



Original: English

**No. ICC-01/14-01/18
Date: 28 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 *THE PROSECUTOR V. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

Decision on the Yekatom Defence Motion for Disclosure of Exculpatory Material

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

The Office of the Prosecutor

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Peter Robinson

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

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

States Representatives

Amicus Curiae

REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

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Detention Section

**Victims Participation
and Reparations Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this Decision on the Yekatom Defence Motion for Disclosure of Exculpatory Material.

I. Procedural history

1. On 11 November 2018, the Chamber issued the ‘Warrant of Arrest for Alfred Yekatom’,¹ who was surrendered to the Court by the authorities of the Central African Republic (‘CAR’) on 17 November 2018.²
2. On 7 December 2018, the Chamber issued the ‘Warrant of Arrest for Patrice-Edouard Ngaïssona’,³ who was surrendered to the Court by the authorities of the French Republic on 23 January 2019.⁴
3. On 23 January 2019, the Single Judge issued the ‘Decision on Disclosure and Related Matters’ (the ‘Disclosure Decision’).⁵
4. On 20 February 2019, the Chamber issued the ‘Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters’, thereby joining the cases against Yekatom and Ngaïssona.⁶
5. On 4 April 2019, the Chamber issued the ‘Second Decision on Disclosure and Related Matters’ (the ‘Second Disclosure Decision’) thereby deciding, *inter alia*, that the Disclosure Decision was applicable to the joint case, as modified by the Second Disclosure Decision.⁷
6. On 15 May 2019, the Chamber issued the ‘Decision on the “Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines”’, thereby deciding that the confirmation of charges hearing shall commence on 19 September 2019.⁸

¹ ICC-01/14-01/18-1-US-Exp (a public redacted version is also available; *see* [ICC-01/14-01/18-1-Red](#)).

² Registry, Rapport du Greffe sur l’Arrestation et la Remise de M. Alfred Yekatom, ICC-01/14-01/18-17-US-Exp, paras 19-24.

³ ICC-01/14-01/18-89-Conf-Exp (a public redacted version is also available; *see* [ICC-01/14-01/18-89-Red](#)).

⁴ Registry, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, ICC-01/14-01/18-101-US-Exp, paras 5-14.

⁵ ICC-01/14-01/18-64-Conf (a public redacted version is also available, *see* [ICC-01/14-01/18-64-Red](#)).

⁶ [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-121](#).

⁷ [ICC-01/14-01/18-163](#).

⁸ [ICC-01/14-01/18-199](#).

7. On 20 August 2019, the Yekatom Defence submitted the ‘Motion for Disclosure of Exculpatory Material’ (the ‘Motion’).⁹

8. On 21 August 2019, the Prosecutor submitted the ‘Prosecution’s Response to the Yekatom Defence’s Motion for Disclosure of Exculpatory Material’ (the ‘Response’).¹⁰

II. Analysis

9. The Defence submits that the Motion ‘pertains to discrete categories of material on which the parties may differ as to their exculpatory nature, and seeks a decision from the Chamber resolving those differences’. As such, the Defence seeks that the Chamber order the Prosecutor to ‘disclose all items encompassed by Article 67(2) of the Statute’, including the following three categories of information:

- i. Information that may tend to show that Yekatom cannot be held responsible for the crimes as a superior;
- ii. Information about activities of the Seleka or other armed groups, and in particular, information that would shed further light on the activities of the Seleka in Bangui, Mbaïki, and other areas where Yekatom is accused of committing crimes; and
- iii. Information tending to affect the credibility of prosecution evidence such as criminal records of all witnesses that the Prosecutor intends to rely on at the confirmation of charges hearing, and information about promises or benefits requested by or provided to prosecution witnesses.

10. The Defence further submits that while ‘material relating to issues of witness credibility and mitigation of punishment may not be immediately usable by the Defence during the confirmation proceedings’, nevertheless, ‘[d]evelopment of a defence strategy for the case requires disclosure of all exculpatory information at the earliest stage possible’.

⁹ [ICC-01/14-01/18-284](#).

¹⁰ [ICC-01/14-01/18-286](#).

11. In the Response, the Prosecutor submits that the Motion should be dismissed, and that the requested relief is unnecessary due to the standing order on disclosure contained in the Disclosure Decision, which covers this matter. The Prosecutor argues that the Motion does not present anything new or in dispute, and that she has abided by the Disclosure Decision in good faith, including in respect to exculpatory material. In the view of the Prosecutor, '[n]oting that disclosure is *inter partes*, the intervention of the Chamber is only warranted where disputes arise as to the process', and 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 matter concerning the application of article 67(2) to "decide"'.

12. At the outset, the Chamber underscores that the disclosure of exculpatory evidence in the possession of the Prosecutor is a fundamental aspect of a suspect's right to a fair trial.¹¹ In this regard, the Chamber recalls that article 67(2) obliges the Prosecutor to disclose to the Defence exculpatory material in 'the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence'.

13. The Chamber further recalls that on 23 January 2019, it issued the Disclosure Decision directing, *inter alia*, that the Prosecutor disclose exculpatory evidence under article 67(2) of the Rome Statute (the 'Statute') 'immediately after having identified any such evidence, unless some justifiable reasons prevent her from doing so'.¹²

14. In light of the above, the Chamber directs the Prosecutor to verify whether she has in her possession any additional evidence that falls within the scope of article 67(2) of the Statute, including any objective information relating to criminal records for witnesses upon whom the Prosecutor intends to rely at the confirmation hearing.


¹¹ Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, 13 June 2008, [ICC-01/04-01/06-1401](#), *see* paras 77-81 and 92.

¹² [ICC-01/14-01/18-64-Red](#), para. 16.


FOR THESE REASONS, THE CHAMBER HEREBY

DIRECTS the Prosecutor to verify whether she has in her possession any additional evidence, including objective information regarding criminal records for witnesses upon whom she intends to rely at the confirmation hearing, which falls within the scope of article 67(2) of the Statute.


Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Wednesday, 28 August 2019
At The Hague, The Netherlands