

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **23 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public Redacted Version of “Yekatom Defence Response to ‘Prosecution’s request to maintain redactions to the Decision on the confirmation of charges (ICC-01/14-01/18-403)’ (ICC-01/14-01/18-908-Conf)”, ICC-01/14-01/18-928-Conf

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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INTRODUCTION

1. The Defence team for Mr. Alfred Rombhot Yekatom ('Defence') hereby files this Response to the 'Prosecution's request to maintain redactions to the Decision on the confirmation of charges (ICC-01/14-01/18-403)'¹ ('Redaction Request').
2. The Defence opposes the Redaction Request in part.
3. The Defence opposes the proposed maintenance of the redactions in relation to Witnesses [REDACTED], on the basis that protective measures in respect of these witnesses have not been sought and/or granted; and in any event, the redactions are unjustified.
4. Further, the Defence partially opposes the proposed redactions in relation to the Yamwara School incident; the involvement of [REDACTED]; and Witness [REDACTED], on the basis that the proposed redactions are disproportionate and therefore contrary to Mr Yekatom's right to a public trial.

PROCEDURAL HISTORY

5. On 18 December 2020, the 'Prosecution's Request for in-court protective measures' was notified, in which the Prosecution sought in-court protective measures for 72 of the 96 witnesses it intends to call to testify *viva voce* ('Protective Measures Request').²
6. On 15 January 2021, the Defence filed a response partially opposing the Protective Measures Request ('Protective Measures Response').³

¹ [ICC-01/14-01/18-908-Conf.](#)

² [ICC-01/14-01/18-757-Conf-Red.](#)

³ [ICC-01/14-01/18-828-Conf.](#)

7. On 9 March 2021, Trial Chamber V filed its Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses ('Decision'), partially granting the Protective Measures Request and rejecting protective measures for [REDACTED] witnesses.⁴
8. On 10 March 2021, the Prosecution filed the Redaction Request.

APPLICABLE LAW

9. Article 67(1) of the Statute states in relevant part: 'In the determination of any charge, the accused shall be entitled to a public hearing'.
10. Pursuant to Article 64(2), 'The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses'.
11. Article 64(7) further states, 'The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.'
12. Article 68(1) states in relevant part: 'The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity, and privacy of victims and witnesses. [...] These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.'

SUBMISSIONS

- I. **The Prosecution seeks to maintain redactions in relation to [REDACTED] witnesses for whom protective measures have not been sought and/or granted.**

⁴ [ICC-01/14-01/18-906-Conf-Red.](#)

13. In the Redaction Request, the Prosecution requests that redactions in the Document Containing the Charges ('DCC') be maintained in relation to [REDACTED] witnesses for whom in-court protective measures were not sought in the Protective Measures Request [REDACTED], or in respect of whom the Protective Measures Request was denied in the Decision [REDACTED] (collectively, '[REDACTED] Witnesses').
14. First, in the Decision, the Chamber found in relation to [REDACTED] that '[REDACTED]'.⁵ The Defence had specifically opposed the granting of protective measures to [REDACTED], *inter alia* on that very basis.⁶ In this respect, the Redaction Request comprises a procedurally improper request for reconsideration that does not address or meet the requisite standard thereof, and can therefore be denied *in limine*.⁷
15. Similarly, the Redaction Request in relation to [REDACTED]⁸ and [REDACTED] appears to comprise a procedurally improper attempt to secure in-court protective measures for these witnesses and should be denied on that basis. Should this not be the case, and should these witnesses intend to testify without protective measures, it is unclear as to why the Prosecution's reliance on these witnesses at the confirmation of charges stage would warrant being withheld from the public. Should 'objective risk' exist in relation to these witnesses, the Prosecution was free to seek protective measures in accordance with the statutory and jurisprudential framework, in a detailed and motivated request. In the absence of such a demonstration, the proposed redactions comprise unjustified half-measures that will nonetheless have the prejudicial effect of eroding the protections inherent to a public trial, afforded to Mr Yekatom under the Statute.

⁵ [ICC-01/14-01/18-906-Conf-Red](#), paras 41, 46-48.

⁶ [ICC-01/14-01/18-828-Conf](#), [REDACTED].

⁷ Cf. [ICC-01/14-01/18-908-Conf](#), para. 4.

⁸ [REDACTED].

16. In any event, the Redaction Request should be denied in relation to the [REDACTED] Witnesses.
17. No meaningful attempt has been made to demonstrate the existence of objective risks justifying protective measures for these witnesses. Broad submissions referencing the deteriorating security situation in the Central African Republic ('CAR') are insufficient in this regard, not least given that they would be applicable for all witnesses situated in CAR.⁹ Nor does the Redaction Request demonstrate the existence of circumstances specific to the [REDACTED] Witnesses that could indicate that removing the redactions in question would create or unduly increase an impermissible danger to their legitimate interests.¹⁰ On the contrary, the Prosecution submissions in relation to the risks facing these [REDACTED] Witnesses remain generalised and unsubstantiated.
18. As regards [REDACTED]: the Prosecution's incorporation of arguments made in the Protective Measures Request as to 'insider witnesses' susceptibility to retaliation from other Anti-Balaka members or supporters' is indicative of the Prosecution's failure to demonstrate the existence of objective risks specific to these two witnesses.¹¹ In any event, as the Chamber has previously held, the fact that '[REDACTED]'.¹²
19. Lastly, the fact that the Prosecution has chosen not to include [REDACTED] in its List of Witnesses is irrelevant.¹³ Mr Yekatom's fundamental right to a public trial extends across all stages of the proceedings. Absent cogent justification to the contrary, the fact that the Prosecution relied on these

⁹ Cf. [ICC-01/14-01/18-908-Conf](#), para. 3.

¹⁰ [ICC-01/14-01/18-908-Conf](#), paras 5, 10, 12, 16, 18, 19, 20, 22; see, [ICC-01/14-01/18-906-Conf-Red](#), paras 17-18.

¹¹ [ICC-01/14-01/18-908-Conf](#), paras 18, 22.

¹² [ICC-01/14-01/18-906-Conf-Red](#), para. 31, referencing 'for a similar approach', [ICC-02/04-01/15-612-Red](#), para. 26.

¹³ [ICC-01/14-01/18-908-Conf](#), paras 18, 22.

[REDACTED] witnesses in seeking confirmation of the charges it brought against Mr Yekatom should not be withheld from the public.

II. The Prosecution seeks to maintain redactions that are disproportionate to Mr Yekatom's right to a public trial.

A. The Yamwara School Witnesses

20. In the Redaction Request, in relation to the Yamwara School incident allegations and its witnesses (specifically, [REDACTED]; collectively, 'Yamwara School Witnesses'), the Prosecution seeks to maintain redactions on '[REDACTED],' on the basis that it 'may be sufficient to identify these witnesses to members of the public, and thus expose them to an actual risk of harm.'¹⁴
21. The Defence submits that the sought redactions [REDACTED] and therefore disproportionately curtail Mr Yekatom's fair trial rights.¹⁵
22. First, [REDACTED]. Insofar as members of the public are concerned, [REDACTED]. This is especially so given that, [REDACTED] allegations contained in immediately preceding paragraphs in the DCC, and the evidence extensively cited in corresponding footnotes, members of the public could easily deduce that [REDACTED].¹⁶
23. Second, the sought redactions impermissibly blur the line between [REDACTED]. Should the Prosecution be permitted to withhold the latter from the public, it follows that most, if not all, of the substantive evidence regarding this incident will need to be heard in closed session.

¹⁴ [ICC-01/14-01/18-908-Conf](#), para. 11.

¹⁵ See, [ICC-01/14-01/18-906-Conf-Red](#), para. 17, and references cited therein.

¹⁶ [ICC-01/14-01/18-908-Conf-Anx](#), [REDACTED].

24. This would represent a significant proportion of the Prosecution case against Mr Yekatom. Over two-thirds of the counts currently faced by Mr Yekatom arise from the alleged Yamwara School Incident.
25. Nor would this outsized prejudicial effect on these proceedings be justified by the nature of the Yamwara School Incident itself. The Defence notes that the Yamwara School Incident charges, while grave, do not involve sexual or gender violence, or violence against children; and as such, they do not give rise to a presumption of protection under Article 68(2).¹⁷ [REDACTED] alone cannot justify sweeping confidentiality measures in relation to substantive details of the incident itself. This is especially so, considering the nature of the allegations that will be heard throughout these proceedings; and on a broader level, considering the subject-matter jurisdiction of this Court. The Defence also notes that the fact that a witness's evidence might relate to a 'sensitive' matter is insufficient for the purposes of granting protective measures, including for 'vulnerable witnesses'.¹⁸
26. The Defence further submits that public session testimony, at least in part, would in fact be possible for witnesses who will testify regarding the Yamwara School Incident, including for the Yamwara School Witnesses, in accordance with the Chamber's guidelines.¹⁹ Specifically, relevant witnesses could provide evidence without indicating that other individuals, or themselves, are Prosecution witnesses, in accordance with relevant protective measures.

¹⁷ See, [ICC-01/14-01/18-906-Conf-Red](#), paras 57, 63.

¹⁸ See, [REDACTED].

¹⁹ [ICC-01/14-01/18-906-Conf-Red](#), para. 23.

B. The [REDACTED] Witnesses

27. Similarly, the redactions sought in relation to [REDACTED], are disproportionate.²⁰
28. In the Decision, while the Chamber found the existence of an objectively justifiable risk in relation to [REDACTED]; and the Chamber ultimately granted protective measures to [REDACTED].²¹ It is therefore apparent that [REDACTED].
29. With the exception of one sentence,²² the redactions sought in relation to the [REDACTED] Witnesses are therefore excessive.²³ Insofar as the public is concerned, [REDACTED].
30. In the circumstances therefore, redacting the sentence, '[REDACTED].' would suffice to strike the appropriate balance between protection of the [REDACTED], and the preservation of Mr Yekatom's right to a public trial.

C. Witness [REDACTED]

31. The Defence opposes redactions of [REDACTED] pseudonym in footnote 315 of the DCC.²⁴
32. It is submitted that the evidence of [REDACTED] as set out in footnote 315, which relates to alleged barricades set up along the PK9-Mbaiki axis, does not provide any indication as to [REDACTED].
33. The Defence recalls that '[REDACTED].'²⁵

CONFIDENTIALITY

²⁰ [ICC-01/14-01/18-908-Conf](#), para. 15.

²¹ [ICC-01/14-01/18-906-Conf-Red](#), paras 71-73.

²² Specifically, the sentence [REDACTED]; see [ICC-01/14-01/18-908-Conf-Anx](#), para. 152.

²³ It is the Defence's understanding that redaction of [REDACTED] is unrelated to the Prosecution submissions regarding [REDACTED]; see [ICC-01/14-01/18-908-Conf-Anx](#), para. 152.

²⁴ [ICC-01/14-01/18-908-Conf-Anx](#), fn. 315.

²⁵ [ICC-01/14-01/18-906-Conf-Red](#), para. 106.

34. This Response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed forthwith.

RELIEF SOUGHT

35. In light of the above, the Defence respectfully requests that Trial Chamber V:
- DENY** the Redaction Request in relation to the [REDACTED] Witnesses [REDACTED] and the Yanwara School Witnesses [REDACTED]; and,
- DENY** in part the Redaction Request in relation to the [REDACTED] Witnesses [REDACTED] and Witness [REDACTED] in accordance with paragraphs 30 and 31 of this Response.

RESPECTFULLY SUBMITTED ON THIS 23RD DAY OF MARCH 2021



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