

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 22 May 2020

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF *THE PROSECUTOR v.*  
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

**Public**

**Application for Reclassification of *Ex Parte* Filings**

**Source: Defence Team of Mr. Alfred Rombhot Yekatom**

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

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**Victims Participation and Reparations  
Section**

## **INTRODUCTION**

1. Pursuant to the Single Judge's *Order to Review Ex Parte Filings on the Case Record*,<sup>1</sup> Counsel representing Mr. Alfred Rombhot Yekatom ("Defence" and "Mr. Yekatom", respectively) respectfully apply for the reclassification of seventeen Defence filings from *ex parte* to confidential, one from *ex parte* redacted to confidential redacted and one from *ex parte* to public. The Defence further requests that the Chamber closely examine the continuing need for *ex parte* classification of the Prosecution's filings and order the reclassification or filing of public redacted versions of as many *ex parte* filings as possible. Finally, the Defence also respectfully requests the Chamber to assess whether or not certain redactions contained in Prosecution filings are still warranted at this stage.

## **RELEVANT PROCEDURAL HISTORY**

2. On 30 October 2018, the Prosecution applied, *ex parte*, for warrants of arrest for Alfred Yekatom<sup>2</sup> and Patrice-Edouard Ngaïssona.<sup>3</sup>
3. Mr. Yekatom was arrested in the Central African Republic on 29 October 2018 and arrived at the Detention Centre on 18 November 2018.<sup>4</sup> Mr. Ngaïssona was arrested in France on 12 December 2018 and arrived at the Detention Centre on 23 January 2019.<sup>5</sup>
4. On 11 December 2018, the Defence requested disclosure of the application for Mr. Yekatom's arrest warrant.<sup>6</sup> The Pre-Trial Chamber denied the request the next day.<sup>7</sup>

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<sup>1</sup> [ICC-01/14-01/18-492](#).

<sup>2</sup> [ICC-01/14-01/18-1-Red](#), para. 2.

<sup>3</sup> [ICC-01/14-02/18-2-Red](#), para. 2.

<sup>4</sup> [ICC-01/14-01/18-15](#), para. 4.

<sup>5</sup> [ICC-01/14-02/18-99-Corr](#), para. 4.

<sup>6</sup> [ICC-01/14-01/18-29-Conf-Exp](#). Public redacted version: [ICC-01/14-01/18-29-Red](#).

<sup>7</sup> [ICC-01/14-01/18-31-Conf](#).

5. On 23 April 2019, the Defence requested reconsideration.<sup>8</sup> The Prosecution objected,<sup>9</sup> and on 8 May 2019, the Pre-Trial Chamber denied the request.<sup>10</sup>
6. On 20 August 2019, the Defence requested that the Pre-Trial Chamber review all of the 76 *ex parte* filings on the record in the case, seek submissions from the party making the *ex parte* filings as to the continuing need for keeping the filing, or parts thereof, secret from the Defence, and reclassify those that can now be shared with the Defence and/or the public.<sup>11</sup>
7. On 23 August 2019, the Legal Representatives for Victims responded, agreeing to the reclassification of the single *ex parte* filing it had made.<sup>12</sup>
8. On 6 September 2019, the Registry responded, agreeing to the reclassification of certain of its filings, and explaining the reasons why other filings should maintain their *ex parte* classification.<sup>13</sup>
9. On 16 September 2019, the Prosecution responded, objecting to the reclassification of 23 of the 27 *ex parte* filings it had made, but providing no reasons why the *ex parte* classifications for those filings should be maintained.<sup>14</sup>
10. On 16 September 2019, the Pre-Trial Chamber ordered the reclassification and the filing of public redacted versions of those filings the parties identified as suitable for reclassification, but maintained the *ex parte* classification for all other documents without requiring an explanation from the Prosecution of the reasons for maintaining the *ex parte* status of its filings.<sup>15</sup>

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<sup>8</sup> [ICC-01/14-01/18-180-Conf.](#)

<sup>9</sup> [ICC-01/14-01/18-188-Conf-Red](#), Public redacted version: [ICC-01/14-01/18-188-Red2](#).

<sup>10</sup> [ICC-01/14-01/18-190](#). Leave to appeal this decision was denied on 27 May 2019 ([ICC-01/14-01/18-211](#)).

<sup>11</sup> [ICC-01/14-01/18-283](#).

<sup>12</sup> [ICC-01/14-01/18-288](#).

<sup>13</sup> [ICC-01/14-01/18-293-Red](#).

<sup>14</sup> [ICC-01/14-01/18-292-Cor](#).

<sup>15</sup> [ICC-01/14-01/18-348](#).

11. On 8 April 2020, in its submissions in advance of the first status conference, the Defence noted that there were currently 96 *ex parte* filings on the record and requested the Trial Chamber to undertake its own review of the *ex parte* filings and reclassify as many of them as possible or order that public redacted versions be filed.<sup>16</sup>
12. After the Defence requested, by e-mail, the reclassification of two detention-related filings, the Single Judge issued an order on 24 April 2020 asking the parties and participants to indicate which of its *ex parte* filings could be reclassified, and to file redacted versions where possible.<sup>17</sup>
13. On 1 May 2020, pursuant to the Single Judge's order, the Registry provided the parties with lists of their *ex parte* filings on the case record.<sup>18</sup>
14. Between 8 and 21 May 2020, the Defence carried out *inter partes* discussions with the other parties and participants.

## **ARGUMENT**

### **A. Reclassification of Defence filings**

15. The Defence requests the reclassification of the following Defence filings from *ex parte* to confidential:
  - (1) ICC-01/14-01/18-37-Conf-Exp
  - (2) ICC-01/14-01/18-49-Conf-Exp
  - (3) ICC-01/14-01/18-84-Conf-Exp
  - (4) ICC-01/14-01/18-123-Conf-Exp
  - (5) ICC-01/14-01/18-132-Conf-Exp
  - (6) ICC-01/14-01/18-145-Conf-Exp
  - (7) ICC-01/14-01/18-235-Conf-Exp
  - (8) ICC-01/14-01/18-291-Conf-Exp
  - (9) ICC-01/14-01/18-389-Conf-Exp

<sup>16</sup> [ICC-01/14-01/18-472](#), paras. 56-58.

<sup>17</sup> [ICC-01/14-01/18-492](#).

<sup>18</sup> [ICC-01/14-01/18-505](#).

- (10) ICC-01/14-01/18-414-Conf-Exp & ICC-01/14-01/18-414-Conf-Exp-AnxA
  - (11) ICC-01/14-01/18-433-Conf-Exp
  - (12) ICC-01/14-01/18-458-Conf-Exp
  - (13) ICC-01/14-01/18-494-Conf-Exp
16. All of these filings relate to restrictions on Mr. Yekatom's communications at the Detention Centre. The Yekatom and Ngaïssona Defence have agreed between them that they would like to have access to each other's detention-related filings. They have found that the current *ex parte* classification of such filings places them at a disadvantage to the Prosecution, which has access to all of the filings. Both Mr. Yekatom and Mr. Ngaïssona have no objection to the reclassification of these filings from *ex parte* to confidential, which will also have the effect of providing the Legal Representatives of the Victims with access to the filings. During the *inter partes* discussions, the Prosecution also agreed to the reclassification as confidential of those filings.
17. Because these filings are in response to Registry reports, the Prosecution also makes submissions on these issues, and they are the subject of decisions issued by the Chambers, the Defence requests that the Trial Chamber also reclassify all of the Registry and Prosecution detention-related filings and the decisions of the Chambers from *ex parte* to confidential.
18. The Defence requests that the Chamber further order the Registry to classify all future filings on detention-related issues as confidential, unless there are specific reasons for a filing to be made *ex parte*. The parties can then file their respective submissions as confidential and the Chamber can issue a confidential decision.
19. The Defence further requests that the Chamber issue public redacted versions of all detention-related decisions on the case record and direct the parties to file public redacted versions of its related pleadings. The Defence believes that there is a public interest in transparency as to detention issues at this Court

and that only those parts of the decisions and filings that involve sensitive issues relating to security at the detention centre should be redacted.

20. Once the Chamber's decision as to whether detention-related filings may be reclassified is known, the Defence will use the Chamber's guidance to file public or public redacted version of the filings mentioned at paragraph 15.
21. The Defence requests the reclassification of the following Defence filings from *ex parte* to confidential:
  - (14) ICC-01/14-01/18-85-US-Exp
  - (15) ICC-01/14-01/18-187-US-Exp
  - (16) ICC-01/14-01/18-195-US-Exp
  - (17) ICC-01/14-01/18-210-US-Exp
22. The Defence requests the reclassification of the following Defence filing from *ex parte* redacted to confidential redacted:
  - (18) 01/14-01/18-181-US-Exp-Red
23. Those five filings relate to Mr. Yekatom's freeze of assets. The Defence engaged in *inter partes* discussions with the Prosecution and the Registry. While the Prosecution did not oppose their reclassification as confidential, it did however object to their reclassification as public, without substantiating their position. The Registry, on the other hand, had no objection to the proposed public reclassification.
24. Given the fundamental importance of the publicity of proceedings, the Defence further respectfully requests that the Chamber issue public redacted versions of Decisions ICC-01/14-01/18-213-US-Exp and ICC-01/14-01/18-126-US-Exp on the case record and direct the parties to file public redacted versions of its related pleadings. At this stage of the proceedings there is no reason for those filings to remain under the classification of *ex parte* or confidential. They should be available to the public.

25. Once the Chamber's decision as to whether the asset freeze related filings may be reclassified is known, the Defence will use the Chamber's guidance to file public or public redacted version of those five filings.
26. The Defence also requests the reclassification of the following Defence filing from *ex parte* to public, because the reason for the *ex parte* status no longer exists. During the *inter partes* discussions the Prosecution agreed with the proposed reclassification:  
(19) ICC-01/14-01/18-29-Conf-Exp
27. As a result, if the above-requested reclassifications are granted, there will be no Defence filings that retain their *ex parte* status, save for some *ex parte* annexes addresses hereinafter.
28. Finally, the Defence respectfully requests that the following annexes to filing maintain their current classification. The information contained in those annexes relate to Mr. Yekatom's private life, identity of friends and relatives and/or relate to financial details provided to the Registry. Those annexes are not material to the parties and participants and no other justification for reclassifying exists in the circumstances:  
(20) ICC-01/14-01/18-37-Conf-Exp-AnxA  
(21) ICC-01/14-01/18-37-Conf-Exp-AnxB  
(22) ICC-01/14-01/18-49-Conf-Exp-AnxA  
(23) ICC-01/14-01/18-85-conf-Exp-AnxA  
(24) ICC-01/14-01/18-181-US-Exp-AnxA  
(25) ICC-01/14-01/18-181-US-Exp-AnxB  
(26) ICC-01/14-01/18-181-US-Exp-AnxC  
(27) ICC-01/14-01/18-210-US-Exp-AnxA  
(28) ICC-01/14-01/18-210-US-Exp-AnxB



## B. Reclassification of Prosecution filings

29. The Defence appreciates the initiative taken by the Single Judge to undertake a review of all *ex parte* filings on the case record. The Pre-Trial Chamber accepted the list of filings that the Prosecution indicated should not be reclassified without receiving or requiring an explanation of why the filing need to be maintained as *ex parte*. That exercise resulted in the reclassification of very few filings. The number of *ex parte* filings has grown, rather than shrunk, since that exercise.
30. The Single Judge is respectfully requested to closely scrutinise the Prosecution's *ex parte* filings and where the reason for maintaining the *ex parte* status of the filing is not apparent, to request an explanation from the Prosecution as to why a redacted version cannot be filed. Absent a satisfactory explanation, the Single Judge should order the reclassification of the filing or that a redacted version be filed.
31. For example, the Prosecution's application for the arrest warrant remains classified as *ex parte*. With the filing of the Document Containing the Charges, and the Confirmation Decision, there appears to be no reason why a redacted version of that application cannot be made available to the Defence.<sup>19</sup>
32. The Chamber is also requested to review the transcripts of the *ex parte* hearings held by the Pre-Trial Chamber and issue a redacted version of those transcripts.

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<sup>19</sup> To the extent that the application names other persons for whom an arrest warrant is outstanding, those references can be redacted. See Document Containing the Charges, public redacted version, para.3: "from at least June 2013, NGAISSONA, Francois Bozize, Maxime Mokom, [REDACTED] and others participated in a broad common plan." [ICC-01/14-01/18-282-Red](#).

C. Assessment of redactions contained in Prosecution filings

33. Finally, the Defence notes that when engaging in *inter partes* discussions the Prosecution notified the Defence of its intention to reclassify three filings as confidential redacted.<sup>20</sup> The Prosecution did not give the Defence any specific reasons warranting the necessity to maintain the redactions at this stage. While the Defence is not in a position to assess the necessity of maintaining the redactions at this stage of the proceedings, it notes that there is nevertheless a distinction between withholding information from the public as opposed to the Defence. The Defence respectfully requests the Single Judge to closely scrutinise the Prosecution's redacted filings ICC-01/14-01/18-28-Conf-Exp-Red ; ICC-01/14-01/18-229-Conf-Exp ; ICC-01/14-01/18-174-Conf-Exp-Red and where the reason for maintaining the redactions of the filing is not apparent, to request an explanation from the Prosecution as to why a lesser-redacted version cannot be filed. Absent a satisfactory explanation, the Single Judge should order the reclassification of the filing to confidential.

D. Procedure for future *Ex Parte* Filings

34. In other cases, Trial Chambers have required that, absent exceptional circumstances, any party making an *ex parte* filing must file an accompanying public notice describing the nature and existence of the filing.<sup>21</sup> The Single Judge is respectfully requested to make such an order for future *ex parte* filings in this case.

<sup>20</sup> [ICC-01/14-01/18-28-Conf-Exp-Red](#); [ICC-01/14-01/18-229-Conf-Exp](#); [ICC-01/14-01/18-174-Conf-Exp-Red](#).

<sup>21</sup> *Prosecutor v. Lubanga*, [Decision on the Procedures to be Adopted for ex parte Proceedings](#), 6 December 2007, ICC-01/04-01/06-1058, para. 12; *Prosecutor v. Ntaganda*, [Decision on Requests in Relation to D-0308](#), ICC-01/04-02/06-2387, 29 August 2019, para. 12.

## CONCLUSION

35. As a public institution, operated with public funds, the Court has an obligation to make the proceedings before it as transparent as possible. The Court also has an obligation of impartiality and fairness to the accused, which requires that *ex parte* filings be kept to an absolute minimum. The Single Judge is respectfully requested to hold all parties to that high standard and order the reclassification or filing of redacted versions of as many *ex parte* filings on the case record as possible.

**RESPECTFULLY SUBMITTED ON THIS 22<sup>ND</sup> DAY OF MAY 2020**



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