

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13 March 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, *EX PARTE*, only available to the Prosecution and the Defence of
Alfred Yekatom**

**Prosecution's Response to the "Requête de la Défense de M. Yekatom aux fins
d'obtenir l'autorisation d'interjeter appel de la « Decision Pursuant to Regulation
101 of the Regulations of the Court » rendue le 1^{er} mars 2019" (ICC-01/14-01/18-145-
Conf-Exp)**

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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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Yekatom Defence's request seeking leave to appeal the "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Decision")¹ should be rejected. The Defence's request is *prima facie* deficient. The issue—the Defence's contention that the Decision is "*manifestement déraisonnable*"—amounts to no more than an attempt at re-litigating the Decision by repeating² or advancing new arguments³ irrespective of what has been said in the Decision. As such, the proposed issue amounts to a mere disagreement with the Decision and not an appealable issue within the meaning of article 82(1)(d).⁴

2. Even assuming that an appealable issue arises, it does not meet the remaining criteria of article 82(1)(d).⁵ The Defence's argument that current contact restrictions could affect YEKATOM's morale ("*minent le moral de la personne détenue*") which in turn could impact his assistance to the Defence⁶ lacks support, is speculative, and would arise out of the Suspect's reaction to any unsatisfactory decision as opposed to the Decision itself. The same is true with respect to the Defence's argument that the Suspect's purported failure to understand the Decision requires the Defence to exert more efforts to "*corriger la situation*".⁷ These concerns relate solely to the nature of the Defence's relations and communications with their client and not any cognisable criteria under article 82(1)(d).

¹ ICC-01/14-01/18-137-Conf-Exp. This response is filed "Confidential, *EX PARTE*, only available to the Prosecution and the Defence of Alfred Yekatom" given that it responds to a filing of the same designation. The Prosecution does not object to its re-classification as "Public".

² Compare ICC-01/14-01/18-145-Conf-Exp, para. 13(i)-(vi), (xi)-(xv) with ICC-01/14-01/18-132-Conf-Exp-Red, paras. 1-13; ICC-01/14-01/18-123-Conf-Exp, paras. 13-27; ICC-01/14-01/18-84-Conf-Red, paras. 14-30; ICC-01/14-01/18-71-Conf, paras. 21-23, 26-31; ICC-01/14-01/18-49-Conf-Exp, paras. 25, 29-51.

³ See ICC-01/14-01/18-145-Conf-Exp, para. 13(vii)-(x), (xvi)-(xvii).

⁴ ICC-01/14-01/18-65-Conf, para. 13.

⁵ ICC-01/14-01/18-65-Conf, para. 18.

⁶ ICC-01/14-01/18-137-Conf-Exp, paras. 15-17.

⁷ ICC-01/14-01/18-137-Conf-Exp, para. 18.



Fatou Bensouda, Prosecutor

Dated this 13th day of March 2019

At The Hague, The Netherlands