



**Original: English**

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

**Date: 26 July 2019**

**Date of public redacted version: 3 February 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 YEKATOM AND  
PATRICE-EDOUARD NGAÏSSONA***

**Public Redacted**

Decision on the ‘Joint Defence Motion for Disclosure of  
Anonymous Summaries for [REDACTED] and [REDACTED]’

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

**The Office of the Prosecutor**

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Geert-Jan Alexander Knoops

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Elisabeth Rabesandratana  
Yaré Fall  
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Paolina Massidda

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel  
for Victims**

Dmytro Suprun

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**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 ‘Joint Defence Motion for Disclosure of Anonymous Summaries for [REDACTED] and [REDACTED]’.

## **I. Procedural History**

1. On 30 October 2018, the Prosecutor submitted under seal, *ex parte*, an application for the issuance of warrants of arrest for Patrice-Edouard Ngaïssona and Alfred Yekatom.<sup>1</sup>

2. On 11 November 2018, the Chamber issued the ‘Warrant of Arrest for Alfred Yekatom’.<sup>2</sup> On 17 November 2018, Yekatom was surrendered to the Court by the authorities of the Central African Republic.<sup>3</sup>

3. On 7 December 2018, the Chamber issued the ‘Warrant of Arrest for Patrice-Edouard Ngaïssona’.<sup>4</sup> On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.<sup>5</sup>

4. On 20 February 2019, the Chamber issued the ‘Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters’, thereby joining the cases against Yekatom and Ngaïssona.<sup>6</sup>

5. On 15 May 2019, the Chamber issued the ‘Decision on the “Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines”’, thereby deciding that the confirmation of charges hearing in the case against Yekatom and Ngaïssona shall commence on 19 September 2019 and ordering the Prosecutor to ‘submit any and all applications for the authorisation of the non-

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<sup>1</sup> ICC-01/14-01/18-2-US-Exp, together with 11 under seal, *ex parte* annexes.

<sup>2</sup> 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](#).

<sup>3</sup> Registry, Rapport du Greffe sur l’Arrestation et la Remise de M. Alfred Yekatom, ICC-01/14-01/18-17-US-Exp, paras 19-24.

<sup>4</sup> ICC-01/14-01/18-89-Conf-Exp. A public redacted version of the warrant of arrest is also available; see [ICC-01/14-01/18-89-Red](#).

<sup>5</sup> Registry, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, ICC-01/14-01/18-101-US-Exp, paras 5-14.

<sup>6</sup> [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-121](#).

disclosure of witnesses' identities and/or the non-disclosure of entire items of evidence by 7 June 2019 at the latest' (the '7 June 2019 Deadline').<sup>7</sup>

6. On 29 May 2019, at a status conference, the Chamber extended the 7 June 2019 Deadline until 5 July 2019.<sup>8</sup>

7. On 5 July 2019, the Chamber received the 'Prosecution's Request for the Non-Disclosure of Witness Identities' (the 'Prosecutor's Request').<sup>9</sup>

8. On 11 July 2019, the Chamber received the 'Addendum to "Prosecution's Request for the Non-Disclosure of Witness Identities", ICC-01/14-01/18-237-Conf-Exp, 5 July 2019'.<sup>10</sup>

9. On 23 July 2019, the Chamber ordered the Yekatom Defence and the Ngaïssona Defence to submit their respective responses to the Prosecutor's Request by 29 July 2019, 16:00 hours, at the latest.<sup>11</sup>

10. On 24 July 2019, the Chamber received the 'Joint Defence Motion for Disclosure of Anonymous Summaries for [REDACTED] and [REDACTED]' submitted by the Yekatom Defence and the Ngaïssona Defence (the 'Defence' and the 'Joint Defence Request').<sup>12</sup>

11. On 24 July 2019, the Chamber ordered the Prosecutor to submit a response to the Joint Defence Request by 25 July 2019, 16:00 hours, at the latest.<sup>13</sup>

12. On 25 July 2019, the Chamber received the 'Prosecution's Response to the Joint Defence Motion for Disclosure of Anonymous Summaries for [REDACTED] and [REDACTED] (ICC-01/14-01/18-254-Conf)'.<sup>14</sup>

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<sup>7</sup> [ICC-01/14-01/18-199](#).

<sup>8</sup> ICC-01/14-01/18-T-003-CONF-EXP-ENG ET, p. 12.

<sup>9</sup> ICC-01/14-01/18-237-Conf-Exp, together with 2 confidential, *ex parte* annexes. A confidential redacted version was registered on 23 July 2019; *see* ICC-01/14-01/18-237-Conf-Exp.

<sup>10</sup> ICC-01/14-01/18-244-Conf-Exp, together with 1 confidential, *ex parte* annex.

<sup>11</sup> Email from the Chamber to the Lead Counsel for Yekatom and Ngaïssona, dated 23 July 2019, 16:41 hours.

<sup>12</sup> ICC-01/14-01/18-254-Conf.

<sup>13</sup> Email from the Chamber to the Prosecutor's Senior Trial Lawyer in the present case, dated 24 July 2019, 18:12 hours.

<sup>14</sup> ICC-01/14-01/18-255-Conf.

## **II. Submissions**

### **A. The Defence**

13. The Defence ‘moves for an order that the Prosecution furnish the Defence with the anonymous summaries it proposes to use at the confirmation hearing for Witnesses [REDACTED] and [REDACTED]’ and ‘an extension of time to file its response to the [Prosecutor’s Request] until 48 hours after receipt of the summaries’. In addition, ‘the Defence suggests that the Prosecution be ordered to file a public redacted version of the [Prosecutor’s] Request, and that this Motion then be reclassified as public’.

14. According to the Defence, it can ‘meaningfully assist the Chamber to assess the prejudice to the Defence by making submissions about the importance of the witnesses that the Chamber would otherwise be unaware of, gleaned from the Defence review of the voluminous disclosure in this case and its own investigations’. However, the Defence asserts that, ‘in order to do this, the Defence needs access to the anonymous summaries that the Prosecution proposes to use at the confirmation hearing’. The Defence is also of the view that ‘[o]rdering the Prosecution to provide the anonymous summaries at this stage will not prejudice the Prosecution’ as ‘[t]he Prosecution would be disclosing the summaries anyway if its Request is granted’ and, if the Prosecutor’s Request is denied, ‘the summaries are anonymous and do not reveal the identities of the witnesses’. Furthermore, the Defence argues that ‘[p]roviding the anonymous summaries to the Defence will not delay the confirmation hearing, nor will it materially delay the Chamber’s decision’.

15. Lastly, in the submission of the Defence, ‘because the non-disclosure of witnesses at the confirmation hearing is an important issue going to the fairness of the proceedings at the Court, it should be debated in public to the extent possible’.

### **B. The Prosecutor**

16. According to the Prosecutor, the Chamber ‘should reject the [Joint Defence Request] in its entirety’.

17. The Prosecutor submits that the Joint Defence Request ‘does not satisfy the conditions for varying the time limit set by the Chamber’. In this regard, the Prosecutor avers that the Joint Defence Request ‘neither mentions nor establishes

“good cause shown” and, in addition, that ‘the time limit set [...] is manifestly reasonable and sufficient for the Defence to address the limited matters at issue’.

18. The Prosecutor further argues that the Joint Defence Request ‘does not set out any particularly compelling reason why, in this instance, the disclosure deadline should be departed from’. In addition, in the view of the Prosecutor, ‘there is no basis for the Defence request’.

19. Lastly, the Prosecutor submits that ‘the Chamber need not “order” the filing of a public redacted version of [the Prosecutor’s Request] as ‘one would be filed in due course in any event’.

### **III. Determination by the Chamber**

20. The Chamber notes that the Appeals Chamber has determined that, in considering requests for using anonymous summaries under article 68(5) of the Rome Statute and rule 81(4) of the Rules of Procedure and Evidence, the Chamber is required to assess whether disclosing a witness’ identity would pose an objectively justifiable risk to the witness’ safety, and if so, to ensure that such summaries are used in a manner that is not prejudicial to or inconsistent with the rights of the suspects and with a fair and impartial trial.<sup>15</sup> In this regard, the Chamber notes its duty in reviewing any proposed anonymous summaries for accuracy, consistency, completeness, and any potentially identifying information. As such, the Chamber must, absent a compelling reason, complete its review prior to the transmission of the proposed summaries to the Defence. The Chamber also notes that, for the purposes of the matter under consideration, the confidential redacted version of the Prosecutor’s Request sufficiently enables the Defence to submit its response to the Prosecutor’s Request. Lastly, the Chamber considers that it does not require additional submissions to adopt its decision on the Prosecutor’s Request. For these reasons, the Chamber finds that, in the circumstances of this case, the Defence has failed to demonstrate a compelling reason to disclose the

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<sup>15</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81”](#), 14 December 2006, ICC-01/04-01/06-773, paras 44-46, 50-51.

anonymous summaries of witnesses [REDACTED] and [REDACTED] before the Chamber's decision on the Prosecutor's Request and, accordingly, rejects this aspect of the Joint Defence Request.

21. The Chamber further observes that the Defence requests 'an extension of time to file its response to the [Prosecutor's Request] until 48 hours after receipt of the [anonymous summaries of witnesses [REDACTED] and [REDACTED]]'. Having determined that the Joint Defence Request must be rejected in so far as the disclosure of these summaries is concerned, the Chamber finds that the Defence request for an extension of time has become moot.

22. Furthermore, in the view of the Chamber, beyond generally stating that the matter should be debated in public to the extent possible, the Defence has failed to justify why a public redacted version of the Prosecutor's Request is required at this time. In this regard, the Chamber also notes that the Prosecutor indicates that such a public redacted version will be filed in due course. Accordingly, the Chamber considers that this aspect of the Joint Defence Request must be rejected as well.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Joint Defence Request.

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

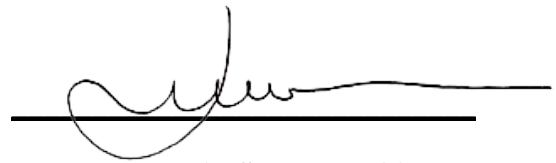


**Judge Antoine Kesia-Mbe Mindua**

**Presiding Judge**



**Judge Tomoko Akane**



**Judge Rosario Salvatore Aitala**

Dated this Monday, 3 February 2020

At The Hague, The Netherlands