

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public Redacted Version of Second Motion for Disclosure of Rule 76 Material

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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**Victims Participation and Reparations
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully move for an order that the Prosecution disclose material shown to or obtained from Prosecution witnesses that are an integral part of the witness statement.

CONFIDENTIALITY

2. The present motion is filed on a confidential basis as it refers to confidential filings and decisions, and reveals the identities of Prosecution witnesses. A public redacted version is being filed contemporaneously.

RELEVANT PROCEDURAL HISTORY

3. On 19 August 2019, the Prosecution filed its Document Containing the Charges (“DCC”).¹

4. On 20 August 2019, the Defence filed its *Motion for Disclosure of Rule 76 Material* (“*Motion*”).²

5. On 27 August 2019, the Prosecution responded to the *Motion*.³

6. On 3 September 2019, the Pre-Trial Chamber (“the Chamber”) [REDACTED]⁴

7. On 9 September 2019, the Prosecution disclosed several of the items in dispute, and declined to disclose others. On 10-11 September 2019, the parties discussed the remaining issues and reduced the number of issues remaining in dispute.

RELEVANT PROVISIONS

8. Rule 76—Pre-Trial disclosure relating to prosecution witnesses provides:

¹ [ICC-01/14-01/18-282-ConfAnxB1](#).

² [ICC-01/14-01/18-285](#).

³ [ICC-01/14-01/18-295-Conf](#).

⁴ [REDACTED]

1. The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.
2. The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.
3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.
4. This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rules 81 and 82.

ARGUMENT

9. In the *Motion*, the Defence contended that material provided by, or shown to the witness by the Prosecution, when referenced in the statement of the witness, constituted an integral part of the statement such as to come within Rule 76.⁵
10. The Prosecution disagreed, [REDACTED].⁶
11. The Chamber did not resolve this issue in the *Decision*, but [REDACTED].⁷
12. When the Defence presented the Prosecution with specific items shown to or provided by the Prosecution witnesses, the Prosecution took the position that it need only disclose those items that it deemed “relevant”, regardless of whether the item was an integral part of the statement.
13. The Chamber is now respectfully requested to resolve this dispute in the context of two Prosecution Witness statements.

⁵ [ICC-01/14-01/18-285](#), paras 22-23.

⁶ [ICC-01/14-01/18-295-Conf](#), paras 6-9.

⁷ [ICC-01/14-01/18-315-Conf](#), para. 41.

(1) Witness P-0646

14. In the statement of Witness P-0646,⁸ who is cited four times in the DCC, it is stated that the investigators showed twelve photographs to the witness. The ERN of each photograph is listed alongside the witness' comment. The witness recognized four of the twelve photos and commented on those he recognised. The relevant portion of the statement is reproduced below [REDACTED]⁹:

15. The Defence contends that the twelve photographs are an integral part of the statement and must be disclosed, regardless of their relevance.

(2) Witness P-2125

16. In the statement of Witness P-2125,¹⁰ who is cited six times in the DCC, the witness states that: [REDACTED]

17. Witness P-2125 goes on to explain [REDACTED]¹¹

18. The Defence contends that the photograph in Annex C is an integral part of the statement regardless of its relevance.

19. Witness P-2125 further states that: [REDACTED]¹²

20. The Defence contends that the photographs in Annex S are an integral part of the statement regardless of their relevance.

21. By analogy, material referenced in a statement is routinely admitted pursuant to Rule 68 as associated exhibits. In the *Ongwen* case, the Trial Chamber held that prior recorded testimony under Rule 68 includes any annex to the witness's

⁸ CAR-OTP-2029-0399-R01.

⁹ CAR-OTP-2029-0399-R01 at 0427 to 0428.

¹⁰ CAR-OTP-2082-0299-R01.

¹¹ CAR-OTP-2082-0299-R01 at 0306.

¹² CAR-OTP-2082-0299-R01 at 0327 to 0328.

statement, or document otherwise associated with it, that is used or explained by the witness.¹³ If such material is admissible as an integral part of the witness' statement, surely it must be disclosable as such.

22. [REDACTED].¹⁴ But it has the distinction backwards. Everything that is disclosable is not admissible, but everything that is admissible must be disclosed. Therefore, the range of items required to be disclosed is broader than the range of items that are admitted. Under the Prosecution's argument, items that are integral to a witness statement could be admitted under Rule 68 without being disclosed to the Defence.

23. The twelve photographs discussed in Witness P-0646's statement and Annexes C and S discussed in Witness P-2125's statement were used and explained by the witnesses in the statements and are an integral part thereof. The Chamber is respectfully requested to find that they must be disclosed pursuant to Rule 76.

CONCLUSION

24. The Chamber is respectfully requested to find that Rule 76 covers the items obtained from or shown to Prosecution Witnesses P-0646 and P-2125 and to order their disclosure. The Chamber is further requested to order that the Prosecution apply this principle to any other items shown to or provided by any Prosecution witness that is an integral part of the witness' statement regardless of relevance.

¹³ *Prosecutor v. Ongwen*, [Decision on Prosecution Request to Add Items to its List of Evidence, to include a Witness on its List of Witnesses and to Submit Two Prior Recorded Testimonies under Rule 68\(2\)\(b\) and \(c\)](#), ICC-02/04-01/15-600, 22 November 2016, para. 10.

¹⁴ [ICC-01/04-01/18-295-Conf](#), para. 9.

RESPECTFULLY SUBMITTED ON THIS 11TH DAY OF SEPTEMBER 2019



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