

Annex 40

From: Trial Chamber V Communications
Sent: 13 October 2021 12:15
To: [REDACTED]
Cc: Court Management-Transcripts; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; Associate Legal Officer-Court Officer; [REDACTED]; Chamber Decisions Communication; Trial Chamber V Communications
Subject: RE: OTP lesser redacted versions of transcripts of P-2251
Attachments: OTP lesser redacted versions of transcripts of P-2251

Dear counsel,

The Single Judge takes note of the Prosecution's proposal for lesser redacted versions of transcripts T-043 and T-044 (see attached email from the Prosecution, 12 August 2021, at 13:53); the Yekatom Defence's objections to some of the redactions which the Prosecutions proposes maintaining in the lesser redacted version of T-043 (the 'Contested Redactions') (see below email from the Yekatom Defence, 25 August 2021, at 10:02); and the Prosecution's response thereto (see below email from the Prosecution, 26 August 2021, at 17:24).

At the outset, the Single Judges notes that the Yekatom Defence should have raised its objections by 23 August 2021 pursuant to paragraph 72 of the Initial Directions, ICC-01/14-01/18-631. However, noting that the Prosecution's email was sent during the summer judicial recess and that the Chamber ordered the suspension of deadlines during this recess (see email from the Chamber, 23 July 2021, at 14:11), the Single Judge will exceptionally consider the objections and assess the Contested Redactions.

(i) Information concerning the video with ERN CAR-OTP-2084-1263

With regard to the information concerning the video with ERN CAR-OTP-2084-1263, played in private session, the Single Judge considers that maintaining redactions to the fact that it was provided to the Prosecution by 'an organisation' – the name of which is not mentioned – and that the latter requested the Prosecution not to make it public, is not justified. Conversely, and noting the reasons provided by the Prosecution in its response email, the Single Judge considers that it is necessary to maintain redactions to information concerning, [REDACTED]
[REDACTED]
[REDACTED]

Accordingly, only the below grey highlighted portions should remain redacted in the lesser redacted version of T-043:

T-043-CONF-ENG, p. 16, lines 22-24:

22 MR LEDDY: [11:21:54] Yes, Mr President. The organisation that provided
23 the Office of the Prosecutor the video requested that it not be made public. Their
24 concern is the identification of [REDACTED] to the public. It's from –

T-043-CONF-ENG, p. 17, lines 17-23:

17 PRESIDING JUDGE SCHMITT: [11:23:45] Actually, really, I thought [REDACTED]
18 would be seen on the screen, so I think this is really -- we really have to be more, let's
19 say, vigilant also with regard to the transparency of the proceedings. I really, you
20 know -- also, whatever organisation it is, they are gathering information in -- in
21 a country where there is a conflict and they might be aware, also, that some of the
22 material will be used later on. So I really -- I really don't see here really how
23 [REDACTED] could be identified.

T-043-CONF-ENG, p. 18, lines 1-11:

25 MR VANDERPUEYE: [11:24:31] *Thank you, Mr President. I'm sorry, I don't want to*

1 *interrupt the proceedings*, but the concern here is that this is a video -- this is not just
 2 gathered from a public source. It is specifically provided to us by the -- by
 3 the provider. That is the understanding [REDACTED]

9 that is the driving concern here. I understand the Court's concern and we are
 10 making our best efforts to make sure that the proceedings are as transparent as they
 11 can be in the circumstances.

(ii) Information concerning the witness

The Single Judge considers that, in order to protect P-2251's identity, it is necessary to maintain redactions to information concerning, *inter alia*, the witness's approximate age, the functions he carried out while in Gobere, his specific involvement in the 5 December 2013 Bangui attack and specific knowledge of the witness on the attack [REDACTED]

[REDACTED] Accordingly, redactions to T-043-CONF-ENG, p. 18, lines 17-23; p. 33, line 5; p. 38, lines 13-16; p. 39; p. 40, lines 16-25; p. 58, lines 1-3; p. 60, lines 21-25 should be maintained in full in the lesser redacted version.

Conversely, the Single Judge considers that the witness's general views on the age of the children he met within the Anti-Balaka do not risk identifying the witness and their redaction is thus not justified. Accordingly, redactions to T-043-CONF-ENG, p. 57, lines 14-16 should be lifted in full in the lesser redacted version.

The Registry is directed to proceed in accordance with paragraph 72 of the Initial Directions, ICC-01/14-01/18-631 for the English and French public lesser redacted versions of transcript T-043.

Kind regards, TC V

From: [REDACTED]

Sent: 26 August 2021 17:24

To: [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Dear Trial Chamber V,

Dear Counsel,

First, article 72 of the Initial Directions on the Conduct of the Proceedings provides the participants 10 days to raise objections to the proposed lesser redacted transcripts. Given that the specific deadlines established by the Trial Chamber have not been suspended (see email 23 July 2021, at 14:11, stating that "specific deadlines established by the Chamber will continue to run"), the Defence's is untimely, and should have raised by 23 August 2021.

In the alternative and substantively, the Prosecution submits the following:

T-043-CONF-ENG, page 16 lignes 22-24 ; T-043-CONF-ENG, page 17 lignes 17-23 ; T-043-CONF-ENG, page 18 lignes 1-11:

Redactions regarding the reasons justifying the playing the [REDACTED] video in private session should be maintained. First, the justifications proffered by the Prosecution detailing the reasons for the necessity to keep the video confidential were accepted by the Presiding Judge and a ruling made. By extension, the nature and content of the video should remain confidential. Second, although the name of the provider is not mentioned, revealing information surrounding the video will inform the public that [REDACTED]

T-043-CONF-ENG, page 18 lignes 17-23 : [REDACTED]

T-043-CONF-ENG, page 33 ligne 5 : [REDACTED]

T-043-CONF-ENG, page 38 lignes 13-16 : [REDACTED]

T-043-CONF-ENG, page 39 : [REDACTED]

T-043-CONF-ENG, page 40 lignes 16 à 25 : [REDACTED]

T-043-CONF-ENG, page 57 lignes 14 à 16 : Contrary to the Defence's argument, the redaction is not proposed to hide any link between the Witness and child soldiers. Redactions to several such parts were lifted (page 56, lines. 18-

19 “Mr Witness, the last topic I want to ask you about are child soldiers in the Anti-balaka”, or “page 56, line. 23- page 57, line. 2 “(...) I have told you that I did not see many children during the attack of 5 December (...) but before the attack of 5 December, I did not see many children. I saw maybe one or two children”). [REDACTED]

[REDACTED] The Presiding Judge’s question, which followed this comment, is however unredacted. (page. 57, lines 17-18: “Mr Witness, we are speaking of young people who have been -- who might have been with you. How old were they, if you recall it?”)

T-043-CONF-ENG, page 58 lignes 1 à 3 ; T-043-CONF-ENG, page 60 lignes 21 à 25 [REDACTED]

For the above reasons, the Defence request should be rejected and the redactions maintained as proposed. Thank you.

Kind regards,

On behalf of OTP Trial Team

From: [REDACTED]
Sent: mercredi 25 août 2021 10:02
To: [REDACTED]

Subject: RE: OTP lesser redacted versions of transcripts of P-2251

Dear Trial Chamber V,
 Dear all,

Pursuant to paragraph 72 of the Initial Directions on the Conduct of the Proceedings, the Defence proposes several amendments to the suggested Prosecution’s redaction. It is the Defence position that those amendments strike a proper balance between the principle of publicity of the hearings and the security of Witness P-2251.

The Defence position mentioned below also extend to the respective redaction applied in the French transcript.

T-043-CONF-ENG, page 16 lignes 22-24 :

22 MR LEDDY: [11:21:54] Yes, Mr President. The organisation that provided
 23 the Office of the Prosecutor the video requested that it not be made public. Their
 24 concern is the identification of [REDACTED] to the public. It's from –

[REDACTED] it is the Defence view that those sentences should be left unredacted. Also, the Defence contends that there is a public interest in the knowledge of what type of reasons might justify the implementation of private session during hearings, in this instance the preference of a third party regarding documents it provided to the Prosecution.

T-043-CONF-ENG, page 17 lignes 17-23 :

17 PRESIDING JUDGE SCHMITT: [11:23:45] Actually, really, I thought [REDACTED]
 18 would be seen on the screen, so I think this is really -- we really have to be more, let's
 19 say, vigilant also with regard to the transparency of the proceedings. I really, you
 20 know -- also, whatever organisation it is, they are gathering information in -- in
 21 a country where there is a conflict and they might be aware, also, that some of the
 22 material will be used later on. So I really -- I really don't see here really how
 23 [REDACTED] could be identified.

In conjunction with its previous argument, the Defence contends those sentences do not identify the organization which provided the video and serve the public interest in understanding the reasoning behind the implementation of private session during hearings.

T-043-CONF-ENG, page 18 lignes 1-11 :

25 MR VANDERPUYE: [11:24:31] *Thank you, Mr President. I'm sorry, I don't want to*
1 interrupt the proceedings, but the concern here is that this is a video -- this is not just
 2 gathered from a public source. It is specifically provided to us by the -- by
 3 the provider. [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]. And so
 9 that is the driving concern here. I understand the Court's concern and we are
 10 making our best efforts to make sure that the proceedings are as transparent as they
 11 can be in the circumstances.

The Defence contends this intervention should not be redacted for the same reasons as the previous two observations. It is the Defence view that redacting [REDACTED] is sufficient to prevent any identification of [REDACTED] and by extension of the organization.

T-043-CONF-ENG, page 18 lignes 17-23 :

[REDACTED]

In yellow the suggested redaction by the Prosecution. The Defence contends those information are sufficiently general as to not identify P-2251, especially in light of the fact that the witness was presented as an "insider" by the Court on social media (see <https://twitter.com/CourPenaleInt/status/1400839094788407305>)

T-043-CONF-ENG, page 33 ligne 5 :

4 So the *modus operandi* was as follows: Noise from pots and other kitchen utensils.
 5 Groups were sent to [REDACTED] and to other locations in the city. And as soon as we came
 6 across the Seleka, we would use those pot noises to intimidate them [...]

In yellow the suggested redaction by the Prosecution. The Defence contends that P-2251 [REDACTED] describing the general strategy of the attack and does not mention where he was personally; as such the mention of [REDACTED] is not susceptible to identify the witness. In addition, it is the Defence view that it is in the public interest to have knowledge of the general strategy of the Anti-Balaka during the 5 December 2013 in light of the importance of that date in the recent history of the Central African Republic.

[REDACTED]

[REDACTED]

[REDACTED]

T-043-CONF-ENG, page 39 :

[REDACTED]

The Defence contends that only redacting the parts underlined in green, instead of the whole answer, is sufficient to protect the identity of P-2251. In addition, a limited redaction would allow the public to have a better understanding the unfolding of the events around the 5 December 2013 attack.

T-043-CONF-ENG, page 40 lignes 16 à 25 :

[REDACTED]

[REDACTED]

That is why these people were afraid of him.

In yellow the suggested redaction by the Prosecution. The Defence contends those redactions are not necessary to protect P-2251 identity as he refers to events that are of public knowledge due to the fact that [REDACTED] were made about those issues.

T-043-CONF-ENG, page 57 lignes 14 à 16 :

13 PRESIDING JUDGE SCHMITT: [15:10:36] Can't we first figure out what we
14 understand by children? This would be interesting. Because if I look at the
15 statement of the witness there is -- there are some interesting phrasings by the witness
16 about the age.

In yellow the suggested redaction by the Prosecution. The Defence contends that the knowledge of the witness mentioning child soldiers in his statement does not risk his identity to be revealed [REDACTED]

T-043-CONF-ENG, page 58 lignes 1 à 3 :

The Defence argues that those sentences are sufficiently general as to not identify the witness. Moreover, in light of the specific charges related to child soldiers in the case, it is in the public interest to have knowledge about the [REDACTED]

Alternatively, the Defence suggests that the redaction of only [REDACTED] is sufficient to protect P-2251's identity.

T-043-CONF-ENG, page 60 lignes 21 à 25 :

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Defence contends that those selected sentences above are not susceptible to identify the witness due to their general nature. In addition, as mentioned in the previous objection above, the Defence argues that it is in the public interest to be informed of [REDACTED]

Kind regards,

[REDACTED]
Legal Consultant
Yekatom Defence

From: [REDACTED]
Sent: 12 August 2021 13:53
To: Trial Chamber V Communications
Cc: [REDACTED]; Court Management-Transcripts; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; OTP CAR IIB Case Management; OTP CAR IIB Operations; Associate Legal Officer-Court Officer
Subject: OTP lesser redacted versions of transcripts of P-2251

Dear Trial Chamber V,

Dear All,

Please find attached the CONF ET transcripts T-043 and T-044 dated 7 and 8 June 2021, in both English and French. The red highlights indicate the parts of P-2251's testimony that should remain redacted in the private sessions. For convenience, redactions which were approved by the Chamber in open session have also been highlighted in red and are to be maintained.

Kind regards,



OTP Case Manager

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