

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **21 December 2018**

PRE-TRIAL CHAMBER II

Before: Judge Tomoko Akane, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM***

Confidential with Confidential Annex A

Prosecution's Observations pursuant to Decision ICC-01/14-01/18-33

Source: Office of the Prosecutor

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

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Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") provides its observations pursuant to Pre-Trial Chamber II's order ("Chamber") in Decision ICC-01/14-01/18-33.

2. The Observations provided herein comprise the Prosecution's best currently available estimations. However, these may be subject to change based on numerous variables, including the Prosecution's ongoing investigation and the volatile and dangerous security situation in the Central African Republic ("CAR"). As foreshadowed,¹ the security situation in CAR necessitates extensive witness protection measures which will necessarily affect the timing of Prosecution disclosure and the scheduling of proceedings concerning Alfred YEKATOM ("YEKATOM"). To the extent it would benefit the Chamber, the Prosecution is ready to attend status conferences where it can provide the Chamber with updates regarding the below-mentioned issues.²

II. CONFIDENTIALITY

3. In accordance with regulation 23bis(2) of the Regulations of the Court, this filing is classified as "*confidential*" since it contains sensitive information bearing on witness protection issues. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Prosecution provides the following observations in response to the Chamber's queries:

¹ ICC-01/14-01/18-8-Conf-Red.

² ICC-01/14-01/18-T-1-ENG ET, pp. 9-10, l. 25-2.

- a. *What is the overall amount of non-oral pieces of evidence the Prosecutor intends to use as evidence at the confirmation hearing? How many pages does this evidence amount to?*
 - i. The Prosecution intends to rely on approximately 800 exhibits at the confirmation hearing. The number of pages amounts to approximately 14,500.
- b. *Which pieces of evidence, and how many, can be disclosed immediately to the Defence without redactions? How many pages does this evidence amount to?*
 - i. The Prosecution estimates that around 300 exhibits can be disclosed immediately to the Defence without redactions. The number of pages is approximately 5,000.
- c. *What is the overall amount of exculpatory evidence that the Prosecutor is duty-bound to disclose to the Defence, pursuant to article 67(2) of the Statute? How many pages does this evidence amount to? Does this exculpatory evidence require redactions?*
 - i. The Prosecution is currently in the process of reviewing and assessing its evidence collection for disclosure purposes, including potentially exculpatory evidence under article 67(2). As such evidence is identified it will be disclosed as soon as practicable. The Prosecution expects to be in a position to provide an accurate assessment in terms of the numbers of exhibits by the end of January to mid-February 2019.

d. How many witnesses, if any, does the Prosecutor intend to call to testify at the confirmation hearing?

i. The Prosecution does not intend to call witnesses to testify at the confirmation hearing.

e. How many witness statements does the Prosecutor intend to use for the purposes of the confirmation hearing, pursuant to rule 76 of the Rules? Are these statements full statements or summaries, as provided in articles 61(5) and 68(5) of the Statute?

i. The Prosecution intends to rely on around 50 witness statements for the purposes of the confirmation hearing. The Prosecution intends to rely on around eight summaries of witness statements.

f. Will the Prosecutor request the identity of witnesses to be withheld (anonymous witnesses) and, if in the affirmative, how many witnesses does this affect? On how many statements of anonymous witnesses will the Prosecutor rely?

i. The Prosecution's best estimate presently is that it will request to withhold the identities of up to 10 witnesses for purposes of the confirmation hearing. The Prosecution's Protection Strategies Unit ("PSU") continues to work with the Victims and Witnesses Unit ("VWU") to ensure that witnesses whose evidence the Prosecution intends to rely upon for purposes of the confirmation hearing are adequately protected. Through this process, the Prosecution endeavours to put sufficient safeguards in place such that

the identity of all Prosecution witnesses can be disclosed prior to confirmation. However, the security situation in CAR is unpredictable, dangerous, and evolving, which makes it difficult to provide concrete estimates. The 10 witnesses are key to the YEKATOM Warrant of Arrest. Their evidence is required to sustain the allegations identified in the Warrant and they also face security concerns because of their residence in CAR and current Anti-Balaka activity.

- ii. Additionally, the Prosecution anticipates that the numbers of witnesses for whom it will request identity redactions will change pending the putative joinder of the Prosecution's case against Patrice Edouard NGAISSONA.
- g. *Have those statements, on which the Prosecutor intends to rely, been translated into Sango, the language which the suspect fully understands and speaks, as provided for in rule 76(3) of the Rules? If not, how much time would it take to provide the required translations?*
- i. The Prosecution has not translated into Sango the statements upon which the Prosecution intends to rely with regard to YEKATOM. As noted in the Prosecution's 17 December 2018 request to the Chamber for an order concerning YEKATOM's French proficiency level,³ the Prosecution has been under the good faith belief that YEKATOM was sufficiently fluent in French such that translations into Sango would be unnecessary. This belief arose from information in the Prosecution's possession, including videos and

³ See generally ICC-01/14-01/18-34.

documents, depicting YEKATOM's full fluency in French.⁴ It also arises from the Prosecution's own prior meetings and contacts with YEKATOM, during which he spoke entirely in French and without the assistance of a Sango-French interpreter.⁵

- ii. In the event the Chamber finds that YEKATOM does not fully understand and speak French, the time required to translate the relevant witness statements into Sango will depend on whether and the extent to which the Chamber requires the disclosure of *written* translations.⁶ As noted in the Prosecution's 17 December 2018 request, the Chamber has flexibility under rule 76(3) to provide language assistance through an interpreter or through written translation of a limited sub-set of statements or passages thereof.⁷ To the extent the Chamber orders that all witness statements used in support of the Prosecution's Arrest Warrant Application be translated into Sango, complete translations would not be completed until, at the earliest, 1 September 2019. This estimate, provided by the Prosecution's Language Services Unit ("LSU"), is based on the projected work of two translators working full-time at a standard production rate of three to four pages a day.
- iii. Whether this is a workable time frame will also obviously depend on whether YEKATOM is literate in written Sango, given that Sango is traditionally an oral language.

⁴ See e.g. ICC-01/14-01/18-34, paras. 3-5.

⁵ See Annex A, Confidential Redacted Version of CAR-OTP-2100-0002.

⁶ See ICC-01/14-01/18-34, paras. 10-23.

⁷ See ICC-01/14-01/18-34, paras. 21-23.

h. At the time of the request to withhold the identity of a witness and the related requests for redactions in the witness's statement, the Prosecutor is expected to provide a detailed and comprehensive security assessment in order for the Chamber to take an informed decision on the requests. In this case, has the Prosecutor prepared a detailed and comprehensive security assessment for each witness on which she intends to rely at the confirmation hearing? If not, how long will it take for the Prosecutor to complete the security assessment of witnesses?

- i. The process is ongoing. Draft Individual Risk Assessments ("IRA's") are available for all witnesses, however these need to be reviewed based on the evolving security situation in CAR and pending additional information from the witnesses. The Prosecution estimates that it will be able to provide updated IRA's for all witnesses by the end of January 2019.
- i. Does the Prosecutor intend to request redactions of information contained in documents, including witness statements, to be disclosed to the Defence and, if in the affirmative, how many such documents will be affected?*

- i. Yes, the Prosecution intends to request redactions to information contained in documents, including witness statements. The approximate number of exhibits for which redactions will be requested is around 500. This estimate includes the anticipated need for redactions to meta-data. The process of redactions to information to be disclosed would be facilitated by the Chamber's adoption of a Protocol

on Redactions as requested in the Prosecution's Request for a Protocol on Redactions of 21 December 2018.

- j. Does the Prosecutor intend to request that protective measures be put in place in order to protect witnesses, victims or other persons at risk prior to disclosure of the names of the witnesses or of certain documents? What are the steps taken and/or the Prosecutor intends to take for the purposes of the protection of victims, witnesses and other persons at risk?*
- i. Yes. The security measures required depend on a number of factors including the security situation in CAR, the individual profiles of the witnesses, including their own capacities to protect themselves, and the nature of the evidence they provide. The Prosecution may refer up to 10 witnesses to VWU for protection advice, pending the outcome of the IRA's. A joint contingency planning operation will be done for these witnesses, involving PSU and VWU staff in CAR. This operation entails detailing a concrete plan of action for each witness.
- k. Has the Office of the Prosecutor been in contact with the VWU for protective measures to be taken in respect of witnesses, victims or other persons at risk? How many witnesses have been referred to the VWU for protection purposes, including relocation? How many witnesses does the Prosecutor intend to refer to the VWU for protection purposes, including relocation, before the confirmation hearing? How much time would it take for those measures to be put in place?*
- i. Yes, PSU has been in contact with the VWU and cooperation is ongoing. At the date of this filing, three witnesses have

been referred to the VWU for protection purposes. While security assessments for all witnesses are an ongoing process and subject to change depending on the evolution of the security situation in CAR, the Prosecution aims to limit the number of referrals for protection purposes to the extent possible. Presently, pending updated information from the witnesses, the Prosecution could refer up to 10 witnesses to the VWU for protection advice. All things remaining equal, the Prosecution will be in a position to provide a final number by the end of January 2019. The Prosecution is not in a position to estimate the amount of time it will take the VWU to put in place the security measures. As the Chamber is aware, the security situation in CAR will necessarily affect the timing and decision-making with regard to witness protection efforts.

l. Are any of the pieces of evidence obtained by the Prosecutor, in particular exculpatory evidence (article 67(2) of the Statute) or evidence considered material for the preparation of the defence (rule 77 of the Rules), affected by confidentiality agreements in accordance with articles 54(3)(e), 72 and 93 of the Statute? If in the affirmative, has the Prosecutor undertaken steps to obtain the consent of the information provider regarding disclosure of this material or will such steps be undertaken?

i. As noted above, the Prosecution is reviewing and assessing its evidence collection with regard to potentially exculpatory evidence and evidence material to the preparation of the defence. At present, the Prosecution has not identified potentially exculpatory evidence or evidence material to the

preparation of the defence affected by articles 54(3)(e), 72, or 93 of the Statute.

m. Are there any documents, books, photographs or other tangible items in the possession or control of the Prosecutor that are material to the preparation of the Defence, or are intended for use by the Prosecutor as evidence or were obtained from or belonged to the suspect, as provided in rule 77 of the Rules? If in the affirmative, how many pieces of evidence are subject to inspection under rule 77 of the Rules? Are they likely to be affected by redaction requests, pursuant to rule 81 of the Rules?

i. As noted, the Prosecution is currently in the process of reviewing and assessing evidence subject to inspection under rule 77. As such evidence is identified it will be disclosed as soon as practicable. The Prosecution expects to be in a position to provide an accurate assessment in terms of the numbers of exhibits by the end of January to mid-February 2019.

n. Does the Prosecutor intend to present requests under article 56 of the Statute to the Chamber?

i. The Prosecution does not presently intend to submit further requests under article 56 of the Statute. However, the Prosecution may submit requests depending on how the security situation evolves and depending on the witness' changing personal circumstances. In such circumstances, the Prosecution will promptly inform the Chamber.

o. Is the Office of the Prosecutor continuing its investigation regarding Alfred Yekatom? What could be the impact of the ongoing investigation on the disclosure process, the protection of witnesses and the commencement of the confirmation hearing?

- i. Yes, there may be additional evidence uncovered during the ongoing investigation. The Prosecution will provide information under article 67(2) as soon as practicable and under rule 77 of the Rules, once in its possession.



Fatou Bensouda, Prosecutor

Dated this 21st day of December 2018
At The Hague, The Netherlands