

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 6 September 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 "Motion for Finding of
Disclosure Violation and Exclude the Evidence of Thirteen Witnesses"
(ICC-01/14-01/18-305)**

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 Office of the Prosecutor (“Prosecution”) hereby responds to the YEKATOM Defence “Motion for Finding of Disclosure Violation and Exclude the Evidence of Thirteen Witnesses” (“Motion”).¹ Motion, predicated on the Prosecution not having provided 13 French translations of Witness Statements before 19 August 2019, should be rejected as disproportionate and unwarranted.

II. SUBMISSIONS

A. **The unavailability of timely French Translations was inadvertent and has been addressed**

2. Through inadvertence, the Prosecution did not timely provide French translations of 13 Witness Statements on which it relies. The Statements were disclosed in English in accordance with the Chamber’s 19 August 2019 disclosure deadline.²

3. Since the omission was brought to its attention on 30 August 2019, the Prosecution has acted promptly and diligently. On 2 September 2019, the Prosecution disclosed 12 French Translations. The last one, a translation of P-1402’s Witness Statement, is now in process. It will be disclosed as soon as possible. Unfortunately, due to erroneous metadata indicating that the document contained French, the Prosecution did not identify the P-1402’s Statement as requiring translation in several advance searches of its collection specifically to identify such material in view of the disclosure deadline.

¹ ICC-01/14-01/18-305.

² ICC-01/14-01/18-199.

B. Excluding the corresponding evidence is unwarranted and excessive

4. Given the surrounding circumstances, the exclusion of the evidence of the affected witnesses from consideration at the Confirmation Hearing is disproportionate and unwarranted.

5. The Defence's stated purpose for seeking such relief, as well as a finding by the Chamber that the Prosecution has violated its disclosure obligations - purportedly in order to "deter future violations"- is neither appropriate nor proportionate where, as here, the Prosecution has not deliberately or negligently withheld the translations, but rather, their non-disclosure was the a result of an error.

6. For the purposes of this *limited* confirmation process, the Prosecution has disclosed over 7,500 exhibits comprising more than 40,000 pages of material, including over 500 individual Witness statements and transcriptions and over 130 French translations. While not minimizing the importance of providing required translations of material, particularly under article 67, which safeguards the fairness of the proceedings, the inadvertence complained of here amounts to less than 0.2% of the total disclosures the Defence received by 19 August 2019. Despite any imperfection, the Prosecution's disclosure has not undermined either the safety or fairness of the on-going proceedings in any appreciable way.

7. Notably, the Motion cites no law, rule, or precedent compelling Chamber's exclusion of evidence, given the short delay in the disclosure of the French translations, and the immediate and diligent response undertaken by the Prosecution. To the contrary, excluding evidence would hamper the Chamber's truth finding function by depriving it of extremely relevant and cogent evidence.

C. The potential prejudice caused to the Defence is minimal

8. There is little to no potential prejudice to the Defence in this instance: *First*, the Defence is now in possession of the French translations associated with the

previously disclosed English Statements, with the exception of one. *Second*, the material at issue is not voluminous and can be readily negotiated prior to the Confirmation Hearing. By analogy, rule 121(5) of the Rules of Evidence and Procedure (“Rules”) 15-days’ notice to the Defence to prepare for *new* evidence is considered sufficient to address altogether new evidence. Here, Counsel for the Defence is both fully conversant in English and has been in possession of the 13 English Statements since between 13 June and 14 August 2019³ – substantially more than the 15 days prior to the Confirmation Hearing which would apply had the Statements been disclosed as entirely *new*.

9. *Third*, as concerns P-1402, the Prosecution relies on the Witness’s Statement for a single contention and one corresponding footnote.⁴ Its consideration in the context of the limited scope of the Confirmation Hearing pending disclosure of the French translation does not unfairly prejudice the Defence. The Defence is fully able to assist YEKATOM to understand the Statement as disclosed, and particularly the limited proposition on which the Prosecution places reliance.

10. The Prosecution regrets its inadvertent errors, and assures the Chamber that it takes its disclosure obligations seriously. As noted above, the Prosecution has expended enormous resources to review, redact, and disclose thousands of exhibits in compliance with the confirmation deadlines set by the Chamber. However and unfortunately, given the volume of disclosure in this complex case, errors have occurred.

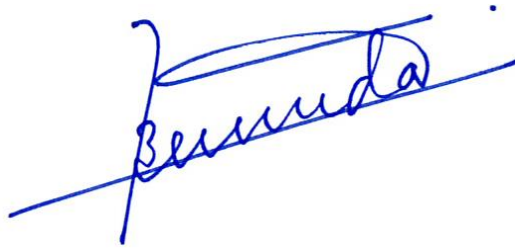
11. Should the Chamber consider that further action is required regarding the Prosecution’s inadvertence, the result should be commensurate to the fault. Here, the Prosecution considers that the more appropriate relief would be for the Chamber to consider any *particularised* and *substantiated* Defence request for additional time to prepare.

³ ICC-01/14-01/18-221; ICC-01/14-01/18-260; ICC-01/14-01/18-268; and ICC-01/14-01/18-274.

⁴ ICC-01/14-01/18-282-Conf-AnxB1, para. 270, fn 592.

III. CONCLUSION

12. For the above reasons, the Chamber should reject the Motion and particularly, the request to exclude the evidence of thirteen Prosecution Witnesses.



Fatou Bensouda, Prosecutor

Dated this 6th day of September 2019
At The Hague, The Netherlands