

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 20 May 2020

**PRE-TRIAL CHAMBER II**

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF  
*PROSECUTOR v. ALFRED YEKATOM***

**Public Redacted**

**with**

**Under Seal, *EX PARTE*, only available to the Prosecution, Annex A**

**Public Redacted version of “Prosecution’s Urgent Request for Redactions to the Warrant of Arrest for Alfred YEKATOM (ICC-01/14-01/18-1-US-Exp)”, 13 November 2018, ICC-01/14-01/18-5-US-Exp**

**Source: Office of the Prosecutor**

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

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**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Detention Section**

**Victims Participation and Reparations  
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## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Pre-Trial Chamber II (“Chamber”) to apply specific redactions (“Proposed Redactions”) to the Warrant of Arrest intended to be served on **Alfred YEKATOM** (“YEKATOM”).<sup>1</sup>

2. The Proposed Redactions are justified and legitimately protect against three important risks: (i) exposing the identities of prospective witnesses cooperating with the Prosecution’s continuing investigation; (ii) [REDACTED]; and (iii) compromising the Prosecution’s investigative methods and ability to secure evidence, [REDACTED].

3. The Proposed Redactions do not prejudice **YEKATOM**. They do not prevent his understanding of the basis for the Arrest Warrant, nor of its operative language. Moreover, the Proposed Redactions do not preclude his ability to contest his arrest before CAR authorities, as article 59 of the Statute foresees.

4. The Proposed Redactions and further explanations are set out in the annex A to this filing. Each of the proposed redactions falls into one of the above identified categories.

## II. CONFIDENTIALITY

5. This request is filed under seal and *ex parte*, pursuant to regulation 23bis(1) of the Regulations of the Court, as it relates to the Application for Warrants of Arrest filed with the same status.<sup>2</sup>

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<sup>1</sup> ICC-01/14-01/18-1-US-Exp (“Arrest Warrant”).

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

### III. SUBMISSIONS

#### A. The Proposed Redactions are necessary and justifiable

6. The form of the Arrest Warrant necessitates the Proposed Redactions. The Court's practice has generally been to reserve substantive detail concerning the findings supporting an arrest for decisions on applications for warrants, rather than provide them in the arrest warrants themselves. However, in collapsing this distinction, the Arrest Warrant risks divulging sensitive information which presents a concrete risk to the security and protection of witnesses, in addition to the two other significant risks noted above.

##### (i) **YEKATOM may act on the sensitive information provided in the Arrest Warrant**

7. In its current form, the Arrest Warrant places in the hands of a dangerous Suspect, information that can be used to interfere with, or harm witnesses, the ongoing investigation against him [REDACTED], and the prospects of securing and preserving relevant evidence.

8. The precise modalities of the execution of the Arrest Warrant are still unknown to the Prosecution. However, what is clear is that **YEKATOM** may be in a position to inform others of the Arrest Warrant's contents before his transfer to the seat of the Court. Further, given the nature of the arrest charges, he has every incentive to do so.

9. The Prosecution has received information indicating that, while in custody, **YEKATOM** has had access to and made use of a mobile phone. He also communicates and has access to other detainees at his place of detention.

Further, information suggests that an attempt was made to arrange his escape from detention. [REDACTED].<sup>3</sup>

**(ii) CAR authorities cannot guarantee YEKATOM's inability to disseminate or act on the information in the Arrest Warrant while in their custody**

10. It is anticipated that a regular judicial process will be followed concerning the execution of the Arrest Warrant. Before **YEKATOM** comes under the Court's control, the CAR authorities will serve the Arrest Warrant on him. He will have an opportunity to read and digest its contents and to receive assistance from a lawyer (who will do the same), in the context of advising him regarding his surrender and transfer to ICC custody. This will all occur while **YEKATOM** is in the CAR authorities' exclusive custody.

11. Nothing guarantees that **YEKATOM**'s access to a mobile phone would be restricted or other measures put in place to prevent his conveying information received through service of the Arrest Warrant either directly or indirectly. Rather, the Prosecution assesses that there is a high risk of **YEKATOM**'s continued access to such or similar means (whether or not illicit in detention in CAR). Similarly, the risk that he would be able to otherwise pass on sensitive information contained in the Arrest Warrant before his surrender and transfer is substantial. On the information available to the Prosecution, the capacity of the CAR authorities to restrict or prevent this is at best uncertain.

12. Further, it is unclear how long **YEKATOM** might be in CAR custody following service of the Arrest Warrant and before his transfer to the Court. However, what is clear is that the longer he remains beyond the immediate control of this Court, the greater the risks.

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<sup>3</sup> [REDACTED].

13. This is underscored by the Chamber's recognition that there are reasonable grounds to believe that **YEKATOM's** behaviour demonstrates a propensity to resort to violence, and that his influence and support in CAR could allow him to influence or harm potential witnesses.<sup>4</sup> Providing **YEKATOM** with sensitive information where the Court has no control over his capacity to disseminate or act on it only heightens the risks.

**B. The Proposed Redactions are narrowly tailored and mitigate the risks presented without causing undue prejudice**

14. This Request attempts to gauge the risks inherent in providing **YEKATOM** with sensitive information in an environment where control measures are difficult to predict, but have been lacking.

15. The Prosecution has thus limited the Proposed Redactions to the three issues set out in the annex to this Request and indicated as follows: (1) protecting witnesses and preventing **YEKATOM** from being able to determine their identities (highlighted in RED); (2) [REDACTED]; and (3) [REDACTED].

16. None of these measures cause prejudice to **YEKATOM's** right to be informed of the basis of his arrest. No operative language is proposed for redaction. And, the temporary redaction of non-operative language is limited and necessary to ensure that the interests of prospective victims and witnesses are fully safeguarded, as well as the Prosecution's legitimate interests in preserving evidence, [REDACTED].

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<sup>4</sup> ICC-01/14-01/18-1-US-Exp, para. 22.

17. As highlighted in the [REDACTED],<sup>5</sup> this situation is exacerbated by the volatile and dangerous security conditions in CAR. The risks posed to prospective witnesses are grave and the Prosecution, [REDACTED], and the general incapacity of the situation country adequately to address these interests.

18. The information in the Arrest Warrant jeopardises witness security. [REDACTED]. This could allow **YEKATOM** to more effectively undermine the witnesses and evidence collection efforts against him and, [REDACTED].

19. To the extent possible, the Prosecution considers that the Chamber should consult and consider VWU's views inasmuch as the concerns raised by the Prosecution, especially regarding the security and safety of witnesses under article 68, which is "[...] a responsibility of the Court as a whole."<sup>6</sup>

#### IV. CONCLUSION

20. On the above, the Prosecution requests the Chamber to grant the Prosecution's request for redactions to the Warrant of Arrest for **YEKATOM**.



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Fatou Bensouda, Prosecutor

Dated this 20<sup>th</sup> day of May 2020  
At The Hague, The Netherlands.

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<sup>5</sup> [REDACTED].

<sup>6</sup> *Prosecutor v. Katanga & Ngudjolo*, Judgment on Preventive Relocation, ICC-01/04-01/07-776 OA7, 26 November 2008, para. 101.