



**Original: English**

**No. ICC-01/14-01/18**

**Date of original: 14 November 2018**

**Date: 8 February 2021**

**PRE-TRIAL CHAMBER II**

**Before: Judge Tomoko Akane, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF *THE PROSECUTOR V. ALFRED YEKATOM***

**Public redacted version of**

**Decision on the “Prosecution’s Urgent Request for Redactions to the Warrant  
of Arrest for Alfred YEKATOM (ICC-01/14-01/18-1-US-Exp)”**

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

**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor  
James Stewart, Deputy Prosecutor  
Kweku Vanderpuye

**Counsel for the Defence**

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Thomas Hannis

**Counsel for Patrice-Edouard Ngaïssona**

Geert-Jan Alexander Knoops  
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**Legal Representatives of Victims**

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

**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*

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**REGISTRY**

**Registrar**

Peter Lewis

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**JUDGE TOMOKO AKANE**, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”),<sup>1</sup> of the International Criminal Court (the “Court”) renders this decision on the “Prosecution’s Urgent Request for Redactions to the Warrant of Arrest for Alfred YEKATOM (ICC-01/14-01/18-1-US-Exp)” (the “Application”).<sup>2</sup>

1. On 11 November 2018, the Chamber issued a warrant of arrest for Alfred Yekatom (“Yekatom”) for his alleged criminal responsibility pursuant to articles 25(3)(a), (b) and (c), as well as 28(a) of the Rome Statute (the “Statute”), for crimes against humanity and war crimes committed in various locations in the Central African Republic (the “CAR”), between 5 December 2013 and August 2014.<sup>3</sup>

2. On 13 November 2018, the Prosecutor filed the Application requesting the Chamber to apply a number of redactions to the warrant of arrest to be served on Yekatom.<sup>4</sup> The Prosecutor argues that the redactions are necessary and justifiable in order to (i) protect (potential) witnesses; (ii) [REDACTED]; and (iii) protect the Prosecutor’s investigative methods and preserve her ability to secure evidence.<sup>5</sup> The Prosecutor submits to have received information that Yekatom has made use of a mobile phone [REDACTED] and affirms that nothing guarantees that he will not disseminate sensitive information contained in the warrant of arrest before he is surrendered and transferred to the Court.<sup>6</sup> Finally, the Prosecutor advances that the redactions would cause no prejudice to Yekatom.<sup>7</sup>

3. The Single Judge notes articles 58, 60(1), 67(1)(a) and 68(1) of the Statute and rule 121(1), second sentence, of the Rules of Procedure and Evidence (the “Rules”). The Single Judge underlines that every person enjoys the fundamental right to liberty and the right to be informed, fully and immediately, of the legal and factual reasons on which a judicial decision of deprivation of liberty is grounded. This right to be informed promptly and in detail of the nature, cause and content of an accusation is enshrined in

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<sup>1</sup> Pre-Trial Chamber II, Decision designating a Single Judge, 9 November 2018, ICC-01/14-23-US-Exp.

<sup>2</sup> ICC-01/14-01/18-5-US-Exp.

<sup>3</sup> Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 11 November 2018, ICC-01/14-01/18-1-US-Exp.

<sup>4</sup> Application, ICC-01/14-01/18-5-US-Exp.

<sup>5</sup> Application, ICC-01/14-01/18-5-US-Exp, paras 2, 7-9 and 18.

<sup>6</sup> Application, ICC-01/14-01/18-5-US-Exp, paras 9-13.

<sup>7</sup> Application, ICC-01/14-01/18-5-US-Exp, paras 3 and 16.

the Statute in article 67(1)(a) and is enjoyed not only by a person who is formally accused, but also by a person who is the subject of a warrant of arrest or summons to appear (rule 121(1) of the Rules), as this person is equally facing an accusation.<sup>8</sup> The same idea is reinforced by article 60(1) of the Statute, which provide that upon a person's surrender to the Court, the Pre-Trial Chamber shall satisfy itself that the person *has been informed* of the crimes which he or she is alleged to have committed.

4. The Single Judge also stresses that provisional detention prior to a conviction is exceptional and must not be arbitrary. As a consequence, the statutory framework of this Court requires that a warrant of arrest be issued only on the grounds specified in article 58 of the Statute, which demands that the Pre-Trial Chamber adopt such a decision explaining transparently the reasons on which it grounds its determination.

5. In light of the above and having reviewed the redactions proposed by the Prosecutor, the Single Judge finds that said redactions would – contrary to the Prosecutor's assertions<sup>9</sup> – prejudice the above mentioned rights of Yekatom, as they concern fundamental elements of the warrant of arrest, such as the names of the persons to whom Yekatom allegedly reported and the description of one of the main accusations made against him. Moreover, the Single Judge believes that the proposed redactions would not serve the objectives purported by the Prosecutor: for example in paragraph 18 (c) of the warrant of arrest in relation to which it is requested to delete the core of the accusation, and keep the sentence “[REDACTED]”, an approach which would anyhow reveal the name of the person whose whereabouts are unknown and the existence of [REDACTED].

6. That said, the Single Judge also heeds to article 68(1), first sentence, of the Statute that obliges also the Chamber to take all “appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”. Considering the generic and speculative information provided in the Application, the Single Judge is not persuaded that there exists an objectively identifiable risk that potential witnesses will be endangered, given that Yekatom or his counsel will not have

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<sup>8</sup> See in this regard article 6(3)(a) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, UNTS vol. 213, p. 221; article 14(3)(a) of the International Covenant on Civil and Political Rights, UNTS vol. 999, p. 171; article 8(2)(b) of the American Convention on Human Rights, UNTS vol. 1144, p. 123.

<sup>9</sup> Application, ICC-01/14-01/18-5-US-Exp, para. 16.

access at this stage to the evidence nor to the Prosecutor's application for the warrant of arrest. In addition, the Single Judge recalls that great caution has been applied in the wording of the warrant of arrest so as to avoid that the risks alleged by the Prosecutor materialise.

7. The Single Judge is further of the view that the information given by the Prosecutor with regard to the fact that Yekatom has had access to and made use of a mobile phone is not further substantiated and is therefore insufficient to justify the measures requested by the Prosecutor, which would significantly curtail the person's fundamental rights.<sup>10</sup> Moreover, the Prosecutor's argument that the redactions are necessary as [REDACTED] Yekatom from passing on sensitive information contained in the warrant of arrest to other persons, before his surrender and transfer to the Court, is purely speculative.<sup>11</sup> In addition, the Single Judge recalls that the Chamber has requested the CAR authorities [REDACTED].<sup>12</sup>

8. Finally, the Single Judge recalls that when the Chamber issued the warrant of arrest for Yekatom it has also ordered that, when transmitting the request for arrest and surrender to the relevant national authorities of the CAR, the Registrar request them, in accordance with articles 93(1) and 99(1) of the Statute, to restrict, as far as possible under their national law, the contacts of Yekatom while detained on their territory, pending his surrender to the Court.<sup>13</sup> The Single Judge considers that it is for the Registry to communicate to the CAR authorities the concerns expressed by the Prosecutor in the Application and request their cooperation reminding them of the importance to restrict the communications of Yekatom with other persons, except his counsel, after the warrant of arrest issued by the Chamber has been notified to him. Further restrictions of Yekatom's communications will be entertained once the suspect is at the seat of the Court.

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<sup>10</sup> Application, ICC-01/14-01/18-5-US-Exp, para. 9.

<sup>11</sup> Application, ICC-01/14-01/18-5-US-Exp, para. 11.

<sup>12</sup> Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 11 November 2018, ICC-01/14-01/18-1-US-Exp, para. 25.

<sup>13</sup> Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 11 November 2018, ICC-01/14-01/18-1-US-Exp, pp. 23-24.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

- a) **REJECTS** the Application; and
- b) **INSTRUCTS** the Registrar to communicate to the relevant authorities of the Central African Republic concerns expressed by the Prosecutor in the Application and to request their cooperation reminding them of the importance to restrict the communications of Yekatom with other persons, except his counsel, after the warrant of arrest issued by the Chamber has been notified to him.

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

**/Signed/**

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**Judge Tomoko Akane, Single Judge**

Dated 8 February 2021

At The Hague, The Netherlands