

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **15 March 2019**

**PRE-TRIAL CHAMBER II**

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Tomoko Akane  
Judge Rosario Salvatore Aitala**

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

**Public**

**Prosecution's Request for Leave to Reply to the "Ngaiissona Defence Observations on the Protocol on the Handling of Confidential Information during Investigations and Contacts with Witnesses" (ICC-01/14-01/18-144)**

**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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**Legal Representatives of Applicants**

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**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests leave to reply to the “NGAISSONA Defence Observations on the Protocol on the Handling of Confidential Information during Investigations and Contacts with Witnesses” (“Observations”).<sup>1</sup> To the extent the NGAISSONA Defence advances discrete requests and demands specific relief, the Prosecution considers that the purported Observations effectively comprise a ‘response’ to the Prosecution’s motion requesting Pre-Trial Chamber II (“Chamber”) to adopt such a protocol<sup>2</sup>, within the meaning of the Regulations of the Court.<sup>3</sup>

2. While several issues raised in the Observations are addressed in the Prosecution’s Reply to the YEKATOM Defence’s response to the Prosecution’s Initial Motion,<sup>4</sup> a limited and focused reply addressing two discrete issues in the Observations would assist the Chamber in the proper determination of the relevant issues and is otherwise in the interests of justice, namely: (1) the propriety of informing the Victims and Witnesses Unit (“VWU”) of the disclosure of the identity of a Prosecution witness only afterwards;<sup>5</sup> and (2) the reasonableness of restricting disclosure to only those witnesses whose identities have been revealed to the Parties.

## II. SUBMISSIONS

3. The Prosecution requests leave to reply on the two issues as identified below:

- (i) whether the Defence’s position that “it cannot avoid mentioning [protected witnesses] during the interviews it conducts and that while the Defence will do its best efforts to disclose them to the VWU in advance of the

<sup>1</sup> See ICC-01/14-01/18-144, para. 17.

<sup>2</sup> See ICC-01/14-01/18-35 (“Initial Motion”).

<sup>3</sup> See Regulation 24 of the Regulations of the Court.

<sup>4</sup> See ICC-01/14-01/18-58.

<sup>5</sup> See ICC-01/14-01/18-51-AnxA, paras. 4(a),(b),(e), (f), and 10.

interview, it should not be obliged to notify the VWU of such a disclosure prior to the interview as long as it notifies it as soon as possible afterwards”<sup>6</sup> comports with the nature and object of a confidentiality protocol; and, in this respect, whether the rationale underlying the Defence’s position (*i.e.*, “it cannot avoid mentioning [protected witnesses] in interviews it conducts”) is consistent with the cited reference to the Decision on the confidentiality protocol in the *Gbagbo and Blé Goudé* case.<sup>7</sup>

- (ii) whether the NGAISSONA Defence’s suggestion to “restrict the disclosure obligations of the parties and participants only in relation to witnesses the protection of identity of whom the parties and participants have been made aware”<sup>8</sup> is tenable and reasonable in view of the nature and objectives of a confidentiality protocol (*i.e.*, to protect individuals in view of their relationship to the activities of the Court pursuant to the Court’s Statutory obligations).

4. The Prosecution considers that a reply focused on these two discrete issues will assist the Chamber to develop an efficient, effective, and fair system of handling confidential information and contacts with witnesses in this (now joined) case.

### III. RELIEF SOUGHT

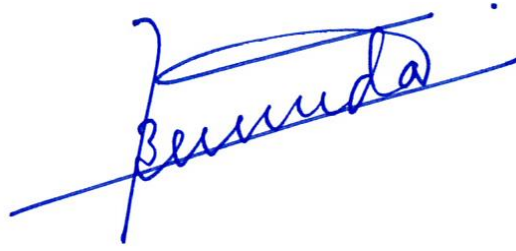
5. For the above reasons, the Chamber should permit the Prosecution to reply to the NGAISSONA Defence’s Observations.

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<sup>6</sup> ICC-01/14-01/18-144, para. 17.

<sup>7</sup> See ICC-02/11-01/15-200, para. 25 (“The Single Judge therefore finds it appropriate to stress that, in accordance with paragraph 10 of the Protocol, the investigating party shall, under no circumstances, reveal a protected witness’s *involvement* with the Court” (emphasis added). The Prosecution notes that while the Observations, para. 17 cites paragraph 24 of the *Gbagbo and Blé Goudé* Decision, it omits any reference to paragraph 25, above.

<sup>8</sup> See ICC-01/14-01/18-144, para. 18.



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**Fatou Bensouda, Prosecutor**

Dated this 15<sup>th</sup> day of March 2019  
At The Hague, The Netherlands