

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **16 September 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public with Confidential Annex A

Notice of Observations Pursuant to Rule 122(3)

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. Further to the instructions of Pre-Trial Chamber II (“Chamber”) in *Order Setting the Schedule for the Confirmation of Charges Hearing*,¹ counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully submits this notice of the observations that it intends to present at the confirmation hearing pursuant to Rule 122(3) of the Rules of the Procedure and Evidence (“Rules”).²

RELEVANT PROVISION

2. Rule 122, in its relevant part, provides:

3. Before hearing the matter on the merits, the Presiding Judge of the Pre-Trial Chamber shall ask the Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing.

6. If the objections raised or observations made are those referred to in sub-rule 3, the Pre-Trial Chamber shall decide whether to join the issue raised with the examination of the charges and the evidence, or to separate them, in which case it shall adjourn the confirmation hearing and render a decision on the issues raised.

SUBMISSIONS

3. The Defence intends to raise three issues concerning the proper conduct of the proceedings. Whereas any further delay would be impermissibly prejudicial to the right of Mr. Yekatom to expeditious proceedings, the Defence will request the Chamber to join the issues raised with the examination of the charges and the evidence without ordering an adjournment of the hearing.
4. *First*, the Chamber has found that the security of the Prosecution’s ongoing and future investigation of Seleka crimes outweighs the interest of Mr. Yekatom to

¹ [ICC-01/14-01/18-327](#), para. 14.

² The Defence does not intend to raise any question or challenge concerning jurisdiction or admissibility at this stage [Rule 122(2)], but reserves its right to do so at a later stage.

prepare for his defence and thereby authorised the non-standard redaction of information that may reveal the “direction and targets” of the Seleka investigation.³ The Defence does not seek to re-litigate this issue. Rather, it will argue that the derogation of Mr. Yekatom’s rights is so overwhelming that a fair trial is no longer possible.

5. *Second*, the *ex parte* proceedings excluding the Defence are abused in the present case. For the majority of these records, the Defence is unable to meaningfully comment on the propriety of the withholding of information. Nonetheless, in at least two instances, the Defence was left to respond to an outdated request which has already been⁴ or was later⁵ substantively altered by an *ex parte* filing. Whereas the subsequent decisions revealed both the existence of these filings and the submissions therein, the complete exclusion of the Defence from the second half of the litigation is clearly not necessitated by the sensitivity of the submissions *per se* but is in blatant disregard of Mr. Yekatom’s right to be heard.
6. *Third*, excessive standard redactions are applied to the evidential material disclosed and/or relied upon by the Prosecution, including those pivotal to the proposed charges. Despite the Defence’s efforts to seek the lift of these

³ [ICC-01/14-01/18-232-Conf-Red](#); [ICC-01/14-01/18-249-Conf-Red](#).

⁴ In this instance, the Prosecution’s original request was filed on 18 April 2019 on an *ex parte* basis, and was partly revised by its submissions on 31 May 2019 (ICC-01/14-01/18-217-Conf-Exp, not available to date). Two weeks later on 14 June 2019, a redacted version of the *original* request was made available to the Defence ([ICC-01/14-01/18-179-Conf-Red](#)), to which the Yekatom Defence and the Ngaïssona Defence jointly responded ([ICC-01/14-01/18-230-Conf](#)). On 18 July 2019, the Chamber ruled on the revised request and revealed the existence of the *ex parte* proceedings for the first time ([ICC-01/14-01/18-249-Conf-Red](#)).

⁵ In this instance, the Prosecution’s original request was filed on 29 March 2019 on an *ex parte* basis. A redacted version was made available to the Defence on 2 April 2019 ([ICC-01/14-01/18-162-Conf-Red](#)), to which the Yekatom Defence and the Ngaïssona Defence jointly responded ([ICC-01/14-01/18-165-Conf](#)). On 24 May 2019, the Prosecution filed additional submissions and revised the legal basis and the scope of its request (ICC-01/14-01/18-209-Conf-Exp, not available to date). On 5 July 2019, the Chamber ruled on the scope defined by revised request vis-à-vis the legal basis of the original, and revealed the existence of the *ex parte* proceeding for the first time ([ICC-01/14-01/18-232-Conf-Red](#)).

redactions, the dispute pertaining to most of them persists to date.⁶ As a result, Mr. Yekatom's ability to comprehend the allegations against him and to effectively prepare for his defence, which indispensable to the fairness of the proceedings, has been significantly undermined.

7. These three issues have seriously damaged the integrity of the proceedings. The Defence will submit that the only appropriate relief is to discontinue the proceedings without confirming any charges, and release Mr. Yekatom at once.

CONCLUSION

8. The current notice is submitted to facilitate an expeditious and efficient conduct of the confirmation proceedings. The Defence will utilise the allocated time on 19 September 2019⁷ to present the full observations orally, and to reply to any arguments the other parties or participants may have in response.⁸

RESPECTFULLY SUBMITTED ON THIS 16TH DAY OF SEPTEMBER 2019



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⁶ An index table outlining the procedural history of the redaction-related discussions in form of *inter partes* correspondence, meetings and phone calls, as well as litigation is attached as Confidential Annex A.

⁷ [ICC-01/14-01/18-327](#), para. 15.

⁸ Rule 122(5).