

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 12 December 2018

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***

CONFIDENTIAL

Order on Reclassification

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Stéphane Bourgon

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court” or “ICC”) issues this Order on Reclassification.

1. On 11 November 2018, the Chamber issued a warrant of arrest against Alfred Yekatom,¹ who was surrendered to the Court on 17 November 2018.
2. On 4 and 6 December 2018, the Chamber received information on the reclassification of selected documents by the Prosecutor and the Registry.²
3. On 11 December 2018, the Defence of Alfred Yekatom (“Yekatom”) submitted the “Expedited request on behalf of Mr. Yekatom seeking immediate disclosure of the Prosecutor’s application for issuance of a warrant of arrest” (the “Defence Application”).³
4. The Chamber notes articles 67 and 68(1) of the Rome Statute (the “Statute”), rule 121(10) of the Rules of Procedure and Evidence and regulation 23*bis* of the Regulations of the Court (the “Regulations”). The Chamber emphasises that it must ensure that the suspect is cognisant of all relevant submissions, subject to protection considerations, so as to prepare properly for the confirmation of charges hearing.
5. The Chamber notes that Yekatom has already received the warrant of arrest issued against him on 11 November 2018 without redactions. The Chamber, therefore, considers, that the classification of the document may be changed from “under seal” to “confidential” so as to reflect accurately the present access rights of the suspect.

¹ Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 11 November 2018, ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant was issued on 17 November 2018, *see* ICC-01/14-01/18-1-Red.

² ICC-0/14-01/18-26-US-Exp; Email from the Counsel Support Section dated 4 December 2018, 16h03; ICC-01/14-01/18-28-US-Exp.

³ ICC-01/14-01/18-29-Conf-Exp.

6. As regards the Defence Application, the Chamber recalls that it accepted, when issuing the warrant of arrest for Yekatom, the classification proposed by the Prosecutor and retained the classification of the Prosecutor's application under article 58 of the Statute.⁴ The Chamber is cognisant of the rights of Yekatom to be informed, pursuant to article 67(1)(a) of the Statute. Yet, the Chamber notes that this must be balanced with other interests at stake, in particular considerations pertaining to the security and well-being of witnesses and the confidentiality of the Prosecutor's ongoing investigation. Moreover, the Chamber recalls that the warrant of arrest contains detailed information as to the crimes for which Yekatom's arrest was sought and the reasons for which his arrest appeared necessary. On balance, the Chamber is of the view that in this particular case the classification of the Prosecutor's application must be maintained. In particular, the detailed information in the warrant of arrest suffices, at this stage, for Yekatom to be informed within the meaning of article 67(1)(a) of the Statute,⁵ to effectively seek provisional release under article 60 of the Statute⁶ and, pursuant to article 19(2)(a) of the Statute, to challenge the admissibility of the case at the earliest opportunity, as argued by the Defence.⁷

7. As regards the request of the Defence to be given access to the Prosecutor's reasons and justifications set forth in the article 58 application regarding the request for telephone restrictions imposed on Yekatom in the ICC Detention Centre,⁸ the Chamber recalls that, for the reasons set out above, the Prosecutor's article 58 application cannot be shared with the Defence, at this stage. It recalls that it has given Yekatom the opportunity to provide

⁴ Pre-Trial Chamber II, "Public Redacted Version of 'Warrant of arrest for Alfred Yekatom', ICC-01/14-01/18-1-US-Exp, 11 November 2018", 17 November 2018, ICC-01/14-01/18-1-Red, para. 23.

⁵ See ICC-01/14-01/18-29-Conf-Exp, paras 2, 21, 22-34.

⁶ See ICC-01/14-01/18-29-Conf-Exp, paras 2, 21, 43-46.

⁷ See ICC-01/14-01/18-29-Conf-Exp, paras 2, 21, 47-50.

⁸ See ICC-01/14-01/18-29-Conf-Exp, paras 2, 21, 35-42.

observations no later than Thursday, 20 December 2018, as set forth in the Chamber's "Second Decision Pursuant to Regulation 101 of the Regulations of the Court".⁹ For the reasons developed above, the Chamber finds that the Prosecutor's article 58 application, which includes the discrete request to restrict Yekatom's communications, will not be re-classified.

8. In the light of the arguments presented by the Prosecutor, and mindful of the fact that the relevant filing concerns the former appointment of Mathias Barthélemy Morouba, who has withdrawn from the case,¹⁰ the Chamber decides to maintain the current classification of document ICC-01/14-01/18-14-US-Exp, including the related document ICC-01/14-01/18-26-US-Exp.

9. The Chamber also orders, as the case may be, the Prosecutor and/or the Registry to indicate until Monday, 17 December 2018, whether the following documents can be reclassified as confidential without redactions or, if deemed necessary, to re-file these documents with redactions, or to maintain their current classification:

- ICC-01/14-01/18-4-US-Exp;
- ICC-01/14-01/18-5-US-Exp (without the annex);
- ICC-01/14-01/18-7-US-Exp (without the annex);
- ICC-01/14-01/18-8-US-Exp;
- ICC-01/14-01/18-9-US-Exp; and
- ICC-01/14-01/18-17-US-Exp, including its annexes.

⁹ 4 December 2018, ICC-01/14-01/18-25-Conf-Exp, p. 6.

¹⁰ Pre-Trial Chamber II, "Decision on Withdrawal of Counsel", 29 November 2018, ICC-01/14-01/18-21.

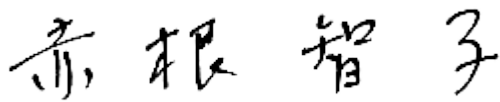
FOR THESE REASONS, THE CHAMBER HEREBY

- a) **DECIDES** to maintain the current classification of documents ICC-01/14-01/18-14-US-Exp and, consequently, ICC-01/14-01/18-26-US-Exp, as well as ICC-01/14-01/18-28-US-Exp and its annex;
- b) **ORDERS** the Prosecutor to re-submit the documents ICC-01/14-01/18-24-US-Exp with the proposed redactions, carrying the classification “confidential”;
- c) **ORDERS** the Registrar to reclassify the documents ICC-01/14-01/18-10-US-Exp, ICC-01/14-01/18-18-Conf, ICC-01/14-01/18-18-Conf-Anx, ICC-01/14-01/18-20-Conf and ICC-01/14-01/18-20-Conf-Anx as “public”;
- d) **ORDERS** the Registrar to reclassify the document ICC-01/14-01/18-12-US-Exp as “confidential” *ex parte*, Defence only;
- e) **ORDERS** the Registrar to reclassify the documents ICC-01/14-01/18-1-US-Exp and ICC-01/14-01/18-1-US-Exp-tFRA as “confidential”, *ex parte* Prosecutor and Defence only;
- f) **ORDERS**, as the case may be, the Registry and/or the Prosecutor to indicate until Monday, 17 December 2018, whether the documents referred to in paragraph 9 of the present Order can be made confidential without redactions or, if deemed necessary, to re-file these documents with redactions, or to maintain the current classification; and
- g) **REJECTS** the Defence Application.

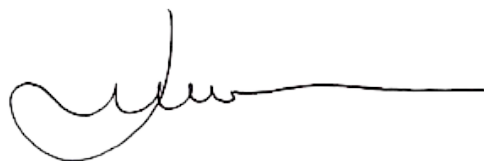
Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua,
Presiding Judge**



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Wednesday, 12 December 2018

At The Hague, Netherlands