

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: **10 January 2019**

**PRE-TRIAL CHAMBER II**

**Before: Judge Rosario Salvatore Aitala, Single Judge**

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

**Public**

**Prosecution's Request for Leave to Reply to the Defence's Response to the  
Prosecution's submission on a Proposed Protocol on the Handling of Confidential  
Information and Contacts with Witnesses (ICC-01/14-01/18-51)**

**Source: Office of the Prosecutor**

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

**The Office of the Prosecutor**

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**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Prosecution requests leave to reply to the Defence's Response to the Prosecution's submission on a Proposed Protocol on the Handling of Confidential Information and Contacts with Witnesses ("Protocol").<sup>1</sup>

2. A limited and focused reply addressing the impact of the Defence proposals and recommendations on (1) the definitions of "Party", "Participant", "Confidential information", and "Witness";<sup>2</sup> and (2) the reporting to the Victims and Witnesses Unit ("VWU") of breaches of confidentiality;<sup>3</sup> would assist Pre-Trial Chamber II ("Chamber") in the proper determination of the relevant issues and is otherwise in the interests of justice.

## II. SUBMISSIONS

3. The Prosecution requests leave to reply on two issues advanced in the Response:

- (i) whether the Defence's proposed restrictive definitions of "Party" "Participant", "Confidential information", and "Witness" unreasonably limit the scope and purpose of the Protocol, impeding the Court's obligation to protect the safety of witnesses and victims in accordance with article 68.<sup>4</sup> If leave is granted, the Prosecution will explain why the Chamber should consider inclusive, rather than limiting, definitions of the terms that determine the scope of the Protocol and the protections it affords and address the impact of the proposed definition of the term "Witness" on the timing of the protection afforded by the Protocol<sup>5</sup> (*i.e.*, only after a

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<sup>1</sup> See ICC-01/14-01/18-51.

<sup>2</sup> See ICC-01/14-01/18-51-AnxA, paras. 4(a),(b),(e), (f), and 10.

<sup>3</sup> See ICC-01/14-01/18-51-AnxA, para. 25.

<sup>4</sup> See ICC-01/14-01/18-51, paras. 16-21; 26-30.

<sup>5</sup> See for example ICC-01/14-01/18-51-AnxA, paras. 10, 11, 27, 28.

formal decision to call a witness to testify has been made as opposed to from the moment the individual's statement is relied upon),<sup>6</sup> and the range of individuals who are afforded protection;<sup>7</sup>

- (ii) whether the Defence's proposal only to report breaches of the confidentiality obligations under the Protocol to VWU when they involve witnesses<sup>8</sup> whose identities have not yet been made public, should be adopted by this Chamber.<sup>9</sup> If leave is granted, the Prosecution will detail why the reporting of all breaches (even if they do not involve a particular witness) is essential to allow a proper and ongoing evaluation of the security situation of victims and witnesses in the case as a whole.

4. The Prosecution considers that a reply focused on these discrete issues will assist the Chamber to develop an efficient and effective system of handling of confidential information and contacts with witnesses.

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<sup>6</sup> Which occurs months, if not years earlier: for example, a witness' statement can be relied upon in the arrest warrant application, whereas the decision to call the witness to testify is usually only made at trial; *see* ICC-01/14-01/18-35-AnxA, para. 4(f).

<sup>7</sup> *See* for example ICC-01/14-01/18-51-AnxA, paras. 10, 11, 27, 28.

<sup>8</sup> As limitedly defined by the Defence, *see* ICC-01/14-01/18-51-AnxA, para. 4(f).

<sup>9</sup> *See* ICC-01/14-01/18-47, para. 25.

### III. RELIEF SOUGHT

5. For the above reasons, the Chamber should permit the Prosecution to reply to the Defence's Response to the Prosecution's submission on a Proposed Protocol on the Handling of Confidential Information and Contacts with Witnesses.



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**Fatou Bensouda, Prosecutor**

Dated this 10<sup>th</sup> day of January 2019  
At The Hague, The Netherlands