

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **28 August 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 & PATRICE-EDOUARD NGAÏSSONA***

Public

Motion for Extension of Time to File List of Evidence

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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**Unrepresented Applicants
(Participation / Reparation)**

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REGISTRY

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Mr. Peter Lewis

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**Victims Participation and Reparations
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully move, pursuant to Regulation 35(2), for an extension of time in which to file its List of Evidence due to incomplete disclosure by the Prosecution.

RELEVANT PROCEDURAL HISTORY

2. On 15 May 2019, the Pre-Trial Chamber postponed the confirmation hearing until 19 September 2019 at the request of the Prosecution, and ordered disclosure to be completed by 19 August 2019.¹
3. On 19 August 2019, the Prosecution filed its Document Containing the Charges (“DCC”).²
4. On 20 August 2019, the Defence filed a motion for review and reclassification of the 76 *ex parte* filings made in the case to which it does not have access.³
5. On 20 August 2019, the Defence filed a motion for disclosure of exculpatory material.⁴
6. On 20 August 2019, the Defence filed a motion for disclosure of statements of Prosecution witnesses and related documents that the Prosecution had failed to disclose.⁵
7. On 26 August 2019, the Defence filed a motion to lift redactions.⁶

¹ [ICC-01/14-01/18-199](#).

² [ICC-01/14-01/18-282-Conf-AnxB1](#).

³ [ICC-01/04-01/18-283](#).

⁴ [ICC-01/04-01/18-284](#).

⁵ [ICC-01/04-01/18-285-Red](#).

⁶ [ICC-01/04-01/18-290](#).

8. On 27 August 2019, the Defence filed a motion to compel inspection of the legal process by which the Prosecution had obtained the call location record included in the DCC.⁷
9. On 28 August 2019, the Defence filed a motion to compel inspection of items related to the organisation of the Seleka and ex-Seleka armed groups.⁸

RELEVANT PROVISION

10. Rule 121(6) provides:

If the person intends to present evidence under article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing.

11. Article 61(6) provides:

At the hearing, the person may:

- (a) Object to the charges;
- (b) Challenge the evidence presented by the Prosecutor; and
- (c) Present evidence.

12. Regulation 35(2) provides:

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

ARGUMENT

13. Pursuant to Rule 121(6), the Defence list of evidence is due to be filed on Wednesday, 4 September 2019, fifteen days before the 19 September confirmation hearing. The Defence currently has not identified any evidence

⁷ [ICC-01/04-01/18-294](#).

⁸ [ICC-01/04-01/18-297](#).

that it wishes to present at the hearing. However, Defence preparation for the hearing has been significantly hampered by the fact that materials which should have been provided by the Prosecution are not provided sufficiently in advance to the confirmation hearing⁹ and, *ipso facto*, the need to divert resources to obtaining such disclosure. Similarly, the Defence's meaningful review of the material disclosed by the Prosecution with a view to efficiently conduct its investigations has been, in some cases, impeded by unwarranted redactions, inconsistent application of unique pseudonyms, and lack of pinpoint references accompanying the pseudonyms.¹⁰

14. The Defence has endeavoured to work with the Prosecution throughout the disclosure process to ensure that it received all of the disclosure material prior to 19 August 2019. Despite those efforts, as reflected in the motions that are pending before the Chamber, as well as other motions to be filed in the coming days, significant material remains undisclosed or disclosed in overly redacted versions.
15. For example, the identities of many persons with information about the events, including eyewitnesses, remain redacted with considerable amount of unique pseudonyms is applied not in conformity with the prescribed redaction regime,¹¹ statements of Prosecution witnesses remain undisclosed,¹² exculpatory

⁹ Such impact was contemplated by the Single Judge when establishing the disclosure regime. See [ICC-01/14-01/18-64-Red](#), para. 16 (emphasis per original): "Indeed, the Defence must receive [evidence within the meaning of Article 67(2)] sufficiently in advance prior to the commencement of the confirmation hearing in order to make *effective* use of the right provided in article 61(6) of the Statute."

¹⁰ See issues raised in [ICC-01/04-01/18-290](#).

¹¹ For example, the disputes and technical issues concerning the redactions applied to the statements CAR-OTP-2053-0086-R01, CAR-OTP-2054-1136-R01, CAR-OTP-2058-0003-R01, and CAR-OTP-2053-0112-R01 remain unresolved. The issues were raised with the Prosecution through Yekatom Defence letters ARY-2019-0027 (excerpts reproduced in [ICC-01/14-01/18-290-Conf-AnxB](#), p. 7) and ARY-2019-0049 (reproduced as [ICC-01/14-01/18-290-Conf-AnxE](#)), and brought to the Chamber's attention through [ICC-01/14-01/18-290](#), in particular, paras 18, 20, 30. These statements touch on the acts and conducts of Mr. Yekatom's subordinates and Mr. Yekatom himself alleged in the DCC. See [ICC-01/14-01/18-282-Conf-AnxB1](#), fns 642-649, citing both statements in support of Counts 11-16.

material remains undisclosed,¹³ and necessary and material information going to the elements of the crimes and the possible exclusion of evidence at the confirmation hearing remain undisclosed as of the filing of this motion.

16. The Defence cannot to make a final determination of what it intends to present at the confirmation hearing until it has received all of the materials and information that it is entitled to. As a result, the Defence will be unable to provide the Chamber with a definitive list of such evidence, if any, by 4 September 2019.
17. The failure of the Prosecution to complete the disclosure process by 19 August 2019 and to address and/or rectify redaction issues constitutes good cause under Regulation 35(2) for an extension of time for the Defence to file its list of evidence. The Defence therefore requests that the deadline for filing its list of evidence be extended to fifteen days after disclosure has been completed.
18. The Defence does not envision a postponement of the commencement of the confirmation hearing as a result of this delay, but may seek to adjourn the hearing after it has commenced, if necessary to obtain and present defence evidence.

CONCLUSION

19. The Chamber is respectfully requested to extend the deadline for the filing of a list of Defence evidence until 15 days after disclosure by the Prosecution is complete.

¹² For example, the Prosecution undertook to provide the 108 screening notes of the witnesses relied upon in the DCC within one week of 27 August 2019. See [ICC-01/14-01/18-295-Conf](#), para. 5.

¹³ For example, on 28 August 2019, the Chamber directed the Prosecution to “verify whether she has in her possession any additional evidence that falls within the scope of Article 67(2) of the Statute, including any objective information relating to criminal records for witnesses upon whom the Prosecutor intends to rely at the confirmation hearing”. [ICC-01/14-01/18-296](#), para. 14.

RESPECTFULLY SUBMITTED ON THIS 28TH DAY OF AUGUST 2019



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