

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 17 December 2018

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***

Confidential Redacted Document

Confidential Redacted version of "Prosecution's submission regarding the extension of contact restrictions concerning Alfred YEKATOM's pre-trial detention", 3 December 2018, ICC-01/14-01/18-24-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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Counsel for the Defence
Mr Stéphane Bourgon

**Legal Representatives of the
Victims**

**Legal Representatives of the
Applicants**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for
the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") defers to the Pre-Trial Chamber ("Chamber") on the potential extension of the contact restrictions imposed on Alfred Yekatom ("YEKATOM") concerning the conditions of his pre-trial detention, as set out in the Chamber's 17 November 2018 Decision pursuant to regulation 101 of the Regulations of the Court.¹

2. The Chamber is best placed to balance the substantial competing interests and risks at stake because it is seized of information the Prosecution does not have, namely: (1) the extent to which the contact restriction Order has been properly implemented to date; and (2) whether YEKATOM has complied with all of the applicable conditions.² Both circumstances are important to a reasonable determination of the propriety of extending or modifying the Order.

3. The Prosecution stands ready to assist the Chamber upon receiving information concerning these matters. Should new information emerge, the Prosecution may seek to make further submissions.

II. CONFIDENTIALITY

4. This Submission is filed *Under Seal* and *Ex Parte*, pursuant to regulation 23bis(1) of the Regulations of the Court, as it relates to filings of the same designation. A public version of the Submission will be filed as soon as practicable.

¹ ICC-01/14-01/18-11-Conf-Exp, p. 6 ("Order").

² ICC-01/14-01/18-11-Conf-Exp, paras. 6-9.

III. SUBMISSIONS

A. The information available to the Prosecution is not complete

5. The circumstances justifying the imposition of the contact restrictions, as set out in the Prosecution's Application for Warrants of Arrest³ and subsequent filings,⁴ have not substantially changed. The risks to the continued investigation, [REDACTED], and witness security issues remain, as do the reasons previously articulated.

6. However, whether the existing contact restrictions, in particular the active monitoring of communications, remain responsive to these identified risks can only be assessed on the basis of certain information of which the Prosecution is not disposed.

7. *First*, the Prosecution has not been apprised of the extent of the Registry's implementation of the contact restriction Order. No report has yet been made available.

8. *Second*, the Prosecution is not otherwise aware of whether YEKATOM has abided by the salient terms and conditions imposed per the Order.

9. In the absence of this important information, the Prosecution considers that the Chamber is better placed to determine whether the continuation of the contact restrictions currently in place reasonably and fairly attend to the substantial risks and competing interests in the case.

³ ICC-01/14-01/18-2-US-Exp, para. 357; *see e.g.* ICC-01/14-01/18-5-US-Exp and ICC-01/14-27-US-Exp.

⁴ *See e.g.* ICC-01/14-01/18-5-US-Exp, paras. 9, 12, 17; ICC-01/14-01/18-9-US-Exp, paras. 8-9.

B. Any modification of the restrictions should rest on a full assessment of YEKATOM's compliance with the Order

10. Any determination the Chamber may make modifying its Order at this relatively early stage should be based on: (1) whether there has been any change in circumstances since the Order was issued; (2) consultation with the Victims and Witnesses Unit regarding any attendant risks to witness security [REDACTED]; (3) the Registrar's Report on the implementation of the Order;⁵ and (4) the Registry's inspection and/or Chamber's review of YEKATOM's actively and passively monitored communications, including the content thereof. The latter would particularly inform the Chamber of whether YEKATOM has breached or attempted to breach any salient condition of the Order, which is highly relevant to the Chamber's determination on the propriety of extending its terms and conditions. To this end, the Prosecution would request a copy of any such report or evaluation of the communications by the Registry.

11. If the Chamber decides to modify the Order in any respect, the Prosecution reserves the right to request the re-imposition or modification of contact restrictions as appropriate, should information come to light that was neither before the Chamber nor known to the Prosecution when the decision was made, and/or should there be a change in circumstances affecting the risk level to witnesses.

⁵ ICC-01/14-01/18-11-Conf-Exp, p. 6.

IV. CONCLUSION

12. For the foregoing reasons, the Prosecution defers to the Chamber regarding the determination on the extension of contact restrictions imposed on YEKATOM in respect of his conditions of pre-trial detention.



Fatou Bensouda, Prosecutor

Dated this 17th day of December 2018

At The Hague, The Netherlands