



Original: English

No. ICC-01/14-01/18

Date: 27 May 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 Request Seeking Leave to Appeal the Decision on the
Request for Reconsideration of the Order on Reclassification

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart

Counsel for Alfred Yekatom

Stéphane Bourgon
Mylène Dimitri

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops

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 of the International Criminal Court issues this decision on the Yekatom request seeking leave to appeal the decision on the request for reconsideration of the order on reclassification.

I. PROCEDURAL HISTORY

1. On 11 November 2018, the Chamber issued the ‘Warrant of Arrest for Alfred Yekatom’,¹ thereby deciding, *inter alia*, to retain the classification of the Prosecutor’s application under article 58 of the Rome Statute (the ‘Prosecutor’s Application’ and the ‘Statute’) as under seal, *ex parte*, only available to the Prosecutor.²

2. On 7 December 2018, the Chamber issued the ‘Warrant of Arrest for Patrice-Edouard Ngaïssona’,³ thereby deciding, *inter alia*, to retain the classification of the Prosecutor’s Application as under seal, *ex parte*, only available to the Prosecutor.⁴

3. On 12 December 2018, the Chamber issued the ‘Order on Reclassification’,⁵ thereby, *inter alia*, rejecting the Yekatom Defence’s request to disclose the Prosecutor’s Application and, accordingly, maintaining the classification of the Prosecutor’s Application as under seal, *ex parte*, only available to the Prosecutor.⁶

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.⁷

5. On 8 May 2019, the Chamber issued the ‘Decision on the Request for Reconsideration of the Order on Reclassification’ (the ‘Decision on Reconsideration’), thereby rejecting the request by the Yekatom Defence to reconsider the Order on Reclassification.⁸

¹ ICC-01/14-01/18-1-Conf-Exp. A public redacted version is also available, see [ICC-01/14-01/18-1-Red](#).

² [ICC-01/14-01/18-1-Red](#), para. 23.

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 [ICC-01/14-01/18-89-Red](#), para. 23.

⁵ ICC-01/14-01/18-31-Conf.

⁶ ICC-01/14-01/18-31-Conf, para. 6.

⁷ [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-121](#).

⁸ [ICC-01/14-01/18-190](#).

6. On 14 May 2019, the Chamber received the ‘Request on behalf of Mr. Yekatom seeking leave to appeal Decision on the Request for Reconsideration of the Order on Reclassification’ (the ‘Yekatom Defence Request for Leave to Appeal’).⁹

7. On 20 May 2019, the Chamber received the ‘Prosecution’s Response to Alfred YEKATOM’s Request for leave to appeal Decision on the Request for Reconsideration of the Order on Reclassification’ (the ‘Prosecutor’s Response’).¹⁰

III. ANALYSIS

8. The first issue for which the Yekatom Defence seeks leave to appeal is ‘whether the Chamber erred in finding that the review of judicial decisions can only be requested on the basis of the mechanism specified in the Statute and the Rules of Procedure and Evidence’. The Prosecutor responds that the Decision on Reconsideration ‘in no way affects the fair and expeditious conduct of the proceedings or their outcome’ and does not otherwise meet the requirements of article 82(1)(d) of the Statute. The Chamber considers that the Yekatom Defence has not demonstrated that the proposed issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. The Yekatom Defence ignores that, in the Decision on Reconsideration, the Chamber found that, ‘even if the Chamber had the power to do so, the Defence for Yekatom has failed to demonstrate the need to reconsider the Order on Reclassification’.

9. The second issue for which the Yekatom Defence seeks leave to appeal is ‘whether the Chamber erred in refusing to order the disclosure to the Defence of the Prosecutor’s application for a warrant of arrest by considering that the evidence and Document Containing the Charges suffice to inform pursuant to Article 67(1)(a) of the Statute’. According to the Prosecutor, the Yekatom Defence identifies ‘no appealable issue, ‘misreads’ and ‘disagrees’ with the Decision on Reconsideration, and does not satisfy the remaining criteria of article 82(1)(d) of the Statute. In the view of the Chamber, the Yekatom Defence merely disagrees with the Decision on Reconsideration. The Yekatom Defence misconstrues this decision seeing as the Chamber found that the detailed information contained in the warrant of arrest for Yekatom would be *supplemented*, in particular, by the disclosure of evidence and the

⁹ ICC-01/14-01/18-196-Conf.

¹⁰ ICC-01/14-01/18-203-Conf.

submission of the document containing the charges. The Yekatom Defence fails to explain why, despite this assessment, a decision by the Appeals Chamber is required to resolve the proposed issue.

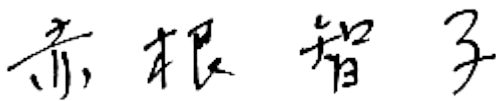
FOR THESE REASONS, THE CHAMBER HEREBY

- a) **REJECTS** the Yekatom Defence Request for Leave to Appeal; and
- b) **ORDERS** the Yekatom Defence and the Prosecutor to either:
 - (i) indicate that the Yekatom Defence Request for Leave to Appeal and the Prosecutor's Response, respectively, can be made public without redactions by Friday, 31 May 2019 at the latest; or
 - (ii) file public redacted versions of said request and response, respectively, by the same deadline.

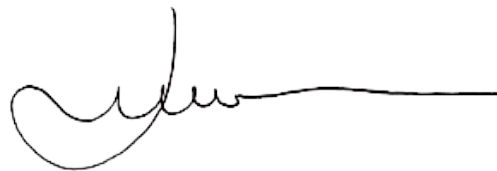
Done in both English and French, the English version being authoritative.



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



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Monday, 27 May 2019

At The Hague, The Netherlands