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**No. ICC-01/14-01/18
Date: 28 June 2021**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of

**Decision on the Prosecution Request to Maintain Redactions to the Confirmation
Decision**

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), (6)(c) and (7), 67 and 68(1) of the Rome Statute (the ‘Statute’) and Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution Request to Maintain Redactions to the Confirmation Decision’.

I. Procedural history and submissions

1. On 11 December 2019, Pre-Trial Chamber II issued the confidential version of its decision on the confirmation of charges (the ‘Confirmation Decision’). A public redacted version thereof was filed on 14 May 2020.¹
2. On 23 February 2021, the Chamber instructed the Office of the Prosecutor (the ‘Prosecution’), in consultation with the other participants and the Victims and Witnesses Unit (the ‘VWU’), to indicate whether the redactions applied to the Confirmation Decision could be lifted or to otherwise indicate, by way of a filing, why redactions remain justified, and to highlight the redactions concerned in the confidential Confirmation Decision.² The Prosecution was further ordered to file a lesser redacted public version of its Document Containing the Charges and a public redacted version of its Trial Brief, or to request their reclassification as public.
3. On 10 March 2021, the Prosecution filed a request to maintain certain redactions to the Confirmation Decision (the ‘Request’).³ The Prosecution argues that many of the redactions sought to be maintained aim at protecting witnesses for whom in-court protective measures have been granted.⁴ This concerns witnesses P-1847,

¹ Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, ICC-01/14-01/18-403-Conf; corrected version with corresponding corrected public redacted version notified on 14 May 2020; see Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, ICC-01/14-01/18-403-Conf-Corr and ICC-01/14-01/18-403-Red-Corr.

² See email from the Chamber, 23 February 2021, at 15:47.

³ 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 (with one confidential annex, ICC-01/14-01/18-908-Conf-Anx (the ‘Annex to the Request’) (public redacted version of the Request notified the same day, ICC-01/14-01/18-908-Red).

⁴ Request, ICC-01/14-01/18-908-Red, para. 4.

P-2232, P-2049, P-2462, P-1339, [REDACTED] P-1962 and P-1521, the details of the alleged events at the Yamwara School and the involvement of the non-governmental organisation ‘*Enfants sans frontières*’ (the ‘ESF’) in the demobilisation process.⁵ It adds that ‘in the case of all trial witnesses – even those for whom in-court protective measures have not been requested or granted – 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’,⁶ and that even for individuals who are not on the Prosecution’s Final Witness List, information on their cooperation with the Prosecution ‘would expose [them] to the same risk as insider trial witnesses’.⁷ This concerns witnesses P-0801, P-0966, P-1813, P-0808, [REDACTED], P-1042, P-1048 and P-2404.⁸

4. The Ngaïssona Defence opposes the Request in part, namely the redactions concerning witnesses P-0801, P-1847, P-0808, P-1962, [REDACTED] and P-1042, as well as relating to the alleged events at Yamwara School.⁹ The Ngaïssona Defence argues that the Prosecution has failed to provide specific substantiation in relation to the reasons underlying its request for redactions regarding some witnesses.¹⁰ It further submits that ‘[g]eneral and vital information relating to the events which allegedly occurred at Yamwara School [...] should not be withheld from the public’, referring to the dates on which the events allegedly occurred, the number of alleged victims, the location where the victims would have been stopped, the date of release, and the length of confinement.¹¹ As for the remainder of the requested redactions, the Ngaïssona Defence defers to the Chamber’s discretion and assessment.¹²

⁵ Request, ICC-01/14-01/18-908-Conf, paras 6-9, 11, 13-15, 17, 21.

⁶ Request, ICC-01/14-01/18-908-Red, para. 4.

⁷ Request, ICC-01/14-01/18-908-Red, paras 18, 22.

⁸ Request, ICC-01/14-01/18-908-Conf, paras 5, 10, 12, 16, 18-20, 22.

⁹ 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, ICC-01/14-01/18-927-Conf (public redacted version notified the same day, ICC-01/14-01/18-927-Red) (the ‘Ngaïssona Defence Response’), paras 6-18, 20.

¹⁰ Ngaïssona Defence Response, ICC-01/14-01/18-927-Red, para. 6.

¹¹ Ngaïssona Defence Response, ICC-01/14-01/18-927-Conf, para. 13.

¹² Ngaïssona Defence Response, ICC-01/14-01/18-927-Red, para. 19.

5. The Yekatom Defence also opposes the Request in part.¹³ It argues that redactions in relation to witnesses P-0801, P-1813, P-1048, [REDACTED], P-1042, P-2404, P-0808, and P-0966 should not be maintained as no protective measures have been sought and/or granted for these witnesses and as the redactions are in any event unjustified.¹⁴ The Yekatom Defence also partially opposes the redactions sought in relation to the events alleged at Yamwara School, the involvement of ESF in the demobilisation process, and witness [REDACTED], on the basis that the redactions are disproportionate and thus contrary to Mr Yekatom's right to a public trial.¹⁵

II. Analysis

6. At the outset, the Single Judge notes that the Request does not concern redaction of information vis-à-vis the Defence, but of information which is not to be revealed to the public. To be underlined in this context is the importance of the principle of publicity of the proceedings, which requires that information be made accessible to the public to the extent possible, i.e. as long as revealing such information does not create or unduly increase an impermissible risk to any interest which demands protection by the Court.¹⁶
7. The Single Judge is satisfied, at this stage and without prejudice to a further lesser redacted version of the Confirmation Decision being issued at a later stage, that part of the redactions to the Confirmation Decision sought by the Prosecution are justified. Specifically, this concerns the redactions in paragraph 80 and footnotes 246, 315 and 490 of the Confirmation Decision. These redactions relate to information which, if revealed to the public, could lead to the identification of witnesses who have testified or will testify with in-court protective measures.¹⁷

¹³ 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), 22 March 2021, ICC-01/14-01/18-928-Conf (public redacted version notified on 23 March 2021, ICC-01/14-01/18-928-Red) (the 'Yekatom Defence Response'), paras 2, 35.

¹⁴ Yekatom Defence Response, ICC-01/14-01/18-928-Conf, paras 3, 13-19.

¹⁵ Yekatom Defence Response, ICC-01/14-01/18-928-Conf, paras 4, 21-33.

¹⁶ See Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the 'Defence Request for Redactions to Statements Submitted into Evidence for Sentencing', 5 May 2021, ICC-02/04-01/15-1817, para. 2.

¹⁷ See Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, 9 March 2021, ICC-01/14-01/18-906-Conf-Exp, confidential *ex parte*, only available to the Prosecution

Maintaining these redactions is therefore necessary in order not to jeopardise the effect of these protective measures. Furthermore, the redactions sought are of a limited extent and nature, such that the general concern for publicity of the proceedings is not impacted to an extent which would countervail the protective interests at stake.

8. In addition, the Prosecution seeks a number of redactions which the Single Judge considers to be only partly justified or for which lesser and/or alternative redactions are more appropriate to address the protective interests at stake, whilst ensuring the publicity of the proceedings to the extent possible, in particular as concerns the text of the operative part of the Confirmation Decision. This concerns, specifically, redactions sought to paragraphs 81, 106 and 152, and footnote 199, where limited redactions are maintained; whereas redactions sought to paragraph 83, footnotes 196-198 and 386, and pages 109 (point (ix)) and 111 (point (vi)) of the Confirmation Decision are not granted.
9. In a similar vein to the considerations above, the Single Judge also considers that a number of additional redactions to the Confirmation Decision are necessary which were not, as such, sought by the Prosecution, but which are needed with a view to giving effect to the redactions discussed above in paragraph 8. This concerns, specifically, redactions to paragraphs 107, 169, 200 and 204 and footnote 385.
10. Also, in order to ensure the effectiveness of the redactions which are necessary to safeguard the protective interests in relation to witness [REDACTED], the Single Judge considers it necessary to maintain, in addition to the redactions sought by the Prosecution, all redactions which are applied in relation to this witness in the first redacted version of the Confirmation Decision. This relates to redactions in paragraphs 87, 135, 145, 147, 148, 149 and 152, as well as in footnotes 205, 208-211, 213-214, 237, 303-304, 307, 314-315, 325-326, 328, 333, 335-336, 338-342, 346, 348 and 351-353 of the Confirmation Decision.

and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-906-Conf-Red; public redacted version notified on 19 April 2021, ICC-01/14-01/18-906-Red2) (the ‘Decision on In-Court Protective Measures’).

11. In contrast, in relation to witness P-1962, the Single Judge is of the view that in light of the information already in the public domain through the currently available public redacted version of the Confirmation Decision, the redactions sought by the Prosecution would serve no purpose. Having considered the information in the Confirmation Decision which relates to P-1962, the Single Judge considers that in fact no redactions are necessary in order to preserve the protective interests at stake, and therefore the redactions requested by the Prosecution in relation to witness P-1962 are rejected.
12. Further, the Prosecution seeks redaction of information concerning a number of witnesses who are yet to testify and for whom in-court protective measures have not been requested ([REDACTED] and P-1813) or in respect of whom in-court protective measures were rejected (P-0808, P-0966 and P-1042).¹⁸
13. In principle, the Single Judge is not convinced by the Prosecution's general arguments that risks persist even for witnesses for whom in-court protective measures have not been granted and/or requested.¹⁹ Importantly, the Request fails to specify any risks particular to the witnesses concerned should redactions in respect of these witnesses be lifted. In relation to some of the witnesses concerned, the Single Judge, in the Decision on In-Court Protective Measures, found that, on the basis of the then available information, no objectively justifiable risk had been established.²⁰
14. However, the Presiding Judge also emphasised that, while preferring to rule on in-court protective measures in advance of trial whenever possible, this was without prejudice to reconsideration at a later time should this be warranted, and in particular in light of further information provided by the VWU.²¹ The Single Judge recalls that any rejection of initial requests for in-court protective measures is without prejudice to reconsidering the need for an order under Rule 87 of the Rules, should new or additional information be made available at a later stage.²²

¹⁸ See Decision on In-Court Protective Measures, ICC-01/14-01/18-906-Red2, paras 41-42, 46-48, p. 46.

¹⁹ See Request, ICC-01/14-01/18-908-Red, para. 4.

²⁰ See Decision on In-Court Protective Measures, ICC-01/14-01/18-906-Red2, paras 41-42, 46-48.

²¹ Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631, para. 69.

²² Decision on In-Court Protective Measures, ICC-01/14-01/18-906-Red2, paras 1, 21.

15. In this regard, the Single Judge is mindful of the fact that the witnesses concerned still have to testify, and that no assessment has yet been received by the VWU in relation to the potential need for in-court protective measures. In these circumstances, and without prejudice to any future considerations by the Chamber, the Single Judge considers that, at this stage, certain limited redactions to the Confirmation Decision in relation to witnesses [REDACTED], P-0808, P-0966, P-1042 and P-1813 should be maintained at this stage. Concretely, this concerns redactions in paragraphs 162, 223 and 225; as well as in footnotes 265, 309 and 476 of the Confirmation Decision.
16. At the same time, for these witnesses the Single Judge also considers that a number of the redactions which the Prosecution seeks to maintain are not justified. Specifically, this concerns redactions to paragraph 133 and to footnotes 317-318, 363, 365-366 and 483 of the Confirmation Decision.
17. Finally, the Single Judge considers that a number of the redactions the Prosecution seeks to maintain are not justified, having considered all factors involved as set out below. Specifically, this concerns the redactions sought to paragraphs 31-34, 114-118, 193 and 231; footnotes 299 and 495; and pages 104, 104 (point (ii)(b)), 105 (points (v) and (vi)), 106 (points (i)(b), (iii) and (iv)), 107 (point (v)), 108 (point (ii)(c)), 109 (points (v) and (vi)), 109-110 (points (i)(c) and (iii)) and 111 (points (iv) and (v)) of the Confirmation Decision.
18. In particular, as regards the redactions requested in relation to witness P-0801,²³ the Single Judge notes that the Prosecution did not seek any in-court protective measures for this witness and that he indeed testified without any such measures.²⁴ The information sought to be redacted does not reveal any additional matters which may not be in the public domain, and its continued redaction in the Confirmation Decision is no longer justified.

²³ Request, ICC-01/14-01/18-908-Conf, para. 5; Confirmation Decision, ICC-01/14-01/18-403-Conf-Corr, paras 31-34, p. 104 in Annex to the Request, ICC-01/14-01/18-908-Conf-Anx.

²⁴ See Transcripts of hearings, ICC-01/14-01/18-T-033-ENG; ICC-01/14-01/18-T-034-ENG; ICC-01/14-01/18-T-035-Red-ENG; ICC-01/14-01/18-T-036-ENG; ICC-01/14-01/18-T-037-Red-ENG; ICC-01/14-01/18-T-038-Red-ENG; ICC-01/14-01/18-T-039-Red-ENG.

19. Turning to the redactions sought in relation to the alleged events at Yamwara School,²⁵ the Single Judge is of the view, having balanced all relevant factors, that the principle of publicity of the proceedings prevails over the protection concerns voiced by the Prosecution. In particular, while the witnesses mentioned in that context have indeed been granted in-court protective measures,²⁶ the wording of the Confirmation Decision does not risk identification of these witnesses through the lifting of the redactions at issue.
20. Rather, the Single Judge considers it fundamental that the details of alleged events underlying the charges are known not only to the accused, but also to the public. The Request equally does not provide any specific arguments on the basis of which the Single Judge could conclude that making the details of the alleged events at Yamwara School public would necessarily identify the witnesses concerned and therefore jeopardise the in-court protective measures granted to them. For these reasons, the Single Judge is of the view that most of the redactions sought by the Prosecution in relation to the alleged events at Yamwara School, with the exception of two limited redactions in paragraphs 115 and 116 of the Confirmation Decision, should be lifted.²⁷
21. The Prosecution also seeks redaction of information relating to individuals who may have cooperated with the Prosecution in the past, but do not appear on its Final Witness List.²⁸ The Single Judge is not convinced by the Prosecution's general arguments that individuals who are not included in its Final Witness List also carry risks.²⁹ Importantly, the Request fails to provide details which would otherwise justify the requested redactions, as it merely makes a general statement which does not establish an objectively justifiable risk specific to the individuals concerned. For these reasons, the redactions sought in relation to P-1048 and P-2404 are rejected.

²⁵ Request, ICC-01/14-01/18-908-Conf, para. 11; Confirmation Decision, ICC-01/14-01/18-403-Conf-Corr, paras 114-118, pp. 104-111 in Annex to the Request, ICC-01/14-01/18-908-Conf-Anx.

²⁶ Decision on In-Court Protective Measures, ICC-01/14-01/18-906-Conf-Red, paras 50, 92, 98-100, p. 45-46.

²⁷ See Confirmation Decision, ICC-01/14-01/18-403-Conf-Corr, paras 115-116.

²⁸ See Request, ICC-01/14-01/18-908-Conf, paras 18 (P-1048), 22 (P-2404).

²⁹ See Request, ICC-01/14-01/18-908-Conf, paras 18, 22.

22. A lesser redacted public version of the Confirmation Decision is issued simultaneously with this decision.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

PARTLY grants the Request as set out in paragraphs 7, 8, 15 and 20 above;

RETAINS additional redactions as set out in paragraphs 9 and 10 above;

REJECTS the remainder of the Request; and

ORDERS the Prosecution, the Yekatom Defence and the Ngaïssona Defence to file lesser public redacted versions of filings ICC-01/14-01/18-908-Conf, ICC-01/14-01/18-927-Conf and ICC-01/14-01/18-928-Conf, respectively, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt

Single Judge

Dated 28 June 2021

At The Hague, The Netherlands