

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/14-01/18**
Date: **27 December 2018**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

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

**Confidential, *EX PARTE*, only available to the Prosecution and Defence
with**

Under Seal, *EX PARTE*, only available to the Prosecution, Annexes A and B

**Prosecution's Request that the Chamber Extend the Contact Restrictions Imposed in
the "Second Decision Pursuant to Regulation 101 of the Regulations of the Court"
(ICC-01/14-01/18-25-Conf-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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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests that Pre-Trial Chamber II ("Chamber") extend the contact restrictions imposed on Alfred YEKATOM beyond 11 January 2019 ("Request")¹ in accordance with regulation 101(2) of the Regulations of the Court ("Regulations"). The contact restrictions remain justified to protect prospective victims, witnesses, and the ongoing investigation. YEKATOM's purported compliance for just over a month since his transfer to the Court does not mitigate the serious risks of lifting them at this early stage of the proceedings.

II. CONFIDENTIALITY

2. The Request is filed "confidential, *EX PARTE*, only available to the Prosecution and Defence" as it concerns decisions and filings with the same classification. The Prosecution will file a public redacted version once these filings and decisions are re-classified.

3. Annexes A and B are filed "under seal, *EX PARTE*, only available to the Prosecution" as they relate to matters concerning Prosecution witnesses which if disclosed could put them at serious risk of harm.

III. SUBMISSIONS

A. The Contact Restrictions are Necessary to Protect Witnesses, Victims, and the Ongoing Investigation

4. The circumstances justifying the imposition of contact restrictions, as identified in the Prosecution's Application for Warrants of Arrest² and other filings³ and the

¹ See ICC-01/14-01/18-25-Conf-Exp.

² See ICC-01/14-01/18-2-US-Exp, para. 357.

³ 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; ICC-01/14-27-US-Exp, para. 19.

Chamber's prior decisions,⁴ have not changed. YEKATOM's contact restrictions remain necessary to protect witnesses, victims, and the ongoing investigation.

5. YEKATOM's prior behaviour should not be disregarded now that he is in ICC custody. He is a continuing danger. His alleged conduct in respect of this case and later acts demonstrate that he is prone to violence.⁵ Further, the wide support that he continues to draw among the Anti-Balaka leadership in the Central African Republic ("CAR") underscores his influence and power to affect the security situation in the country.

6. Over the past few weeks, the Anti-Balaka leadership has expressed support for YEKATOM and threatened violence because of his rendition to the ICC. On 14 December 2018, the Anti-Balaka National Coordination threatened withdrawal from any process to bring peace and security to the country if NGAISSONA and YEKATOM are not returned to CAR.⁶ General Coordinator Maxime Mokom issued a press communique to that effect: announcing the Anti-Balaka's withdrawal from the CAR government, the committee on demobilisation, disarmament, and reintegration ("DDRR"), and the African Union coordinated peace initiatives; demanding also that Anti-Balaka representatives in the DDRR advisory committee step down immediately.⁷

7. There remain salient risks to victims and prospective witnesses in this case. Many continue to reside in CAR and are exposed to the fragile security situation

⁴ See ICC-01/14-01/18-25-Conf-Exp, para. 8; ICC-01/14-01/18-11-Conf-Exp, para. 5; ICC-01/14-01/18-1-Red, para. 22.

⁵ See ICC-01/14-01/18-1-US-Exp, paras. 18, 22; ICC-01/14-01/18-2-US-Exp, para. 349; ICC-01/14-22-US-Exp, para. 6; CAR-OTP-2074-3244; CAR-OTP-2074-3252. See also RFI, [RCA: coups de feu à l'Assemblée lors de l'élection du nouveau président](#), 29 October 2018 [last accessed 27 December 2018].

⁶ Radio Ndeke Luka, [RCA: Le mouvement Antibalaka aile Mokom exige le transfert de Ngaïssona et Yékatom à la CPS](#), 15 December 2018 [last accessed 27 December 2018].

⁷ Afrique News Info, [Centrafrique: Le mouvement Antibalaka aile Mokom exige le transfert de Ngaïssona et Yékatom à la CPS](#), 15 December 2018 (containing press release from Mokom noting as such) [last accessed 27 December 2018].

there, heightened by recent Anti-Balaka activities and threats⁸ directed against the ongoing proceedings. *Ex parte*, under seal, annexes A and B provide further details concerning security risks currently facing potential witnesses and victims, including the vulnerability of potential Prosecution witnesses.

8. Contrary to the Defence's arguments,⁹ YEKATOM's retention of "strong influence over his (former and current) Anti-Balaka subordinates [...] which could allow him to reach, intimidate or harm (potential) witnesses, their families, or other individuals cooperating with the Court" is highly relevant to the Chamber's determination on the continuation of contact restrictions. Likewise, the deteriorating security situation in CAR, heightened Anti-Balaka rhetoric and threats, vulnerability of witnesses and victims, and YEKATOM's influence among the Anti-Balaka leadership implicates the very interests that the contact restrictions contemplate.

B. YEKATOM's Compliance with his Terms of Detention Does not Mitigate the Need for Contact Restrictions

9. YEKATOM's purported compliance with the conditions of his detention does not mitigate any of the above-mentioned risks. Nor does it require terminating the active monitoring of non-privileged calls.¹⁰ All prisoners are legitimately expected to comply with the terms of their detention, including limitations as to the nature and content of their contacts with others.¹¹ Even if *arguendo* YEKATOM's behaviour has accorded with the terms and conditions of his detention, this does not alter the prevailing security situation in CAR, the vulnerability of witnesses and victims, his demonstrated propensity for violence, or his influence among the Anti-Balaka leadership now active in the country.

⁸ ICC-01/14-01/18-40-Conf, pp. 5-6.

⁹ ICC-01/14-01/18-37-Conf-Exp, para. 34.

¹⁰ *Contra* ICC-01/14-01/18-37-Conf-Exp, para. 51.

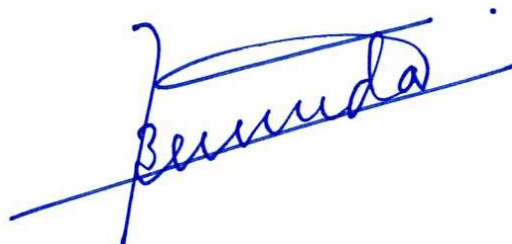
¹¹ *See e.g.* ICC-01/05-01/13-2085-Red, para. 108.

10. YEKATOM'S ostensible compliance with the contact restrictions demonstrates only that he has not circumvented them, not that they are unwarranted; it shows only that the risks have not been realised — not that they no longer exist.

11. Indeed, the circumstances justifying the imposition of YEKATOM's contact restrictions in detention have not changed. If anything, the recent Anti-Balaka activities conducted on his behalf have made them worse and further underscore their necessity.

IV. RELIEF SOUGHT

12. For the above reasons, the Prosecution requests continuation of contact restrictions without modification beyond 11 January 2019.



Fatou Bensouda, Prosecutor

Dated this 27th day of December 2018
At The Hague, The Netherlands