

Initial Appearance

(Open Session)

ICC-01/14-01/18

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Yekatom - ICC-01/14-01/18
5 Presiding Judge Antoine Kesia-Mbe Mindua, Judge Tomoko Akane and
6 Judge Rosario Salvatore Aitala
7 Initial Appearance - Courtroom 1
8 Friday, 23 November 2018
9 (The hearing starts in open session at 11.00 a.m.)
10 THE COURT USHER: [11:00:52] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE MINDUA: [11:01:25] (Interpretation) The hearing is open.
14 Ladies and gentlemen, good morning. I would like to wish all of you welcome, but
15 before I begin, I would like to recall that the Chamber has authorised the presence of
16 photographers in the courtroom so that they should take photographs for the first one
17 and a half minutes of the hearing.
18 So I will call on the court officer to invite in the photographers.
19 Thank you very much. You can now leave the courtroom.
20 Without further ado, I would like to ask the court officer to call the case.
21 Court officer, please.
22 THE COURT OFFICER: [11:03:17] Good morning, Mr President, your Honours.
23 The situation in the Central African Republic II, in the case of The Prosecutor versus
24 Alfred Yekatom, case reference ICC-01/14-01/18.
25 And for the record, we're in open session.

1 PRESIDING JUDGE MINDUA: [11:03:34] (Interpretation) Thank you very much,
2 court officer.

3 I would like to ask the parties to introduce themselves, beginning with the Office of
4 the Prosecutor. But before that, I would like to ask everyone to speak slowly and to
5 observe pauses before answering questions so as to enable the interpreters to do their
6 job properly.

7 I would like to ask you, Madam Prosecutor, to introduce yourself and the members of
8 your team.

9 MS BENSOUA: [11:04:20] Honourable Judges, the Office of the Prosecutor is
10 represented today by Mr James Stewart, Deputy Prosecutor; Mr Kweku Vanderpuye,
11 senior trial lawyer; Ms Olivia Struyven, trial lawyer; Mr Eric Iverson, trial lawyer;
12 Mr George Mugwanya, appeals counsel; Mr Yassin Mostfa, case manager; and myself
13 Fatou Bensouda, Prosecutor.

14 PRESIDING JUDGE MINDUA: [11:04:54] (Interpretation) Thank you very much,
15 Madam Prosecutor.

16 I will now turn to the Defence counsel. I would like to ask the representative of the
17 Office of Public Defence to introduce themselves. I would ask you to allow your
18 client to introduce himself later on.

19 You have the floor, Counsel.

20 MR KEÏTA: [11:05:28] (Interpretation) Thank you, Mr President, your Honours.

21 For the Defence of Mr Yekatom, I would like to introduce Ms Marie O'Leary, counsel
22 and who will serve as co-counsel alongside myself today. There is also
23 Ms Vedrana Residovic, who is the case manager.

24 And I would like to note for the purposes of courtesy the presence of my learned
25 colleague, Maître Bourgon, who is here present and who my client has considered as

1 a possible counsel for him later on. The office and myself considered that out of
2 courtesy we should not oppose his presence because he might eventually be our
3 common client.

4 Myself, I am Xavier-Jean Keïta, lead counsel, and I was appointed by your Chamber
5 to replace Mr Morouba on 2 November 2018.

6 PRESIDING JUDGE MINDUA: [11:07:07] (Interpretation) Thank you, Mr Keïta.

7 I can see that the Registrar, Mr Lewis, is in the court.

8 Can I ask you, Mr Registrar, please to introduce yourself as well as the members of
9 your team.

10 MR LEWIS: [11:07:23] Thank you, Mr President, your Honours. The Registry is
11 represented by, on my right, Anne Aurore Bertrand, external relations and
12 cooperation officer; and on my left, Elisabeth Boulard Smith, associate external
13 relations and cooperation officer; and myself, Peter Lewis, the Registrar. Thank you.

14 PRESIDING JUDGE MINDUA: [11:07:48] (Interpretation) Thank you very much,
15 Mr Registrar.

16 Now I would like to address myself to Mr Yekatom and ask him to introduce himself.
17 Please stand up, Mr Yekatom, and I will now call on you to state your name as well as
18 your date and place of birth, please.

19 MR YEKATOM: [11:08:32] (Interpretation) Thank you. I shall speak in Sango. My
20 name is Yekatom Rambo Alfred. I was born on 23 January 1975 at the general
21 hospital in Bangui.

22 PRESIDING JUDGE MINDUA: [11:08:53] (Interpretation) Thank you very much,
23 Mr Yekatom. You can take your seat.

24 Lastly, I would like to introduce myself as well as my colleagues. My name is
25 Antoine Mbe-Kesia Mindua and I am the President of Pre-Trial Chamber II of this

1 Court. To my right is Judge Tomoko Akane and on my left there is Judge Rosario
2 Salvatore Aitala.
3 I believe that it is useful to clarify the nature and scope of this hearing. It is crucial to
4 recall that today we are not dealing with a trial or a confirmation of charges hearing.
5 There will be no evidence adduced or presented. And furthermore, there will not be
6 any questions relating to the guilt or innocence of Mr Yekatom.
7 That said, the scope of this initial appearance shall be limited to three issues pursuant
8 to Article 61 of the Rome Statute and to Rule 121(1) of the Rules of Procedure and
9 Evidence which define the subject of the instant hearing as follows.
10 I am observing a pause myself so as to facilitate the work of the interpreters.
11 Firstly, the Chamber shall satisfy itself that the person who is the subject of the arrest
12 warrant has been informed of the crimes which he or she is alleged to have
13 committed.
14 Secondly, the Chamber shall satisfy itself that the person has been informed of his or
15 her rights under the Statute.
16 Lastly, the Chamber shall set the date on which it intends to hold a hearing to confirm
17 the charges.
18 Accordingly, I will now deal in a consecutive manner with the three issues that
19 constitute the subject of the hearing of today.
20 To begin with, I would like to confirm, as required under Article 60 of the Rome
21 Statute, if you have indeed been informed of the crimes charged against you,
22 Mr Alfred Yekatom.
23 Mr Yekatom, please.
24 MR YEKATOM: [11:12:52] (Interpretation) Thank you, Mr President. I was not
25 told anything. I was in the national assembly and there was a little problem there.

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1 I was arrested there and I was led to the prison of the presidential security. That is
2 where I was taken to be transferred here to the ICC.

3 PRESIDING JUDGE MINDUA: [11:13:32] (Interpretation) Very well. So according
4 to you, you were not informed of the crimes charged against you.

5 Now, would you want that the crimes charged against you in the arrest warrant
6 issued by the Chamber on 11 November be read to you?

7 MR YEKATOM: [11:13:59] (Interpretation) When I arrived on Sunday, I was handed
8 a certain number of documents which I read, but I had not been told anything when
9 I was in my country. It was only here that I received information.

10 PRESIDING JUDGE MINDUA: [11:14:20] (Interpretation) Very well. Thank you.
11 We will try to resolve that.

12 Mr Court Officer, please read out the crimes charged against Mr Yekatom in the arrest
13 warrant.

14 THE COURT OFFICER: [11:14:35] On 11 November 2018, Pre-Trial Chamber II
15 concluded that there are reasonable grounds to believe that Alfred Yekatom, a
16 national of the Central African Republic, born on 23 January 1975, is criminally
17 responsible, pursuant to Articles 25(3)(a), (b) and (c) as well as 28(a) of the Statute for
18 murder, Article 7(1)(a) of the Statute; deportation or forcible transfer of population,
19 Article 7(1)(d) of the Statute; imprisonment or other severe deprivation of physical
20 liberty, Article 7(1)(e) of the Statute; torture, Article 7(1)(f) of the Statute; persecution,
21 Article 7(1)(h) of the Statute; enforced --

22 PRESIDING JUDGE MINDUA: [11:15:49] (Interpretation) I can see Mr Keïta on his
23 feet.

24 You have the floor.

25 MR KEÏTA: [11:15:57] (Interpretation) Thank you, Mr President. My client has

1 considered, can say that it was read to him, so he wanted to point out that that was
2 done only after his arrival at the detention centre in The Hague. Thank you.

3 PRESIDING JUDGE MINDUA: [11:16:18] (Interpretation) Thank you for your
4 cooperation, Maître Keïta.

5 Mr Alfred Yekatom, the Chamber also needs to satisfy itself that you have been
6 informed of all your rights under the Rome Statute and specifically in its Article 67,
7 and I will put that question to you now. Were you indeed informed of those rights,
8 Mr Yekatom?

9 MR YEKATOM: [11:16:54] (Interpretation) Thank you, Mr President. I was given a
10 certain number of documents which I tried to read over with my counsel and that
11 enabled me to familiarise myself with my rights.

12 PRESIDING JUDGE MINDUA: [11:17:12] (Interpretation) Thank you. I know that
13 Mr Keïta is very competent. Nevertheless, I would like to highlight some of those
14 rights which are of crucial importance at this stage of the proceedings.

15 Amongst others, you have the following rights:

16 You have the right to be informed promptly and in detail of the nature, cause and
17 content of the charges in a language which you fully understand and speak.

18 Mr Yekatom, I would like to ask you now to confirm which are the languages that
19 you fully understand and speak. Do you understand and speak French?

20 MR YEKATOM: [11:18:21] (Interpretation) I speak Sango perfectly. On the other
21 hand, my French is not very good.

22 PRESIDING JUDGE MINDUA: [11:18:37] (Interpretation) Very well. Thank you
23 very much.

24 You also have the right to have free of any cost the assistance of a competent
25 interpreter and such translations as are necessary to meet the requirements of fairness.

1 You would have realised that to that effect this hearing is being simultaneously
2 interpreted into Sango. That is correct? Did you know that there was
3 interpretation in Sango?

4 MR YEKATOM: [11:19:20] (Interpretation) Yes, I can understand perfectly the
5 interpretation into Sango.

6 PRESIDING JUDGE MINDUA: [11:19:26] (Interpretation) Thank you. You have
7 the right to have adequate time and facilities for the preparation of your defence and
8 to communicate freely with counsel of your choosing in confidence.

9 You also have the right to remain silent and not to be compelled to testify or to
10 confess guilt.

11 You may also make unsworn statements in your defence.

12 In addition to any other disclosure provided for in the Statute, the Prosecutor shall, as
13 soon as practicable, disclose to you the evidence in her possession or control which
14 she believes shows or tends to show your innocence or to mitigate your guilt or which
15 may affect the credibility of Prosecution evidence.

16 With regard to the confirmation of charges hearing, you may object to the charges,
17 you may challenge the evidence presented by the Prosecutor and you may also
18 present evidence yourself.

19 Lastly, you have the possibility to apply for interim release pending trial.

20 Mr Yekatom, once again, I will address myself to you. Do you have any
21 observations to make relating to the conditions of your transfer to the International
22 Criminal Court or on the conditions of your detention at the headquarters of the
23 Court in The Hague ever since your arrival? Any observations?

24 MR YEKATOM: [11:22:26] (Interpretation) Thank you. I will allow my lawyer to
25 explain to you what happened.

1 PRESIDING JUDGE MINDUA: [11:22:41] (Interpretation) Thank you very much,
2 Mr Yekatom.

3 Mr Keita, I can see you looking towards the Bench. Have you something to add?

4 MR KEITA: [11:22:50] (Interpretation) I would like to say something, but at a later
5 point in the proceedings. I can say from a procedural point of view, Mr President,
6 that the Defence would like that, at the end of this hearing, all the rights of the
7 Defence be suspended as we await for counsel to be chosen and the final choice of the
8 Defence counsel be registered in my office. I don't want this to continue for a long
9 time. I don't want any delay until there is an official recognition and registration of
10 the chosen Defence counsel. Thank you.

11 PRESIDING JUDGE MINDUA: [11:23:46] (Interpretation) Thank you very much,

12 Mr Keita. I think that's a reasonable request and that is how we shall proceed.

13 Thank you, Mr Yekatom, for your reply.

14 Now, convinced that the suspect has been informed of the crimes with which he has
15 been charged and the rights that he enjoys under the Rome Statute, I shall now set the
16 date for the confirmation of charges hearing, this is the third point on our agenda
17 today, in accordance with Rule 121(1) of the Rules of Procedure and Evidence. Of
18 course, I must allow sufficient time for the parties to prepare so that they can
19 participate in an effective manner at the confirmation of charges hearing.

20 In light of previous experience of this Court in this regard, the date chosen for the
21 beginning of the confirmation of charges hearing shall be 30 March 2019.

22 THE INTERPRETER: [11:25:32] Interpreter correction: April, 30 April 2019.

23 (The Chamber confers)

24 PRESIDING JUDGE MINDUA: [11:25:46] (Interpretation) I believe there was a
25 problem with interpretation. I said 30 April 2019.

1 MR KEÏTA: [11:26:00] (Interpretation) Your Honour, with all due respect, I do want
2 to correct one point.

3 The transcript seems to say that his rights be suspended, but I said that they
4 should -- it should be, rather, the time frame that be suspended, not his rights.

5 Thank you.

6 (The Chamber confers)

7 PRESIDING JUDGE MINDUA: [11:26:42] (Interpretation) Counsel, yes, I
8 understood that. But what are you trying to say, you want to talk about the date,
9 30 April?

10 MR KEÏTA: [11:26:53] (Interpretation) No, no, no, I beg your pardon for interrupting.
11 It was not anything that had to do with the date for the confirmation of charges. I
12 wanted to correct one point. I was asking that the rights, the inherent rights of the
13 Defence be suspended awaiting until a permanent counsel is assigned, not that his
14 rights be suspended. That is the nuance I wanted to provide, and I do apologise if
15 I was not clear enough.

16 PRESIDING JUDGE MINDUA: [11:27:32] (Interpretation) Yes, indeed I think it's all
17 been dealt with and the transcript is fine.

18 MR KEÏTA: [11:27:36] (Interpretation) Thank you.

19 PRESIDING JUDGE MINDUA: [11:27:39] (Interpretation) Thank you. Of course
20 this date, 30 April 2019, shall be set by the Chamber and the date may be postponed
21 by the Chamber, depending on the proceedings and how they unfold, for statutory
22 reasons *proprio motu* or at the request of the Prosecution or the Defence.

23 The Chamber shall rule on any written request to this end with grounds any such
24 application made.

25 I would like to add that Rule 121(2) of the Rules of Procedure and Evidence sets out

1 that the Chamber shall hold status conferences so that items of evidence can be
2 disclosed properly.

3 Now at this stage of the proceedings, do the parties have anything to add?

4 First of all, the Prosecution. Madam Prosecutor, have you anything to add?

5 Madam Prosecutor?

6 MS BENSOUA: [11:29:05] Thank you, Mr President. No comments from the
7 Prosecution side.

8 PRESIDING JUDGE MINDUA: [11:29:17] (Interpretation) Thank you very much,
9 Madam Prosecutor.

10 Mr Keïta.

11 MR KEÏTA: [11:29:25] (Interpretation) Thank you. The Defence has no comment.

12 PRESIDING JUDGE MINDUA: [11:29:31] (Interpretation) Thank you very much,
13 Mr Keïta.

14 This concludes the initial appearance hearing in the case The Prosecutor versus
15 Alfred Yekatom.

16 I would like to take this opportunity to thank all the participants here in the
17 courtroom. I thank the interpreters and the court reporters, as well as the security
18 officers.

19 I see Mr Keïta on his feet.

20 Mr Keïta, you may proceed.

21 MR KEÏTA: [11:30:14] (Interpretation) Yes, my client said a few moments ago that he
22 would like his counsel to make a few remarks. And at your discretion may I, may I
23 address the Court on behalf of my client?

24 (The Chamber confers)

25 PRESIDING JUDGE MINDUA: [11:30:37] (Interpretation) Which counsel are you

1 speaking of, yourself or Mr Bourgon?

2 MR KEÏTA: [11:30:46] (Interpretation) I'm speaking of myself. For the time being
3 I am the only counsel who has been designated by the Chamber.

4 PRESIDING JUDGE MINDUA: [11:30:54] (Interpretation) Indeed, you are the
5 designated counsel at this time. Please proceed.

6 MR KEÏTA: [11:31:00] (Interpretation) Thank you, Mr President, your Honours.
7 Just a few words at the request of Mr Yekatom.

8 Mr Yekatom is a member of parliament in his country who enjoys the rights
9 associated with such a position. And he was placed under arrest. The arrest,
10 according to him, was brutal in nature, followed by detention at the presidential
11 detention unit for more than one month because you see he was arrested late in
12 October. He was tortured he says. He was beaten with Kalashnikovs, with the butt
13 of the gun, and he still has visible signs of the beating on his body, and the physician
14 at the detention centre has observed this himself.

15 From a historical perspective, this year we celebrate the 20th year of the Rome Statute,
16 and those who negotiated the Rome Statute had not envisaged that there would be a
17 Pre-Trial Chamber. The French delegation wanted an investigating magistrate and
18 at the beginning of each proceedings the truth would be demonstrated. That request
19 was dismissed and thus during the negotiations it was decided that there would be a
20 Pre-Trial Chamber.

21 Now, I would just like to say that the existence of your Pre-Trial Chamber was a
22 deliberate decision and the Pre-Trial Chamber is the only break, the only hindrance to
23 the power of the Office of the Prosecutor whose task is to investigate both and to
24 consider both incriminating and the exonerating evidence. Thus you are ensuring
25 the safeguards, you are the watchdog, so to speak, and this has been set out in the

1 Rome Statute. You mentioned Article 67 a few moments ago. And if you don't
2 mind, I will quote from Article 55 to 59. Cooperation is provided for with the Court,
3 but above all, the fundamental rights, namely the right not to be detained arbitrarily,
4 not to be tortured, to ensure that one is not mistreated, immediate -- yet my client has
5 told me, and this is the truth as he has stated it so far, ever since the time that he was
6 brutally arrested late in October he has had no access to a judge. Yet the proceedings
7 of the Court, as provided for in the Rome Statute, set out that within the framework of
8 cooperation and later at the time of surrender to the Court that at the time the person
9 is read his rights there is a provision, there is a provision for release, the Pre-Trial
10 Chamber is duly informed and there is the opportunity to make observations about a
11 possible release.

12 Yet nothing of the sort has occurred. This man was transferred brutally in handcuffs,
13 taken to the presidential detention unit. He was not allowed to meet with his lawyer,
14 Mr Morouba. And it was the prosecution in Bangui that strongly opposed his
15 request, even in physical terms. He was transferred to the airport in Bangui and
16 there the authorities of the court were waiting, and because the authorities of the
17 Court were there, you see, the prosecutor in Bangui agreed that my client should have
18 a five-minute interview in the presence of the prosecutor and the security officials of
19 the Court.

20 So for Mr Yekatom, and I am speaking on his behalf, his fundamental rights were
21 violated. And I know that this hearing is not necessarily -- well, you see, you see,
22 Mr President, since you are the safeguard, the ultimate guardian of my client's
23 fundamental rights, which form the foundation, the beauty of this Court, we cannot
24 give any credibility to what we have heard, given the violation of his fundamental
25 rights.

1 PRESIDING JUDGE MINDUA: [11:36:31] (Interpretation) Just a moment.

2 MR KEÏTA: (Interpretation) He arrived Sunday. I am the first lawyer he met on
3 the 21st. He confirmed to me that the documents having to do with his arrest, the
4 warrant of arrest were provided to him only by the ICC, by my colleagues here at the
5 Court. So I am of the view that his transfer and his detention were arbitrary in
6 nature. And of course it is up to you, Mr President, your Honours, to in due course
7 and once my client has his duly chosen counsel, to draw all the appropriate
8 consequences, and this will bring honour to our International Criminal Court.

9 I wanted these points to be said to be on the record with a view to ensuring and
10 preserving the rights of my client. And I thank you for this opportunity to address
11 the Court.

12 PRESIDING JUDGE MINDUA: [11:37:39] (Interpretation) Thank you very much for
13 your remarks. You can see that the Chamber listened to what you had to say very
14 carefully, but of course you have raised a number of very important issues, the rights
15 of the suspect, and we cannot deal with them orally. And if you insist, I believe we
16 need a number of filings. Kindly file your submissions and the Prosecution will be
17 in a position to respond and perhaps also the prosecution from the country in
18 question. But at this stage of the proceedings we cannot discuss these particular
19 issues.

20 We have come to the end of our hearing and once again I thank everyone and thus the
21 hearing is adjourned.

22 THE COURT USHER: [11:38:34] All rise.

23 (The hearing ends in open session at 11.38 a.m.)