



Original: English

No. ICC-01/14-01/18

Date: 13 September 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 ‘Prosecution’s Urgent Request for Non-Standard Redactions under
Rule 81(2)’

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 the Defence

Mylène Dimitri
Peter Robinson

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops

Legal Representatives of the Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Dmytro Suprun

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Defence 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 ‘Prosecution’s Urgent Request for Non-Standard Redactions under Rule 81(2)’.

I. Procedural history

1. On 28 June 2019, the Chamber issued the ‘First Decision on the Prosecutor’s Request for Authorisation to Withhold the Identities of Witnesses and Apply Non-Standard Redactions’ (the ‘First Decision on Redactions’), setting out the guiding principles with respect to the non-disclosure of information, including redactions pursuant to rule 81(2) of the Rules of Procedure and Evidence (the ‘Rules’).¹

2. On 3 September 2019, the Chamber rendered the ‘Decision on the Defence Motion for an Extension of Time to File List of Evidence and Related Motions’, directing the Prosecutor to disclose to the Defence, by 16.00 hrs on 13 September 2019, all requests for assistance (‘RFAs’) submitted by the Prosecutor to obtain the mobile phone records references in the document containing the charges (‘DCC’) and its annexes (the ‘3 September 2019 Decision’).²

3. On 10 September 2019, the Chamber received the ‘Prosecution’s Urgent Request for Non-Standard Redactions under Rule 81(2)’ (the ‘Request’).³

4. On 11 September 2019, the Yekatom Defence filed its ‘Response to Prosecution’s Urgent Request for Non-Standard Redactions Under Rule 81(2)’ (the ‘Response’).⁴

II. The Request and the Response

5. The Prosecutor seeks authorisation to apply non-standard redactions under rule 81(2) of the Rules to information contained in three RFAs which the Chamber ordered the Prosecutor to disclose in its 3 September 2019 Decision. The Prosecutor submits that the redactions are necessary in order to prevent prejudice to the

¹ ICC-01/14-01/18-232-Conf-Exp (a confidential redacted version is also available, *see* ICC-01/14-01/18-232-Conf-Red).

² ICC-01/14-01/18-315-Conf, paras 64-69, pp. 26-27.

³ ICC-01/14-01/18-329-Conf-Exp (with confidential, *ex parte*, annexes A-C; a confidential redacted version is also available, *see* ICC-01/14-01/18-329-Conf-Red).

⁴ ICC-01/14-01/18-332-Conf.

investigation into crimes allegedly committed by the Seleka (the ‘Seleka investigation’). [REDACTED].

6. The Yekatom Defence opposes the Request and submits that ‘the Prosecution’s continuous effort to use its five-year-old Seleka investigation as a basis for withholding information from the Defence should be put to a stop’.

III. Determination of the Chamber

7. The present decision is classified as confidential *ex parte* as it refers to the existence of documents and, to a limited extent, to their content, which have been submitted and are currently treated as confidential, *ex parte*, Prosecutor and Victims and Witnesses Unit only. Taking into account the fairness of the proceedings *vis-à-vis* the Defence, this decision is shared with the Defence, albeit in a confidential redacted form. The Chamber considers that the references made in the present decision to confidential *ex parte* filings are required by the principle of judicial reasoning. They have been kept to a minimum and have been made without endangering the interests concerned and defeating the very purpose of the classification of the filings.

8. The Chamber notes articles 61 and 67 of the Rome Statute, rules 77 and 81 of the Rules and article 8 of the Code of Professional Conduct for counsel. The Chamber further recalls, by reference, the principles set out in the First Decision on Redactions, in particular, in relation to redactions pursuant to rule 81(2) of the Rules.⁵

9. For the reasons that follow, the Chamber finds that the Prosecutor’s proposed redactions to the RFAs, as contained in annexes A to C to the Request, are justified pursuant to rule 81(2) of the Rules.

10. First, the Chamber finds that there is an objectively justifiable risk of prejudice to the Prosecutor’s ongoing Seleka investigation should [REDACTED] be disclosed to the Defence. In this regard, the Chamber notes that such disclosure would reveal the direction and targets of the Seleka investigation [REDACTED]. The risk of prejudice to the ongoing investigation arises from disclosing the information to the Defence, as the information may be passed on by the suspects in this case or by Defence sources on the ground – intentionally or inadvertently [REDACTED]. The

⁵ ICC-01/14-01/18-232-Conf-Red, paras 19-23.

Chamber recalls in this regard its findings in the First Decision on Redactions concerning the volatile situation on the ground in the Central African Republic.⁶

11. Second, the Chamber finds that the proposed redactions are necessary as there are no less intrusive measures that could overcome or reduce the risk of prejudice to the Seleka investigation.

12. Third, the Chamber considers that the proposed redactions are not prejudicial to or inconsistent with the rights of the Defence as: (i) the proposed redactions do not relate to [REDACTED] relied upon by the Prosecutor in the DCC; (ii) the Defence will have access to the relevant information contained in the RFAs; and (iii) the proposed redactions are limited.

13. In light of the above, the Chamber authorises the Prosecutor, pursuant to rule 81(2) of the Rules, to apply redactions to the RFAs which form the object of the Request as proposed in annexes A to C to the Request. This authorisation also extends to any translations of, and the metadata linked to, the concerned RFAs.

FOR THESE REASONS, THE CHAMBER HEREBY


GRANTS the Request;

ORDERS the Prosecutor to continually assess the risk of prejudice to further or ongoing investigations and immediately inform the Chamber of any changes to the current situation which may warrant a variation of the present ruling; and

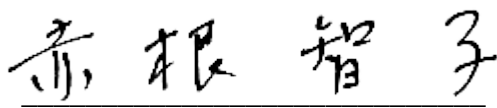
ORDERS the Defence to keep the information disclosed confidential and to ensure that it is not passed on to third parties or to the public.

⁶ ICC-01/14-01/18-232-Conf-Red, para. 40.

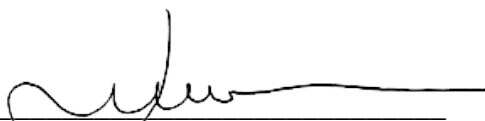
Done in both English and French, the English version being authoritative.



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