

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **29 April 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Motion for disclosure of witness statements in their original language

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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INTRODUCTION / OVERVIEW

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) move for an order, pursuant to Rule 76(3) of the Rules of Procedure and Evidence, that where recorded statements were taken from witnesses who spoke the Sango language, that the recording of the interview, or a transcript of the witness’ answers in Sango, be disclosed.

PROCEDURAL BACKGROUND

2. Between 30 July and 16 August 2019, the Prosecution disclosed transcripts of its interviews with three Prosecution witnesses. Although the witnesses answered the questions in the Sango language, the Prosecution only disclosed a French translation of the interviews.
3. All transcripts described above only contained the translation of the interview in French. The language used by the witnesses to answer the questions was Sango. However the Sango speech of the witness answering questions was not transcribed, nor was the audio provided.
4. On 13 December 2019, in *inter partes* correspondence, the Defence requested that the original Sango recording, or a transcript of the witness’ original answers in Sango, be disclosed. On 12 March 2020, the Prosecution declined to make the requested disclosure. The parties exchanged further views on the issue and on 2 April 2020, the Prosecution affirmed that it would not make the requested disclosures.¹

¹ A copy of the relevant *inter partes* correspondence can be provided upon request.

RELEVANT PROVISION

5. Rule 76 -Pre-Trial disclosure relating to prosecution witnesses

(1) 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.

(2) The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.

(3) The statements of prosecution witnesses shall be made available in original **and** in a language which the accused fully understands and speaks.²

(4) This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rules 81 and 82.

ARGUMENT

6. Rule 76(3) provides that “[t]he statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.” This request requires the Chamber, in a case of first impression, to interpret the word “original”.

7. During the interviews in question, which were audio recorded, the Prosecution’s investigator asked questions in French, which was in turn interpreted into the Sango language and the witness answered in Sango. The witness’ answer was in turn interpreted into French for the investigator.

8. The Prosecution has provided only the French translation and not the witness’ original answers in Sango nor the questions in Sango put to the witness. It declines to produce the original recording or a transcript of the Sango

² [Rules of Procedure and Evidence](#), Rule 76(3) (emphasis added).

questions and answers of the witness. This is a departure from its practice in the *Banda and Jerbo* case, in which it disclosed “transcripts of witness interviews...in the languages in which the interviews were conducted—usually English and the language used by the witness.”³

9. The definition of the term original in the Merriam Webster dictionary is “that from which a copy, reproduction, or translation is made.”⁴ Applying this definition to the Prosecution’s interview of a Sango-speaking witness, the “original” is the recording or transcript of what the witness said in Sango, not the translation of what the witness said into French.
10. By providing a French translation only, the Prosecution is depriving the Defence of learning what the witness actually said. Instead, the Defence is forced to rely on a translation, which may or may not be accurate.
11. The possibility of a material error in translation is not merely hypothetical. In the *Turinabo et al* case, a Prosecution translation of an intercepted conversation in the Kinyarwandan language used the word “witness” to the conversation, leading the Prosecution to charge one of the accused with having disclosed the identity of a protected witness. However, a review of the Kinyarwandan original showed that the accused never used the word “witness”.⁵

³ *Prosecutor v. Banda and Jerbo*, [Prosecution’s Submission of Additional Details and Information on the Evidence Disclosed to the Defence Pursuant to Article 67\(2\) of the Statute or Provided Pursuant to Rule 77 of the Rules of Procedure and Evidence](#), ICC-02/05-03/09-343, 4 June 2012, fn 3.

⁴ <https://www.merriam-webster.com/dictionary/original>.

⁵ *Prosecutor v. Turinabo*, [Munyeshuli Submission pursuant to Rule 70\(F\)](#), No. MICT-18-116-PT, 12 February 2020, para. 17: “The OTP’s allegation that Munyeshuli directly disclosed the identities of Protected Witnesses to Turinabo and identified them as prospective witnesses is based on a Prosecution draft translation of a phone call between Munyeshuli and Turinabo. It should be noted that the draft translation produced and provided by the OTP shows Munyeshuli used the word ‘witnesses’ in reference to Recanting and Prospective Witnesses, however, the official translation effected by CLSS discredits the OTP’s translation. It reveals that Munyeshuli used the word ‘people’, thereby never establishing a link between the names used and their status as witnesses or prospective witnesses, let alone their protected status.”

12. The Chamber should find that the term “original” in Rule 76(3) requires the Prosecution to disclose the words used by the witness in the language in which the words were spoken, not a translation of those words into some other language. This would be an important clarification for this and other cases at this Court.⁶

RELIEF SOUGHT

13. For the above reasons, the Chamber should require the Prosecution to disclose a recording or transcript of its witnesses that contains the original answers of the witness.

RESPECTFULLY SUBMITTED ON THIS 29th DAY OF APRIL 2020



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⁶ This motion should not be denied as premature. Although the Prosecution is not yet required to file its final witness list, it has not dropped any of these witnesses and a pending interview of one of them is being conducted under the protocol for interviewing witnesses of the other party. Even if these witnesses are not ultimately called to testify, they retain the status of prosecution witnesses until dropped. In addition, the issue is likely to recur in this and other cases.