



Original: **English**

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

Date: **23 July 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Confidential

**With Confidential *EX PARTE* Annexes A and B only available to the Prosecution
and VWU**

**Confidential Redacted version of "Prosecution's Request for the Non-Disclosure of
Witness Identities", 5 July 2019, ICC-01/14-01/18-237-Conf-Exp**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Mr Stéphane Bourgon

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoop

Legal Representatives of Victims

Mr Dmytro Suprun

Mr Abdou Dangabo Moussa

Ms Elisabeth Rabesandratana

Mr Yaré Fall

Ms Marie-Edith Douzima-Lawson

Ms Christine Priso Ouamballo

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests authorisation to withhold the identities of two Witnesses – CAR-OTP-P-0458 ("P-0458") and CAR-OTP-P-1792 ("P-1792"). The Prosecution intends to rely on these Witnesses. However, ongoing security concerns prevent disclosing their identities before confirmation. The use of anonymised summaries¹ of their respective Witness Statements ("Proposed Summaries") is necessary to protect their safety and warranted under rule 81(4) of the Rules of Procedure and Evidence. The Proposed Summaries are set out at Annexes A and B.

II. CONFIDENTIALITY

2. This request and its annexes are filed "*EX PARTE*, available only to the Prosecution and the VWU" as they contain sensitive information pertaining to witness security. A confidential redacted version of this request will be filed when possible.

III. BACKGROUND

3. On 15 May 2019, the Chamber issued the "Decision on the 'Prosecution's Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines'", and ordered the Prosecution to "submit any and all applications for the authorisation of the non-disclosure of witnesses' identities and/or the non-disclosure of entire items of evidence by 7 June 2019 at the latest."²

¹ See article 61(5) of the Statute (permitting the use of "summary evidence").

² ICC-01/14-01/18-199.

4. On 29 May 2019, the Chamber convened a Status Conference and extended this deadline to 5 July 2019.³ The Chamber additionally ordered the Prosecution to prepare and submit anonymous summaries of witness statements.⁴

IV. SUBMISSIONS

5. The Proposed Summaries are necessary to protect the Witnesses' safety. Since prior to the submission of the Application for Warrants of Arrest, the Prosecution has been continually assessing and implementing necessary security measures. However, prevailing circumstances in CAR present several challenges to their expeditious and effective implementation. As [Redacted],⁵[Redacted] the continued volatility and unpredictability of the security situation in CAR as well as the country's weak infrastructure [Redacted] slowing the process.

6. [Redacted] require the Prosecution to withhold the identities of P-0458 and P-1792 at this stage. The Witnesses are [Redacted]. [Redacted].

7. [Redacted], increasing the risk that they may be targeted for their cooperation with the investigation. [Redacted].⁶

8. The Prosecution has been [Redacted] with regard to these two Witnesses. The measures are a predicate to the safe disclosure of their materials and identities, and entail ensuring the Witnesses are [Redacted].

a. P-0458's situation does not safely allow for disclosing his identity

9. P-0458 provides incriminatory evidence on which the Prosecution intends to rely for the purposes of the confirmation of charges hearing. [Redacted]. [Redacted].

³ ICC-01/14-01/18-T-3-CONF-EXP-ENG ET, p. 20.

⁴ ICC-01/14-01/18-T-3-CONF-EXP-ENG ET, p. 12.

⁵ [Redacted].

⁶ [Redacted].

10. [Redacted];

a. [Redacted];

b. [Redacted];

c. [Redacted].

11. [Redacted].

12. [Redacted].

13. Annex A sets out the Proposed Summary for P-0458. While the article 55(2) interview is audio recorded, its transcription and translation are not yet complete. The Prosecution will provide the Chamber a summary of P-0458's recent interview of (28 June – 1 July 2019). However, this will only be available by the end of next week – 12 July 2019.

b. *P-1792's situation does not safely allow for disclosing his identity*

14. P-1792 provides incriminatory evidence on which the Prosecution intends to rely for the purposes of confirmation. [Redacted],⁷ [Redacted].

15. [Redacted].

16. [Redacted].

17. [Redacted].

18. [Redacted].

⁷ [Redacted].

c. *Provision of summaries does not prejudice the Suspects' rights*

19. The use of summaries is specifically authorised under article 61(5) and does not prejudice or impede the fairness of the confirmation proceedings. The Proposed Summaries (1) provide the Defence with the necessary information contained in the Witnesses' statements as relates to the Document Containing the Charges; (2) form only a small portion of the total disclosure the Defence will receive regarding the Prosecution's case; and (3) are temporary, since the complete statements, including the Witness' identities, will be disclosed once the Prosecution implements the required security measures.

20. Aside from the Proposed Summaries, no other less intrusive and expeditious measures are available to mitigate the risk inherent in disclosing these materials. The provision of summaries will best balance the interests in protecting the safety of witnesses and fairness and expeditiousness.

21. Other Chambers of this Court have endorsed this approach in similar circumstances. For instance, the Appeals Chamber in the *Ntaganda* case noted that the use of anonymous summaries for rule 81(2) or 81(4) reasons was appropriate at the confirmation stage given that "in light of the limited scope of the confirmation of charges hearing, the anonymity is necessary and not prejudicial to or inconsistent with the rights of the Suspects and fair and impartial proceedings as the Defence will have access to the relevant information contained in the summary."⁸ Similarly, the Appeals Chamber in the *Katanga* case confirmed that "it may be permissible to withhold the disclosure of certain information from the Defence prior to the hearing to confirm the charges that could not be withheld prior to trial."⁹ The same legal reasoning is apt here.

⁸ ICC-01/04-02/06-248-Red2, para. 21.

⁹ ICC-01/04-01/07-475, para. 68.

22. On the Chamber's approval, the Prosecution intends to disclose the Proposed Summaries to the Defence, and in the case of P-1792, a French translation thereof.

V. RELIEF SOUGHT

23. For the above reasons, the Prosecution requests the Chamber's authorisation to withhold the identities of Witnesses P-0458 and P-1792 under rule 81(4), and to provide the Proposed Summaries instead.



Fatou Bensouda, Prosecutor

Dated this 23rd day of July 2019
At The Hague, The Netherlands