



Original: **English**

No.: **ICC-01/14-01/18**
Date: **24 December 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
with Confidential Annex A**

**Public Redacted Version of “Prosecution’s response to the Yekatom Defence’s
Application to Vary Protective Measures [REDACTED] (ICC-01/14-01/18-407-
Conf)”, filed on 24 December 2019**

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 Alfred Yekatom

Ms Mylène Dimitri
Mr Peter Robinson

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Legal Representatives of Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Pre-Trial Chamber (“Chamber”) should allow the Parties and Participants access to [REDACTED]¹ bearing on Witness [REDACTED] credibility. The relevant materials are set out in Confidential Annex A.

2. Although the application of Regulation 42(3) of the Regulations of the Court (“Regulations”) is unclear in this situation, in determining Yekatom’s Application to Vary Protective Measures (“Application”)², the Chamber should principally address the assurances given to the witnesses [REDACTED] under rule 74 of the Rules of Procedure and Evidence (“Rules”). The protections provided under rule 74(7) remain in place and affect much of the material sought.

3. Should the Chamber order the requested variations, it should further direct the Registry’s Court Management Services (“CMS”) to provide access to the relevant materials via Records Manager.³

II. CONFIDENTIALITY

4. This response is classified as confidential pursuant to regulation 23 *bis* of the Regulations because it responds to an application filed with the same classification, and because [REDACTED]. A public redacted version is filed concurrently.

III. SUBMISSIONS

¹ [REDACTED].

² ICC-01/14-01/18-407-Conf.

³ Regulation 22 of the Regulations of the Registry allows the Chamber to order the transfer or all or part of one situation or case record to another situation or case record.

5. The Prosecution has conducted a review of [REDACTED], as well as its own records, to identify material which may affect the credibility of Witness [REDACTED].

6. The relevant material (set out in Confidential Annex A) falls into three broad categories:

- a. Transcripts of testimony of Witnesses [REDACTED],⁴ [REDACTED] ("four witnesses"), who testified about [REDACTED]. All four witnesses were given assurances against self-incrimination under rule 74, by way of an oral decision at the outset of their respective testimony.⁵
- b. Transcripts of prior statements given by three of the four witnesses [REDACTED].⁶ [REDACTED].
- c. The [REDACTED] Trial Judgment, in unredacted form, as the public redacted version contains redactions to testimony given by witnesses subject to rule 74 assurances. [REDACTED].

7. A main consideration regarding access to these materials is the form in which the Presiding Judge of [REDACTED] provided assurances to the four witnesses under rule 74(3)(c), and not just the related measures ordered under rule 74(7). The Presiding Judge told the four witnesses at the outset of their testimony that [REDACTED].⁷ This wording is likely to create a reasonable expectation for the four witnesses that the testimony they gave in private session would not be disclosed beyond the [REDACTED] proceedings. Thus, it would appear that an explicit

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

modification to the rule 74 assurances given in respect of the four witnesses would be necessary to allow the Parties and Participants access to their full testimony.

8. As noted, the Prosecution considers that regulation 42(3) of the Regulations does not address rule 74, and is not otherwise strictly applicable to this situation. It is also unnecessary to invoke regulation 42(3) to vary the in-court protective measures granted to the four witnesses under rule 87 of the Rules.⁸

9. Nevertheless, access to the [REDACTED] record and related materials however, can be achieved by the Chamber simply expanding the number of persons to whom the obligations concerning the protections apply, to those having a legitimate interest in knowing the identity of the witness and/or substance of their testimony in this case.⁹ Thus, the same protective restrictions would apply, but simply to a larger class of persons.

10. However, the Prosecution does not oppose the Application on the basis that it is founded on regulation 42(3), and defers to the Chamber's discretion on the question of its application. In any event, the Prosecution considers that the Parties and Participants should be provided access to the relevant materials.

IV. CONCLUSION

11. For the above reasons, the Chamber should vary the measures accorded to the four witnesses under rule 74 as it deems necessary, to allow the parties and participants in the present case to access the material related to the credibility of Witness [REDACTED] from the [REDACTED] proceeding, as set out in Confidential Annex A.

⁸ [REDACTED].

⁹ See rule 87(3) of the Rules, indicating that the purpose of protective measures is to "prevent the release to the public or press or information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness" (emphasis added).

12. Should the Application be granted, the Chamber should direct CMS to grant access to the Parties and Participants via Records Manager.



Fatou Bensouda, Prosecutor

Dated this 24th day of December 2019
At The Hague, The Netherlands