

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **30 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 with Confidential Annexes A, B and C

**Motion for Finding of Disclosure Violation and
to Exclude the Evidence of Thirteen Witnesses**

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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**Victims Participation and Reparations
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully move for a finding that the Prosecution has violated its obligation under Article 67(1)(a) and Rule 76(3) to disclose statements of prosecution witnesses in a language which Mr. Yekatom fully understands and speaks. The Defence further requests that as a remedial measure, the Chamber excludes the evidence of the thirteen affected witnesses at the confirmation hearing.

RELEVANT PROCEDURAL HISTORY

2. On 11 January 2019, the Single Judge found that Mr. Yekatom is proficient in French for the purpose of the proceedings.¹ Mr. Yekatom does not understand English for the statutory purposes. Nor was this claimed by the Prosecution.
3. On 4 April 2019, the Pre-Trial Chamber issued its *Second Decision on Disclosure and Related Matters*. The Chamber ordered the Prosecutor to disclose a list of evidence she intends to present at the confirmation of charges hearing within the meaning of rule 121(3) of the Rules, all evidence within the meaning of article 67(2) of the Statute in her possession or control, and all material referred to in rule 77 of the Rules in her possession or control by 17 May 2019 at the latest.²
4. As early as 11 April 2019, the Defence called the Prosecution’s attention to the fact that certain disclosed statements it intended to rely on were not translated into French. Subsequent letters were also sent on the 28 May and 17 July 2019.³ On 28 May 2019, the Prosecution responded by reassuring the Defence that

¹ [ICC-01/14-01/18-56-Red](#), page 9.

² [ICC-01/14-01/18-163](#), para. 40(a).

³ See Confidential Annexes A (letter ARY-2019-0022) and C (letter ARY-2019-0039).

translation would come through at some point because disclosure was an ongoing process.⁴

5. On 15 May 2019, the Chamber postponed the confirmation hearing until 19 September 2019 at the request of the Prosecution, and postponed the deadline for disclosure of this material to 19 August 2019.⁵
6. On 14 August 2019, in its *Decision on the Prosecution Urgent Request for the Non-Disclosure of Witness Identities*, the Chamber stated that:

[T]he Prosecutor may not rely at the confirmation of charges hearing on re-disclosed evidence after the lifting of redactions if such evidence has been disclosed to the Defence later than 30 days before the commencement of the hearing. This is to ensure fairness of the proceedings and to meet the requisite that the Defence is put on sufficient notice for its preparation.⁶

7. On 19 August 2019, the Prosecution filed its Document Containing the Charges ("DCC").⁷ Among the Prosecution Witnesses relied upon in the DCC are Witnesses P-0459, P-0732, P-0958, P-1402, P-1595, P-1792, P-1815, P-1824, P-1994, P-2416, P-2442, P-2444, and P-2453.

RELEVANT PROVISIONS

8. Article 67(1)(a) provides that :

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

⁴ See Confidential Annex B.

⁵ [ICC-01/14-01/18-199](#), para. 39.

⁶ [ICC-01/14-01/18-273-Conf-Red](#), para. 31.

⁷ [ICC-01/14-01/18-282-Conf-AnxB1](#).

9. Rule 76(1) provides that:

The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.

10. Rule 76(3) provides that:

The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.

11. Rule 121(3) provides that:

The Prosecutor shall provide to the Pre-Trial Chamber and the person, no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing.

12. Regulation 35(2) of the Regulations of the Court provides that:

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. The Prosecution has failed to abide by Article 67(1)(a) of the Statute and Rule 76(3) of the Rules of Procedure and Evidence by failing to providing French translation of witness statements intended to be used during the confirmation hearing.

14. The Defence was diligent in raising this issue at a very early stage in the proceedings, the first time being in early April 2019. To that effect several letters

listing the statements missing a French translation were sent.⁸ While the Prosecution undertook to complete and disclose the translation of some of the statements listed in the aforementioned letters, it also indicated that “the disclosure process is ongoing and apparent anomalies will resolve themselves over time”.⁹

15. Despite their undertaking that the French translation of the statements would be received through the ongoing disclosure process and their obligations pursuant to the Statute and the Rules, the Prosecution has failed to disclose the French translation of the following statements, transcripts, or summaries of statements of thirteen witnesses relied upon in the DCC:

- 1) P-1595: [CAR-OTP-2104-0274-R01](#)¹⁰
- 2) P-0732: [CAR-OTP-2061-0003-R01](#)¹¹
- 3) P-0459: [CAR-OTP-2013-0503-R01](#)¹²
- 4) P-0958: [CAR-OTP-2101-0013-R01](#)¹³
- 5) P-1994: [CAR-OTP-2080-0852-R01](#)¹⁴
- 6) P-1402: [CAR-OTP-2070-0518-R01](#)¹⁵
- 7) P-2444: [CAR-OTP-2108-0422-R01](#)¹⁶
- 8) P-1815: [CAR-OTP-2058-0581-R01](#)¹⁷
- 9) P-2442: [CAR-OTP-2105-0940-R01](#)¹⁸
- 10) P-2416: [CAR-OTP-2106-0489-R01](#)¹⁹

⁸ ARY-2019-0011 dated 11 April 2019 listing 4 statements (letter is available upon request); ARY-2019-0022 dated 28 May 2019 listing 29 statements (attached as Annex A); ARY-2019-0039 dated 17 July 2019 listing 16 statements (attached as Annex C).

⁹ See Annex B.

¹⁰ [ICC-01/14-01/18-282-Conf-AnxB1](#), fn. 724.

¹¹ [ICC-01/14-01/18-282-Conf-AnxB1](#), fns 1187, 1193, 1197, 1201, 1202, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1217, 1221, 1223, 1226, 1227, 1231.

¹² [ICC-01/14-01/18-282-Conf-AnxB1](#), fn. 126.

¹³ [ICC-01/14-01/18-282-Conf-AnxB1](#), fn. 860.

¹⁴ [ICC-01/14-01/18-282-Conf-AnxB1](#), fns 10, 77.

¹⁵ [ICC-01/14-01/18-282-Conf-AnxB1](#), fn. 592.

¹⁶ [ICC-01/14-01/18-282-Conf-AnxB1](#), fns 219, 899, 903, 904, 905, 906, 907, 912, 913, 914, 917, 918, 919, 928, 930.

¹⁷ [ICC-01/14-01/18-282-Conf-AnxB1](#), fns 85, 227, 282, 486, 490, 757.

¹⁸ [ICC-01/14-01/18-282-Conf-AnxB1](#), fns 288, 744, 745, 748, 750.

11) P-2453: [CAR-OTP-2111-0415-R01](#)²⁰

12) P-1824: [CAR-OTP-2094-1803-R01](#)²¹

13) P-1792: [CAR-OTP-2115-0216](#)²²

16. The Prosecution's obligation to provide translation of statements of its witnesses to suspects is enshrined in Rule 76(3). Several decisions recognise that such right "require[s] the disclosure of fully translated (signed) statements in a language the [defendant] fully understand".²³
17. Such right is so important that the translation of statement has still been required even when the translation of its summary was provided.²⁴ As for the summary of the statements of P-1792, its summary is only available in English.²⁵
18. The Prosecution violated Rule 76(3) despite the fact the Defence specifically brought the failure to provide translations to the Prosecution's attention on multiple occasions through letters and during *inter partes* meetings.²⁶

CONCLUSION

19. The Chamber is therefore respectfully requested to make an explicit finding that the Prosecution has violated its disclosure obligations under Rule 76(3) by

¹⁹ [ICC-01/14-01/18-282-Conf-AnxB1](#), fns 832, 833, 834, 835, 836, 838, 839, 840, 841, 842, 843, 844, 846, 848, 849, 850, 860, 861, 862.

²⁰ [ICC-01/14-01/18-282-Conf-AnxB1](#), fns 764, 765, 767, 769, 773, 775, 779, 780, 781, 783, 786, 787, 795, 798.

²¹ [ICC-01/14-01/18-282-Conf-AnxB1](#), fns. 713, 720, 729.

²² [ICC-01/14-01/18-282-Conf-AnxB1](#), fns. 152, 153, 155, 178, 179, 181, 500, 507, 527, 739, 742, 751, 958.

²³ *Prosecutor v. Banda & Jerbo*, [Reasons for the Order on translation of witness statements \(ICC-02/05-03/09-199\) and additional instructions on translation](#), ICC-02/05-03/09-214, 12 September 2011, para. 30. See also *Prosecutor v. Bemba*, [Decision on the Defence's Request Related to Language Issues in the Proceedings](#), ICC-01/05-01/08-307, 4 December 2008, para. 16; *Prosecutor v. Ongwen*, [Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests](#), ICC-02/04-01/15-1199-Red, 6 March 2018, para. 21.

²⁴ *Prosecutor v. Banda & Jerbo*, [Reasons for the Order on translation of witness statements \(ICC-02/05-03/09-199\) and additional instructions on translation](#), ICC-02/05-03/09-214, 12 September 2011, para. 30.

²⁵ [CAR-OTP-2115-0216](#).

²⁶ Meeting between Prosecution and Yekatom Defence on 2 July 2019.

failing to timely disclose the witness statements of thirteen witnesses in a language that Mr. Yekatom understands. Such a finding will serve to fully document this violation and to deter future violations. The Chamber is further requested to enter an order that the Prosecution may not rely on the evidence of these thirteen witnesses at the confirmation hearing.

RESPECTFULLY SUBMITTED ON THIS 30TH DAY OF AUGUST 2019 ²⁷



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²⁷ The assistance of Legal Consultant, Mr. Florent Pages-Granier of Montpellier, France is greatly appreciated.