

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **30 January 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 *PROSECUTOR v. ALFRED YEKATOM***

Public

Prosecution's Response to the "Request on behalf of Mr. Yekatom seeking leave to appeal 'Decision on Disclosure and Related Matters'" (ICC-01/14-01/18-68)

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

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for the Defence

Mr Stéphane Bourgon

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Defence's request seeking leave to appeal the "Decision on Disclosure and Related Matters"¹ ("Decision") should be rejected. In the Decision, Pre-Trial Chamber II ("Chamber") drew upon the Court's prior jurisprudence of adopting protocols governing redactions as best effectuating the overall efficiency of the proceedings, distinguished the Court's practice with that of other tribunals, articulated the reasons for having a redactions protocol in general, and addressed the Defence's contrary arguments and proposals.²

2. The Defence's suggestion that the Decision fails to "provid[e] a reasoned opinion"³ ignores this holistic assessment. It also ignores the Chamber's substantial discretion to adopt procedures necessary to facilitate the fair and expeditious conduct of proceedings while protecting the safety of individuals at risk on account of the Court's activities. The Defence's arguments reflect nothing more than a mere disagreement, and fail to articulate an appealable issue.⁴ The Chamber need not further consider the Request.

3. Even assuming *arguendo* that the Chamber were to determine that the Request establishes a colourable issue for appeal, it nevertheless fails on its face to meet both prongs of the applicable test under article 82(1)(d). Resolution of the issue would not significantly affect the fairness of the proceedings or the outcome of the trial since the Decision continues to permit the Defence to challenge the redactions imposed by the Prosecution and the Chamber will be provided with the unredacted evidence to verify, at its discretion, the necessity of any given redaction.⁵ Both measures ensure that information the Defence is permitted to receive, is received. Further, given that the very purpose of the protocol is to ensure efficiency in the proceedings, the issue,

¹ ICC-01/14-01/18-64-Conf.

² ICC-01/14-01/18-64-Conf, paras. 23-32 ("Request").

³ ICC-01/14-01/18-68, para. 23.

⁴ See ICC-01/14-01/18-65-Conf, para. 13 (*citing* ICC-01/04-168, para. 9).

⁵ See *e.g.* ICC-01/14-01/18-64-Conf, para. 28.

which envisions further litigation by the Parties, would delay, not materially advance, the conduct of proceedings. Accordingly, no appeal is warranted.⁶



Fatou Bensouda, Prosecutor

Dated this 30th day of January 2019

At The Hague, The Netherlands

⁶ See ICC-01/14-01/18-65-Conf, para. 12; ICC-01/04-168, para. 10.