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No. ICC-01/14-01/18

Date: 4 April 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***

Public

Second Decision on Disclosure and Related Matters

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

Detention Section

**Victims Participation and
Reparations Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this second decision on disclosure and related matters.

I. Procedural history

1. On 11 November 2018 and 7 December 2018, the Chamber issued warrants of arrest for Alfred Yekatom and Patrice-Edouard Ngaïssona for their alleged criminal responsibility for crimes against humanity and war crimes committed in various locations in the Central African Republic respectively.¹

2. On 14 December 2018, in the case of *The Prosecutor v. Alfred Yekatom*, the Single Judge issued the ‘Decision Seeking Observations’ for the purposes of establishing a disclosure calendar.²

3. On 21 December 2018, the Prosecutor submitted the ‘Prosecution’s Request for a Protocol on Redactions’ (the ‘Prosecutor’s Proposed Redaction Protocol’)³ and the ‘Prosecution’s Observations pursuant to Decision ICC-01/14-01/18-33’;⁴ the same day, the Registry submitted the ‘Registry’s Observations pursuant to ICC-01/14-01/18-33’.⁵

4. On 28 December 2018, the Yekatom Defence submitted the ‘Observations on behalf of Mr. Yekatom pursuant to the “Decision Seeking Observations”’.⁶

5. On 2 January 2019, the Chamber received the ‘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”’ requesting that the Yekatom Defence be allowed to submit its response to the

¹ ICC-01/14-01/18-1-US-Exp - a public redacted version is also available, see [ICC-01/14-01/18-1-Red](#); ICC-01/14-01/18-89-US-Exp - a public redacted version is also available, see [ICC-01/14-01/18-89-Red](#).

² [ICC-01/14-01/18-33](#).

³ [ICC-01/14-01/18-39](#) with one public annex.

⁴ ICC-01/14-01/18-40-Conf with one confidential annex.

⁵ ICC-01/14-01/18-38-Conf-Exp.

⁶ ICC-01/14-01/18-45-Conf.

Prosecutor's Proposed Redaction Protocol on 7 January 2019;⁷ on the same day, the Single Judge granted this request *via* email.⁸

6. On 7 January 2019, the Single Judge received the Yekatom Defence's 'Response to the Prosecution's Request for a Protocol on Redactions' (the 'Yekatom Defence Response to Prosecutor's Proposed Redaction Protocol').⁹

7. On 10 January 2019, the Single Judge received the 'Prosecution's Request for Leave to Reply to the Defence's Response to the Prosecution's Request for a Protocol on Redactions (ICC-01/14-01/18-47)' (the 'Prosecutor's Request for Leave to Reply').¹⁰

8. On 11 January 2019, the Single Judge issued the 'Decision on Prosecutor's Requests to Reply' thereby rejecting the Prosecutor's Request for Leave to Reply.¹¹

9. On 11 January 2019, the Single Judge issued the 'Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings' thereby deciding that Yekatom is proficient in French for the purposes of the proceedings (the 'Language Proficiency Decision').¹²

10. On 23 January 2019, the Single Judge issued the 'Decision on Disclosure and Related Matters' (the 'First Disclosure Decision').¹³

11. On 20 February 2019, the Chamber issued the 'Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters' (the 'Joinder Decision') thereby joining the cases against Yekatom and Ngaïssona.¹⁴ In this decision, the Chamber, *inter alia*, considered 'it appropriate to permit the Defence for Ngaïssona to make observations on the Decision on Disclosure

⁷ [ICC-01/14-01/18-46](#).

⁸ Email dated 2 January 2019 at 12:12 from the Senior Legal Adviser of the Pre-Trial Division to the Yekatom Defence.

⁹ [ICC-01/14-01/18-47](#) with one public annex.

¹⁰ [ICC-01/14-01/18-53](#).

¹¹ [ICC-01/14-01/18-55](#).

¹² ICC-01/14-01/18-56-Conf - a public redacted version is also available, see [ICC-01/14-01/18-56-Red](#).

¹³ ICC-01/14-01/18-64-Conf - a public redacted version is also available, see [ICC-01/14-01/18-64-Red](#).

¹⁴ [ICC-01/14-01/18-121](#). See also [ICC-01/14-01/18-87](#).

in order to safeguard Ngaïssona's right to be heard on the issue' at the latest on 11 March 2019.¹⁵

12. On 28 January 2019, the Chamber received the 'Request on behalf of Mr. Yekatom seeking leave to appeal "Decision on Disclosure and Related Matters"' (the 'Yekatom Defence Request for Leave to Appeal').¹⁶

13. On 4 February 2019, the Chamber received the 'Prosecution's Provisional Schedule for the Disclosure of Evidence Prior to the Confirmation Hearing'.¹⁷

14. On 8 February 2019, the Chamber issued the 'Decision on Defence Leave to Appeal the "Decision on Disclosure and Related Matters"' thereby rejecting the Yekatom Defence Request for Leave to Appeal.¹⁸

15. On 11 March 2019, the Chamber received the 'Ngaïssona Defence Observations on Disclosure and Related Matters (ICC-01/14-01/18-64-Conf)' (the 'Ngaïssona Defence Observations').¹⁹

16. On 21 March 2019, the Chamber received the 'Prosecution's Response to "Ngaïssona Defence Observations on Disclosure and Related Matters (ICC-01/14-01/18-64-Conf)" (ICC-01/14-01/18-143-Conf)' (the 'Prosecutor's Response').²⁰

II. Analysis

17. The Chamber notes articles 54(3)(e), 61(3), (5), (7), 67, 68(5), 69, 72 and 93(8) of the Rome Statute (the 'Statute'), rules 15, 63(1), 76-83, 121 and 122 of the Rules of Procedure and Evidence (the 'Rules'), regulation 24, 26 and 34 of the Regulations of the Court (the 'Regulations') and regulations 15-19, 24-28 and 53(3) of the Regulations of the Registry.

¹⁵ [ICC-01/14-01/18-121](#), para. 21. See also [ICC-01/14-01/18-87](#), para. 21.

¹⁶ [ICC-01/14-01/18-68](#).

¹⁷ ICC-01/14-01/18-77-Conf.

¹⁸ [ICC-01/14-01/18-79](#).

¹⁹ ICC-01/14-01/18-143-Conf - a public redacted version is also available, see [ICC-01/14-01/18-143-Red](#).

²⁰ ICC-01/14-01/18-155-Conf - a public redacted version is also available, see [ICC-01/14-01/18-155-Red](#).

18. The Ngaïssona Defence requests that the First Disclosure Decision be amended in several respects.²¹ The Chamber addresses each proposed amendment below.

A. Principles governing disclosure

19. First, the Ngaïssona Defence ‘submits that every disclosure should be announced via email, at least 24 hours in advance, in order for the receiving party to properly prepare for the disclosure to come and to liaise with [the Information Management Services Section (the ‘IMSS’)] in case of any technical difficulty to perform the import of evidence’ and that ‘the announcement should mention the classification of the evidence to be disclosed’.²² The Prosecutor responds that this amendment is ‘redundant, inefficient, and unnecessary’.²³ According to the Prosecutor, ‘[t]he current disclosure process already provides a clear electronic record of when, how, and what is disclosed by each Party’.²⁴

20. The Chamber considers that, in view of the existing electronic record regarding the disclosure of evidence, the Ngaïssona Defence has not adequately demonstrated why an additional notice by email is required. Accordingly, this proposed modification is rejected. To the extent that the Ngaïssona Defence is experiencing technical difficulties in relation to the disclosure of evidence,²⁵ the Chamber expects: (i) the Ngaïssona Defence to contact the Registry prior to receiving further disclosure in order to resolve any technical issues that may arise; (ii) the Registry to provide the required assistance to the Ngaïssona Defence; and (iii) the Prosecutor to ensure, as far as possible, that technical issues do not impede her obligations relating to the disclosure of evidence.

21. Second, the Ngaïssona Defence requests that the First Disclosure Decision be clarified in relation to the parties’ obligations concerning the submission of evidence.²⁶ In this regard, it proposes the following:

²¹ [ICC-01/14-01/18-143-Red](#), paras 17, 43.

²² [ICC-01/14-01/18-143-Red](#), para. 23.

²³ [ICC-01/14-01/18-155-Red](#), para. 7.

²⁴ [ICC-01/14-01/18-155-Red](#), para. 7.

²⁵ [ICC-01/14-01/18-143-Red](#), para. 20.

²⁶ [ICC-01/14-01/18-143-Red](#), para. 25.

The lists mentioning the items of evidence disclosed in each package should be communicated in a separate document to the receiving party at the time of the disclosure. The party disclosing evidence should hence send a separate letter mentioning the date and content of the disclosure, accompanied by a list of the items disclosed. This letter, signed by the representative of the disclosing party, should then be signed by the receiving parties [sic], acknowledging receipt of the disclosure, and sent back to the disclosing party. Not only this process would [sic] comply with courtesy obligations of the parties, but it would allow the receiving party to formally receive the disclosure when it is confirmed that this disclosure can be imported in the Court's software.²⁷

The Prosecutor responds that 'an electronic record is created for each transmission and the transfer is formalised in a communication signed by the disclosing Party and filed in the case record'.²⁸ The Prosecutor is, thus, of the view that '[t]his process is efficient, fully reliable, and obviates the need for anything further'.²⁹

22. In relation to the Ngaïssona Defence's request to clarify the First Disclosure Decision, the Chamber reiterates that nothing in the legal texts of the Court allows the parties to seek clarification of a decision.³⁰ In any event, the Chamber is of the view that considerations of courtesy do not constitute a sufficient basis to amend the First Disclosure Decision and that the proposal is superfluous in light of the existing procedure relating to the disclosure of evidence. Accordingly, this proposed modification is rejected. Furthermore, in so far as this proposed modification is also based on the Ngaïssona Defence anticipating technical difficulties, the Chamber reiterates that, in accordance with paragraph 20 of the present decision, the parties are expected to take measures to avoid such difficulties.

23. Third, the Ngaïssona Defence avers that 'every disclosure of alleged incriminating evidence should be accompanied by an In-Depth Analysis Charter [sic] [...], to allow the Defence to properly identify to what portion of the charges the evidence disclosed refers to'.³¹ The Prosecutor responds that '[a]n In-Depth Analysis Chart ("IDAC") is unnecessary and would disproportionately burden the

²⁷ [ICC-01/14-01/18-143-Red](#), para. 25.

²⁸ [ICC-01/14-01/18-155-Red](#), para. 10.

²⁹ [ICC-01/14-01/18-155-Red](#), para. 10.

³⁰ See for instance Pre-Trial Chamber II, *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, [Decision on the Prosecutor's Position on the Decision of Pre-Trial Chamber II to Redact Factual Descriptions or Crimes From the Warrants of Arrest, Motion for Reconsideration, and Motion for Clarification](#), 28 October 2005, ICC-02/04-01/05-60, para. 25.

³¹ [ICC-01/14-01/18-143-Red](#), para. 26.

Prosecution’.³² In this regard, the Prosecutor argues that: (i) the arrest warrants contain ‘detailed references to the evidence’;³³ (ii) she intends ‘to file a pre-confirmation brief in advance of the scheduled hearing date’;³⁴ (iii) the Ngaïssona Defence Observations’ ‘reference to the Court’s prior jurisprudence supporting an IDAC is incomplete and potentially misleading’;³⁵ (iv) ‘[t]he length, work, and complexity involved in preparing an IDAC could significantly extend an already complicated process’ and that ‘the potential delay in this case would be much longer’ than ‘in the *Ongwen* and *Al Hassan* cases’ in which ‘an IDAC for incriminatory evidence alone was estimated to delay the proceedings for one year and seven months, respectively’;³⁶ and (v) ‘the potential utility of an IDAC is at best marginal’.³⁷

24. The Chamber is of the view that, in the specific circumstances of the present case, an IDAC could significantly delay the proceedings, which would outweigh the benefits of such an instrument.³⁸ Accordingly, this proposed modification is rejected.

25. Fourth, the Ngaïssona Defence is of the view that, given the time required for it to adequately prepare for the confirmation of charges hearing, it is necessary ‘to adopt a deadline for the disclosures to come’.³⁹ In this regard, it proposes that ‘[a]ll the alleged incriminating evidence should be disclosed no later than 18 April 2019 [...]’ and that ‘all exculpatory evidence and evidence collected under Rule 77 of the Rules should be disclosed no later than 18 May 2019’.⁴⁰ According to the Prosecutor, ‘an 18 May 2019 deadline for the disclosure of all incriminating and exculpatory information and all information falling under rule 77 is not realistic’.⁴¹ In this regard, the Prosecutor asserts, first, that ‘witness protection measures are still being implemented’ and ‘there is no active disclosure protocol in the joint case, or a

³² [ICC-01/14-01/18-155-Red](#), para. 12.

³³ [ICC-01/14-01/18-155-Red](#), para. 13.

³⁴ [ICC-01/14-01/18-155-Red](#), para. 14.

³⁵ [ICC-01/14-01/18-155-Red](#), para. 15.

³⁶ [ICC-01/14-01/18-155-Red](#), para. 17.

³⁷ [ICC-01/14-01/18-155-Red](#), para. 18.

³⁸ See also Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoulaziz Ag Mohamed Ag Mahmoud*, [Decision on the In-Depth Analysis Chart of Disclosed Evidence](#), 29 June 2018, ICC-01/12-01/18-61-tENG, para. 22.

³⁹ [ICC-01/14-01/18-143-Red](#), para. 29.

⁴⁰ [ICC-01/14-01/18-143-Red](#), para. 29.

⁴¹ [ICC-01/14-01/18-155-Red](#), para. 22.

protocol on confidential material’.⁴² The Prosecutor argues, in addition, that she has the right to continue her ‘investigations up to and past the confirmation hearing and to rely on any information collected during that time at trial’.⁴³

26. With regard to the 18 April 2019 deadline proposed by the Ngaïssona Defence, the Chamber observes that the Ngaïssona Defence considers that the Prosecutor’s intention to disclose all confirmation materials concerns ‘alleged incriminating evidence’.⁴⁴ Therefore, the Chamber understands that the 18 April 2019 deadline proposed by the Ngaïssona Defence relates to the evidence on which the Prosecutor intends to rely at the confirmation of charges hearing within the meaning of article 61(3)(b) of the Statute. The Chamber recalls that, according to rule 121(3) of the Rules, the Prosecutor is required to provide a list of evidence she intends to present at the confirmation of charges hearing no later than 30 days before the hearing.⁴⁵ In the Chamber’s view, besides generally claiming that it requires more time, the Ngaïssona Defence has not demonstrated compelling reasons to vary this deadline. Accordingly, this proposed modification is rejected. Nevertheless, the Chamber reiterates that rule 121(3) of the Rules sets a minimum period and that the parties are expected to discharge their disclosure obligations as soon as practicable.⁴⁶

27. With regard to the 18 May 2019 deadline proposed by the Ngaïssona Defence in relation to the Prosecutor’s disclosure of all exculpatory evidence and evidence collected under rule 77 of the Rules, the Chamber recalls that, according to the First Disclosure Decision, the Prosecutor shall disclose exculpatory evidence ‘immediately after having identified any such evidence’ and ‘the Defence must receive such evidence sufficiently in advance prior to the commencement of the confirmation hearing in order to make effective use of the right provided in article 61(6) of the Statute’.⁴⁷ The Chamber further notes that, if the Defence intends to make use of this right, it must present a list of evidence to the Chamber no later than 15 days before the hearing pursuant to rule 121(6) of the Rules. In the view of the Chamber, a deadline

⁴² [ICC-01/14-01/18-155-Red](#), para. 23.

⁴³ [ICC-01/14-01/18-155-Red](#), para. 23.

⁴⁴ [ICC-01/14-01/18-143-Red](#), para. 27.

⁴⁵ See also [ICC-01/14-01/18-64-Red](#), para. 13.

⁴⁶ See also [ICC-01/14-01/18-64-Red](#), para. 13.

⁴⁷ [ICC-01/14-01/18-64-Red](#), para. 16.

would allow the Defence to make an informed decision as to whether it wishes to present exculpatory evidence disclosed by the Prosecutor at the confirmation of charges hearing and, if so, to comply with its obligations under rule 121(6) of the Rules. By the same token, this deadline would also enable the Defence to make use of any material referred to in rule 77 of the Rules for the purposes of the confirmation of charges hearing. However, as 18 May 2019 falls on a Saturday, the Chamber sets the deadline at 17 May 2019 based on the information currently before it. Therefore, this proposed modification is accepted as specified above.

28. In this regard, the Chamber is not persuaded by the Prosecutor's arguments opposing this deadline. First, the mere fact that the Prosecutor is undertaking witness protection activities does not, in and of itself and in the absence of a detailed assessment regarding such activities, suffice to reject the proposed deadline. The Prosecutor is obliged to organise her activities regarding witness protection in such a manner so as to enable her to comply with her disclosure obligations.⁴⁸ Second, the Prosecutor's argument concerning the absence of decisions enabling the disclosure process is inapposite. The Chamber notes that, besides the recent issuance of its 'Decision on a Protocol on the Handling of Confidential Information and Contacts with Witnesses',⁴⁹ the Chamber, as early as 23 January 2019, issued the First Disclosure Decision setting in place a system of disclosure. In addition, the Chamber notes that nothing in the later Joinder Decision may be construed as suspending the operation of the First Disclosure Decision. It must therefore be assumed that the Prosecutor has been acting in accordance with the latter decision, while the present decision, which serves to supplement the First Disclosure Decision, is issued sufficiently in advance of the 17 May 2019 deadline. Finally, the possibility of the Prosecutor's investigation potentially continuing after the confirmation of charges hearing and the Prosecutor relying on additional information at trial is irrelevant. The Chamber recalls that the Prosecutor's investigation 'should largely be completed at the stage of the confirmation of charges hearing'.⁵⁰ In any event, the mere possibility of the disclosure of evidence following the confirmation of charges hearing cannot be

⁴⁸ [ICC-01/14-01/18-64-Red](#), para. 14.

⁴⁹ [ICC-01/14-01/18-156](#).

⁵⁰ Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges"](#), 30 May 2012, ICC-01/04-01/10-514, para. 44.

invoked to reject deadlines regarding the disclosure of evidence prior to the confirmation of charges hearing. Any additional disclosure of evidence following the confirmation of charges hearing is primarily a matter for the Trial Chamber, provided that the charges are confirmed, and does not affect any obligations regarding the disclosure of evidence pertaining to the confirmation of charges hearing. In the event that the Prosecutor considers the 17 May 2019 deadline for the disclosure of all incriminating and exculpatory information as well as all information falling under rule 77 of the Rules to be ‘not realistic’ in view of the date of the confirmation of charges hearing, a reasoned request for the postponement of that hearing shall be submitted as soon as possible.

29. Finally, the Ngaïssona Defence asserts that the Prosecutor may ‘resort to electronic disclosure of evidence’ but that it ‘is not certain that the same facility would be available for its own disclosures of evidence’.⁵¹ The Ngaïssona Defence, therefore, argues that, ‘if electronic disclosure could be available to the Defence, it would need familiarization, training and the assistance of IMSS to master the process’, which would result ‘in a difference of time [sic] necessary to perform disclosures’.⁵² The Prosecutor responds that ‘there is a discrepancy between the Defence’s stated intention to “still resort[] to physical disclosure” and the E-court Protocol, which mandates that the disclosing party “format the potential evidence, evidence (stet) and material and provide metadata for it in accordance with the standards set out in section III D of this Protocol”’.⁵³

30. The Chamber considers that, in so far as the Ngaïssona Defence is seeking a variation of the deadline in relation to its own disclosure obligations, such a request is unwarranted. As specified in paragraph 20 of the present decision, the Ngaïssona Defence is expected to consult with the Registry to overcome and avoid any technical issues, including in relation to its own disclosure obligations, and the Registry shall provide the required assistance. Accordingly, this proposed modification is rejected.

⁵¹ [ICC-01/14-01/18-143-Red](#), para. 30.

⁵² [ICC-01/14-01/18-143-Red](#), para. 30.

⁵³ [ICC-01/14-01/18-155-Red](#), para. 11.

B. Exceptions to disclosure

31. First, the Ngaïssona Defence submits that, when issuing the First Disclosure Decision, the Single Judge ‘did not consider that the “leads” referred [sic] in Category A.6 are not defined under the redaction regime and may embrace large categories of persons and entities who could be of interest to the receiving party’.⁵⁴ It, accordingly, ‘invites the Chamber to define the term “leads” so as to protect the parties from any unnecessary redactions’.⁵⁵ The Prosecutor responds that such a definition would be ‘premature’.⁵⁶ According to the Prosecutor, the First Disclosure Decision ‘provides two safeguards to prevent a Party from abusing the redaction categories or interpreting them too broadly’, namely ‘the Chamber is furnished with unredacted versions of the evidence’ and ‘the Defence is permitted to challenge any specific redactions’.⁵⁷

32. In so far as the Ngaïssona Defence seeks a clarification of the First Disclosure Decision, the Chamber has already reiterated in paragraph 22 of the present decision that such a remedy is not available to the parties under the legal texts of the Court. In any event, the Chamber recalls that, as indicated by the Prosecutor, the safeguards contained in the First Disclosure Decision are specifically meant to prevent any abuse of the redaction regime and the Ngaïssona Defence fails to substantiate why the proposed modification would be required in spite of these safeguards.⁵⁸ Accordingly, this proposed modification is rejected.

33. Second, with regard to Categories A.8 and B.5 of the redaction regime, the Ngaïssona Defence argues that they ‘are too broad and too vague as they may apply to information that presents a tenuous link to the information effectively protected under Rule 81(2) and (4) of the Rules, which would ultimately result in impeding the ongoing and future investigation of the receiving party’.⁵⁹ On this basis, it ‘requests the Chamber to suppress Categories A.8 and B.5’.⁶⁰ The Prosecutor opposes this

⁵⁴ [ICC-01/14-01/18-143-Red](#), para. 32.

⁵⁵ [ICC-01/14-01/18-143-Red](#), para. 32.

⁵⁶ [ICC-01/14-01/18-155-Red](#), para. 26.

⁵⁷ [ICC-01/14-01/18-155-Red](#), para. 26.

⁵⁸ [ICC-01/14-01/18-64-Red](#), paras 28, 30.

⁵⁹ [ICC-01/14-01/18-143-Red](#), para. 33.

⁶⁰ [ICC-01/14-01/18-143-Red](#), para. 33.

modification on the basis that the Ngaïssona Defence reiterates arguments raised by the Yekatom Defence which were considered and rejected in the First Disclosure Decision.⁶¹

34. The Chamber notes that the exact same arguments have been raised in the Yekatom Defence Response to Prosecutor's Proposed Redaction Protocol⁶² and rejected in the First Disclosure Decision⁶³. The arguments of the Ngaïssona Defence, therefore, amount to a request for reconsideration of the First Disclosure Decision, which is not permitted by the legal texts of the Court.⁶⁴ In any event, the Ngaïssona Defence fails to explain why, despite the aforementioned safeguards contained in the First Disclosure Decision, the Chamber should do away with these categories. Accordingly, this proposed modification is rejected.

35. Finally, the Ngaïssona Defence 'is extremely preoccupied [sic] by the current impossibility offered to the receiving party to challenge the application of redactions' and 'therefore deems it necessary for the Chamber to implement a strict responsive mechanism, accompanied by strict deadlines, that will allow the receiving party to challenge the redactions applied by the disclosing party, in case *inter partes* requests for the lifting of redactions would fail'.⁶⁵ In this regard, the Ngaïssona Defence 'adopts and recalls the mechanism proposed by the Yekatom Defence in the' Yekatom Defence Response to Prosecutor's Proposed Redaction Protocol.⁶⁶ It further submits that '[o]ther options are available'.⁶⁷ The Prosecutor opposes this modification on the basis that the Ngaïssona Defence reiterates arguments raised by

⁶¹ [ICC-01/14-01/18-155-Red](#), para. 25.

⁶² [ICC-01/14-01/18-47](#), paras 50, 60.

⁶³ [ICC-01/14-01/18-64-Red](#), para. 28.

⁶⁴ See for instance Pre-Trial Chamber II, *The Prosecutor v. Joseph Kony, Vincent Otti and Okot Odhiambo*, [Decision on the Prosecutor's Position on the Decision of Pre-Trial Chamber II To Redact Factual Descriptions of Crimes from the Warrants of Arrest, Motion for Reconsideration, and Motion for Clarification](#), 29 October 2005, ICC-02/04-01/05-60, para. 18; Pre-Trial Chamber II, *Regulation 46(3) of the Regulations of the Court*, [Decision on a Request for Reconsideration or Leave to Appeal the 'Decision on the "Request for review of the Prosecutor's decision of 23 April 2014 not to open a Preliminary Examination concerning alleged crimes committed in the Arab Republic of Egypt, and the Registrar's Decision of 25 April 2014"'](#), 22 September 2014, ICC-RoC46(3)-01/14-5, para. 5.

⁶⁵ [ICC-01/14-01/18-143-Red](#), para. 34.

⁶⁶ [ICC-01/14-01/18-143-Red](#), para. 36.

⁶⁷ [ICC-01/14-01/18-143-Red](#), para. 37.

the Yekatom Defence which were considered and rejected in the First Disclosure Decision.⁶⁸

36. The Chamber recalls that the Single Judge has found that a schedule relating to challenges to redactions is not necessary in the First Disclosure Decision.⁶⁹ Therefore, the proposals by the Ngaïssona Defence to either adopt the schedule put forward by the Yekatom Defence⁷⁰ or put another schedule in place also constitute a request for reconsideration, which, as mentioned in paragraph 34 of the present decision, is not permitted. Accordingly, this proposed modification is rejected.

C. Translation

37. Considering that Ngaïssona only speaks French, the Ngaïssona Defence ‘requests the Chamber to order the Prosecution to provide translations into French of the material disclosed so far in English and intended to be disclosed in the future in English’.⁷¹ It, in addition, ‘requests the Chamber to order the Prosecution to provide French translations of all the evidence it intends to rely on at the Confirmation Hearing’.⁷² The Prosecutor responds that Ngaïssona ‘has no legal right under the Statute—and the Defence points to none—to have all evidence to be used at confirmation translated into French, be it by the Prosecution or otherwise’.⁷³

38. The Chamber observes that, except for the translation of ‘[t]he statements of prosecution witnesses’ pursuant to rule 76(3) of the Rules, the legal texts of the Court do not vest the suspect with the right to receive translations of all the evidence disclosed. In the Language Proficiency Decision, the Single Judge similarly noted that the established practice of the Court establishes that ‘suspects do not have an absolute right to have *all* documents translated into a language which they fully understand and speak’.⁷⁴ Accordingly, this proposed modification is rejected as far as it exceeds rule 76(3) of the Rules. However, the Chamber recalls that the Ngaïssona Defence

⁶⁸ [ICC-01/14-01/18-155-Red](#), para. 25.

⁶⁹ [ICC-01/14-01/18-64-Red](#), para. 30.

⁷⁰ The Ngaïssona Defence concedes that these arguments have been considered and rejected in the First Disclosure Decision. See [ICC-01/14-01/18-143-Red](#), para. 37.

⁷¹ [ICC-01/14-01/18-143-Red](#), para. 39.

⁷² [ICC-01/14-01/18-143-Red](#), para. 41.

⁷³ [ICC-01/14-01/18-155-Red](#), para. 27.

⁷⁴ [ICC-01/14-01/18-56-Red](#), para. 14.

may request the Prosecutor to translate items of evidence other than the statements of the Prosecutor's witnesses if it considers that to be essential for preparing its defence and, in the event of disagreement, either party may apply to the Chamber for a ruling.⁷⁵

D. Deadline for responses

39. The Ngaïssona Defence 'is of the view that, considering the proximity [sic] of the Confirmation Hearing, and the subsequent necessity for the parties to communicate swiftly, responses to correspondence [sic] should not take more than five days'.⁷⁶ Accordingly, the Ngaïssona Defence 'requests the Chamber to direct the parties to examine and respond to their correspondence [sic] swiftly and diligently, and ultimately, no later than five days after their reception'.⁷⁷ The Prosecutor responds that '[i]t is unclear what the Defence means by "correspondence"' and that 'the Statutory framework is clear as to when responses to motions should be filed'.⁷⁸

40. In view of the reference to 'respond', the Chamber understands that the Ngaïssona Defence is requesting the time limit for responses within the meaning of regulation 24(1) of the Regulations to be shortened from 10 days, as provided for in regulation 34(b) of the Regulations, to five days. The Chamber considers that it would be disproportionate and uncondusive to the fairness of the proceedings to shorten the default time limit for responses in general and without any exceptions. However, it remains within the discretion of the Chamber to determine, either at the request of a party or on its own motion, whether the time limit for a particular response should be shortened on a case by case basis. Accordingly, this proposed modification is rejected.

⁷⁵ See also Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoulaziz Ag Mohamed Ag Mahmoud*, [Decision on the Evidence Disclosure Protocol and Other Related Matters](#), 16 May 2018, ICC-01/12-01/18-31-tENG-Corr, para. 23.

⁷⁶ [ICC-01/14-01/18-143-Red](#), para. 42.

⁷⁷ [ICC-01/14-01/18-143-Red](#), para. 42.

⁷⁸ [ICC-01/14-01/18-155-Red](#), paras 30-31.

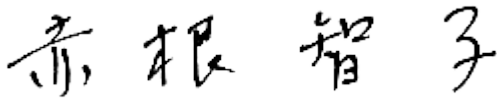
FOR THESE REASONS, THE CHAMBER HEREBY

- a) ORDERS** the Prosecutor to disclose, in addition to a list of evidence she intends to present at the confirmation of charges hearing within the meaning of rule 121(3) of the Rules, all evidence within the meaning of article 67(2) of the Statute in her possession or control and all material referred to in rule 77 of the Rules in her possession or control by 17 May 2019 at the latest;
- b) REJECTS** all other requests to amend the First Disclosure Decision contained in the Ngaïssona Defence Observations; and
- c) FINDS** that the First Disclosure Decision, as modified by the present decision, is applicable to the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*.

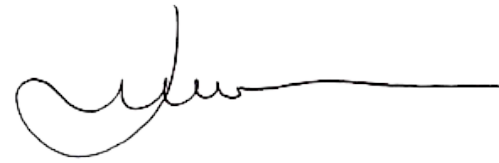
Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua,
Presiding Judge**



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Thursday, 4 April 2019

At The Hague, Netherlands