

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: **ICC-01/14-01/18**
Date: **18 October 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 AND PATRICE-EDOUARD
NGAISSONA

Public Redacted Version

Public Redacted Version of “Consolidated Ngaïssona Defence Response to ‘Motion for Extension of Time to File List of Evidence’ (ICC-01/14-01/18-298) and ‘Motion for Finding of Disclosure Violation and for Remedial Measures’ (ICC-01/14-01/18-301-Conf)”, 30 August 2019, ICC-01/14-01/18-303-Conf

Source: Defence of Patrice-Edouard Ngaïssona

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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I. Introduction

1. The Defence for Mr. Patrice Edouard Ngaïssona (hereinafter ‘Defence’ and ‘Mr. Ngaïssona’) joins the 28 August 2019 ‘Motion for Extension of Time to File List of Evidence’¹ and the 29 August 2019 ‘Motion for Finding of Disclosure Violations and Remedial Remedies’² submitted by the Defence for Mr. Alfred Rombhot Yekatom (hereinafter ‘Yekatom Defence’).

II. Procedural history

2. On 23 January 2019, the Single Judge issued its *Decision on Disclosure and Related Matters*. In the decision, he emphasised that:

The Prosecutor shall disclose [exculpatory] evidence immediately after having identified any such evidence, unless some justifiable reasons prevent her from doing so.³

3. On 4 April 2019, the Pre-Trial Chamber issued its *Second Decision on Disclosure and Related Matters*. The Chamber ordered the Prosecutor to disclose all exculpatory evidence by 17 May 2019.⁴

4. On 15 May 2019, at the request of the Prosecution, the Pre-Trial Chamber postponed the confirmation hearing until 19 September 2019 and ordered disclosure to be completed by 19 August 2019.⁵

5. On 19 August 2019, the Prosecution filed its Document Containing the Charges (“DCC”).⁶

6. On 28 August 2019, the Yekatom Defence filed a motion to request an extension of time to file its list of evidence.⁷

¹ ICC-01/14-01/18-298

² ICC-01/04-01/18-301-Conf. A public redacted version is also available: ICC-01/04-01/18-301-Red

³ ICC-01/14-01/18-64-Red, para 16

⁴ ICC-01/14-01/18-163

⁵ ICC-01/14-01/18-199

⁶ ICC-01/14-01/18-282-Conf-AnxB1

⁷ ICC-01/14-01/18-298

7. On 29 August 2019, the Yekatom Defence filed a motion for finding of disclosure violations and for remedial measures.⁸

III. Submissions

a. Defence response to ‘Motion for Extension of Time to File List of Evidence’

8. In spite of the Pre-Trial Chamber order that the Prosecution should complete its disclosure process by 19 August 2019, to this date relevant material has still not been made available to the Defence. The Defence should file a list of the evidence it wishes to rely upon at the confirmation hearing by the 4 September 2019. However, until all relevant Prosecution evidence is disclosed, the Defence is not in a position to present a definitive list of the evidence it wishes to rely upon at the confirmation hearing.

9. The Defence agrees with the Yekatom Defence that the Prosecution’s failure to complete disclosure by the requested deadline constitutes good cause under Regulation 35(2) to request an extension of time for the Defence to file its list of evidence. For this reason, the Defence respectfully moves to join the motion submitted by the Yekatom Defence and requests the time limit to file its list of evidence to be extended of fifteen days from the date of completion of disclosure.

b. Defence response to ‘Motion for Finding of Disclosure Violation and for Remedial Measures’

10. The Defence also wishes to join the 30 August 2019 motion for finding of disclosure violations and for remedial measures submitted by the Yekatom Defence. The Defence is alarmed by the fact that the Prosecutor has failed to disclose exculpatory information, in spite of the Single Judge’s indication to do so immediately after having identified it. Such information is clearly relevant to the preparation of the defence of Mr. Ngaïssona, given that it relates to the credibility of a witness whose statement is heavily relied upon in the DCC.

11. The Defence thus joins the Yekatom Defence in requesting the Chamber to make an explicit finding concerning the Prosecution’s violation of its duties under article 67(2). The

⁸ ICC-01/14-01/18-301-Conf

Defence agrees with the Yekatom Defence that the warranted remedy to this violation should be the immediate disclosure to the Defence of all material that could be relevant to determine the reliability of P-[REDACTED]. Moreover, the Defence endorses the request by the Yekatom Defence that such witness be called to testify under the above-mentioned circumstances at the confirmation hearing.

IV. Conclusion

12. The Defence respectfully requests an extension of time to file its list of evidence until fifteen days after the Prosecution has completed its disclosure. Moreover, the Defence requests the Chamber to make an explicit finding on the Prosecution's violation of its duty to disclose exculpatory information under article 67(2). As a remedy to such violation, the Defence respectfully requests the Chamber to order immediate disclosure of all evidence that could affect the reliability of P-[REDACTED], and that such evidence be heard *viva voce* at the confirmation hearing.

Respectfully submitted,



Mr Knoops

Lead Counsel for Mr. Patrice-Edouard Ngaïssona

Dated this 18 October 2019