

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 April 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***

Confidential Redacted

**with Confidential, *EX PARTE*, only available to the Prosecution and VWU,
Annexes A to F**

**Confidential Redacted version of "Prosecution's Requests in Response to "Decision
setting a deadline for the submission of applications prior to the Confirmation
Hearing (ICC-01/14-01/18-148-Conf)", 29 March 2019, ICC-01/14-01/18-162-Conf-Exp**

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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Unrepresented Victims

**Unrepresented Applicants
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I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests authorisation to withhold the identities of Prosecution Witnesses: [REDACTED]. [REDACTED]. Withholding their identities is necessary [REDACTED] and thus warranted under rule 81(2) of the Rules of Procedure and Evidence.

2. The Prosecution also requests authorisation to apply non-standard redactions to the statements of the following witnesses: [REDACTED]. While the scope of the Chamber's 14 March 2019 decision¹ concerns the non-disclosure of witness identities, the Prosecution also includes discrete requests for non-standard redactions to statements for witnesses whose identities will be disclosed. [REDACTED].

3. Finally, the Prosecution requests an additional three weeks to apply for the non-disclosure of identities for other Witnesses. The evidence collection in this Situation is massive and its review ongoing. Although the Prosecution has reviewed over 94% of the collection to identify all potentially disclosable items of 'true relevance' to the confirmation proceeding, the requested extension is necessary to finish the review of the remaining material. Only at that stage will the Prosecution be in a position to provide the Chamber a *complete list* of witnesses whose identities need to be withheld pending the assessment and implementation of security measures.

II. CONFIDENTIALITY

4. This request and its annexes are filed "Confidential, *EX PARTE*, available only to the Prosecution and the VWU" as they contain sensitive information pertaining to witness security [REDACTED]. A confidential redacted version of this request will be filed in due course.

¹ ICC-01/14-01/18-148-Conf ("Decision").

III. SUBMISSIONS

A. Ten Prosecution Witnesses require non-standard redactions or the withholding of their identities to protect the Prosecution's ongoing investigation

a. *The proposed restrictions on disclosure are necessary under article 81(2)*

5. The proposed restrictions on disclosure ("Proposed Restrictions") are necessary [REDACTED]. [REDACTED]. [REDACTED]. These witnesses also provide information that is potentially incriminatory, exculpatory, or disclosable under rule 77 in the case against NGAISSONA and YEKATOM.

6. [REDACTED]. [REDACTED],² [REDACTED].

7. The Proposed Restrictions do not prejudice the Defence nor impede a fair and impartial confirmation proceedings: they (1) involve matters irrelevant to the case [REDACTED]; (2) generally fall outside of the time frame relevant to this case; and (3) relate to crimes and events that will not be part of the anticipated charges.

8. Further, the Prosecution proposes restrictions to mitigate, to the greatest extent possible, any potential prejudice to the Suspects. Witness Statements containing incriminating information on which the Prosecution intends to rely for confirmation will be disclosed in whole, with non-standard redactions requested for those paragraphs or sections [REDACTED]. For all other statements, which the Prosecution considers are not incriminating, the Prosecution has extracted excerpts of those statements which are disclosable under rule 77 or article 67(2).

9. Aside from the proposed redactions and excerpts, no other less intrusive measures are available to mitigate the risk inherent in disclosing these materials.

² See [REDACTED].

b. Six witnesses require their identities to be withheld and for excerpts of their statements to be disclosed instead

10. The identities of six Witnesses need to be withheld and excerpts of their Statements disclosed instead. None of these Witnesses will be relied upon for confirmation, and although each provides potentially exculpatory or disclosable information under rule 77, for the most part, their evidence [REDACTED]. The proposed excerpts are self-contained, in that they include sufficient information to understand their context and content. They are also the only portions of the Witness's Statement the Prosecution considers could be rule 77 or exculpatory—meaning they are the only portions relevant to the case against the Suspects.

11. As reflected in annex B, the potentially disclosable material associated with these Witnesses is minor and brief. [REDACTED].

12. In similar circumstances, other Chambers of this Court have endorsed this approach. For instance, the Appeals Chamber in the *Ntaganda* case noted that the use of anonymous summaries for rule 77 material for rule 81(2) or 81(4) reasons was appropriate at the confirmation stage given that “in light of the limited scope of the confirmation of charges hearing, the anonymity is necessary and not prejudicial to or inconsistent with the rights of the suspect and fair and impartial proceedings as the Defence will have access to the relevant information contained in the summary.”³ Similarly, the Appeals Chamber in the *Katanga* case confirmed that “it may be permissible to withhold the disclosure of certain information from the Defence prior to the hearing to confirm the charges that could not be withheld prior to trial.”⁴ The same legal reasoning is apt here.

³ ICC-01/04-02/06-248-Red2, para. 21.

⁴ ICC-01/04-01/07-475, para. 68.

13. The proposed excerpts are appended to this filing at annex B. Once approved, the Prosecution will apply standard redactions to these excerpts and disclose them to the Defence.

c. Four witness statements can be disclosed with non-standard redactions

14. Non-standard redactions [REDACTED] are required for four Witness Statements. These Statements will be used against the Suspects in this case during confirmation as incriminating material. The proposed redactions are applied to discrete portions of Statements that do not cloud or otherwise impact the Defence's ability to discern and understand the incriminating evidence. The proposed redactions also do not contain material that is 'tru[ly] relevant'⁵ to the case, such as potentially exonerating or rule 77 information. [REDACTED].

15. The proposed non-standard redactions are appended to this filing at annexes C to F.

B. The Prosecution needs an additional three weeks to comply with the Decision

16. Despite its best efforts to meet the Chamber's deadline of 29 March 2019, the Prosecution needs an additional three weeks to fully comply with the Decision. The Prosecution's current application is based on an incomplete and non-exhaustive review of its evidence collection. The additional time is necessary to finalise the Prosecution's review of all documents *currently* in its collection and to identify, upon a proper assessment, those that are 'tru[ly] relevant'.

17. [REDACTED].

⁵ ICC-01/14-01/18-64-Conf, para. 18.

18. [REDACTED].

19. [REDACTED].

20. [REDACTED].

IV. RELIEF SOUGHT

21. For the above reasons, the Prosecution requests the following:

- (1) authorisation to withhold the identities of Witnesses [REDACTED] and to provide excerpts of their statements instead;
- (2) authorisation to apply non-standard redactions to the Statements of Witnesses [REDACTED]; and
- (3) an extension of three weeks to request authorisation to withhold the identities of additional Witnesses.



Fatou Bensouda, Prosecutor

Dated this 2nd day of April 2019
At The Hague, The Netherlands