

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/14-01/18
Date: 14 December 2018**

PRE-TRIAL CHAMBER II

Before: Judge Tomoko Akane, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR V. ALFRED YEKATOM***

PUBLIC

Decision Seeking Observations

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for the Defence

Stéphane Bourgon

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

JUDGE TOMOKO AKANE, acting on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court” or “ICC”),¹ issues this decision seeking observations for the purposes of establishing a disclosure calendar.

1. On 11 November 2018, the Chamber issued a warrant of arrest against Alfred Yekatom (“Yekatom”),² who was surrendered to the Court on 17 November 2018.
2. On 23 November 2018, Yekatom appeared before the Chamber. The confirmation hearing was scheduled to commence on Tuesday, 30 April 2019.³
3. The Single Judge notes articles 43(6), 61(3), (5), (6), 67 and 68(1) of the Rome Statute (the “Statute”) and rules 76, 77, 78, 79, 81-83 and 121(2), (3) and (6) of the Rules of Procedure and Evidence (the “Rules”).
4. With a view to ensuring that disclosure commences as soon as possible and “takes place under satisfactory conditions”⁴, the Single Judge considers it imperative to receive, at first, precise and comprehensive observations, to the extent possible, from both parties on the questions set forth below, including the time needed to effectuate the disclosure and/or submit related requests to the Chamber. In a second step, the Single Judge will establish, on the basis of the information received, a calendar for disclosure that will ensure a transparent and expeditious disclosure process. The Single Judge will also convene a status conference to discuss any other outstanding issue presented by the parties.
5. Noting the triggering role of the Prosecutor and the role of the Victims and Witnesses Unit (“VWU”) with regard to witnesses, victims and other persons at risk,⁵ the Single Judge wishes to receive information on the following questions:

¹ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-27.

² Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 11 November 2018, ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant was issued on 17 November 2018, *see* ICC-01/14-01/18-1-Red.

³ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG ET, p. 8, lines 20-25.

⁴ Rule 121(2)(b) of the Rules.

⁵ Article 43(6) of the Statute.

- a. What is the overall amount of non-oral pieces of evidence the Prosecutor intends to use as evidence at the confirmation hearing? How many pages does this evidence amount to?
- b. Which pieces of evidence, and how many, can be disclosed immediately to the Defence without redactions? How many pages does this evidence amount to?
- c. What is the overall amount of exculpatory evidence that the Prosecutor is duty-bound to disclose to the Defence, pursuant to article 67(2) of the Statute? How many pages does this evidence amount to? Does this exculpatory evidence require redactions?
- d. How many witnesses, if any, does the Prosecutor intend to call to testify at the confirmation hearing?
- e. How many witness statements does the Prosecutor intend to use for the purposes of the confirmation hearing, pursuant to rule 76 of the Rules? Are these statements full statements or summaries, as provided in articles 61(5) and 68(5) of the Statute?
- f. Will the Prosecutor request the identity of witnesses to be withheld (anonymous witnesses) and, if in the affirmative, how many witnesses does this affect? On how many statements of anonymous witnesses will the Prosecutor rely?
- g. Have those statements, on which the Prosecutor intends to rely, been translated into Sango, the language which the suspect fully understands and speaks, as provided for in rule 76(3) of the Rules? If not, how much time would it take to provide the required translations?
- h. At the time of the request to withhold the identity of a witness and the related requests for redactions in the witness's statement, the Prosecutor is expected to provide a detailed and comprehensive security assessment in order for the Chamber to take an informed decision on the requests. In this case, has the Prosecutor prepared a

detailed and comprehensive security assessment for each witness on which she intends to rely at the confirmation hearing? If not, how long will it take for the Prosecutor to complete the security assessment of witnesses?

- i. Does the Prosecutor intend to request redactions of information contained in documents, including witness statements, to be disclosed to the Defence and, if in the affirmative, how many such documents will be affected?
- j. Does the Prosecutor intend to request that protective measures be put in place in order to protect witnesses, victims or other persons at risk prior to disclosure of the names of the witnesses or of certain documents? What are the steps taken and/or the Prosecutor intends to take for the purposes of the protection of victims, witnesses and other persons at risk?
- k. Has the Office of the Prosecutor been in contact with the VWU for protective measures to be taken in respect of witnesses, victims or other persons at risk? How many witnesses have been referred to the VWU for protection purposes, including relocation? How many witnesses does the Prosecutor intend to refer to the VWU for protection purposes, including relocation, before the confirmation hearing? How much time would it take for those measures to be put in place?
- l. Are any of the pieces of evidence obtained by the Prosecutor, in particular exculpatory evidence (article 67(2) of the Statute) or evidence considered material for the preparation of the defence (rule 77 of the Rules), affected by confidentiality agreements in accordance with articles 54(3)(e), 72 and 93 of the Statute? If in the affirmative, has the Prosecutor undertaken steps to obtain the consent of the information provider regarding disclosure of this material or will such steps be undertaken?

- m. Are there any documents, books, photographs or other tangible items in the possession or control of the Prosecutor that are material to the preparation of the Defence, or are intended for use by the Prosecutor as evidence or were obtained from or belonged to the suspect, as provided in rule 77 of the Rules? If in the affirmative, how many pieces of evidence are subject to inspection under rule 77 of the Rules? Are they likely to be affected by redaction requests, pursuant to rule 81 of the Rules?
- n. Does the Prosecutor intend to present requests under article 56 of the Statute to the Chamber?
- o. Is the Office of the Prosecutor continuing its investigation regarding Alfred Yekatom? What could be the impact of the ongoing investigation on the disclosure process, the protection of witnesses and the commencement of the confirmation hearing?

6. The Single Judge recalls that it is up to the Defence to decide whether to object to the charges, challenge the evidence of the Prosecutor or present evidence, as stipulated in article 61(6) of the Statute. The Single Judge is also aware that the Defence's position will depend, to a large extent, on the Prosecutor's presentation of the document containing the charges and the disclosure of evidence. Noting that, the Single Judge nevertheless invites the Defence to provide (i) its observations on the information to be provided by the Prosecutor; as well as (ii) information on the following questions, to the extent possible at this stage:

- a. Does the Defence anticipate presenting evidence at the confirmation hearing? If in the affirmative, what is the envisaged amount of non-oral evidence?
- b. Does the Defence anticipate calling witness to testify at the confirmation hearing?
- c. Does the Defence intend to rely on witness statements at the confirmation hearing? If yes, does the Defence intend to submit full

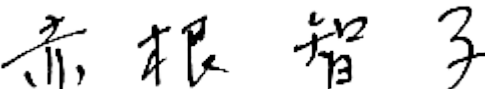
witness statements or summaries thereof, as provided in rule 81(6) of the Rules?

- d. Does the Defence anticipate requests for redactions? If in the affirmative, how many pieces of evidence would that affect? How many pages does this evidence amount to?
- e. Are there any documents, books, photographs or other tangible items in the possession or control of the Defence that are intended for use by the Defence as evidence, as provided in rule 78 of the Rules? If in the affirmative, how many pieces of evidence are subject to inspection under rule 78 of the Rules? Are they likely to be affected by redaction requests, pursuant to rule 81(6) of the Rules?
- f. Does the Defence intend to request protective measures for witnesses, including relocation, to be put in place prior to the commencement of the confirmation hearing? Does the Defence anticipate requesting redactions? Is the Defence in contact with the VWU in this regard?

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **ORDERS** the Prosecutor and the VWU (in respect to paragraph 5k) to provide the information, as requested in paragraph 5, no later than Friday, 21 December 2018; and
- b) **ORDERS** the Defence to provide the information, as requested in paragraph 6, no later than Friday, 28 December 2018.

Done in both English and French, the English version being authoritative.


Judge Tomoko Akane, Single Judge

Dated this Friday, 14 December 2018

At The Hague, The Netherlands