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No.: ICC-01/14-01/18
Date: 17 February 2026

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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

Public redacted version of "Prosecution's Response to the Yekatom Defence's
'Second Motion for Disclosure of rule 76 Material', 1 September 2019,
ICC-01/14-01/18-331-Conf", 12 September 2019, ICC-01/14-01/18-333-Conf

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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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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

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Victims and Witnesses Unit

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Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Pre-Trial Chamber II (“Chamber”) to reject the Yekatom Defence’s *Second Motion for Disclosure of rule 76 Material* (“Motion”).¹ The Motion requests that the Chamber order the disclosure of 14 irrelevant photographs shown to three Prosecution Witnesses during their interviews.²

2. The Prosecution has complied with its disclosure obligations under rule 76 of the Rules of Procedure and Evidence and the Chamber’s direction to disclose items of “true relevance” to the case.³ The Prosecution opposes the Motion as it requests the disclosure of photographs that are not logically connected to any matter in the case or helpful to understanding other evidence – and are therefore irrelevant. Further, the photographs do not constitute disclosable information under the plain terms of rule 76.

3. At first glance, the Motion requests only 14 photographs “regardless of their relevance.”⁴ However, the issue at stake is more far-reaching than 14 irrelevant photographs. The Defence invites the Chamber to apply a blanket order on the disclosure of otherwise irrelevant items merely because they were shown to a Witness or provided by a Witness, by attempting to shoehorn the items into rule 76.⁵ Were the Chamber to accept this invitation, it would require the wholesale disclosure of irrelevant items. The Court would be inundated with a raft of irrelevant exhibits

¹ ICC-01/14-01/18-331-Conf.

² The Prosecution offers to provide the Chamber with the 14 photographs for an *in camera* review should the Chamber deem it necessary.

³ With the exceptions already noted in ICC-01/14-01/18-330-Conf, paras. 3-4; ICC-01/14-01/18-64-Conf, para. 18.

⁴ ICC-01/14-01/18-331-Conf, paras. 15, 18, and 20.

⁵ ICC-01/14-01/18-331-Conf, para. 24.

unnecessarily burdening the record, prolonging the proceedings, and causing inefficiency — counter to the requirement of expedition.

4. The Chamber should reject any attempt to create a ‘bright-line’ rule requiring *automatic* disclosure of any item mentioned or provided during the course of a Witness interview without regard to the relevance, let alone the *materiality* of that item either to the Statement or to the case. It is well recognised that “the right to disclosure is not absolute.”⁶ A plain reading of rule 76 and the requirement of relevance must remain among the bare minimum thresholds for disclosure to occur at this stage of the proceedings. The Prosecution’s has appropriately undertaken and satisfied its disclosure obligations as established by the *Lubanga* Bulk Rule and the Chamber’s previous orders.⁷

5. The Prosecution again reiterates that the confirmation proceedings are limited, and that it has reasonably assessed the requested material for disclosure purposes, having exercised its discretion appropriately and in accordance with its statutory obligations.⁸

II. CONFIDENTIALITY

6. The Response is filed as Confidential, as it responds to a Motion with the same designation.

⁶ See ICC-01/04-01/07-475, para. 62.

⁷ See ICC-01/04/01/06-803-tEN, para. 154 (emphasis added), citing ICC-01/04-01/06-102 or ICC-01/04-01/06-581-Conf-tEN.

⁸ See ICC-01/04-02/06-1330, para. 23.

III. SUBMISSIONS

7. As noted by the Defence, the Prosecution disclosed several items in dispute following discussions with the Yekatom Defence team.⁹ The Prosecution declined to disclose the disputed 14 photographs on grounds of irrelevance.

8. As a general matter, the Prosecution has disclosed items provided by Witnesses as annexes to their Statements. Such items are disclosed where they are relevant to an issue in the case. Many, if not most, items obtained during the investigation tend to be relevant to the case. However, not every item shown to or received from a Witness is relevant and that is the case with the 14 photographs. Additionally, as none of the 14 irrelevant photographs fall under the plain terms of rule 76, which requires the pre-trial disclosure of names, Statements, and Statement translations of Witnesses, they are not disclosable under this rule.

9. The Prosecution investigations in the CAR II Situation go beyond this case. Thus, not every item shown to or provided by a Witness during the course of an interview should be automatically disclosable under rule 76. For example, P-1819 provided the Prosecution with [REDACTED] videos. The Prosecution has spent enormous time and resources to review those videos and other voluminous information for relevance, in order to provide only what is truly relevant to the Defence and to avoid flooding the Defence and the Court with meaningless material.

10. As was the case with the Yekatom Defence's first *Motion for Disclosure of Rule 76 Material*, ("First Motion")¹⁰ this Motion fails to address the Court's prior jurisprudence,¹¹ upheld by the Appeals Chamber in the *Ntaganda* case, that not all items containing information obtained from a Witness necessarily constitute a

⁹ ICC-01/14-01/18-331-Conf, para. 7.

¹⁰ ICC-01/14-01/18-285.

¹¹ ICC-01/05-01/13-1227, paras. 9-10; *see also* ICC-01/04-02/06-904, paras. 29-30.

‘statement’ within the meaning of rule 76.¹² Thus, for instance, information provided by Witnesses solely related to matters other than their knowledge of the case, such as information related to security concerns or purely logistical matters, does not fall within rule 76.¹³ The Prosecution has abided by this precedent.

11. The Prosecution’s response to the First Motion¹⁴ remains apt in this instance:

In accordance with the Chamber’s directive to disclose only what is truly relevant at this stage,¹⁵ the Prosecution has endeavoured to avoid overburdening the Defence with irrelevant material; again, in view of the limited purposes of the proceedings. Thus, while not every single piece of evidence related to all Prosecution Witnesses has been disclosed at this stage, nor is required to be,¹⁶ the Prosecution remains mindful of its continuing obligation to review and disclose material, as appropriate through trial.

12. The Prosecution has assessed several items of evidence either shown to or provided by a Witness as relevant to the Statement and has disclosed those items. For example, the Prosecution has disclosed videos shown to Witnesses during interviews.¹⁷

13. The Motion’s continued attempt to analogise annexes to Witness Statements and associated exhibits to prior recorded testimony under rule 68¹⁸ is not apt. As the Prosecution previously stated:¹⁹

¹² ICC-01/04-02/06-1330, at para. 11 (quoting ICC-01/04-02/06-904 at paras. 29 and 39); *see also* ICC-01/04-02/06-731-Conf-Exp, para. 19.

¹³ ICC-01/04-02/06-1330, at paras. 11 (quoting ICC-01/04-02/06-904 at para. 30) and 39 (confirming the impugned decision); *see also* ICC-01/04-02/06-731-Conf-Exp, para. 19.

¹⁴ ICC-01/14-01/18-295-Conf, para.

¹⁵ ICC-01/14-01/18-64-Conf, at para. 18.

¹⁶ ICC-01/04-01/06-803, at para. 154; ICC-01/04-01/07-621, para. 8.

¹⁷ *See, e.g.* P-1819, CAR-OTP-2065-0003-R01, at 0012-0031, paras. 49-164 (describing disclosed video CAR-OTP-2012-0523); P-0289, CAR-OTP-2024-0288, at 0304, paras. 88-94 (describing disclosed videos CAR-OTP-2012-0477 and CAR-OTP-2019-1359); P-1521, CAR-OTP-2046-0603, at 0624-0625, para. 128 (describing disclosed video CAR-OTP-2012-0523).

¹⁸ ICC-01/14-01/18-331-Conf, para. 23.

¹⁹ ICC-01/14-01/18-295, Conf, para. 9.

The comparison obscures the different legal thresholds that apply to admission and to disclosure, respectively. Rather than determining the admissibility of items whose relevance has already been decided (under rule 68), the issue here is whether the item is and relevant and *disclosable* in the first place.

14. The Chamber may be minded to grant the seemingly benign Motion with the rationale that it would expedite the proceedings or the disclosure would come at little effort to the Prosecution. However, adoption of the Defence's proposed new legal standard to disclose irrelevant items would set a dangerous precedent as it would expand litigated issues exponentially, put Witnesses and family members at risk for no conceivable benefit to any party, and unnecessarily prolong proceedings at the expense of both fairness and expeditiousness. The effect of such an order would cause the Prosecution to disclose not only the requested irrelevant photos, but to apply the same standard to all similar material. It would require several months to resolve the disclosure of hundreds or thousands of items of irrelevant and immaterial collateral information, much of which would have to be reviewed manually for redactions in order to protect Witnesses, family members, or preserve other investigative interests. It would also significantly increase the burden on the Defence, who would then need to review all of this new material, in addition to the large volume of relevant material already disclosed, in search of the proverbial needle in a haystack of irrelevance.

IV. CONCLUSION

15. For the above reasons, the Prosecution requests the Chamber to reject the Defence Motion.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 17th day of February 2026
At The Hague, The Netherlands