

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **21 August 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 AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Prosecution's Response to the Yekatom Defence's Motion for Disclosure of
Exculpatory Material**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Chamber should dismiss the Yekatom Defence's Motion for an Order requiring the immediate disclosure of all exculpatory material ("Motion").¹ In particular, the requested relief is unnecessary. There is already a standing order on disclosure which covers this matter, issued on 23 January 2019.²

II. SUBMISSIONS

2. *First*, as noted, there is an Order regarding the disclosure of exculpatory material already in place, whereby the Chamber has required that the Prosecutor "disclose such evidence immediately after having identified any such evidence, unless some justifiable reasons prevent her from doing so."³ The Motion presents nothing new or in dispute, or otherwise compels modification of the existing disclosure Order.

3. *Second*, throughout the pre-confirmation process, the Prosecution has abided by the Chamber's Order and directions regarding disclosure as well as its statutory obligations in good faith, including with respect to potentially exculpatory material. Noting that disclosure is *inter partes*,⁴ the intervention of the Chamber is only warranted where disputes arise as to the process.⁵ Notably, disclosure has been ongoing in this case without the need to resort to the Chamber's intervention.

4. *Third*, the Motion does not allege or cite to any circumstance or occurrence suggesting that the Prosecution has breached any of its obligation or that there is any

¹ ICC-01/14-01/18-284.

² ICC-01/14-01/18-64-Red, para.16 ("Order"); see ICC-01/14-01/18-284, para.13.

³ ICC-01/14-01/18-64-Red, para.16 (*citing* ICC-01/12-01/18-31-tENG-Corr, para. 24, and ICC-02/04-01/15-203, para.18).

⁴ ICC-02/04-01/15-203, para.10; *see also* ICC-01/14-01/18-64-Conf, para.11 (recalling, *inter alia*, "the disclosure of evidence [is] between the parties").

⁵ ICC-01/14-01/18-64-Conf, para.30 (noting, in respect of the application of redactions "Calling on the professionalism of both parties, the Single Judge expects that the parties cooperate on this matter in good faith. h. If they are unable to agree, the receiving party may apply to the Chamber for a ruling").

matter concerning the application of article 67(2) for the Chamber to “decide”.⁶ To the contrary, the examples cited in the Motion regarding what might nominally be considered ‘potentially exculpatory’ information derive from Witness Statements that the Prosecution properly identified and disclosed timely and appropriately.⁷

III. CONCLUSION

5. For the above reasons, the Motion fails to present any grounds for the relief requested and should be dismissed accordingly.



Fatou Bensouda, Prosecutor

Dated this 21st day of August 2019
At The Hague, The Netherlands

⁶ See article 67(2) (providing, “[i]n case of doubt as to the application of this paragraph, the Court shall decide”).

⁷ ICC-01/14-01/18-284, paras.24, 25.