

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/14-01/18
Date: 14 March 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 YEKATOM
AND PATRICE-EDOUARD NGAÏSSONA***

Confidential

Decision setting a deadline for the submission of applications prior to the
Confirmation Hearing

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 Alfred Yekatom
Stéphane Bourgon

Counsel for Patrice-Edouard Ngaïssona
Geert-Jan Alexander Knoops

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis, Registrar

Counsel Support Section

Victims and Witnesses Unit
Nigel Verrill

Detention Section

**Victims Participation and
Reparations Section**

Other

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”) issues this decision setting a deadline for the submission of applications prior to the filing of the document containing the charges.

PROCEDURAL HISTORY

1. On 11 November 2018, the Chamber issued a warrant of arrest against Alfred Yekatom (“Yekatom”),¹ who was surrendered to the Court by the authorities of the Central African Republic on 17 November 2018.² On 23 November 2018, Yekatom made his initial appearance before the Chamber³ during which the Chamber, *inter alia*, scheduled the hearing to confirm or decline to confirm the charges to commence on 30 April 2019.⁴

2. On 7 December 2018, the Chamber issued a warrant of arrest against Patrice-Edouard Ngaïssona (“Ngaïssona”),⁵ who was surrendered to the Court by the authorities of the French Republic on 23 January 2019.⁶ On 25 January 2019 Ngaïssona made his initial appearance before the Chamber⁷ during which the Chamber, *inter alia*, scheduled the hearing to confirm or decline to confirm the charges to commence on 18 June 2019.⁸

3. On 23 January 2019, the Single Judge, acting on behalf of the Chamber, issued the “Decision on Disclosure and Related Matters”⁹ (the “Decision on Disclosure”).

4. On 29 January 2019, the Prosecutor filed the “Prosecution’s Communication of the Disclosure of Evidence”¹⁰ indicating that on the previous day she had disclosed to each defence team a total of 723 items of evidence.

5. On 4 February 2019, the Prosecutor filed the “Prosecution’s Provisional Schedule for the Disclosure of Evidence Prior to the Confirmation Hearing”¹¹ in

¹ ICC-01/14-01/18-1-US-Exp. A public redacted version is also available, see ICC-01/14-01/18-1-Red.

² ICC-01/14-01/18-17-US-Exp, paras 19 and 25.

³ ICC-01/14-01/18-15, para. 7.

⁴ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG, p. 8, lines 20-25.

⁵ ICC-01/14-01/18-89-US-Exp. A public redacted version is also available, see ICC-01/14-01/18-89-Red.

⁶ ICC-01/14-01/18-101-US-Exp, paras 5 and 15.

⁷ ICC-01/14-01/18-99-Corr, para. 7.

⁸ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-2-ENG, p. 9, lines 5-6.

⁹ ICC-01/14-01/18-64-Conf.

¹⁰ ICC-01/14-01/18-72 and ICC-01/14-01/18-105, each with a confidential annex.

¹¹ ICC-01/14-01/18-77-Conf.

which the Prosecutor outlined a provisional schedule for the disclosure of evidence intended for presentation at the confirmation hearing.

6. On 8 February 2019, pursuant to an order of the Single Judge,¹² the Prosecutor filed the “Rapport de l’Accusation en application de la decision du juge unique ‘Disclosure and Related Matters’ (ICC-01/14-01/18-64-Conf)”.¹³

7. On 20 February 2019, the Chamber joined the cases against Yekatom and Ngaïssona¹⁴ and retained 18 June 2019 as the date of the hearing to confirm or decline to confirm the charges against Yekatom and Ngaïssona.¹⁵

8. On 22 February 2019, the Prosecutor filed the “Prosecution’s Communication of the Disclosure of Evidence”¹⁶ indicating that on the same day she had disclosed to the defence a total of 239 items of evidence.

ANALYSIS

9. The Chamber notes articles 54(3)(e), 61(3), (5), (7), 67, 68(5) and 69 of the Rome Statute (the “Statute”) and rules 15, 63(1), 76-83, 121 and 122 of the Rules of Procedure and Evidence (the “Rules”).

10. The Chamber recalls that in the Decision on Disclosure, the Single Judge emphasised that:

[...] the *early* initiation of the process of disclosure, as soon as possible after the surrender of the suspect to the Court, better guarantees also the expeditiousness of the proceedings, guided by the overarching principle of fairness. This places an obligation on the Prosecutor, the triggering force of the proceedings, to conduct the review of the evidence as soon as it is collected during the investigation on an ongoing basis, so as to be ready to comply expeditiously with the disclosure obligations upon surrender of the suspect to the Court. The same logic applies for the preparation of individual risk assessments of witnesses and the referral of witnesses to the Victims and Witnesses Unit (the “VWU”) for protection purposes.¹⁷

11. In addition, the Chamber notes that the Decision on Disclosure stipulated the procedure that would apply to the disclosure of evidence with redactions. In particular, the Single Judge distinguished between the procedure to be followed with

¹² See Decision on Disclosure, para. 22.

¹³ ICC-01/14-01/18-80.

¹⁴ ICC-01/14-01/18-87; ICC-01/14-01/18-121.

¹⁵ ICC-01/14-01/18-87, para. 18; ICC-01/14-01/18-121, para. 18.

¹⁶ ICC-01/14-01/18-122, with a confidential annex.

¹⁷ Decision on Disclosure, para. 14.

respect to the redaction of information in standard categories under rule 81(2) and (4) of the Rules and the procedure with respect to the “non-disclosure of witnesses’ identities before the commencement of trial or to the non-disclosure of entire items of evidence”.¹⁸ In relation to the latter instance, the Chamber recalls that the disclosing party is required to obtain the authorisation of the Chamber by way of a discrete application sufficiently in advance so as to allow for the timely decision by the Chamber and the subsequent disclosure of the evidence within the time limits prescribed in the Rules.

12. Mindful of the specified 30-day time period for the disclosure of evidence and the filing of the document containing the charges provided for in rule 121(3) of the Rules, the Chamber notes that to date it has not received such applications and considers that it is necessary, for the fair and expeditious conduct of the proceedings that a deadline be set for the receipt of such applications. As such the Prosecutor is ordered to submit any applications for the authorisation of the non-disclosure of witnesses’ identities and/or the the non-disclosure of entire items of evidence by 29 March 2019 at the latest.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Prosecutor to submit any applications for the authorisation of the non-disclosure of witnesses’ identities and/or the non-disclosure of entire items of evidence by 29 March 2019 at the latest.

¹⁸ Decision on Disclosure, para. 32.

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 Thursday, 14 March 2019

At The Hague, Netherlands