

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 28 January 2019

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**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, Annex A

**Prosecution's Response to the "Third Decision Pursuant to Regulation 101 of the
Regulations of the Court"
(ICC-01/14-01/18-52-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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Detention Section

**Victims Participation and Reparations
Section**

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 1 February 2019¹ ("Request") in accordance with regulation 101(2) of the Regulations of the Court ("Regulations"). These restrictions remain justified to protect potential witnesses, victims, and the ongoing investigation and should remain in place for an additional 30-day period, pending the Chamber's review. The necessity of continued contact restrictions is emphasised by an incident of YEKATOM's non-compliance with the current contact restrictions reported by the Registry in its "Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II".²

II. CONFIDENTIALITY

2. This 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 reclassified.

3. Annex A is filed "under seal, *EX PARTE*, only available to the Prosecution" as it relates to a Prosecution source who, if disclosed, could be placed at serious risk of harm.

III. SUBMISSIONS

A. The current contact restrictions fairly balance the Suspect's rights and the Court's duty to protect witnesses and victims

¹ ICC-01/14-01/18-52-Conf-Exp.

² ICC-01/14-01/18-62-Conf-Red.

4. The current contact restrictions on YEKATOM remain necessary to protect ongoing investigations pursuant to regulation 101(2)(b), and to protect (potential) witnesses and victims pursuant to regulation 101(2)(c) and (f). The circumstances justifying these restrictions, as identified in the Prosecution's Application for the Warrants of Arrest³ and other filings⁴ and the Chamber's prior decisions,⁵ have not changed. These restrictions were imposed because of the existence of "reasonable grounds to believe that contact between YEKATOM and his associates could affect the investigation and the outcome of the proceedings against him".⁶

YEKATOM has a demonstrated propensity for violence, ample supporters and associates in CAR, and a motive to interfere with witnesses

5. YEKATOM has a history of allegedly resorting to acts of violence and disregarding the rule of law, including up to and following his arrest in CAR on 26 October 2018.⁷ His alleged violent conduct spans years. As previously mentioned, YEKATOM was listed in the United Nations Sanctions List on 20 August 2015 for violence-related activities.⁸ In November 2017, YEKATOM reportedly instructed his men to intimidate individuals in Bimbo at gunpoint.⁹ As pointed out in the Prosecution's earlier submission,¹⁰ YEKATOM also allegedly made an attempt to escape detention in CAR before his transfer to The Hague.¹¹ His conduct demonstrates YEKATOM's propensity to commit violence, and to circumvent justice.

³ ICC-01/14-01/18-2-US-Exp, para. 357.

⁴ 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; ICC-01/14-2744-Conf-Exp.

⁵ ICC-01/14-01/18-1-Red, para. 22; ICC-01/14-01/18-11-Conf-Exp, para. 5; ICC-01/14-01/18-25-Conf-Exp, para. 8; ICC-01/14-01/18-52-Conf-Exp.

⁶ ICC-01/14-01/18-11-Conf-Exp, para. 5; ICC-01/14-01/18-52-Conf-Exp, para. 15.

⁷ ICC-01/14-22-US-Exp, para. 6.

⁸ ICC-01/14-01/18-1-Red, para. 22; CAR-OTP-2015-0782, at 0782; CAR-OTP-2074-3246, at 3247.

⁹ CAR-OTP-2088-0747.

¹⁰ ICC-01/14-01/18-5-US-Red, para. 9.

¹¹ See Annex A.

6. This threat is amplified by the fact that YEKATOM “retains strong influence over his (former and current) Anti-Balaka subordinates, in particular in Lobaye Prefecture, which could allow him to reach, intimidate, or harm (potential) witnesses, their families or other individuals cooperating with the Court”.¹² Not only does YEKATOM have authority over his Anti-Balaka group, he is also supported by the Anti-Balaka leadership who threatened violence over his transfer to the ICC.¹³ Once contact restrictions are lifted, YEKATOM easily has access to a wide network of supporters and associates, increasing the risk of collusion and the risk of tampering with witnesses. In this regard, it is important to note that the identities of Prosecution witnesses will soon become available to YEKATOM through the disclosure process, further increasing the risk of interference with these individuals.

7. In addition, the unstable security situation in CAR remains another significant factor to take into consideration, because it has a direct impact on the ability of YEKATOM’s supporters to interfere with or intimidate (potential) witnesses and victims. The Anti-Balaka still control significant territory in CAR,¹⁴ facilitating their access to Prosecution witnesses, many of whom still reside in the country.

8. Finally, YEKATOM has every motive to interfere with witnesses and the Prosecution’s investigation. YEKATOM is charged with serious crimes. He potentially faces a lengthy term of imprisonment. His reputation in CAR, potential political ambitions, and economic prospects are related to the disposition of this case.

The current contact restrictions are not unduly burdensome

9. The current contact restrictions do not unduly burden YEKATOM. YEKATOM is at liberty to communicate with his family and others. Pursuant to the Chamber’s

¹² ICC-01/14-01/18-1-Red, para. 22; CAR-OTP-2051-0393, at 0400; CAR-OTP-2051-0372, at 0373.

¹³ ICC-01/14-01/18-44-Conf-Exp, para. 6; ICC-01/14-01/18-63-Conf-Exp, para. 7.

¹⁴ ICC-01/14-01/18-1-US-Exp, para. 22; ICC-01/14-01/18-11-Conf-Exp, para. 5; CAR-OTP-2084-1827.

decision he can communicate by telephone with a limited number of verified individuals, including family members, for up to 60 minutes per week, in French or Sango. Discussions related to the case or the use of obscure or coded language during these telephone conversations are, however, prohibited. These non-privileged calls are subject to active monitoring to ensure that the Chamber's directives are followed.¹⁵

10. YEKATOM is equally able to receive visits from a limited number of individuals, such as family members.¹⁶ Moreover, in its 10 January 2019 Decision, the Chamber permitted YEKATOM to have "private family visits, namely from his wife and children, without any monitoring or the use of 'sensitive listening devices'".¹⁷

YEKATOM has not fully complied with the contact restrictions imposed by the Chamber

11. According to the latest Registry Report,¹⁸ an incident occurred on 10 January 2019 "which may be considered as constituting a violation of the Decision on Restrictions".¹⁹ Contrary to this decision,²⁰ YEKATOM spoke to an individual who is not on his non-privileged contact list during the relevant telephone conversation.²¹ YEKATOM also asked his interlocutor to place the telephone on speaker, which contravenes his current contact restrictions as well "as it cannot be determined who may be listening on the other end".²²

12. The incident mentioned above demonstrates YEKATOM's willingness to violate the Chamber's decision and validates the necessity of continued active

¹⁵ ICC-01/14-01/18-11-Conf-Exp, paras. 6, 8.

¹⁶ ICC-01/14-01/18-11-Conf-Exp, para. 9.

¹⁷ ICC-01/14-01/18-52-Conf-Exp, para. 18.

¹⁸ ICC-01/14-01/18-62-Conf-Red.

¹⁹ ICC-01/14-01/18-62-Conf-Red, para. 10.

²⁰ ICC-01/14-01/18-11-Conf-Exp, para. 6.

²¹ ICC-01/14-01/18-62-Conf-Red, para. 11.

²² ICC-01/14-01/18-62-Conf-Red, para. 11.

monitoring of YEKATOM's contacts. Removing those restrictions would pose the very risks that their imposition was intended to prevent.

13. The most important indicators of what YEKATOM could do once he knows contact restrictions are no longer in force are his prior acts, his influence over persons on the ground, and the support he has from others in CAR. As demonstrated above, each of these factors establish reasonable grounds to believe that lifting restrictions on YEKATOM's contacts could affect the investigation of the case against him and could be harmful to (potential) witnesses and victims.

Witnesses face a real risk of harm if their identities were leaked by YEKATOM

14. The Prosecution's Protection Strategies Unit ("PSU") continues to work with the Victims and Witnesses Unit ("VWU") to ensure that witnesses whose evidence the Prosecution intends to rely upon are adequately protected.²³ Implementing sufficient safeguards is an ongoing process, and contingency plans require adequate time to be put in place. Lifting the restrictions on contact before the requisite safeguards are implemented may cause irreparable prejudice to the investigation and could endanger the safety and wellbeing of (potential) witnesses.

15. Certain Prosecution witnesses will face particularly serious risks if their identities become known to YEKATOM's supporters, associates, or to the public, rendering them highly vulnerable.²⁴

B. Alternatively, the Chamber should only order the gradual, not wholesale, reduction of restrictions

16. Alternatively, should the Chamber decide to change the current contact restrictions, it should do so in a way that ensures that YEKATOM does not tamper

²³ ICC-01/14-01/18-40-Conf, p. 5-6.

²⁴ ICC-01/14-01/18-40-Conf, p. 5-6.

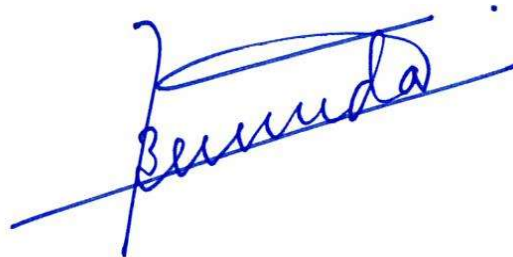
with (potential) witnesses or the continuing investigation. In this regard, the Prosecution does not oppose Defence proposal that the limit of 60 minutes per week imposed on YEKATOM's non-privileged calls be increased to 120 minutes, distributed over four days, if this does not interfere with the Detention Centre's management.²⁵ However, active monitoring of these communications should remain in place for the reasons mentioned above.

17. If the Chamber is minded to terminate active monitoring of YEKATOM's telephone communications in the future, it should request random monitoring of his calls to minimise the risk of interference with investigations and (potential) witnesses. However, the Prosecution strongly recommends that active monitoring of YEKATOM's telephone communications is maintained, at the very least, until the contingency plans mentioned at paragraph 14 above are implemented.

²⁵ ICC-01/14-01/18-37-Conf-Exp, para. 51.

IV. RELIEF SOUGHT

18. For the above reasons, the Prosecution requests continuation of current contact restrictions beyond 1 February 2019 for an additional 30-day period. Alternatively, the Chamber should only order an increase in the time YEKATOM has for non-privileged calls.



Fatou Bensouda, Prosecutor

Dated this 28th day of January 2019
At The Hague, The Netherlands