

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 10 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 *THE PROSECUTOR V. ALFRED YEKATOM AND*
PATRICE-EDOUARD NGAÏSSONA

Confidential

Decision on the Prosecutor's Request for an Extension of Time to Apply for the Non-Disclosure of Witness Identities

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for Alfred Yekatom
Stéphane Bourgon
Mylène Dimitri

Counsel for Patrice-Edouard Ngaissona
Geert-Jan Alexander Knoops

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit
Nigel Verrill

Detention Section

**Victims Participation
and Reparations Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this decision on the Prosecutor's request for an extension of time submitted in the '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)"' (the 'Request').¹

I. Procedural history

1. On 11 November 2018, the Chamber issued a warrant of arrest for Alfred Yekatom,² who was surrendered to the Court by the authorities of the Central African Republic on 17 November 2018.³ On 23 November 2018, Yekatom made his initial appearance before the Chamber during which the Chamber, *inter alia*, scheduled the confirmation of charges hearing ('confirmation hearing') to commence on 30 April 2019.⁴
2. On 7 December 2018, the Chamber issued a warrant of arrest against Patrice-Edouard Ngaïssona,⁵ who was surrendered to the Court by the authorities of the Republic of France on 23 January 2019.⁶ On 25 January 2019 Ngaïssona made his initial appearance before the Chamber during which the Chamber, *inter alia*, scheduled the confirmation hearing to commence on 18 June 2019.⁷
3. On 23 January 2019, the Single Judge issued the 'Decision on Disclosure and Related Matters' ('First Disclosure Decision').⁸
4. On 4 February 2019, the Prosecutor filed the 'Prosecution's Provisional Schedule for the Disclosure of Evidence Prior to the Confirmation Hearing'⁹ in which

¹ 29 March 2019, ICC-01/14-01/18-162-Conf-Exp, with 6 confidential, *ex parte*, annexes. A confidential, redacted version of the filing is also available, *see* ICC-01/14-01/18-162-Conf-Red.

² ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant of arrest is also available, *see* ICC-01/14-01/18-1-Red.

³ Registrar, Rapport du Greffe sur l'Arrestation et la Remise de M. Alfred Yekatom, 22 November 2018, ICC-01/14-01/18-17-US-Exp, paras 19, 25.

⁴ Transcript of Hearing, ICC-01/14-01/18-T-1-ENG, p. 8, lines 20-25.

⁵ ICC-01/14-01/18-89-US-Exp. A public redacted version is also available, *see* ICC-01/14-01/18-89-Red.

⁶ Registrar, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, 25 January 2019, ICC-01/14-01/18-101-US-Exp, paras 5, 15.

⁷ Transcript of Hearing, ICC-01/14-01/18-T-2-ENG, p. 9, lines 5-6.

⁸ ICC-01/14-01/18-64-Conf. A public redacted version is also available, *see* ICC-01/14-01/18-64-Red.

⁹ ICC-01/14-01/18-77-Conf.

the Prosecutor outlined a provisional schedule for the disclosure of evidence intended for presentation at the confirmation hearing.

5. On 8 February 2019, pursuant to an order of the Single Judge,¹⁰ the Prosecutor filed the ‘Rapport de l’Accusation en application de la decision du juge unique “*Disclosure and Related Matters*” (ICC-01/14-01/18-64-Conf)’.¹¹

6. On 20 February 2019, the Chamber joined the cases against Yekatom and Ngaïssona and retained 18 June 2019 as the date of the confirmation hearing.¹²

7. On 14 March 2019, the Chamber issued the ‘Decision setting a deadline for the submission of applications prior to the Confirmation Hearing’ (the ‘14 March 2019 Decision’), ordering the Prosecutor to submit any applications for the authorisation of the non-disclosure of witnesses’ identities and/or the non-disclosure of entire items of evidence by 29 March 2019 at the latest.¹³

8. On 29 March 2019, the Prosecutor submitted the ‘Request, seeking authorization to withhold the identities of a number of witnesses and apply non-standard redactions to the statements of others and requesting, an extension of three weeks to apply for the non-disclosure of identities for other witnesses.’¹⁴

9. On 4 April 2019, the Chamber issued the ‘Second Decision on Disclosure and Related Matters’ (the ‘Second Disclosure Decision’), thereby deciding, *inter alia*, that the First Disclosure Decision was applicable to the joint case, as modified by the Second Disclosure Decision.¹⁵

10. On 8 April 2019, the Yekatom Defence and the Ngaïssona Defence (the ‘Defence’) jointly submitted the ‘Réponse de M. Alfred Rombhot Yekatom et de M. Patrice-Edouard Ngaïssona à la «Confidential Redacted version of “Prosecution’s Requests in Response to ‘Decision setting a deadline for the submission of

¹⁰ See Decision on Disclosure and Related Matters, 23 January 2019, ICC-01/14-01/18-64-Conf, para. 22.

¹¹ ICC-01/14-01/18-80.

¹² ICC-01/14-01/18-87, para. 18; ICC-01/14-02/18-34, para. 18.

¹³ ICC-01/14-01/18-148-Conf.

¹⁴ Request, paras 3 and 16.

¹⁵ ICC-01/14-01/18-163.

applications prior to the Confirmation Hearing (ICC-01/14-01/18-148-Conf)”, 29 March 2019, ICC-01/14-01/18-162-Conf-Exp» (the ‘Response’).¹⁶

II. Submissions

11. In the Request, the Prosecutor submits that despite her best efforts to meet the 29 March 2019 deadline, an additional three weeks is needed in order to fully comply with the 14 March 2019 Decision.¹⁷ In support of this claim, the Prosecutor asserts that the evidence collection for this Situation is massive. While the Prosecutor has reviewed 94% of the material for relevance, the extension is necessary to complete the review of the remaining material.¹⁸

12. The Prosecutor states that its current application to withhold the identities of a number of witnesses and apply non-standard redactions to the statements of others is based on an incomplete and non-exhaustive review of its evidence collection, and that the additional time is necessary to finalise the Prosecutor’s review of all documents currently in its collection and to identify those that are ‘truly relevant’.¹⁹ Only after finalising the above review will the Prosecutor be in a position to provide the Chamber with ‘a complete list of witnesses whose identities need to be withheld pending the assessment and implementation of security measures’.²⁰

13. The Defence strongly opposes the request for an extension of time and asserts that the request demonstrates a flagrant lack of consideration on the part of the Prosecutor towards the Chamber and the rights of the suspects.²¹ The Defence asks the Chamber to ensure that the confirmation hearing will take place on 18 June 2019, as scheduled.²²

14. The Prosecutor did not explain why she failed to request an extension earlier, or why she requires three weeks to complete the review of the remaining 6% of the

¹⁶ ICC-01/14-01/18-165-Conf.

¹⁷ Request, paras 3, 16.

¹⁸ Request, para. 3.

¹⁹ Request, para. 16.

²⁰ Request, paras 3, 16.

²¹ Response, para. 50.

²² Response, para. 56

evidence collection.²³ Further, the Defence submits that the Prosecutor did not indicate when the material for review came into her possession, and that such information is essential in order to determine whether the request for an extension is reasonable.²⁴

15. As the Defence seeks to ensure that there will not be a delay of the confirmation hearing, any extension would result in less time for the Defence to analyse the evidence and prepare its defence.²⁵ Based on the phrasing used in the Request, the Defence expresses concern that the Prosecutor may request additional extensions in the future.²⁶ Finally, the Defence asserts that the deadlines set by the Chamber must be respected in order to ensure that the rights guaranteed by the Statute to Yekatom and Ngaïssona are respected.²⁷

III. Analysis

16. The Chamber notes regulation 35 of the Regulations of the Court (the 'Regulations').

17. The Chamber recalls that the 14 March 2019 Decision ordered the Prosecutor to submit 'any applications for the authorisation of the non-disclosure of witnesses' identities and/or the non-disclosure of entire items of evidence by 29 March 2019 at the latest'.²⁸

18. The Chamber observes that the Request, which incorporates the request for an extension of the stipulated time limit, was filed at 15:52 on 29 March 2019, the day that the filing was due. The Chamber was thus prevented from assessing and ruling upon the request for an extension of time prior to the lapse of the original time limit. The Prosecutor also fails to indicate why her request for an extension of time was filed so late. While regulation 35(2) of the Regulations does not *per se* preclude the Prosecutor from applying for an extension of the time limit on the day that the filing is

²³ Response, para. 57.

²⁴ Response, para. 58.

²⁵ Response, para. 59.

²⁶ Response, para. 55.

²⁷ Response, para. 60.

²⁸ 14 March 2019 Decision, page 5.

due, such practice, in the Chamber's view, goes against the principle of fairness and impacts judicial economy. Good practice would dictate filing a request for an extension of time sufficiently in advance of the deadline, rather than waiting until the day of the deadline to do so.

19. Turning to whether, pursuant to regulation 35(2) of the Regulations, good cause has been shown for an extension of the time limit, the Chamber notes the Prosecutor's submissions regarding the large collection of material involved in this investigation, and in particular, the number of pages of documents that remain to be reviewed to determine whether any of the material is incriminating, exculpatory or disclosable under rule 77 of the Rules of Procedure and Evidence.

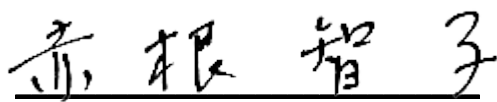
20. Noting the concerns raised by the Defence, the Chamber nevertheless considers that in view of the necessity of the review and the volume of material that remains, good cause has been shown for an extension of the time limit. Furthermore, the Chamber finds that the extension requested is reasonable in the circumstances.

21. Accordingly, the Chamber directs the Prosecutor to provide any and all applications for non-disclosure of witness identities and/or for non-disclosure of entire items of evidence by 18 April 2019.

FOR THESE REASONS, THE CHAMBER HEREBY**GRANTS** the request for an extension of time; and**ORDERS** the Prosecutor to submit any and all applications for the authorisation of the non-disclosure of witnesses' identities and/or the non-disclosure of entire items of evidence by 18 April 2019.

Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge

Judge Tomoko Akane

Judge Rosario Salvatore Aitala

Dated this Wednesday, 10 April 2019

At The Hague, The Netherlands