

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **27 January 2020**

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 & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of “Joint Defence Motion for
Disclosure of Anonymous Summaries for [REDACTED]”,
ICC-01/14-01/18-254-Conf, 24 July 2019**

Source: Defence for Mr. Alfred Rombhot Yekatom
Defence for Mr. Patrice-Edouard Ngaïssona

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

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Further to the Prosecution Request for the Non-Disclosure of Witness Identities (“the Request”), Counsel representing Messrs. Alfred Rombhot Yekatom and Patrice-Edouard Ngaïssona (“the Defence”) hereby submit this:

**Joint Defence Motion for Disclosure of
Anonymous Summaries for [REDACTED].**

1. The Yekatom and Ngaïssona Defence (“the Defence”) respectfully moves for an order that the Prosecution furnish the Defence with the anonymous summaries it proposes to use at the confirmation hearing for [REDACTED]. The Defence further moves for an extension of time to file its response to the *Prosecution Request for the Non-Disclosure of Witness Identities* (5 July 2019) (“the Request”) until 48 hours after receipt of the summaries. Finally, the Defence suggests that the Prosecution be ordered to file a public redacted version of the Request, and that this Motion then be reclassified as public.

RELEVANT PROCEDURAL HISTORY

2. On 5 July 2019, the Prosecution filed an *ex parte* request seeking an order authorising the non-disclosure of the identities of [REDACTED]. The Prosecution proposed to rely on the witnesses at the confirmation hearing by introducing anonymous summaries of the witnesses’ evidence.¹
3. On 23 July 2019, the Prosecution filed a confidential redacted version of the Request.²
4. On 23 July 2019, the Pre-Trial Chamber notified the parties by e-mail that the time for responding to the Request had been shortened to 29 July 2019.

¹ ICC-01/14-01/18-237-Conf-Exp

² ICC-01/14-01/18-237-Conf

ARGUMENT

5. The Defence first wishes to express its appreciation to the Chamber for ensuring that it has an opportunity to be heard on the Request. This motion seeks to make that opportunity meaningful.
6. The overriding principle is that *full* disclosure should be made and that non-disclosure is the *exception* to the rule.³ The decision whether to allow the non-disclosure of the identity of witnesses at the confirmation hearing requires the Chamber to balance, on a case-by-case basis, the need for the non-disclosure against the prejudice to the Defence.⁴
7. The Defence's ability to meaningfully assist the Chamber to assess the need for the non-disclosure is quite limited, given that it is not privy to facts concerning the security concerns for the witnesses.
8. The Defence can, however, meaningfully assist the Chamber to assess the prejudice to the Defence by making submissions about the importance of the witnesses that the Chamber would otherwise be unaware of, gleaned from the Defence review of the voluminous disclosure in this case and its own investigations. In this instance, providing the Defence a meaningful opportunity to be heard can only enhance the Chamber's decision-making process.
9. However, in order to do this, the Defence needs access to the anonymous summaries that the Prosecution proposes to use at the confirmation hearing. As it stands now, because no disclosure has been provided concerning

³ ICC-01/14-01/18-169, para. 16.

⁴ *Lubanga*, Judgment on the Prosecutor's Appeal of the Decision of Pre-Trial Chamber I entitled "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence", ICC-01/04-01/06-568, 13 October 2006, para. 36; *Prosecutor v. Katanga*, Judgement on Katanga's Appeal against the First Redaction Decision, ICC-01/04- 01/07-476, 13 May 2008, para. 62.

[REDACTED], the Defence has no idea of even the issues to which the witnesses' testimony relate, the nature and gravity thereof, or which suspect(s) the testimony concerns. It cannot assist the Chamber with information about the importance of those issues to the confirmation hearing, or the importance of the witnesses' testimony to a determination of those issues, such as whether there is evidence from other witnesses on those same issues.

10. Ordering the Prosecution to provide the anonymous summaries at this stage will not prejudice the Prosecution. The Prosecution would be disclosing the summaries anyway if its Request is granted. If the Request is denied, the Prosecution would not have been prejudiced since the summaries are anonymous and do not reveal the identities of the witnesses.
11. Providing the anonymous summaries to the Defence will not delay the confirmation hearing, nor will it materially delay the Chamber's decision on the Request. Eighteen days elapsed between the filing of the Request and its disclosure to the Defence. The Defence can respond to the Request within 48 hours of receiving the summaries.
12. Finally, because the non-disclosure of witnesses at the confirmation hearing is an important issue going to the fairness of the proceedings at the Court, it should be debated in public to the extent possible. The Defence requests that the Prosecution be ordered to file a public redacted version of the Request, and that this Motion be reclassified as public once that is done.

CONCLUSION

13. The Pre-Trial Chamber should (1) order the Prosecution to provide the anonymous summaries for [REDACTED] to the Defence; (2) extend the time to respond until 48 hours after receipt of the summaries; and (3) order the

Prosecution to file a public redacted version of the Request and the reclassification of this Motion as public.

RESPECTFULLY SUBMITTED ON THIS 27th DAY OF JANUARY 2020



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