

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/14-01/18

Date: 24 January 2020

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
THE PROSECUTOR *v.* ALFRED ROMBHOT YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA**

Public

Public Redacted Version of “Joint Defence Request to Disregard the Redacted Submissions or Lift the Redactions in ‘Prosecution’s Observations Pursuant to the “Decision [REDACTED]” (ICC-01/14-01/18-137-Conf-Exp)’ (ICC-01/14-01/18-170-Conf-Red)”, ICC-01/14-01/18-175-Conf, 12 April 2019

Source: Defence of Alfred Rombhot Yekatom and Defence of Patrice-Edouard Ngaïssona

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

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I. Introduction

1. The Defence of Alfred Rombhot Yekatom and the Defence of Patrice-Edouard Ngaïssona (“the Defence”) hereby respectfully request Pre-Trial Chamber II (“the Chamber”) to disregard the submissions subject to redaction in the “Confidential Redacted version of ‘Prosecution’s Observations Pursuant to the Decision [REDACTED]’ (ICC-01/1401/18-137-Conf-Exp)’, 10 April 2019, ICC-01/14-01/18-170-Conf-Exp” (“the Request to Reinforce the Restrictions”)¹ or, in the alternative, order the Prosecution to lift the redactions therein.

II. Confidentiality

2. These submissions are filed “confidential” as they concern observations of the same classification, as well as information which, if divulged, may defeat the purpose of the submissions.

III. Procedural history

3. On 1 March 2019, the Chamber granted [REDACTED] concerning Mr Yekatom and Mr Ngaïssona’s [REDACTED] put in place by way of the 17 November 2018 Decision, as modified by the 10 January 2019 Decision and paragraphs 19 and 21, and the 23 January 2019 Decision, as modified by the 29 January 2019 Decision and paragraphs 19-21 of the 1 March 2019 decision, until Monday, 15 April 2019 (inclusive).²
4. On 8 April 2019, [REDACTED].³
5. On 10 April 2019, the Defence of Alfred Rombhot Yekatom filed the “Observations de la Défense de M. Alfred Rombhot Yekatom suite à la «

¹ ICC-01/14-01/18-170-Conf-Red

² [REDACTED], ICC-01/14-01/18-137-Conf-Exp.

³ ICC-01/14-01/18-166-Conf-Exp; ICC-01/14-01/18-167-Conf-Exp. See also ICC-01/14-01/18-166-Conf-Red; ICC-01/14-01/18-167-Conf-Red.

Decision [REDACTED] » (ICC-01/14-01/18-137-Conf-Exp)”,⁴ and the Defence of Patrice-Edouard Ngaïssona filed the “Defence Observations Pursuant to the ‘Decision [REDACTED]’ (ICC-01/14-01/18-137-Conf-Exp)” (“the Ngaïssona’s Observations”).⁵

6. On the same day, the Prosecution filed the Request to [REDACTED].

IV. Submissions

7. The Defence recalls [REDACTED]:

[REDACTED]

8. On 10 April 2019, the Defence was notified of the Prosecution’s Request [REDACTED], which appears to be heavily redacted.
9. More specifically, the Request to [REDACTED] contains twenty-nine redactions in the main text and twenty redactions in footnotes. Paragraphs 2, 7, 8, 9, 10, 11, 12, 16, 17 and 18 are redacted in full, as well as their respective footnotes. Subsection III.B’s title is partially redacted. The relief sought is also partially redacted.
10. *First*, the Defence submits under these circumstances of heavy redactions, the requirement set out in [REDACTED] is not reached as the detained persons have not been properly informed of the Prosecution’s request.
11. *Second*, under the current redactions, the Defence finds itself in a situation where on 15 April 2019, the Chamber will deliver a new decision on [REDACTED] without the Defence being fully informed of the Prosecution’s arguments presented in the Request to [REDACTED] and, as a consequence, the Defence is not in a position to properly assess, analyse and respond to

⁴ ICC-01/14-01/18-172-Conf-Exp. A Confidential redacted version was filed on 11 April 2019.

⁵ ICC-01/14-01/18-171-Conf-Exp. A confidential redacted version was filed on 12 April 2019.

such a request.

12. In this regard, the Defence recalls the Appeals Chamber's finding in the *Ntaganda* case that the opportunity within the meaning of [REDACTED].⁶
13. Further, the Defence reiterates the argument already presented in the Ngaiissona's Observations⁷ that, under the current schedule to submit observations on [REDACTED], it is not in a position to *genuinely* respond to the Prosecution's requests to [REDACTED]. The Defence adds to this argument that, confronted with the Prosecution's heavily redacted Request to [REDACTED], it will not be able to provide any further response by the time of the Defence's next observations, if the Chamber orders any.
14. *Third*, the necessity for the Defence to be fully and precisely informed on the Prosecution's Request to [REDACTED] is even more vital as the Prosecution requested [REDACTED] beyond 15 April 2019 and with that, [REDACTED].
15. *Fourth*, the Prosecution seems to have requested an additional relief that, as redacted, has not even been communicated to the Defence and as such, cannot be the subject of any Defence's response, whether present or future.
16. *Finally*, the Defence notes that the Prosecution has not even justified the classification of the Request to [REDACTED] and the notification of a confidential redacted version to the Defence. In other words, the Prosecution has not deemed it necessary to provide the Defence with an explanation, reasoning and the motives for this exceptional volume of redactions.
17. In this regard, the Defence recalls [REDACTED]:

⁶ [REDACTED].

⁷ The Ngaiissona's Observations, paras 15-16.

[REDACTED].⁸

18. The Defence submits that, provided that the Prosecution intended to base the Request to [REDACTED], it should have substantiated the “exceptional circumstances” that would justify that an order be made prior to the detained persons being informed. As such justification does not appear in the Request to [REDACTED] cannot serve as a legal basis to the redactions affecting the Request to [REDACTED].

19. For the foregoing reasons, the Defence respectfully requests the Chamber to disregard the submissions subject to the redaction in the Request to [REDACTED]. Alternatively, the Defence requests the Chamber to order the Prosecution to lift the redactions affecting the Request to [REDACTED].

RELIEF SOUGHT

20. The Defence respectfully requests the Chamber to:

- **DISREGARD** the submissions subject to the redaction in the Request to [REDACTED]; or

In alternative,

- **ORDER** the Prosecution to lift the redactions to the Request to [REDACTED].

Respectfully submitted,



Mr Knoops

Lead Counsel for Mr. Patrice-Edouard Ngaïssona

⁸ Emphasis added.



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Lead Counsel for Mr. Yekatom



Peter Robinson
Associate Counsel for Mr. Yekatom

Dated this 24 January 2020,
At The Hague, the Netherlands.