

Annex 12

From: Trial Chamber V Communications
Sent: 12 June 2020 11:30
To: [REDACTED] Trial Chamber V Communications
Cc: D30 Ngaissona Defence Team; OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom Defence Team; V44 LRV Team; V45 LRV Team; Office of the Director DJSS; V44LRVTeam-OPCV
Subject: RE: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaissona: ICC-01/14-01/18-541-Red - Public Redacted Version of "Defence Request to Redress the Violations of Mr Ngaissona's Rights in Detention"

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Registry,

Having considered the Registry's and the Defence's submissions, and noting that the information in question is already publically available, the Single Judge is not convinced that a classification as confidential is warranted in this instance.

The Single Judge thus rejects the request and orders the Registry to lift the restriction on access to filing ICC-01/14-01/18-541-Red.

Kind regards, TC V

From [REDACTED]
 Sent: 11 June 2020 18:21
 To: Trial Chamber V Communications
 Cc: D30 Ngaissona Defence Team; OTP CAR IIB Managers; OTP CAR IIB Case Management; D29 Yekatom Defence Team; V44 LRV Team; V45 LRV Team; Massidda, Paolina; Suprun, Dmytro; Office of the Director DJSS; [REDACTED]
 Subject: Re: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaissona: ICC-01/14-01/18-541-Red - Public Redacted Version of "Defence Request to Redress the Violations of Mr Ngaissona's Rights in Detention"

Your Honours,

The Defence strongly opposes the Registry's request to reclassify the Defence's submissions ICC-01/14-01/18-541-Red as confidential.

First, the Registry does not provide a legal basis for its request, which is contrary to the requirements of regulation 23(1)(d) of the Regulations of the Court (the importance of providing a clear legal basis pursuant to which a request is filed with the Court was underscored, inter alia, in *The Prosecutor v. Gbagbo and Blé Goudé*, Decision on "Urgent Prosecution's motion seeking clarification on the standard of a 'no case to answer' motion", 13 June 2018, ICC-02/11-01/15-1182, para. 9.). Moreover, by generally referring to "operational and security reasons", the Registry fails to sufficiently substantiate the factual basis for its request.

Second, the Registry's request incorrectly qualifies certain information as confidential. The fact that the Detention Centre has more than one wing is an information which is already in the public domain (see *The Prosecutor v. Al Hassan*, Public redacted version of 'Decision on the Defence request for interim release', 29 May 2020, ICC-01/12-01/18-786-Red, para 33, noting that Mr Al Hassan is detained in a wing by

himself). As for “details about lock-up times”, the fact that detainees are locked up at night and during guards’ meals is an information of public knowledge (see article “10 things you didn’t know about the ICC Detention Centre”, which directly quotes the CCO: https://medium.com/@justice_hub/10-things-you-didnt-know-about-the-icc-s-detention-centre-a16ca6e6aae1, point 6). The fact that detainees engage in sports and fresh air is equally in the public domain (see point 5 of the above-mentioned article). The Defence acknowledges that the fact that detainees who do not engage in sports or fresh air are locked up in their cell may not be in the public domain. However, this information does not appear to raise any particular operational or security concern. As far as the “provision of food by the host state” is concerned, the fact that food can be bought from an African Shop is an information of public knowledge (see point 4 of the above-mentioned article, which specifically mentions “cassava flour” i.e. chikwangue as one of the specific products that can be ordered from the list). Furthermore, no specific information concerning the provision of food at the DC by the host state is provided at paragraphs 28-29 of the Defence’s submissions, where the Defence simply notes, in general terms, that chikwangue had not been available at the DC for a certain period of time. Moreover, information about the unavailability of a certain food item at the DC does not raise any operational or security concern.



Lastly, the Defence wishes to emphasise that it has adopted an extremely cautious approach while preparing a public redacted version of submissions ICC-01/14-01/18-541, by redacting the totality of the Registry and CCO’s decisions and determinations with respect to the matters raised in its submissions.

Therefore, the Defence respectfully requests the Chamber to reject the Registry’s request for reclassification.

Kind regards,



On behalf of the Ngaïssona Defence Team

From: 
Sent: Thursday, June 11, 2020 2:02 PM
To: Trial Chamber V Communications
Cc: D30 Ngaïssona Defence Team ; OTP CAR IIB Managers ; OTP CAR IIB Case Management ; D29 Yekatom Defence Team ; V44 LRV Team ; V45 LRV Team ; Paolina Massidda  ; Suprun, Dmytro_icc-cpi ; Office of the Director DJSS
Subject: RE: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona: ICC-01/14-01/18-541-Red - Public Redacted Version of "Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention"

Your honours,

The Registry has noted that the Defence filed on 2 June 2020 a public redacted version of the “Defence Request to Redress the Violations of Mr Ngaïssona’s Rights in Detention” (“Request”, ICC-01/14-01/18-541-Conf). Notwithstanding the application of redactions, upon further review, the Request, classified as public, contained information related to internal Registry procedures in detention that are not known to the public at large (i.e. the fact that there are several wings in detention (para. 14), details about the lock up times (para. 14), and the provision of food from the host State (paras. 28 and 29)).

Unless decided otherwise by the Chamber, this information ought to be kept confidential for operational and security reasons.

Accordingly, on 8 June 2020, as a precautionary measure, the Registry proceeded to remove the public redacted version of the Request from the International Criminal Court’s website and further informed the Chamber, parties and participants.

In light of the above, the Registry requests the reclassification as confidential of the document ICC-01/14-01/18-541-Red.

Respectfully and kind regards,

Registry.

From: Trial Chamber V Communications
Sent: 08 June 2020 12:48
To: [REDACTED]; Office of the Director DJSS

[REDACTED]

Subject: RE: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona: ICC-01/14-01/18-541-Red - Public Redacted Version of "Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention"

Dear Carline,

The Single Judge authorises the temporary restriction to filing ICC-01/14-01/18-541-Red, and orders the Registry to inform the Chamber of the details as soon as possible.

Kind regards, TC V

From: [REDACTED]
Sent: 08 June 2020 12:24

[REDACTED]



Redacted Version of "Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention"

Your Honours,
Dear Trial Chamber V colleagues,

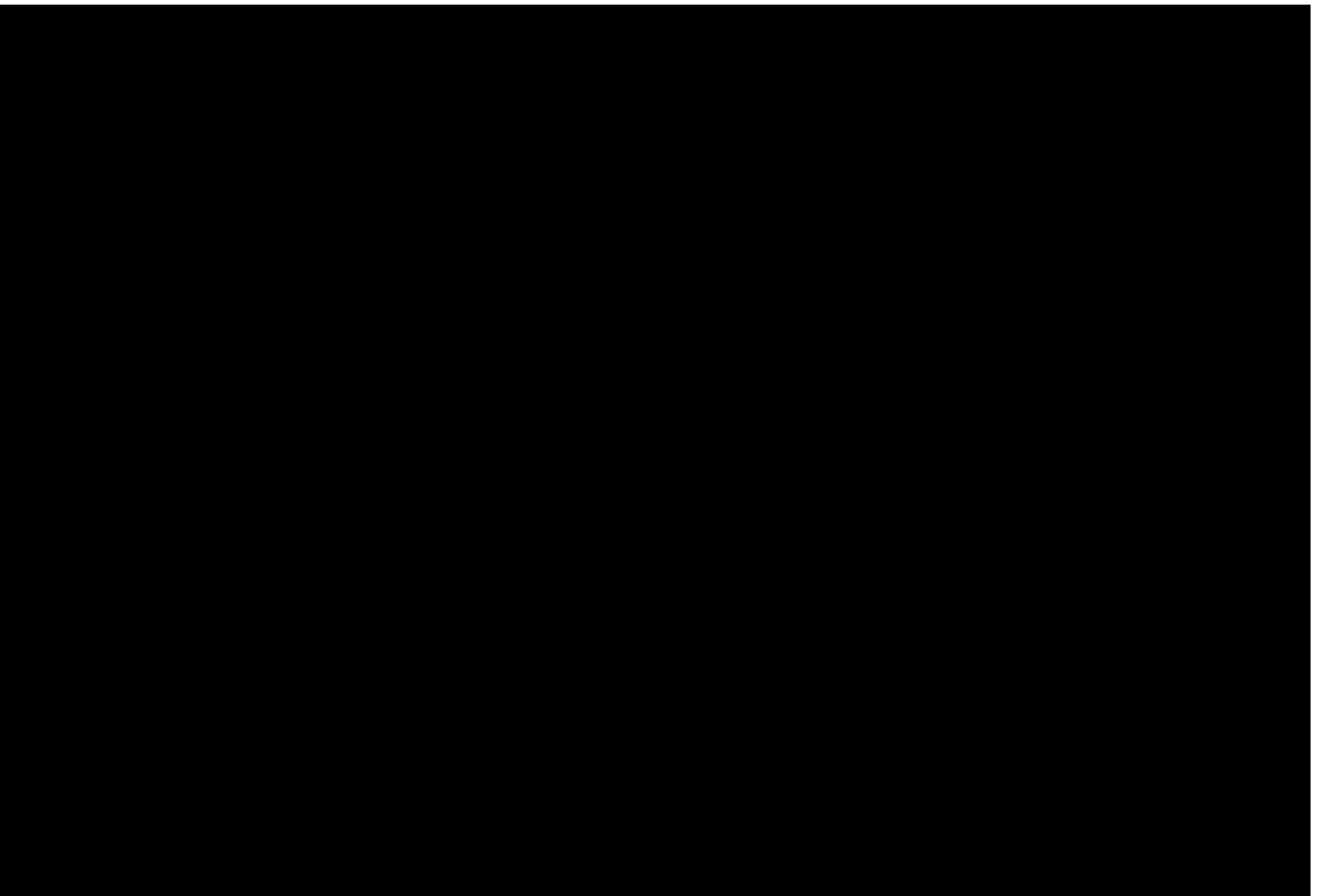
The Registry respectfully requests the official authorization of the Trial Chamber to temporarily restrict the access to this filing from the public domain, due to certain confidentiality issues, of which the Registry will inform the Trial Chamber in detail, once and if authorization has been received.

As a temporary measure the filing has been removed from the public domain, pending the authorization of the Trial Chamber.

Kind regards,
Court Management Section



From: Court Management-Court Records
Sent: 08 June 2020 10:42



Subject: RE: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona: ICC-01/14-01/18-541-Red - Public Redacted Version of "Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention"

Your Honours,

Dear all,

Please note that access to court record ICC-01/14-01/18-541-Red has been temporarily restricted.
This document contains information that may be confidential.
Please consider this document as confidential.

Kind regards,

Court Management Section

From: Court Management-Court Records
Sent: 03 June 2020 14:25

Subject: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona: ICC-01/14-01/18-541-Red - Public Redacted Version of "Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention"

<https://edms.icc.int/RMWebdrawer/Record/2689507>

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Le but de ce courriel est de vous informer que le document mentionné ci-dessous a été enregistré dans ICC-01/14-01/18.

Public Redacted Version of "Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention"

Submitted by the Defence Counsel of Mr. Patrice-Edouard Ngaïssona / Déposé par le Conseil de la Défense de M. Patrice-Edouard Ngaïssona

Reception Date/hour / Reçu le date/heure : 03/06/2020 12:43:43

Registration Date / Enregistré le : 03/06/2020

Notification Date / Notifié le : 03/06/2020

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