

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 January 2020

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

**Public Redacted Version of “Application to Vary Protective Measures
in [REDACTED] Case”, 17 December 2019, ICC-01/14-01/18-407-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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 Mr. Yekatom

Me Mylène Dimitri

Mr. Peter Robinson

Counsel for Mr. Ngaïssona

Me Geert-Jan Alexander Knoops

Legal Representatives of Victims

Mr. Dmytro Suprun

Mr. Abdou Dangabo Moussa

Mr. Elisabeth Rabesandratana

Mr. Yaré Fall

Ms. Marie-Edith Douzima-Lawson

Ms. Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Me Xavier-Jean Keïta

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**

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) hereby apply for an order, pursuant to Regulation 42(3) of the Regulations of the Court, varying the protective measures in the [REDACTED] case so as to allow the Prosecution to disclose:

- (1) all prior statements, transcripts, recordings, investigator’s notes and e-mails of [REDACTED] concerning [REDACTED];
- (2) information about [REDACTED] from a confidential informant; and
- (3) the prior statements and trial transcripts of [REDACTED] in the [REDACTED] case.

CONFIDENTIALITY

2. This application is classified as confidential because disclosure of the link between [REDACTED] and the [REDACTED] case would enable members of the public to identify [REDACTED].

RELEVANT PROCEDURAL HISTORY

3. On 19 August 2019, the Prosecution filed its Document Containing the Charges (“DCC”).¹ The Prosecution’s DCC relied upon Prosecution Witness [REDACTED] evidence on [REDACTED] separate occasions.²

4. On 20 August 2019, the Defence filed a motion for disclosure of exculpatory material.³ The Prosecution responded the next day, stating that the motion was unnecessary since it had fully complied with its duty to disclose exculpatory material.⁴

5. [REDACTED].⁵

¹ [ICC-01/14-01/18-282-Conf-AnxB1](#).

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

³ [ICC-01/14-01/18-284](#).

⁴ [ICC-01/14-01/18-286](#).

⁵ [REDACTED]

6. [REDACTED]⁶

7. On 29 August 2019, the Defence filed a *Motion for Finding of Disclosure Violation and for Remedial Measures* contending that the Prosecution had violated its obligation to disclose exculpatory evidence with respect to [REDACTED].⁷

8. The Prosecution responded on 2 September 2019.⁸

9. [REDACTED].⁹

10. [REDACTED].¹⁰

11. [REDACTED].¹¹

12. The confirmation of charges hearing commenced on 19 September 2019 without this issue being resolved.

13. On 9 November 2019, [REDACTED] was interviewed by the Defence in the presence of representatives of the Office of the Prosecutor and confirmed, in his recorded statement, having been interviewed by the Office of the Prosecutor concerning the issue of [REDACTED] in the [REDACTED] case.

14. On 11 December 2019, in its *Decision on the Confirmation of Charges against Alfred Yekatom and Patrice Edouard Ngaïssona*, the Chamber reiterated its finding that the Office of the Prosecutor had failed to fully discharge its obligation to disclose information relevant to [REDACTED], refrained from entering findings based entirely on [REDACTED] and only referred to this Witness' evidence for the purpose of corroborating findings otherwise established to the relevant standards.¹²

⁶ [REDACTED].

⁷ [ICC-01/14-01/18-301-Red.](#)

⁸ [ICC-01/14-01/18-311-Conf.](#)

⁹ [REDACTED]

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² ICC-01/14-01/18-403-Red, paras. 33-34.

RELEVANT PROVISIONS

15. Article 67(2) provides:

In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

16. Regulation 42 provides:

1. Protective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded, subject to revision by a Chamber.

2. When the Prosecutor discharges disclosure obligations in subsequent proceedings, he or she shall respect the protective measures as previously ordered by a Chamber and shall inform the defence to whom the disclosure is being made of the nature of these protective measures.

3. Any application to vary a protective measure shall first be made to the Chamber which issued the order. If that Chamber is no longer seized of the proceedings in which the protective measure was ordered, application may be made to the Chamber before which a variation of the protective measure is being requested. That Chamber shall obtain all relevant information from the proceedings in which the protective measure was first ordered.

4. Before making a determination under sub-regulation 3, the Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the application to rescind, vary or augment protective measures has been made.

ARGUMENT

17. The Chamber's decision not to rely solely on the evidence of [REDACTED] at the confirmation stage is much appreciated and should serve as a deterrent to the Office of the Prosecutor from continuing to violate its disclosure obligations.

However, as [REDACTED] will be a witness at trial, the Defence continues to need access to the exculpatory material that the Prosecution has refused to disclose.

18. Inasmuch as the Prosecution has claimed that it is unable to disclose the material as a result of protective measures ordered in the [REDACTED] case, the most practical way for the Defence to obtain this disclosure is to request this Chamber to modify those protective measures.

19. Regulation 43(3) provides this Chamber with the authority to modify the protective measures in the [REDACTED] case, as the Chamber that ordered the protective measures is no longer seized of that case.¹³ Because exculpatory material must be disclosed as soon as practicable,¹⁴ and in order to avoid delay in the commencement of the trial due to obstacles to disclosure of exculpatory material, the Defence respectfully requests this Chamber to order that the protective measures in the [REDACTED] case be modified to allow the Prosecution to comply with its obligations without further delay.

A. [REDACTED] prior statements

20. [REDACTED].¹⁵ The witness also confirmed to the Defence that he had been interviewed by the Prosecution on this subject. This prior statement, in which [REDACTED] either acknowledges his participation in the [REDACTED], or falsely denies it, or both, is the highest degree of exculpatory evidence and is the most probative piece of exculpatory material concerning his reliability for purposes of the confirmation hearing. Therefore all statements, transcripts, recordings, investigator's notes and e-mails of [REDACTED] concerning the [REDACTED] in the [REDACTED] case should be disclosed.

¹³[REDACTED].

¹⁴ Article 67(2)

¹⁵ [REDACTED].

21. To the extent that the information would reveal the identities of protected witnesses [REDACTED] in the [REDACTED] case, the names can be redacted and pseudonyms substituted in their place.

B. Information from an Informant

22. For the same reasons, information received from an informant about [REDACTED] involvement in [REDACTED] should be disclosed. Any references to the names of [REDACTED] can be replaced with their pseudonyms.

C. Transcripts of [REDACTED]

23. The Chamber should vary the protective measures for [REDACTED] to allow for disclosure of their redacted transcripts and statements, as they refer to [REDACTED] involvement in [REDACTED].

CONCLUSION

24. The Chamber is requested to order that the protective measures provided in the [REDACTED] case be modified to allow the Prosecution to disclose (1) redacted versions of all prior statements, transcripts, recordings, investigator's notes and e-mails of [REDACTED] concerning the [REDACTED] in the [REDACTED] case; (2) redacted versions of the information from the informant; and (3) redacted versions of the transcripts of the testimony and prior statements of [REDACTED] in [REDACTED] case.

RESPECTFULLY SUBMITTED ON THIS 23RD DAY OF JANUARY 2020



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom



Peter Robinson
Associate Counsel for Mr. Yekatom

The Hague, the Netherlands