



Original: English

**No. ICC-01/14-01/18
Date: 24 March 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Decision on Yekatom Defence Request not to include *Ex Parte* Evidentiary
material in the Record of the Proceedings**

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
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Peter Robinson

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops

Legal Representatives of Victims

Dmytro Suprun
Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda

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

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 64 of the Rome Statute (the ‘Statute’), and Rules 121(10), 129 and 130 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on Yekatom Defence Request not to include *Ex Parte* Evidentiary material in the Record of the Proceedings’.

1. On 10 March 2020, the Yekatom Defence requested Pre-Trial Chamber II (hereinafter: ‘PTC II’)¹ to ‘not include any *ex parte* evidentiary material in the record of the proceedings when it transmits that record to the Presidency pursuant to Rule 129, when the proceedings before the Pre-Trial Chamber are completed’ (the ‘Request’).² The Yekatom Defence bases its request on (i) the Chambers Practice Manual recommendation that the record transmitted to the Trial Chamber shall include ‘all evidence which has become part of the record by way of its communication to the Pre-Trial Chamber following *inter partes* disclosure’,³ and (ii) a decision in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*.⁴
2. On 11 March 2020, PTC II issued its ‘Decision on the Prosecutor’s request for reconsideration or, in the alternative, leave to appeal the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard”’ (the ‘Reconsideration Decision’ and the ‘Confirmation Decision’, respectively),⁵ which concluded the proceedings in the case before PTC II.⁶ In this decision, PTC II addressed the Request, noting, *inter alia*, its mandate to transmit to the

¹ Yekatom Defence Request not to include *Ex Parte* Evidentiary material in Record of the Proceedings, ICC-01/14-01/18-445.

² Request, ICC-01/14-01/18-445, para. 1.

³ Request, ICC-01/14-01/18-445, para. 5, citing Chambers Practice Manual (2019), <https://www.icc-cpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>, para. 69.

⁴ Request, ICC-01/14-01/18-445, para. 6, referring to *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the evidence disclosure protocol and other related matters, 30 December 2019, ICC-01/12-01/18-546, para. 17.

⁵ Decision on the Prosecutor’s request for reconsideration or, in the alternative, leave to appeal the ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, ICC-01/14-01/18-447.

⁶ Reconsideration Decision, ICC-01/14-01/18-447, paras 34-35.

Presidency ‘the record of the proceedings’ pursuant to Rule 129 of the Rules, which ‘univocally points to the transmission of the record in its entirety and rules out that any discretion may be vested in the Chamber for the purposes of reducing, amending or otherwise intervening on the content of the record’.⁷ Accordingly, PTC II ordered the Registry to transmit to the Presidency the Confirmation Decision and the record of the proceedings.⁸

3. On 13 March 2020, the Registry transmitted to the Presidency the record of the proceedings of PTC II, pursuant to Rule 129 of the Rules and in compliance with the Reconsideration Decision.⁹
4. On 16 March 2020, the Presidency (i) constituted Trial Chamber V with immediate effect, (ii) decided to refer the present case to it, and (iii) ordered the Registry, pursuant to Rule 130 of the Rules, to transmit to the Chamber ‘the full record of the proceedings in the case’.¹⁰
5. On 17 March 2020, the Registry transmitted to the Chamber the record of the proceedings, including the Confirmation Decision.¹¹
6. On 18 March 2020, the Office of the Prosecutor (the ‘Prosecution’) responded to the Request (the ‘Response’),¹² submitting that the Request should be considered moot, given that the full case record has already been transferred to the Chamber.¹³ Alternatively, the Prosecution submits that the Request be rejected on its merits, arguing that ‘the entirety of the case record should be

⁷ Reconsideration Decision, ICC-01/14-01/18-447, para. 38.

⁸ Reconsideration Decision, ICC-01/14-01/18-447.

⁹ Transmission to the Presidency of the record of the proceedings, including the Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, ICC-01/14-01/18-449 (with Annex 1, under seal *ex parte*, Registry only, and Annexes 2 and 3, confidential *ex parte*, Registry only).

¹⁰ Decision constituting Trial Chamber V and referring to it the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, ICC-01/14-01/18-451.

¹¹ Transmission to Trial Chamber V of the record of the proceedings, including the Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, ICC-01/14-01/18-455 (with Annex 1, under seal *ex parte*, Registry only, and Annexes 2 and 3, confidential *ex parte*, Registry only).

¹² Prosecution’s Response to the Yekatom Defence Request not to include Ex Parte Evidentiary material in Record of the Proceedings (ICC-01/14-01/18-445), ICC-01/14-01/18-457.

¹³ Response, ICC-01/14-01/18-457, para. 1.

before the Chamber for it to decide whether and to what extent it may regard such material in the exercise of its statutory functions'.¹⁴

7. Noting that the Registry has already transmitted the record of the proceedings in its entirety to the Chamber, pursuant to Rules 129 and 130 of the Rules and following PTC II's Reconsideration Decision,¹⁵ the Single Judge considers the Request to be moot and dismisses it accordingly.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

DECLARES the Request moot.

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



Judge Bertram Schmitt
Single Judge

Dated this 24 March 2020

At The Hague, The Netherlands

¹⁴ Response, ICC-01/14-01/18-457, para. 1.

¹⁵ Reconsideration Decision, ICC-01/14-01/18-447, para. 38.