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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
*THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM***

Confidential

**Defence observations further to the
Third Decision Pursuant to Regulation 101 of the Regulations of the Court**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor
[REDACTED]

Counsel for the Defence
[REDACTED]

Legal Representatives of Victims

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Further to the Third Decision Pursuant to Regulation 101 of the Regulations of the Court rendered by the Single Judge on 10 January 2019 (“Third Decision”), and the Submission of the Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II (“Pre-Trial Chamber”), on 23 January 2019 (“Third Registry Report”) Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” or “Mr. Yekatom”) hereby submit this:

**Defence observations further to the
Third Decision Pursuant to Regulation 101 of the Regulations of the Court
 (“Defence Observations”)**

INTRODUCTION

1. As requested by the Single Judge the Defence hereby submits its observations, including on the Third Registry Report, concerning the restrictions imposed on Mr. Yekatom in the Second Decision Pursuant to Regulation 101 of the Regulations of the Court.¹

2. As stated by the Single Judge in the Third Decision “restrictions on contacts and communications under the Court’s statutory framework must be (re-) assessed in light of concrete, specific and up-to date information”.²

3. The information available to this day, including in particular, that contained in the three Registry Reports concerning the implementation of the restrictions on contacts ordered by the Pre-Trial Chamber,³ and, Mr. Yekatom’s conduct since his

¹ Third Decision Pursuant to Regulation 101 of the Regulations of the Court, 10 January 2019, ICC-01/14-01/18-52-Conf-Exp (“Third Decision”).

² Third Decision, para. 15.

³ See, Confidential Redacted version of Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge, 30 November 2018, ICC-01/14-01/18-23-Conf-Exp, 7 December 2018, ICC-01/14-01/18-23-Conf-Red (“First Registry Report”); Confidential Redacted Version of Second Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II, 14 December 2018, ICC-01/14-01/18-32-Conf-Exp, 14 December 2018, ICC-01/14-01/18-32-Conf-Red (“Second Registry Report”); Confidential redacted version of “Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II”, 23 January 2019,

transfer in the custody of the International Criminal Court Detention Center (“Court” or “ICC” and “ICC DC”) does not reveal any concrete, specific and up-to-date information demonstrating the need to maintain the restrictions imposed.

4. Indeed, there is no available information giving rise to suspicion that Mr. Yekatom interferes with the Prosecutor’s investigation, that he poses a threat to potential witnesses and victims, or that he engages in activities that may affect the outcome of the proceedings.

5. In addition, Mr. Yekatom’s willingness to voluntarily limit the number of persons who can be added to his list of non-privileged contact in the event the restrictions imposed on him are lifted, demonstrates his genuine determination to abide with the applicable Regulations concerning non-privileged telephone communications and visits.

6. Respectfully submitted, the time has come to end the restrictions imposed on Mr. Yekatom.

PROCEDURAL BACKGROUND

7. On 30 October 2018, the Prosecution submitted under seal, *ex parte*, an application pursuant to Article 58 of the Rome Statute (“Statute”) for, *inter alia*, restrictions of Mr. Yekatom’s communications and visits in custody.⁴

8. On 17 November 2018, the Single Judge acting on behalf of Pre-Trial Chamber II (“Pre-Trial Chamber”) granted the request and ordered to restrict Mr. Yekatom’s telephone communications and visits for a two-week period (“First Decision”).⁵

ICC-01/14-01/18-62-Conf-Exp, 25 January 2019, ICC-01/14-01/18-62-Conf-Red (“Third Registry Report”).

⁴ ICC-01/14-01/18-2-US-Exp. No redacted or reclassified version has been made available to Defence so far.

⁵ Decision pursuant to Regulation 101 of the Regulations of the Court, 17 November 2018, ICC-01/14-01/18-11-Conf-Exp.

9. On 30 November 2018, the Registry submitted on an *ex parte* basis, excluding the Prosecution, the first report on the implementation of restrictions.⁶ A confidential redacted version was made available to the Prosecution on 7 December 2018 (“First Registry Report”).⁷

10. On 3 December 2018 namely five days after the ordered restrictions expired, the Prosecution filed on an *ex parte* basis, excluding the Defence, its first request for extension of the restrictions on Mr. Yekatom’s non-privileged communications.⁸ A confidential redacted version was made available to the Defence on 17 December 2018 (“First Request for Extension”).⁹

11. On 4 December 2018, the Pre-Trial Chamber issued its second decision on restrictions whereby provisionally extended the restrictive measures and ordered the Defence to submit its views on the Prosecution’s First Request for Extension by 20 December 2018 (“Second Decision”).¹⁰

12. On 14 December 2018, the Registry submitted on an *ex parte* basis, excluding the Prosecution, the second report on the implementation of restrictions.¹¹ A confidential redacted version was made available to the Prosecution on the same day (“Second Registry Report”).¹²

13. On 20 December 2018, the Defence submitted its observations on the First

⁶ Registry Report on the Implementation of the Restriction on Contact Ordered by the Single Judge, 30 November 2018, ICC-01/14-01/18-23-Conf-Exp.

⁷ First Registry Report.

⁸ 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.

⁹ 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, 17 December 2018, ICC-01/14-01/18-24-Conf-Red.

¹⁰ Second Decision Pursuant to Regulation 101 of the Regulations of the Court, 4 December 2018, ICC-01/14-01/18-25-US-Exp.

¹¹ Second Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II, ICC-01/14-01/18-32-Conf-Exp, 14 December 2018.

¹² Second Registry Report.

Request for Extension (“Defence Observations on First Request”).¹³

14. On 27 December 2018, the Prosecution requested the restrictions prescribed by the Second Decision to be further extended (“Second Request for Extension”).¹⁴ The Defence responded on 7 January 2019 (“Defence Observations on Second Request”).¹⁵

15. On 10 January 2019, the Single Judge rendered the third decision pursuant to Regulation 101 and ordered the Registry to submit an implementation report by 23 January 2019, and the parties to submit “their observations, including on the Registry report” by 28 January 2019 (“Third Decision”).¹⁶

16. On 23 January 2019, the Registry submitted on an *ex parte* basis, excluding the Prosecution, the third report on the implementation of restrictions.¹⁷ A confidential redacted version was made available to the Prosecution on 25 January 2019 (“Third Registry Report”).¹⁸

OBSERVATIONS

17. Restrictions were imposed on Mr. Yekatom from the moment he was transferred in the custody of the ICC DC on 17 November 2018. From that moment, he has been subject to active monitoring of his non-privileged telephone communications and visits.

¹³ Defence Views on the “Prosecutor’s Submission Regarding the Extension of Contact Restrictions Concerning Alfred YEKATOM’s Pre-Trial Detention”, 20 December 2018, ICC-01/14-01/18-37-Conf-Exp.

¹⁴ Confidential Redacted 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-01/14-01/18-24-Conf-Exp), 27 December 2018, ICC-01/14-01/18-44-Conf-Exp.

¹⁵ Defence Response to “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)”, 7 January 2019, ICC-01/14-01/18-49-Conf-Exp.

¹⁶ Third Decision Pursuant to Regulation 101 of the Regulations of the Court, 10 January 2019, ICC-01/14-01/18-52-Conf-Exp.

¹⁷ Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II, 23 January 2019, ICC-01/14-01/18-62-Conf-Exp.

¹⁸ Third Registry Report.

18. Since Mr. Yekatom's transfer, the Prosecution failed to plead, let alone to demonstrate the existence of reasonable grounds to believe pursuant Regulation 101 of the Regulations of the Court ("RoC") that allowing contacts between Mr. Yekatom and his associates could affect the investigation and the outcome of the proceedings against him.

19. In order to reach the threshold of reasonable grounds to believe pursuant to Regulation 101 RoC it is necessary to present sufficiently credible evidence showing that certain impropriety has occurred or could occur should the restrictions be lifted. For such evidence to be credible, it must be verified.¹⁹ Accordingly, unverified information and second-hand hearsay cannot be considered as credible evidence giving rise to reasonable grounds to believe within the meaning of Regulation 101 RoC, in particular at this stage, following Mr. Yekatom undertaking to abide with all applicable Regulations at the ICC DC.

20. In this regard the Defence reiterates its observations contained in its views on the Prosecution's submission regarding the extension of contact restrictions concerning Mr. Yekatom's pre-trial detention,²⁰ as well as in its response to the Prosecution's request that the Chamber extend the contact restrictions imposed in the Second Decision.²¹

21. To date, the available documentation and information does not establish reasonable grounds to believe that contact between Mr. Yekatom and any other person could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation.²²

22. The Defence also reiterates that in the event information contained in material not available to Mr. Yekatom could potentially justify the continuation of restrictions,

¹⁹ Defence Observations on Second Request, para. 26.

²⁰ Defence Observations on First Request.

²¹ Defence Observations on Second Request.

²² Defence Observations on First Request, paras. 24-35.

the Defence is not in position to present informed views or to challenge such information. Consequently, in accordance with Regulation 101(3) RoC, any such information cannot be held against Mr. Yekatom for the purpose of extending the restrictions imposed on him.

23. Tellingly, the available documentation and information demonstrates not only the absence of reasonable grounds to believe pursuant Regulation 101 RoC but also, more importantly, Mr. Yekatom's willingness to abide with all applicable Regulations as well as full compliance by Mr. Yekatom with the terms of the Decision on Restrictions. Furthermore, the First, Second and Third Registry Reports reveal no violations of the restrictions imposed on Mr. Yekatom's non-privileged telephone communications and visits.²³

24. Regarding the minor incident reported in the Third Registry Report²⁴, the Defence underscores that it relates to Mr. Yekatom to personal and private issues. Indeed, as observed by the Registry, the matters discussed were private and business-related, and were entirely unrelated to the case before the Court.²⁵ The Third Registry Report also confirms that "the content of said phone call concerns private matters."²⁶ Notably, in his written notification to Mr. Yekatom concerning the 10 January 2019 telephone communication, the Chief Custody Officer ("CCO") acknowledged that Mr. Yekatom could transmit messages of a private or family nature during his telephone conversations with his interlocutor but that he could not communicate directly with persons not on his list of approved non-privileged

²³ First Registry Report, para. 13: "during the reporting period, no violations of the Decision on Restrictions occurred"; Second Registry Report, para. 9: "Since his arrival at the DC, no violations of the Decision on Restrictions have occurred"; Third Registry Report, para. 10 (emphasis added): "an incident that occurred on 10 January 2019 during the telephone call to [REDACTED] which may be considered as constituting a violation of the Decision on Restrictions."

²⁴ Third Registry Report, para. 10.

²⁵ See, e.g., Third Registry Report, para. 11.

²⁶ Third Registry Report, para. 11.

contacts.²⁷ [REDACTED]. Significantly, no other similar incident occurred during any of the subsequent telephone conversations reported in the Third Registry Report.

25. This minor and isolated incident must be considered in light of Mr. Yekatom demonstrated will to comply with all applicable Regulations concerning his non-privileged telephone communications and visits. Indeed, since his transfer to the ICC DC, Mr. Yekatom has taken positive measures to comply with the applicable Regulations by: (i) [REDACTED];²⁸ and (ii) voluntarily keeping to a strict minimum the number of persons on his list of non-privileged contacts, [REDACTED].²⁹

26. What is more, in the event the restrictions imposed on him are lifted, Mr. Yekatom agrees to adding [REDACTED].³⁰

27. [REDACTED].

28. The Defence respectfully submits that such voluntary measures by Mr. Yekatom reveal both his determination to comply to all applicable Regulations and his intent not to interfere with the Prosecution investigation in any way. As such these positive measures must be accorded full weight in determining whether the restrictions imposed should be lifted.

29. Lastly, the Defence deems appropriate to address the recent transfer at the ICC DC of Patrice-Edouard Ngaïssona³¹ which does not give rise to suspicion that Mr. Yekatom could interfere with the Prosecutor's investigation, pose a threat to potential witnesses and victims or engage in activities that may affects the outcome of the proceedings.

²⁷ Corrected Confidential redacted version of Annex II to the Confidential redacted version of "Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II", 23 January 2019, ICC-01/14-01/18-62-Conf-Exp, ICC-01/14-01/18-62-Conf-AnxII-Red-Corr, 25 January 2019, second paragraph.

²⁸ Defence Observations on First Request, para. 48; Defence Observations on Second Request, para. 48.

²⁹ First Registry Report, para. 7; Second Registry Report, para. 9.

³⁰ See above para. 25 and fn. 28.

³¹ First Decision, para. 4.

30. [REDACTED].³² [REDACTED], the Defence respectfully submits that the impeccable behaviour of Mr. Yekatom since his arrival at the ICC DC demonstrates his determination to comply with all applicable Regulations and that he has no intention to interfere with the Prosecution's investigation or to engage in activities that may affect the outcome of the proceedings.

31. Accordingly, the transfer of Mr. Ngaïssona to the ICC DC, does not give rise to reasonable grounds to believe, pursuant to Regulation 101 RoC that contact Mr. Yekatom and the latter could affect the investigation and/or the proceedings against him. To be sure this would not be the first time that two suspects purportedly involved in the same situation would be detained together.

CONCLUSION

32. In the Third Decision the Single Judge noted the "absence of any recent information on incidents that would demonstrate the need to maintain the restrictions on Yekatom's contacts and communications during the entire pre-trial stage of this case."³³ As highlighted in the Third Registry Report, there has been no change of circumstances in this regard.

33. Consequently, considering the absence of any "relevant information relating to Yekatom's behaviour or communications that may give rise to suspicion that he interferes with the Prosecutor's investigation (in particular that he poses a threat to potential witnesses and victims) or that he engages in activities that may affect the outcome of the proceedings"³⁴, the restrictions imposed on Mr. Yekatom's non-privileged telephone communications should be terminated forthwith.

CONFIDENTIALITY

³² Registry Report on the Feasibility, Costs and Effects of Separating Mr Ngaïssona and Mr Yekatom within the ICC Detention Centre, 25 January 2019, ICC-01/14-02/18-15-Conf-Exp, para. 8.

³³ Third Decision, para. 16.

³⁴ Third Decision, para. 17.

34. These Defence Observations are filed on a confidential basis corresponding to the classification of the Third Registry Report and due to the sensitive information identifying Mr. Yekatom's personal contacts and detention-related matters referred to in it.

RELIEF SOUGHT

35. In light of the above submissions and arguments, the Defence respectfully requests the Pre-Trial Chamber to:

RESCIND the restrictions imposed on Mr. Yekatom's non-privileged telephone communications pursuant to the Second Decision.

RESPECTFULLY SUBMITTED ON THIS 28th DAY OF JANUARY 2019

A handwritten signature in black ink, appearing to read 'StB-'.

Me Stéphane Bourgon *Ad.E*
Counsel for Alfred Rombhot Yekatom

The Hague, the Netherlands