

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **2 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***

**Confidential**

**Prosecution's Consolidated Response to the YEKATOM and NGAISSONA  
Defence's Requests for Extension of Time to File the List of Evidence**

**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**

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## I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") opposes the YEKATOM Defence's and NGAISSONA Defence's applications for an extension of time to file their lists of evidence for the Confirmation Hearing<sup>1</sup> ("Applications"). Neither Application identifies good cause justifying any deviation from rule 121(6) of the Rules of Procedure and Evidence ("Rules") as required by regulation 35(2) of the Regulations of the Court.<sup>2</sup>

## II. CONFIDENTIALITY

2. The response is filed as Confidential as it responds to a filing with the same designation. A public redacted version will be filed as soon as practicable.

## III. SUBMISSIONS

3. Neither Application identifies good cause to extend the deadline for providing its list of evidence to the Pre-Trial Chamber in advance of the Confirmation Hearing. The plain text of rule 121(6) requires that if a Suspect intends to present evidence under article 61(6), they must provide their list of evidence to the Pre-Trial Chamber "no later than 15 days" before the Confirmation Hearing.<sup>3</sup>

4. Since the Suspects' initial appearances, their Defence teams have anticipated the Confirmation Hearing. The arrest warrants have informed them in detail of the nature and type of charges, relevant period, the approximate dates, times, and locations of the crimes charged, and the applicable modes of liability.<sup>4</sup>

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<sup>1</sup> See ICC-01/14-01/18-298 (Yekatom Defence), and ICC-01/14-01/18-303-Conf (Ngaissona Defence).

<sup>2</sup> See regulation 35(2) requiring "good cause shown".

<sup>3</sup> Rule 121(6) of the Rules.

<sup>4</sup> ICC-01/14-01/18-1-Red; ICC-01/14-01/18-89-Red.

5. The YEKATOM Defence's assertion that it has "[...] not identified any evidence that it wishes to present at the hearing"<sup>5</sup> at this stage, should dispose of YEKATOM's Application altogether, as it belies any intention to present evidence under article 61(6), rendering the requested extension unnecessary.

6. However, to the extent that the Chamber considers the Applications, bearing in mind that the Defence has no legal burden of proof, the claimed inability to identify a single piece of evidence given the lapse of time is implausible and unavailing. It highlights either a failure to analyse the high volume of evidence provided to the Defence, or to investigate the allegations against the Suspects in good faith. More likely, the claim is part of a transparently dilatory Defence strategy.

7. The Prosecution has disclosed a significant amount of highly relevant incriminatory evidence to both Defence teams throughout the calendar year. In addition to the warrants of arrest, the Document containing the Charges and its annexed List of Evidence, contains even further details on the underlying incidents, the crimes charged, and each Suspect's individual criminal responsibility.

8. Although the Defence argues that alleged disclosure violations make it impossible to prepare for the Confirmation Hearing, there is no basis to find such a violation has occurred. Even if this were so — which it is not — it would not merit the relief requested, bearing in mind the stage of the proceedings and the limited scope of the Confirmation Hearing.

9. As indicated in its various recent motion responses, the Prosecution has discharged its disclosure obligations in good faith, including with respect to

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<sup>5</sup> ICC-01/14-01/18-298, para. 13.

potentially exonerating evidence under article 67(2) and rule 77 material through the 19 August 2019 deadline.<sup>6</sup>

10. Moreover, in accordance with the Chamber's directive to disclose only what is truly relevant at this stage,<sup>7</sup> the Prosecution has endeavoured to avoid overburdening the Defence with irrelevant material; again, in view of the limited purposes of the proceedings. Thus, while not every single piece of evidence related to all Prosecution Witnesses has been disclosed at this stage — nor is required to be under the *Lubanga* Bulk Rule<sup>8</sup> — the Prosecution remains fully engaged in its continuing obligation to review and disclose material through trial, as appropriate.

11. The remedy the Defence seeks — to not file a list of evidence in accordance with rule 121(6) and to potentially adjourn the Confirmation Hearing after the Prosecution's presentation — is overly broad and unwarranted.

12. Nothing prevents the Defence from adequately preparing for the Confirmation Hearing and filing its list of evidence in compliance with the deadline established in rule 121(6). If the Defence can thereafter show good cause to *amend* their respective lists of evidence after that deadline has passed, the Prosecution would not object to the amendments within a reasonable time, as determined by the Chamber.

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<sup>6</sup> See ICC-01/04-01/06-803-tEN ("prior to the confirmation hearing, the Prosecution's obligation [is] solely to disclose to the Defence the bulk of potentially exculpatory evidence or evidence which could be material to the preparation of the Defence") ("Bulk Rule").

<sup>7</sup> ICC-01/14-01/18-64-Conf, para. 18 (stressing that "only such evidence is disclosed which is of true relevance to the case and apt to support a particular factual allegation underlying the requisite legal elements.")

<sup>8</sup> ICC-01/04-01/06-803, para. 154; ICC-01/04-01/07-621, para. 8.

#### IV. CONCLUSION

13. For the above reasons, the Chamber should dismiss the Defence Applications to extend the time limit to file their lists of evidence.



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**Fatou Bensouda, Prosecutor**

Dated this 2<sup>nd</sup> day of September 2019  
At The Hague, The Netherlands