

**Cour
Pénale
Internationale**



**International
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Court**

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

Date: **22 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

PUBLIC

Public Redacted Version of Defence Response to the “Prosecution’s request to maintain redactions to the Decision on the confirmation of charges (ICC-01/14-01/18-403)”, 22 March 2021

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. INTRODUCTION

1. On 10 March 2021, the Prosecution filed the “Prosecution’s request to maintain redactions to the Decision on the confirmation of charges (ICC-01/14-01/18-403)”, along with a confidential annex, requesting that a series of redactions be maintained to the Pre-Trial Chamber II’s Decision on the confirmation of charges (“Confirmation Decision”).¹
2. The Defence presents the following observations in response to the Request, in order to highlight those redactions which would be unduly prejudicial to Mr Ngaïssona’s right to a fair and public trial.

II. APPLICABLE LAW

3. Articles 67(1) and 64(7) of the Statute establish the principle of the publicity of the proceedings as a fundamental right of the accused and a necessary component of a fair and transparent trial. This general principle is not absolute; exceptions may be made by the Chamber, including for the protection of victims and witnesses.²

III. CONFIDENTIALITY

4. The Defence files the present Response as confidential pursuant to regulation 23bis(2) of the RoC as it responds to a document of the same classification.³ A public redacted version will be issued simultaneously.

IV. SUBMISSIONS

5. The Prosecution alleges that since the filing of its request for in-court protective measures filed on 7 December 2020, “the security situation in CAR has deteriorated considerably” relying on [REDACTED].⁴

¹ ICC-01/14-01/18-908-Conf (the « Request ») and ICC-01/14-01/18-908-Conf-Anx (“Annex”).

² See ICC-01/14-01/18-906-Conf-Red, para. 14, citing Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the ‘Prosecution’s application for in-court protective and special measures’, 29 November 2016, ICC02/04-01/15-612-Conf (confidential and Public redacted Versions notified on 30 November 2016, ICC-02/04-01/15-612-Red) (the ‘Ongwen Protective Measures Decision’), para. 5.

³ Request, para. 2.

6. However, in its Request, the Prosecution fails to provide specific substantiation in relation to the reasons underlying its request for redactions as it concerns some of the witnesses, including fair trial considerations. The Prosecution's observation that for *all* trial witnesses, 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" is without basis.⁵ Although, as noted by the Prosecution, "[m]any 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",⁶ the Prosecution also seeks to redact information from the public for witnesses for whom in-court protective measures have not been granted or for whom, in some cases, were not even requested. Given the lack of a basis for withholding some of the information requested by the Prosecution in its Request, as described below, the Prosecution's Request should be partially rejected.

A. Witness [REDACTED]

7. With respect to Witness [REDACTED], the Prosecution argues that the redaction of identifying information is warranted, given that the public dissemination of [REDACTED] "may be sufficient to identify him to the public (including members of former and active militias in CAR with whom he was previously associated) and thus expose him to an actual and substantial risk of harm."⁷
8. However, rather than providing concrete and specific substantiation of the alleged risk of harm entailed in the public potentially becoming aware of Witness [REDACTED], the Prosecution merely makes a general statement in this regard.⁸ The Prosecution does not offer any further elaboration, evidence or sources to

⁴ Request, para. 3.

⁵ Request, para. 4.

⁶ Request, para. 4.

⁷ Request, para. 5.

⁸ Request, para. 5.

support its claim of an alleged risk in particular to Witness [REDACTED]. It is pertinent to note that the Prosecution did not seek in-court protective measures for Witness [REDACTED]. Given the lack of substantiation and absence of a substantial risk of harm, Witness [REDACTED] should not be withheld from the public at this stage of trial.

B. Witness [REDACTED]

9. The Prosecution argues that certain information pertaining to Witness [REDACTED] in the Confirmation Decision should be redacted, to prevent the Witness being exposed to an actual and substantial risk of harm.⁹ Witness [REDACTED] has been granted in-court protective measures, namely through face and voice distortion and through exclusive reference to this Witness through his pseudonym in public filings and public sessions of the trial.¹⁰
10. Upon review, the information the Prosecution seeks to redact from the public in the Confirmation Decision is general and not identifying in nature. For instance, it relates to Witness' general sources of information. For ease of reference, the Prosecution's suggested redactions to paragraph [REDACTED] (citations omitted) of the Confirmation Decision are reproduced below:¹¹

[REDACTED]

11. The Prosecution seeks to redact very general references to the Witness' sources, which is clearly unwarranted, for instance by redacting the words: [REDACTED].¹² Another proposed redaction, namely [REDACTED] is also unwarranted, given that the [REDACTED], therefore not permitting

⁹ Request, para. 6.

¹⁰ ICC-01/14-01/18-906-Conf-Red, page 45.

¹¹ Annex, [REDACTED].

¹² Annex, [REDACTED].

identification by the public.¹³ Such general redactions are unjustified, as the information does not permit identification.

C. Details of the incident at the YAMWARA School

12. Although the Defence does not contest that certain identifying information relating to Witnesses P-1654, P-1704, P-1705 and P-1811 who have been granted in-court protective measures are warranted to protect their identities, the Prosecution's proposed redactions go beyond this purpose and are incompatible with the fundamental principle of publicity.
13. General and vital information relating to the events which allegedly occurred at Yamwara School, for which Mr Ngaïssona is charged under multiple counts, should not be withheld from the public. More specifically, the dates on which the events allegedly occurred [REDACTED],¹⁴ the number of [REDACTED],¹⁵ the location [REDACTED],¹⁶ the date of [REDACTED],¹⁷ and the length of [REDACTED], should be made public at this stage of trial.¹⁸

D. Witness [REDACTED]

14. The redactions requested by the Prosecution at paragraph [REDACTED] of the Confirmation Decision are unwarranted. The Prosecution sought, but was not granted, in-court protective measures for Witness [REDACTED].¹⁹ The Single Judge explicitly rejected the Prosecution's allegation of an objectively justifiable risk and held [REDACTED].²⁰ Therefore, redacting information which Witness [REDACTED] is expected to provide in public, without in-court protective measures, is not justified.

¹³ Annex, [REDACTED].

¹⁴ Annex, para. 114.

¹⁵ Annex, para. 114.

¹⁶ Annex, para. 114.

¹⁷ Annex, para. 117.

¹⁸ Annex, para. 118.

¹⁹ ICC-01/14-01/18-906-Conf-Red, para 41.

²⁰ ICC-01/14-01/18-906-Conf-Red, para. 48.

15. In the alternative, should the Chamber conclude that such redactions are justified, a lesser intrusive way to redact the information requested by the Prosecution would be simply to redact [REDACTED] which would remove any potentially identifying information from the public sphere.²¹

E. Witness [REDACTED]

16. The redaction proposed by the Prosecution of Witness [REDACTED] pseudonym does not appear proportionate to Mr Ngaïssona's right to a public trial. The information the Prosecution seeks to redact is of a sufficiently general nature [REDACTED]²² and does permit clear identification of Witness [REDACTED]. The proposed redactions are therefore unwarranted and unduly prejudicial to Mr Ngaïssona's right to a public trial.

F. Witness [REDACTED]

17. The redactions requested by the Prosecution in relation to Witness [REDACTED] are unjustified. The Prosecution has not shown, or attempted to show, that the public's knowledge of the Witness' [REDACTED] may identify the Witness to members of the public and would expose the witness to an actual and substantial risk of harm.²³ Such unsubstantiated claims do not justify withholding this information from the public.

G. Witness [REDACTED]

18. The Prosecution seeks to redact Witness [REDACTED] pseudonym at paragraph [REDACTED] of the Confirmation Decision. However, the information relating to [REDACTED] is general in nature. In addition, in-court protective measures for Witness [REDACTED] were rejected by the Chamber. The Singe Judge held there was "no objectively justifiable risk exists to the witnesses' legitimate

²¹ Annex, [REDACTED].

²² Annex, [REDACTED]. The words in *italics* delineate the portions of the sentence the Prosecution seeks to redact.

²³ Request, para. 19.

interests protected under Article 68 of the Statute”.²⁴ In these circumstances, the redaction of Witness [REDACTED] does not appear justified.

H. Remaining Witnesses for which the Prosecution seeks redaction

19. The Defence defers to the Chamber’s discretion and assessment as to whether the Prosecution’s remaining redactions are proportionate to Mr Ngaïssona’s fundamental right to a public trial, as it concerns the remaining witnesses.

V. RELIEF SOUGHT

20. In light of the above, the Defence respectfully requests the Chamber to :

- **REJECT** the Prosecution’s proposed redactions to witness pseudonyms, and other information, as described in paragraphs 7-18 above.

Respectfully submitted,



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 22 March 2021

At The Hague, the Netherlands.

²⁴ ICC-01/14-01/18-906-Conf-Red, para. 48.