

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**
Date: **02 January 2019**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR V. ALFRED ROMBHOT YEKATOM***

Public

Expedited request on behalf of Mr. Yekatom seeking a limited extension of time to respond to “Prosecution’s submission on a Proposed Protocol on the Handling of Confidential Information and Contacts with Witnesses” and “Prosecution’s Request for a Protocol on Redactions”

Source: Defence Team of 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

Mrs. Fatou Bensouda

Mr. James Stewart

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Counsel for the Defence

Me Stéphane Bourgon *Ad.E.*

Me Mylène Dimitri

Legal Representatives of Victims

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**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Further to the “Decision granting an extension of time” issued by the Single Judge on 21 December 2018 (“Decision”), Counsel representing Mr. Alfred Rombhot Yekatom (“Mr. Yekatom” or “Defence”) hereby submit this:

Expedited request on behalf of Mr. Yekatom seeking a limited extension of time to respond to “Prosecution’s submission on a Proposed Protocol on the Handling of Confidential Information and Contacts with Witnesses” and the “Prosecution’s Request for a Protocol on Redactions” (“Expedited Defence Request”).

INTRODUCTION

1. The aim of this Expedited Defence Request, submitted pursuant to Regulation 35(1) of the Regulations of the Court (“RoC”), is to request a limited extension of time to respond to the Prosecution’s submission on a Proposed Protocol on the Handling of Confidential Information and Contacts with Witnesses (“Prosecution Confidential Information Protocol Request”)¹ and the Prosecution’s Request for a Protocol on Redactions (“Prosecution Redaction Protocol Request”)² until 07 January 2019.
2. As a result of circumstances beyond its control and despite its best efforts, the Defence is unable to submit its responses to the Prosecution Confidential Information Protocol Request and the Prosecution Redaction Protocol Request on 02 January 2019 in accordance with the Decision.

¹ Prosecution’s submission on a Proposed Protocol on the Handling of Confidential Information and Contacts with Witnesses, 17 December 2018, ICC-01/14-01/18-35.

² Prosecution’s Request for a Protocol on Redactions, 21 December 2018, ICC-01/14-01/18-39.

3. Good cause justifies granting the limited extension sought, which is in the interest of justice while neither causing prejudice the Prosecution or the proceedings.

PROCEDURAL BACKGROUND

4. On 17 December 2018, the Prosecution filed its Prosecution Confidential Information Protocol Request.
5. On 21 December 2018, the Prosecution and the Defence held informal consultations regarding the proceedings against Mr. Yekatom, during which the Defence was informed that earlier on the same day, the Prosecution submitted its Prosecution Redaction Protocol Request.
6. Also on 21 December 2018, the Defence submitted its Expedited Request on behalf of Mr. Yekatom seeking a limited extension of the delay to respond to “Prosecution’s submission on a Proposed Protocol on the Handling of Confidential Information and Contacts with Witnesses”.³
7. On the same day, the Single Judge issued the Decision authorizing the Defence to file its response to Prosecution Confidential Information Protocol Request on 2 January 2019.⁴
8. On 28 December 2018, despite problems encountered with the *CITRIX* remote access system, the Defence succeeded *in extremis* to file its Observations on behalf of Mr. Yekatom pursuant to “Decision Seeking Observations”⁵ with the assistance of the Court Management Section (“CMS”), Counsel Support Section (“CSS”) and Office of the Public Counsel for the Defence (“OPCD”).

³ Expedited Request on behalf of Mr. Yekatom seeking a limited extension of the delay to respond to “Prosecution’s submission on a Proposed Protocol on the Handling of Confidential Information and Contacts with Witnesses”, 21 December 2018, ICC-01/14-01/18-41.

⁴ Decision granting an extension of time, 21 December 2018, ICC-01/14-01/18-43, p.4.

⁵ Observations on behalf of Mr. Yekatom pursuant to “Decision Seeking Observations”, 28 December 2018, ICC-01/14-01/18-45.

SUBMISSIONS

9. The adoption of protocols concerning: (i) the handling of confidential information and contacts with witnesses during investigations; and (ii) the redaction of information by disclosing parties without judicial intervention, as requested by the Prosecution, is a most important undertaking that cannot be underestimated or accomplished in haste without thoroughly considering its impact on the rights of Mr. Yekatom and the fairness of the proceedings.
10. Moreover, taking into consideration the Prosecution's aim to join its case against Patrice Edouard Ngaïssona to the present proceedings, the Defence posits that adoption of such important protocols should even be postponed until the latter has been given an opportunity to submit his observations.
11. The fact that the requested protocols, if adopted, will regulate *inter alia*, the disclosure of evidence by the Prosecution, the handling of confidential information, contacts with witnesses of the opposing parties, contacts with third parties, contacts with participants, conduct of investigations and more, for the duration of the proceedings, strongly militates in favour of ensuring that the Pre-Trial Chamber obtains the most complete submissions as possible from all parties.
12. Based on experience in previous cases before the Court, the Defence intends to play a meaningful role in shaping the content of the protocols requested by the Prosecution, if adopted, to ensure that their impact on the ability of the Defence to fulfill its duties towards Mr. Yekatom is minimized. In this regard, the Defence notes that many aspects of the protocols requested by the Prosecution do not meet this objective and deems essential to set out its views.

13. Whereas the Defence believed that it would be in position to respond to both Prosecution requests by 2 January 2018, for the reasons set out herein and despite its best efforts, it is unable to do so.
14. In this regard, the Defence respectfully draws the attention of the Single Judge on the following circumstances beyond the control of the Defence, as a result of which *inter alia*, the Defence is unable to submit its responses today and therefore requests a limited extension of time until 7 January 2019 to do so.
15. The Defence is presently composed of three members, including one Counsel, one Legal Consultant and a Case Manager. During the period from 22 to 31 December 2018, the three members of the Defence team were away from the seat of the Court, operating *de facto* from three different continents and three different time zones, as a result of travel arrangements made before Mr. Yekatom was arrested and transferred in the custody of the Court. During the period from 24 December to this day, the Defence experienced serious difficulties with the *citrix* remote access system, making it impossible to even download filings from the Court webmail, let alone to have access to filings in other cases from the Court records.
16. What is more, two members of the Defence team experienced health problems, which impeded their ability to work for approximately five days during the period from 24 to 30 December. Lastly, the Defence Case Manager returned to The Hague on 31 December; Counsel will be back on 3 January; and the Legal Consultant is returning early on 6 January 2019.
17. The Defence could not anticipate the difficulties encountered as a result of the above circumstances; nor could the Prosecution anticipate the same when submitting its requests on 18 and 21 December 2018.

18. Notwithstanding the difficulties encountered – more particularly the inability to download filings distributed *via* the Court webmail and/or to access Court records using the *citrix* remote access system since 24 December 2018 - the Defence was able to submit its Observations pursuant to the Decision Seeking Observations on 28 December 2018, in accordance with the Decision. This was only possible however with the assistance of the Court Management Section (“CMS”), Counsel Support Section (“CSS”) and Office of the Public Counsel for the Defence (“OPCD”).
19. Lastly, the Defence deems necessary to underscore that the extension of time sought is limited to five calendar days – which at this stage will neither prejudice the Prosecution nor the proceedings - whereas additional time would allow the Defence to submit even better responses by *inter alia*, conducting an in depth analysis and comparison of all similar protocols adopted in previous cases before the Court.

CONCLUSION

20. Taking stock of the above circumstances beyond the control of the Defence, the Defence respectfully submits that good cause has been shown pursuant to Regulation 35(1) RoC, thereby justifying the granting of the limited extension of time sought to respond to the Prosecution Confidential Information Protocol Request and the Prosecution Redaction Protocol Request.

RELIEF SOUGHT

21. In light of the above submissions, the Defence respectfully requests the Pre-Trial Chamber to:

GRANT the Expedited Defence Request; and

AUTHORISE the Defence to file its responses to the Prosecution Confidential Information Protocol Request and the Prosecution Redaction Protocol Request on 7 January 2019.

RESPECTFULLY SUBMITTED ON THIS 2nd DAY OF JANUARY 2019

A handwritten signature in black ink, appearing to read 'StB' with a small flourish at the end.

Me Stéphane Bourgon *Ad.E*, Counsel for Alfred Rombhot Yekatom

The Hague, The Netherlands