ See highlight applied in Confidential Annex at fn. [REDACTED].

¹⁶ See highlights applied in Confidential Annex at paras. 114-118, plus fn. 299; and in Section VII: p. 104 (point (ii)(b)), p. 105 (points (v) and (vi)), p. 106 (points (i)(b), (iii) and (iv)), p. 107 (point (v)), p. 108 (point (ii)(c)), p. 109 (points (v) and (vi)), pp. 109-110 (points (i)(c) and (iii)), and p. 111 (points (iv) and (v)).

¹⁷ See ICC-01/14-01/18-906-Conf, pp. 45-46.

¹⁸ See highlights applied in Confidential Annex at [REDACTED].

dissemination of the narrative whereby [REDACTED], may also be sufficient to identify him to members of the public. *Thirdly*, the identification of [REDACTED], may also be sufficient to identify him to members of the public and thus expose the witness to an actual *risk* of harm.

I. Identity of insider witness [REDACTED]

13. Redactions to information that may reveal the identity of trial witness [REDACTED] prior to giving his testimony, remain justified.¹⁹ The witness has been granted in-court protective measures that guarantee his anonymity *vis-à-vis* the public.²⁰ The public identification of [REDACTED] may identify him to members of the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

J. Identity of [REDACTED]

14. Redactions to information that may reveal the identity of trial witness [REDACTED], remain justified.²¹ The witness has been granted in-court protective measures that guarantee his anonymity *vis-à-vis* the public.²² The public dissemination of [REDACTED], may identify him to members of the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial risk of harm.

¹⁹ See highlights applied in Confidential Annex at [REDACTED].

²⁰ See ICC-01/14-01/18-906-Conf, p. 45.

²¹ See highlights applied in Confidential Annex at [REDACTED].

²² See ICC-01/14-01/18-906-Conf, p. 45.

K. Involvement of [REDACTED]

15. Redactions to information that may reveal [REDACTED], remain justified.²³ [REDACTED]. Both witnesses have been granted in-court protective measures that guarantee their anonymity *vis-à-vis* the public.²⁴ [REDACTED].²⁵ The public dissemination of information relating to [REDACTED] may be sufficient to identify and expose these two witnesses to members of the public (including current and former members of militias in CAR with whom they have had prior dealings) and thus expose the witness to an actual and substantial *risk* of harm.

L. Identity of insider witness [REDACTED]

16. Redaction to information that may reveal the identity of trial witness [REDACTED] remains justified.²⁶ Information that [REDACTED] is clearly identifying. Revealing identifying information about this witness to the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

M. Identity of insider witness [REDACTED]

17. Redactions to information that may reveal the identity of trial witness [REDACTED] prior to giving his testimony, remain justified.²⁷ The witness has been granted in-court protective measures that guarantee his anonymity *vis-à-vis* the public.²⁸ The public dissemination of [REDACTED] may identify him to members of the public (including members of former and active militias in CAR with whom he

²³ See highlights applied in Confidential Annex at para. 152.

²⁴ See ICC-01/14-01/18-906-Conf, p. 45.

²⁵ See ICC-01/14-01/18-757-Conf-Anx-Red, p.9.

²⁶ See highlight applied in Confidential Annex at [REDACTED].

²⁷ See highlights applied in Confidential Annex at [REDACTED].

²⁸ [REDACTED].

was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

N. Cooperation of [REDACTED] with the Prosecution

18. Redaction to information revealing that [REDACTED] has given a statement to the Prosecution remains justified.²⁹ Even though the Prosecution has chosen not to include [REDACTED] in its List of Witnesses, the public dissemination of his cooperation with the Prosecution in giving a statement would expose him to the same risk as insider trial witnesses. The Prosecution refers to and incorporates the arguments made in its ICPM Request as to insider witnesses' susceptibility to retaliation from other Anti-Balaka members or supporters.³⁰

O. Identity of crime base witness [REDACTED]

19. Redaction to information that may reveal the identity of trial witness [REDACTED]³¹ [REDACTED], remains justified.³² The public dissemination of references to his public interviews about the situation in [REDACTED] may identify him to members of the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

P. Identity of insider witness [REDACTED]

20. Redactions to information that may reveal the identity of trial witness [REDACTED] prior to giving his testimony, remain justified.³³ The public dissemination of [REDACTED] may identify him to members of the public (including

²⁹ See highlights applied in Confidential Annex at [REDACTED].

³⁰ See ICC-01/14-01/18-757-Red2, para. 24.

³¹ Subject to application under rule 68(2) of the Rules of Procedure and Evidence; ICC-01/14-01/18-710-Conf.

³² See highlights applied in Confidential Annex at [REDACTED].

³³ See highlights applied in Confidential Annex, at [REDACTED].

members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

Q. Identity of insider witness [REDACTED]

21. Redactions to information that may reveal the identity of trial witness [REDACTED], remain justified.³⁴ The witness has been granted in-court protective measures that guarantee his anonymity *vis-à-vis* the public.³⁵ The public identification of [REDACTED] may identify him to members of the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

R. Cooperation of [REDACTED] with the Prosecution

22. Redaction to information revealing that [REDACTED] has given a statement to the Prosecution remains justified.³⁶ Even though the Prosecution has chosen not to include [REDACTED] in its List of Witnesses, the public dissemination of his cooperation with the Prosecution in giving a statement would expose him to the same risk as insider trial witnesses. The Prosecution refers to and incorporates the arguments made in its ICPM Request as to insider witnesses' susceptibility to retaliation from other Anti-Balaka members or supporters.³⁷ The public identification of [REDACTED] may identify him to members of the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose the witness to an actual and substantial *risk* of harm.

³⁴ See highlights applied in Confidential Annex, at [REDACTED].

³⁵ See ICC-01/14-01/18-906-Conf, p. 45.

³⁶ See highlights applied in Confidential Annex at [REDACTED].

³⁷ See ICC-01/14-01/18-757-Red2, para. 24.

IV. CONCLUSION

23. For the foregoing reasons, the Chamber should maintain the limited redactions sought herein to the public version of the Confirmation Decision to best avoid that the *actual* risks identified do not materialise.

A handwritten signature in black ink that reads "James K. Stewart." The signature is written in a cursive, flowing style.

James Stewart, Deputy Prosecutor

Dated this 10th day of March 2021
At The Hague, The Netherlands