

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **10 March 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 & PATRICE-EDOUARD NGAÏSSONA***

Public

**Yekatom Defence Request not to include *Ex Parte* Evidentiary material in
Record of the Proceedings**

Source: Defence for Mr. Alfred Rombhot Yekatom

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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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Me Xavier-Jean Keïta

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Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully request that the Pre-Trial Chamber (“Chamber”) not include any *ex parte* evidentiary material in the record of the proceedings when it transmits that record to the Presidency pursuant to Rule 129, when the proceedings before the Pre-Trial Chamber are completed, whether by disposing of the Prosecution reconsideration request, by denial of leave to appeal or after ultimate resolution of the issues by the Appeals Chamber if leave to appeal is granted.

2. By evidentiary material, the Defence is referring to the unredacted material provided by the Prosecution pursuant to the Single Judge’s *Decision on Disclosure and Related Matters*¹ as well as any other documents or recordings bearing an Evidence Registration Number (“ERN”) that has not been made available to the Defence or has been made available in redacted form.

3. Rule 129 of the Rules of Procedure and Evidence provides:

The decision of the Pre-Trial Chamber on the confirmation of charges and the committal of the accused to the Trial Chamber shall be notified, if possible, to the Prosecutor, the person concerned and his or her counsel. Such decision and the record of the proceedings of the Pre-Trial Chamber shall be transmitted to the Presidency.

4. The Presidency then transmits the record of the proceedings to the Trial Chamber pursuant to Rule 130.

¹ [ICC-01/14-01/18-64-Conf](#). Public redacted version: [ICC-01/14-01/18-64-Red](#), para. 31: “In order to verify, at its discretion, the validity of any redactions made by the disclosing party and, if necessary, order the disclosing party *proprio motu* to lift, partially or fully, any redactions, after having given the disclosing party the opportunity to submit its observations, the Single Judge considers it appropriate that the Chamber receive the evidence as disclosed to the Defence, but also in non-redacted version. The only purpose of communicating that non-redacted version of evidence to the Chamber shall be to give it the opportunity to verify, pursuant to rule 81 of the Rules, the scope and validity of any redactions made. Certainly, in its decision on the confirmation of charges, the Chamber shall take into account only the version of evidence that was disclosed between the parties.”

5. The Chambers Practice Manual provides that:

Following the confirmation of charges and the assignment of the case to a Trial Chamber, the record is transmitted to the Trial Chamber pursuant to Rule 130 of the Rules. This includes all evidence which has become part of the record by way of its communication to the Pre-Trial Chamber following *inter partes* disclosure (cf. also Rule 121(10) of the Rules).²

6. In the *Al Hassan* case, the Single Judge recently held that the Trial Chamber did not wish to receive redacted material that had not been disclosed *inter partes*, noting that the evidence disclosure regime adopted only allows for limited and circumscribed exceptions to the principle of full disclosure.³

7. The jurisprudence of this Court provides that *ex parte* proceedings should be exceptional, only used when truly necessary and when no alternative procedures are available, and be proportionate given the potential prejudice to the accused.⁴ A Chamber should not be provided with any information on an *ex parte* basis purely for its information.⁵

8. The Defence respectfully requests that the Pre-Trial Chamber respect the *Chamber's Practice Manual* and this jurisprudence not include any *ex parte* evidentiary material in the record it transmits to the Presidency.

² [Chambers Practice Manual](#), para. 69.

³ *Prosecutor v. Al Hassan*, [Decision on the Evidence Disclosure Protocol and Other Related Matters](#), ICC-01/12-01/18-546, 30 December 2019, para. 17.

⁴ *Prosecutor v. Bemba*, [Decision on the Defence's Request for Access to Filings in Case ICC-01/05-01/08](#), ICC-01/05-01/08-3630, 7 May 2018, para. 12; *Prosecutor v. Lubanga Dyilo*, [Decision on the Procedures to be Adopted for ex parte Proceedings](#), ICC-01/04-01/06-1058, 6 December 2007, para. 12; *Prosecutor v. Ntaganda*, [Decision on Expedited Defence Request for Reclassification of Ex Parte Documents](#), ICC-01/04-02/06-2230, 15 February 2018, para. 8.

⁵ *Prosecutor v. Lubanga Dyilo*, [Decision on the Procedures to be Adopted for ex parte Proceedings](#), ICC-01/04-01/06-1058, 6 December 2007, para. 13.

RESPECTFULLY SUBMITTED ON THIS 10th DAY OF MARCH 2020



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