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No. ICC-01/14-01/18

Date: 24 June 2022

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 Renewed 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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Other

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

1. The Chamber recalls the procedural developments in relation to the Office of the Prosecutor’s (the ‘Prosecution’) first request for notice to be given under Regulation 55 of the Regulations (the ‘First Regulation 55 Request’)¹ as set out in its first decision on the matter (the ‘First Regulation 55 Decision’).²
2. On 2 June 2020, the Chamber rejected the First Regulation 55 Request, without prejudice,³ indicating that ‘at this point, it does not appear to the Chamber that the legal characterisation in this case might be subject to change’.⁴
3. On 1 April 2022, the Prosecution filed a new request for the Chamber to provide notice that the facts described in the charges regarding Mr Yekatom’s individual criminal responsibility may be re-characterised to accord with Articles 25(3)(c) and (d) and 28(a) of the Rome Statute (the ‘Statute’), pursuant to Regulation 55(2) of the Regulations (the ‘Request’).⁵ The Prosecution requests that the Chamber consider the factual findings in the Confirmation Decision and the evidence submitted since the beginning of the trial.⁶ According to the Prosecution, the evidence submitted to date, together with evidence still expected to be submitted, supports the possible re-characterisation.⁷

¹ 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 on 1 May 2020, ICC-01/14-01/18-503-Red).

² Decision on the Prosecution’s Application for Notice to be given pursuant to Regulation 55(2) on Mr Yekatom’s Individual Criminal Responsibility, ICC-01/14-01/18-542, paras 1-8.

³ First Regulation 55 Decision, ICC-01/14-01/18-542, para. 16.

⁴ First Regulation 55 Decision, ICC-01/14-01/18-542, para. 14.

⁵ Prosecution’s renewed application for Notice to be Given under Regulation 55(2) on Accused Yekatom’s Individual Criminal Responsibility, ICC-01/14-01/18-1345-Conf (public redacted version notified on 7 April 2022, ICC-01/14-01/18-1345-Red).

⁶ Request, ICC-01/14-01/18-1345-Red, para. 9.

⁷ Request, ICC-01/14-01/18-1345-Red, para. 13.

4. On 14 April 2022, the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes filed a joint response, supporting the Request.⁸
5. On 25 April 2022, the Yekatom Defence asked the Chamber to reject the Request and to find that re-characterisation of the charges under Article 28(a) of the Statute would exceed the facts and circumstances described in the charges (the ‘Yekatom Defence Request’).⁹
6. The Chamber recalls the applicable law as set out in the First Regulation 55 Decision.¹⁰
7. 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.
8. The Chamber further recalls that it is ultimately its prerogative to decide if and when to give notice under Regulation 55 of the Regulations.¹¹
9. Having considered the Request and the above, it does not appear to the Chamber, at this stage, that the legal characterisation of facts may be subject to change. 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.
10. In light of the above, the Chamber also does not consider it necessary to further address the Yekatom Defence Request.

⁸ Common Legal Representatives’ Joint Response to the “Prosecution’s renewed application for Notice to be Given under Regulation 55(2) on Accused Yekatom’s Individual Criminal Responsibility”, ICC-01/14-01/18-1362.

⁹ Yekatom Defence Response to the ‘Prosecution’s renewed application for Notice to be Given under Regulation 55(2) on Accused Yekatom’s Individual Criminal Responsibility’ (ICC-01/14-01/18-1345-Conf), ICC-01/14-01/18-1378, para. 69.

¹⁰ First Regulation 55 Decision, ICC-01/14-01/18-542, paras 9-13.

¹¹ First Regulation 55 Decision, ICC-01/14-01/18-542, para. 16.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 24 June 2022

At The Hague, The Netherlands