

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/14-01/18
Date: 16 September 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***

**Urgent
Public**

Decision on Motion for Review and Reclassification of *Ex Parte* Filings

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

Mylène Dimitri
Peter Robinson

Counsel for Patrice-Edouard Ngaissona

Geert-Jan Alexander Knoops

Legal Representatives of Victims

Marie-Edith Douzima-Lawson
Yaré Fall
Paolina Massidda
Abdou Dangabo Moussa
Christine Priso Ouamballo
Elisabeth Rabesandratana

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

Dmytro Suprun

**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 Motion for Review and Reclassification of *Ex Parte* Filings.

I. Procedural History

1. On 30 October 2018, the Prosecutor submitted under seal, *ex parte*, an application for the issuance of warrants of arrest for Patrice-Edouard Ngaïssona and Alfred Yekatom (the ‘Prosecutor’s Application’).¹
2. On 11 November 2018, the Chamber issued the ‘Warrant of Arrest for Alfred Yekatom’.² On 17 November 2018, Yekatom was surrendered to the Court by the authorities of the Central African Republic.³
3. On 7 December 2018, the Chamber issued the ‘Warrant of Arrest for Patrice-Edouard Ngaïssona’.⁴ On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.⁵
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.⁶
5. On 15 May 2019, the Chamber issued the ‘Decision on the “Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines”’, thereby deciding that the confirmation hearing in the case against Yekatom and Ngaïssona shall commence on 19 September 2019.⁷
6. On 19 August 2019, the Chamber received the ‘Prosecution’s Notification of Filing of the Document Containing the Charges and List of Evidence’.⁸

¹ ICC-01/14-01/18-2-US-Exp, together with 11 under seal, *ex parte* annexes.

² ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant of arrest is also available; see [ICC-01/14-01/18-1-Red](#).

³ Registry, Rapport du Greffe sur l’Arrestation et la Remise de M. Alfred Yekatom, ICC-01/14-01/18-17-US-Exp, paras 19-24.

⁴ ICC-01/14-01/18-89-Conf-Exp. A public redacted version of the warrant of arrest is also available; see [ICC-01/14-01/18-89-Red](#).

⁵ Registry, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, ICC-01/14-01/18-101-US-Exp, paras 5-14.

⁶ [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-121](#).

⁷ [ICC-01/14-01/18-199](#).

⁸ [ICC-01/14-01/18-282](#), together with confidential annexes A to J.

7. On 20 August 2019, the Chamber received the Yekatom Defence’s ‘Motion for Review and Reclassification of *Ex Parte* Filings’ (the ‘Yekatom Defence Request’).⁹

8. On 23 August 2019, the Chamber received the ‘OPCV’s Response to the Yekatom Defence’s “Motion for Review and Reclassification of Ex Parte Filings”’.¹⁰

9. On 27 August 2019, the Chamber received the ‘Prosecution’s Response to “Motion for Review and Reclassification of *Ex Parte* Filings”, ICC-01/14-01/18-283’.¹¹

10. On 27 August 2019, the Chamber received the ‘Registry’s Response to the “Motion for Review and Reclassification of Ex Parte Filings” (ICC-01/14-01/18-283)’.¹²

11. On 9 September 2019, the Chamber received the ‘Communication par l’Accusation de ses propositions d’expurgation des écritures ICC-01/14-01/18-28-US-Exp et ICC-01/14-01/18-174-Conf-Exp aux fins de leur reclassification’ (the ‘Prosecutor’s Redaction Proposals’).¹³

12. On 16 September 2019, the Chamber received the ‘Corrected version of “Prosecution’s Response to ‘Motion for Review and Reclassification of Ex Parte Filings, ICC-01/14-01/18-283’, 27 August 2019, ICC-01/14-01/18-292”’.¹⁴

II. Submissions

13. The Yekatom Defence requests that the Chamber ‘review all *ex parte* filings in this case, seek submissions from the party making the *ex parte* filings as to the continuing need for keeping the filing, or parts thereof, secret from the Defence, and reclassify those that can now be shared with the Defence and/or the public’. The Yekatom Defence has identified 76 filings that have not been made available to it and asserts that it also does not have access to ‘transcripts of *ex parte* hearings’.

⁹ [ICC-01/14-01/18-283](#).

¹⁰ [ICC-01/14-01/18-288](#).

¹¹ [ICC-01/14-01/18-292](#).

¹² [ICC-01/14-01/18-293-Conf-Exp](#). A public redacted version is also available, *see* [ICC-01/14-01/18-293-Red](#).

¹³ [ICC-01/14-01/18-326-US-Exp](#), together with under seal, *ex parte*, annexes 1 and 2. A confidential redacted version is also available, *see* [ICC-01/14-01/18-326-Conf-Red](#).

¹⁴ [ICC-01/14-01/18-292-Corr](#).

Furthermore, the Yekatom Defence ‘specifically requests that the Chamber reassess whether it remains necessary to retain under seal the warrants of arrest for other suspects included in the 30 October 2018 application for arrest warrants’. In this regard, it avers that ‘persons who the Defence have sought to interview in preparation of the confirmation hearing have been reluctant to cooperate, speculating that they are the ones named in the arrest warrant’.

14. The OPCV ‘respectfully requests the reclassification as “confidential” of the “Notification by the Office of Public Counsel for Victims pursuant to the ‘Decision on the Legal Representation of Victims’ dated 23 May 2019 (ICC-01/14-01/18)”, ICC-01/14-01/18-218-Conf-Exp’. Furthermore, the OPCV submits that ‘the current level of classification [of the annex to this filing] should be maintained since the reasons justifying it remain unchanged’.

15. The Prosecutor submits that a number of documents ‘should not be reclassified, particularly where there has been no change in circumstances since the Pre-Trial Chamber rejected previous Defence requests, such as the Prosecution’s Warrant of Arrest Application and related filings’. Furthermore, according to the Prosecutor, four documents ‘can be reclassified only after specific redactions are applied’. Lastly, the Prosecutor argues that the Yekatom Defence Request ‘in respect of filing ICC-01/14-01/18-237-Conf-Exp-AnxB is moot’, considering that it ‘was disclosed to the Defence *via* the regular disclosure process on 9 August 2019’.

16. According to the Registry, a number of documents should not be reclassified. The Registry submits that three documents may be reclassified. In addition, in the view of the Registry, should the Chamber decide to share ICC-01/14-01/18-38-Conf-Exp and/or ICC-01/14-01/18-T-003-CONF-EXP-ENG with the Defence, certain information should be redacted. Lastly, the Registry argues that it ‘does not object to [ICC-01/14-01/18-173-Conf-Exp] being shared with the Defence, but notes that its classification follows the same classification of the Chamber’s order ICC-01/14-01/18-164-Conf-Exp (i.e. confidential *ex parte*, only available to the Prosecution)’.

III. Determination by the Chamber

17. The Chamber notes regulation 23*bis*(3) of the Regulations of the Court which provides in the relevant part that, ‘[w]here the basis for the classification no longer exists, whosoever instigated the classification, be it the Registrar or a participant,

shall apply to the Chamber to reclassify the document. A Chamber may also re-classify a document upon request by any other participant or on its own motion’.

18. The Chamber recalls that it has previously issued: (i) an order rejecting the Yekatom Defence’s request to disclose the Prosecutor’s Application;¹⁵ (ii) a decision rejecting the Yekatom Defence’s request to reconsider that decision;¹⁶ and (iii) a decision rejecting the Yekatom Defence’s request for leave to appeal the Chamber’s decision denying the request for reconsideration¹⁷. In light of these standing decisions, and in the absence of specific arguments by the Yekatom Defence as to the need to assess this matter anew, the Chamber rejects the Yekatom Defence Request in so far as it concerns the Prosecutor’s Application (ICC-01/14-01/18-2-US-Exp and ICC-01/14-01/18-2-US-Exp-AnxA to ICC-01/14-01/18-2-US-Exp-AnxK) and any related filings.¹⁸

19. Furthermore, having reviewed the record and the relevant submissions by the Prosecutor, the Ngaïssona Defence, the Registry and/or the OPCV, the Chamber considers that the existing classification of the documents enumerated hereafter shall be upheld since the basis for their classification remains in effect. Accordingly, the Chamber rejects the Yekatom Defence Request in relation to:

- ICC-01/14-01/18-3-US-Exp;
- ICC-01/14-01/18-4-US-Exp;
- ICC-01/14-01/18-5-US-Exp-AnxA;
- ICC-01/14-01/18-6-US-Exp;
- ICC-01/14-01/18-7-US-Exp-AnxA;
- ICC-01/14-01/18-17-US-Exp-AnxIV, ICC-01/14-01/18-17-US-Exp-AnxV, ICC-01/14-01/18-17-US-Exp-AnxIX, ICC-01/14-01/18-17-US-Exp-AnxX and ICC-01/14-01/18-17-US-Exp-AnxXI;

¹⁵ Order on Reclassification, 12 December 2018, ICC-01/14-01/18-31.

¹⁶ [Decision on the Request for Reconsideration of the Order on Reclassification](#), 8 May 2019, ICC-01/14-01/18-190.

¹⁷ [Decision on the Yekatom Request Seeking Leave to Appeal the Decision on the Request for Reconsideration of the Order on Reclassification](#), 27 May 2019, ICC-01/14-01/18-211.

¹⁸ [Yekatom Defence Request](#), ICC-01/14-01/18-283, paras 13-14.

- ICC-01/14-01/18-22-US-Exp;
- ICC-01/14-01/18-28-US-Exp-Anx1;
- ICC-01/14-01/18-30-US-Exp;
- ICC-01/14-01/18-69-US-Exp-AnxA;
- ICC-01/14-01/18-88-US-Exp and ICC-01/14-01/18-88-US-Exp-AnxA to ICC-01/14-01/18-88-US-Exp-AnxK;
- ICC-01/14-01/18-93-US-Exp and ICC-01/14-01/18-93-US-Exp-AnxA;
- ICC-01/14-01/18-94-US-Exp;
- ICC-01/14-01/18-95-US-Exp and ICC-01/14-01/18-95-Conf-Exp-Red;
- ICC-01/14-01/18-96-US-Exp and ICC-01/14-01/18-96-US-Exp-AnxI to ICC-01/14-01/18-96-US-Exp-AnxIV;
- ICC-01/14-01/18-97-US-Exp, ICC-01/14-01/18-97-US-Exp-Anx and ICC-01/14-01/18-97-US-Exp-Red;
- ICC-01/14-01/18-100-Conf-Exp-AnxIII;
- ICC-01/14-01/18-101-US-Exp and ICC-01/14-01/18-101-US-Exp-AnxI to ICC-01/14-01/18-101-US-Exp-AnxXIV;
- ICC-01/14-01/18-107-US-Exp and ICC-01/14-01/18-107-US-Exp-Red;
- ICC-01/14-01/18-108-US-Exp;
- ICC-01/14-01/18-114-Conf-Exp and ICC-01/14-01/18-114-Conf-Exp-Red;
- ICC-01/14-01/18-115-Conf-Exp and ICC-01/14-01/18-115-Conf-Exp-AnxI to ICC-01/14-01/18-115-Conf-Exp-AnxIV;
- ICC-01/14-01/18-125-Conf-Exp, ICC-01/14-01/18-125-Conf-Exp-AnxI, ICC-01/14-01/18-125-Conf-Exp-AnxII, ICC-01/14-01/18-125-Conf-Exp-Red, ICC-01/14-01/18-125-Conf-Exp-AnxI-Red and ICC-01/14-01/18-125-Conf-Exp-AnxII-Red;
- ICC-01/14-01/18-134-US-Exp;

- ICC-01/14-01/18-135 and ICC-01/14-01/18-135-US-Exp-AnxI to ICC-01/14-01/18-135-US-Exp-AnxIII;
- ICC-01/14-01/18-136-US-Exp and ICC-01/14-01/18-136-US-Exp-AnxI to ICC-01/14-01/18-136-US-Exp-AnxIII;
- ICC-01/14-01/18-138-Conf-Exp;
- ICC-01/14-01/18-142-US-Exp and ICC-01/14-01/18-142-US-Exp-AnxI;
- ICC-01/14-01/18-146-US-Exp and ICC-01/14-01/18-146-US-Exp-Anx;
- ICC-01/14-01/18-166-Conf-Exp, ICC-01/14-01/18-166-Conf-Exp-Red-AnxI to ICC-01/14-01/18-166-Conf-Exp-Red-AnxV, ICC-01/14-01/18-166-Conf-Exp-Red and ICC-01/14-01/18-166-Conf-AnxI-Exp-Red to ICC-01/14-01/18-166-Conf-AnxV-Exp-Red;
- ICC-01/14-01/18-170-Conf-Exp-AnxA and ICC-01/14-01/18-170-Conf-Exp-AnxB;
- ICC-01/14-01/18-178-Conf-Exp-AnxII and ICC-01/14-01/18-178-Conf-Exp-AnxIII;
- ICC-01/14-01/18-179-Conf-Exp-AnxA and ICC-01/14-01/18-179-Conf-Exp-AnxB;
- ICC-01/14-01/18-186-Conf-Exp-Anx;
- ICC-01/14-01/18-209-Conf-Exp and ICC-01/14-01/18-209-Conf-Exp-AnxA to ICC-01/14-01/18-209-Conf-Exp-AnxJ;
- ICC-01/14-01/18-216-Conf-Exp-Anx;
- ICC-01/14-01/18-217-Conf-Exp, ICC-01/14-01/18-217-Conf-Exp-AnxA and ICC-01/14-01/18-217-Conf-Exp-AnxB;
- ICC-01/14-01/18-218-Conf-Exp-Anx1;
- ICC-01/14-01/18-222-Conf-Exp-Anx1 to ICC-01/14-01/18-222-Conf-Exp-Anx74;
- ICC-01/14-01/18-225-Conf-Exp, ICC-01/14-01/18-225-Conf-Exp-AnxI, ICC-01/14-01/18-225-Conf-Exp-AnxII, ICC-01/14-01/18-225-Conf-Exp-Red and ICC-01/14-01/18-225-Conf-Exp-AnxI-Red;

- ICC-01/14-01/18-228-Conf-Exp and ICC-01/14-01/18-228-Conf-Exp-Red;
- ICC-01/14-01/18-234-Conf-Exp and ICC-01/14-01/18-234-Conf-Exp-Red;
- ICC-01/14-01/18-237-Conf-Exp-AnxA;
- ICC-01/14-01/18-240-Conf-Exp;
- ICC-01/14-01/18-242-Conf-Exp and ICC-01/14-01/18-242-Conf-Exp-AnxA to ICC-01/14-01/18-242-Conf-Exp-AnxC;
- ICC-01/14-01/18-244-Conf-Exp and ICC-01/14-01/18-244-Conf-Exp-AnxA;
- ICC-01/14-01/18-245-Conf-Exp-Anx1 to ICC-01/14-01/18-245-Conf-Exp-Anx161;
- ICC-01/14-01/18-246-US-Exp and ICC-01/14-01/18-246-US-Exp-Anx;
- ICC-01/14-01/18-258-Conf-Exp-Anx1 to ICC-01/14-01/18-258-Conf-Exp-Anx150;
- ICC-01/14-01/18-267-Conf-Exp-AnxA to ICC-01/14-01/18-267-Conf-Exp-AnxO;
- ICC-01/14-01/18-273-Conf-Exp;
- ICC-01/14-01/18-276-Conf-Exp, ICC-01/14-01/18-276-Conf-Exp-Anx and ICC-01/14-01/18-276-Conf-Exp-Red;
- ICC-01/14-01/18-279-Conf-Exp-Anx1 to ICC-01/14-01/18-279-Conf-Exp-Anx301;
- ICC-01/14-01/18-320-Conf-Exp-Anx1 to ICC-01/14-01/18-320-Conf-Exp-Anx387;
- ICC-01/14-01/18-321-Conf-Exp-AnxB;
- ICC-01/14-01/18-326-US-Exp-Anx1 and ICC-01/14-01/18-326-US-Exp-Anx2;
- ICC-01/14-01/18-328-Conf-Exp and ICC-01/14-01/18-328-Conf-Exp-Anx;

- ICC-01/14-01/18-329-Conf-Exp-AnxA, ICC-01/14-01/18-329-Conf-Exp-AnxB and ICC-01/14-01/18-329-Conf-Exp-AnxC;
- ICC-01/14-01/18-337-Conf-Exp; and
- ICC-01/14-01/18-T-003-CONF-EXP-ENG.

20. In addition, the Chamber considers that the Yekatom Defence Request is moot in relation to the following documents:

- ICC-01/14-01/18-14-US-Exp, as a confidential redacted version of this document has been filed;
- ICC-01/14-01/18-26-US-Exp, as a confidential redacted version of this document has been filed;
- ICC-01/14-01/18-119, as this document is classified as public; and
- ICC-01/14-01/18-237-Conf-Exp-AnxB, as this document has been disclosed to the Yekatom Defence by the Prosecutor.

21. The Chamber further finds that, having reviewed the record and the relevant submissions by the Prosecutor, the Ngaissona Defence, the Registry and/or the OPCV, the existing classification of the documents enumerated hereafter may be lifted as the basis for their classification no longer exists. Accordingly, the Chamber grants the Yekatom Defence Request in relation to the following documents and orders the Registry to reclassify them as follows:

- ICC-01/14-01/18-78-Conf-Exp-Anx as confidential;
- ICC-01/14-01/18-133-Conf-Exp-AnxIII as confidential;
- ICC-01/14-01/18-140-US-Exp-AnxIII as confidential;
- ICC-01/14-01/18-164-Conf-Exp as confidential, *ex parte*, only available to the Prosecutor, the Yekatom Defence, the Ngaissona Defence and the Victims and Witnesses Unit;
- ICC-01/14-01/18-207-Conf-Exp as confidential; and
- ICC-01/14-01/18-218-Conf-Exp as confidential.

22. In addition, having reviewed the record and the relevant submissions by the Prosecutor, the Chamber is of the view that, following the application of redactions,

the existing classification of the documents enumerated hereafter may be lifted since the basis for their classification no longer exists. In this regard, the Chamber approves the Prosecutor's Redaction Proposals considering that they are necessary to protect certain information and that they are proportionate to the rights of the Defence. Accordingly, the Chamber grants the Yekatom Defence Request in relation to the following documents and orders the Prosecutor to file redacted versions of these documents in accordance with the Prosecutor's Redaction Proposals and with the classifications specified below:

- ICC-01/14-01/18-28-US-Exp as confidential redacted, *ex parte*, only available to the Prosecutor and the Yekatom Defence; and
- ICC-01/14-01/18-174-Conf-Exp as confidential redacted, *ex parte*, only available to the Prosecutor, the Yekatom Defence, the Ngaïssona Defence and the Victims and Witnesses Unit.

23. Having reviewed the record and the relevant submissions by the Registry, the Chamber is further of the view that, following the application of redactions, the existing classification of the documents enumerated in the ensuing paragraphs may be lifted since the basis for their classification no longer exists. Accordingly, the Chamber grants the Yekatom Defence Request in relation to the following documents and orders the Registry to provide proposals regarding the application of redactions to the following documents and their level of classification:

- ICC-01/14-01/18-38-Conf-Exp; and
- ICC-01/14-01/18-133-Conf-Exp-AnxII.

24. Lastly, having reviewed document ICC-01/14-01/18-173-Conf-Exp and the relevant submissions by the Registry, the Chamber considers that, following the redaction of the final sentence of paragraph 6, the existing classification of this document may be lifted since the basis for its classification no longer exists. Accordingly, the Chamber grants the Yekatom Defence Request in relation to document ICC-01/14-01/18-173-Conf-Exp and orders the Registry to apply the aforementioned redaction and to file that version with the following classification: confidential, redacted, *ex parte*, only available to the Prosecutor, the Yekatom Defence, the Ngaïssona Defence and the Victims and Witnesses Unit.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **GRANTS** the Yekatom Defence Request to the extent specified in the present decision;
- b) **ORDERS** the Registry to reclassify the following documents:
- ICC-01/14-01/18-78-Conf-Exp-Anx as confidential;
 - ICC-01/14-01/18-133-Conf-Exp-AnxIII as confidential;
 - ICC-01/14-01/18-140-US-Exp-AnxIII as confidential;
 - ICC-01/14-01/18-164-Conf-Exp as confidential, *ex parte*, only available to the Prosecutor, the Yekatom Defence, the Ngaissona Defence and the Victims and Witnesses Unit;
 - ICC-01/14-01/18-207-Conf-Exp as confidential; and
 - ICC-01/14-01/18-218-Conf-Exp as confidential.
- c) **ORDERS** the Prosecutor to file redacted versions of the following documents in accordance with the Prosecutor's Redaction Proposals and with the classifications specified hereafter by 17 September 2019, at 16:00 hours, at the latest:
- ICC-01/14-01/18-28-US-Exp, as confidential redacted, *ex parte*, only available to the Prosecutor and the Yekatom Defence; and
 - ICC-01/14-01/18-174-Conf-Exp, as confidential redacted, *ex parte*, only available to the Prosecutor, the Yekatom Defence, the Ngaissona Defence and the Victims and Witnesses Unit;
- d) **ORDERS** the Registry to provide proposals regarding the application of redactions to the following documents and their level of classification by 17 September 2019, at 16:00 hours, at the latest:
- ICC-01/14-01/18-38-Conf-Exp; and
 - ICC-01/14-01/18-133-Conf-Exp-AnxII;

e) **ORDERS** the Registry to file a redacted version of the following document, in accordance with the present decision, by 17 September 2019, at 16:00 hours, at the latest:

- ICC-01/14-01/18-173-Conf-Exp; and

f) **REJECTS** the remainder of the Yekatom Defence Request, as specified in the present decision.

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

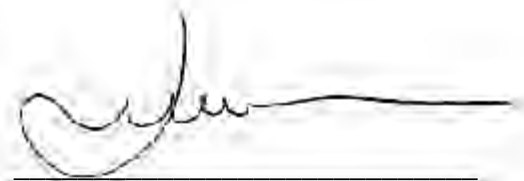


Judge Antoine Kesia-Mbe Mindua

Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Monday, 16 September 2019

At The Hague, The Netherlands