



**Original: English**

**No. ICC-01/14-01/18  
Date: 14 September 2023**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Chang-ho Chung**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF  
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public**

**Decision on the Prosecution's Third Application for Notice to be Given Pursuant  
to Regulation 55(2) on Mr Yekatom's Individual Criminal Responsibility**

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

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**TRIAL CHAMBER V** of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Regulation 55 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution’s Third Application for Notice to be Given Pursuant to Regulation 55(2) on Mr Yekatom’s Individual Criminal Responsibility’.

1. The Chamber recalls that during the course of the present trial proceedings, the Office of the Prosecutor (the ‘Prosecution’) filed two requests for notice pursuant to Regulation 55(2) of the Regulations,<sup>1</sup> which were rejected by the Chamber without prejudice (the ‘First Regulation 55 Decision’ and the ‘Second Regulation 55 Decision’).<sup>2</sup>
2. On 7 July 2023, the Prosecution filed a new request under Regulation 55 of the Regulations (the ‘Request’), covering the same subject matter as the previous ones.<sup>3</sup> In the Request, the Prosecution asks the Chamber to give notice that the legal characterisation of the facts described in the charges regarding Mr Yekatom’s individual criminal responsibility may be subject to change to accord with Articles 25(3)(c) and (d) and 28(a) of the Rome Statute (the ‘Statute’).<sup>4</sup> The Prosecution argues that ‘the accumulated body of evidence now before the Chamber justifies the issuance of notice’.<sup>5</sup> According to the Prosecution, issuing such notice would ‘fully respect [Mr Yekatom’s] rights and does not occasion any prejudice’, and that ‘interests of judicial economy strongly favour doing so at this point’.<sup>6</sup>

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<sup>1</sup> Prosecution’s Application for Notice to be given pursuant to Regulation 55(2) on Accused Yekatom’s Individual Criminal Responsibility, 30 April 2020, ICC-01/14-01/18-503-Conf (notified on 1 May 2020; public redacted version notified the same day, ICC-01/14-01/18-503-Red); Prosecution’s renewed application for Notice to be Given under Regulation 55(2) on Accused Yekatom’s Individual Criminal Responsibility, 1 April 2022, ICC-01/14-01/18-1345-Conf (public redacted version notified on 7 April 2022, ICC-01/14-01/18-1345-Red).

<sup>2</sup> Decision on the Prosecution’s Application for Notice to be given pursuant to Regulation 55(2) on Mr Yekatom’s Individual Criminal Responsibility, 2 June 2020, ICC-01/14-01/18-542; Decision on the Prosecution Renewed Application for Notice to be Given Pursuant to Regulation 55(2) on Mr Yekatom’s Individual Criminal Responsibility, 24 June 2022, ICC-01/14-01/18-1482.

<sup>3</sup> Prosecution’s Application for Notice to be given pursuant to Regulation 55(2) on Accused Yekatom’s Individual Criminal Responsibility, ICC-01/14-01/18-1973-Conf.

<sup>4</sup> Request, ICC-01/14-01/18-1973-Conf.

<sup>5</sup> Request, ICC-01/14-01/18-1973-Conf, para. 6.

<sup>6</sup> Request, ICC-01/14-01/18-1973-Conf, para. 8.

3. On 20 July 2023, the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes supported the Request.<sup>7</sup>
4. On 21 August 2023, the Yekatom Defence filed its response to the Request (the ‘Yekatom Defence Response’), seeking that the Chamber reject it as (i) the re-characterisation under Article 28(a) of the Statute would exceed the facts and circumstances confirmed by the Pre-Trial Chamber II; (ii) the sought notice would be unnecessary and inappropriate in that the Prosecution had not met its burden to address the purpose, preconditions, and consequences of the sought re-characterisation procedure; and (iii) the sought notice would unduly prejudice the Defence.<sup>8</sup>
5. The Chamber recalls the applicable law as set out in the First Regulation 55 Decision.<sup>9</sup> In particular, the Chamber recalls that in accordance with Regulation 55(2) of the Regulations, it shall give notice to the participants if and when – at any time during the trial – it appears to the Chamber that the legal characterisation of facts may be subject to change.<sup>10</sup> The Chamber further recalls that it is ultimately its prerogative to decide if and when to give notice under Regulation 55 of the Regulations.<sup>11</sup>
6. Having considered the Request and the above, it does not appear to the Chamber that the legal characterisation of facts may be subject to change. The Request is accordingly rejected. This is without prejudice to notice being given in accordance with Regulation 55 of the Regulations at a later stage, if and when it appears appropriate to the Chamber to do so.

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<sup>7</sup> Common Legal Representatives of Victims’ Joint Response to the “Prosecution’s Application for Notice to be given pursuant to Regulation 55(2) on Accused YEKATOM’s Individual Criminal Responsibility”, ICC-01/14-01/18-1992-Conf.

<sup>8</sup> Yekatom Defence Response to Third Prosecution Application for Regulation 55(2) Notice, ICC-01/14-01/18-2040-Conf (with confidential Annex A).

<sup>9</sup> First Regulation 55 Decision, ICC-01/14-01/18-542, paras 9-13.

<sup>10</sup> Second Regulation 55 Decision, ICC-01/14-01/18-1482, para. 7.

<sup>11</sup> Second Regulation 55 Decision, ICC-01/14-01/18-1482, para. 8; First Regulation 55 Decision, ICC-01/14-01/18-542, para. 16.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Request; and

**ORDERS** the Prosecution and the Yekatom Defence to file public redacted versions of the Request, ICC-01/14-01/18-1973-Conf, and the Yekatom Defence Response, ICC-01/14-01/18-2040-Conf, respectively, within one week of notification of this decision.

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



**Judge Péter Kovács**



**Judge Bertram Schmitt**

**Presiding Judge**



**Judge Chang-ho Chung**

Dated 14 September 2023

At The Hague, The Netherlands