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

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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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

Public Redacted version of “Prosecution’s Observations Pursuant to the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (ICC-01/14-01/18-137-Conf-Exp)”, 10 April 2019, ICC-01/14-01/18-170-Conf-Exp

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

The Office of the Prosecutor

[REDACTED]

[REDACTED]

[REDACTED]

Counsel for Alfred Yekatom

[REDACTED]

[REDACTED]

Counsel for Patrice-Edouard Ngaïssona

[REDACTED]

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

[REDACTED]

Counsel Support Section

Victims and Witnesses Unit

[REDACTED]

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests that Pre-Trial Chamber II (“Chamber”) reinstate the original contact restrictions initially imposed on Alfred YEKATOM (“YEKATOM”)¹ and Patrice-Edouard NGAISSONA (“NGAISSONA”)² beyond 15 April 2019 (“Request”), including the resumption of active monitoring of all Detention Centre communications, in accordance with regulation 101(2) of the Regulations of the Court (“Regulations”). The prevailing circumstances since the Chamber’s 1 March “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“1 March Decision”),³ as detailed below, justify this modification. They remain necessary to protect (potential) witnesses, victims, and the ongoing investigation. [REDACTED]⁴ Further, such restrictions are not unduly broad or burdensome, and should be coextensively imposed on both Suspects to avoid defeating their purpose.

2. [REDACTED]

II. CONFIDENTIALITY

3. This request and annexes A and B are filed as “*EX PARTE*, only available to the Prosecution and VWU” as they contain information pertaining to the safety of a Prosecution witness which, if disclosed, could place the witness at serious risk of harm. A confidential redacted version of the request will be filed contemporaneously.

III. SUBMISSIONS

A. The contact restrictions continue to be justified

¹ ICC-01/14-01/18-11-Conf-Exp, paras. 6, 8-9.

² ICC-01/14-01/18-98-Conf-Exp, paras. 8, 10-11.

³ ICC-01/14-01/18-137-Conf-Exp.

⁴ [REDACTED]

4. Restriction of the Suspects' contacts is 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 Prosecution's past filings⁵ and the Chamber's decisions⁶ extensively set out the relevant justifications. They are incorporated by reference and briefly summarised below. [REDACTED]

a. The requested contact restrictions remain necessary to protect witnesses, victims, and the ongoing investigation

5. As detailed in the Prosecution's previous filings,⁷ contact between the Suspects and their respective supporters or associates could adversely affect the ongoing investigation and outcome of the proceedings.

- *The Suspects have strong motives to interfere with the Prosecution's investigation:* The Suspects will face serious charges and correspondingly lengthy terms of imprisonment which may also affect their reputation, and political and economic aspirations.⁸
- *The Suspects continue to have influence over their supporters and associates in CAR:* 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

⁵ Prosecution's filings on YEKATOM's contact restrictions: ICC-01/14-01/18-2-US-Exp, para. 357; ICC-01/14-01/18-5-US-Exp, paras. 9, 12, 17; ICC-01/14-01/18-9-Conf-Exp, paras. 8-9; ICC-01/14-01/18-24-Conf-Red; ICC-01/14-01/18-44-Conf-Exp, paras. 4-8; ICC-01/14-01/18-69-Conf-Exp; ICC-01/14-01/18-83-Conf; ICC-01/14-01/18-130-Conf-Red. Prosecution's filings on NGAISSONA's contact restrictions: ICC-01/14-01/18-112-Conf-Red; ICC-01/14-01/18-131-Conf-Red.

⁶ 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; ICC-01/14-01/18-75-Conf-Exp; ICC-01/14-01/18-86-Conf-Exp; ICC-01/14-01/18-98-Conf-Exp; ICC-01/14-01/18-114-Conf-Exp; ICC-01/14-01/18-137-Conf-Exp.

⁷ For YEKATOM: ICC-01/14-01/18-11-Conf-Exp, para.5; ICC-01/14-01/18-44-Conf-Exp, paras. 5-8; ICC-01/14-01/18-52-Conf-Exp, para.15; ICC-01/14-01/18-69-Conf-Exp paras. 5-8; ICC-01/14-01/18-83-Conf, paras. 5-8. For NGAISSONA: ICC-01/14-01/18-112-Conf-Red, paras. 5-7; ICC-01/14-01/18-131-Conf-Exp, para. 8.

⁸ For YEKATOM: see ICC-01/14-01/18-69-Conf-Exp para. 8; ICC-01/14-01/18-83-Conf, para. 6. For NGAISSONA: see ICC-01/14-01/18-131-Conf-Exp, para. 8.

individuals cooperating with the Court”.⁹ NGAISSONA also “remains a key Anti-Balaka figure, in addition to being a former minister, founder and President of a political party and successful businessman, which establishes, *inter alia*, that he could be in a position to reach, intimidate, or harm (potential) witnesses, their families or other individuals cooperating with the Court”.¹⁰ The Chamber reiterated these findings in its 1 March Decision.¹¹ If contact restrictions are lifted or lessened, the Suspects will have easier access to their wide network of supporters and associates, increasing the risk of collusion and of witness interference.

- *The Anti-Balaka are still active throughout CAR:* The Anti-Balaka still control significant territory in CAR,¹² making their access to Prosecution witnesses easier, [REDACTED].¹³
- *The security situation in CAR is unstable:* The security situation in CAR remains fragile and unpredictable, with recent developments significantly complicating work in the field.¹⁴ Moreover, the ability to protect witnesses from any illicit interference as well as the capacity to preserve the integrity of the evidence solely rests on the CAR government.¹⁵ However, at this stage, the CAR government remains unable to adequately protect individuals in CAR, particularly outside of Bangui.¹⁶
- *Witnesses [REDACTED]:* The Prosecution’s Protection Strategies Unit (“PSU”) continues to work with the Victims and Witnesses Unit (“VWU”) to ensure

⁹ ICC-01/14-01/18-1-Red, para. 22; CAR-OTP-2051-0393, at 0400; CAR-OTP-2051-0372, at 0373.

¹⁰ ICC-01/14-01/18-98-Conf-Exp, para. 7.

¹¹ ICC-01/14-01/18-137-Conf-Exp, para. 18.

¹² ICC-01/14-01/18-1-Red, para. 22; ICC-01/14-01/18-11-Conf-Exp, para. 5; CAR-OTP-2084-1827; ICC-01/14-01/18-98-Conf-Exp, para. 7.

¹³ [REDACTED].

¹⁴ ICC-01/14-74-US-Exp, paras. 15-17.

¹⁵ ICC-01/14-01/18-131-Conf-Exp, para. 12.

¹⁶ ICC-01/14-01/18-83-Conf, para. 6; ICC-01/14-01/18-130-Conf-Exp, para. 5.

that witnesses whose evidence the Prosecution intends to rely upon are adequately protected.¹⁷ [REDACTED].¹⁸ As the Chamber is aware, [REDACTED] and has been hampered by the unstable and unpredictable security situation in CAR.¹⁹ In addition, the Chamber previously found that “the possibility of members of the Anti-Balaka assuming government positions only increases the capacity of Yekatom’s and Ngaïssona’s supporters to identify, locate and compromise witnesses”.²⁰ This possibility has materialised with the recent appointment of Anti-Balaka representatives ([REDACTED]) in the new CAR government,²¹ including at key positions in both Presidency and Prime Ministry Cabinets.²² Moreover, on 27 March 2019, the Prosecution disclosed to the Defence and the two Suspects confidential documents, including Witness Statements.²³ Allowing YEKATOM and NGAISSONA freely to communicate with their supporters and associates in CAR directly, or through contact with purported ‘family members’, inevitably increases the substantial risk of interference with these witnesses.

6. As concerns YEKATOM, additional factors warrant the reinstatement of the original contact restrictions imposed by the Chamber:

- *YEKATOM has a demonstrated propensity for violence and disregard for the rule of law*: YEKATOM has a history of resorting to acts of violence and disregarding the rule of law, including up to and following his arrest in CAR on 26 October 2018.²⁴

¹⁷ ICC-01/14-01/18-83-Conf, para. 8.

¹⁸ [REDACTED].

¹⁹ ICC-01/14-74-US-Exp, paras. 15-17.

²⁰ ICC-01/14-01/18-137-Conf-Exp, para. 18.

²¹ Corbeau News, [Centrafrique : qui sont les rebelles du gouvernement NGRÉBADA ?](#), 25 March 2019, [last accessed 9 April 2019].

²² African Daily Voice, [Centrafrique : une vague de nomination pour la mise en œuvre de l'accord de paix](#), 28 March 2019 [last accessed 9 April 2019].

²³ ICC-01/14-01/18-159; ICC-01/14-01/18-159-Conf-Anx.

²⁴ ICC-01/14-22-US-Exp, para. 6; ICC-01/14-01/18-69-Conf-Exp, para. 5; ICC-01/14-01/18-83-Conf, para. 6.

- *Yekatom has not fully complied with the Chamber's order to date:* One incident of YEKATOM's non-compliance with the Chamber's order has already been reported by the Registry in its "Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II".²⁵ The incident demonstrates YEKATOM's willingness to violate the Chamber's decision and justifies the continuation of the active monitoring of his contacts.²⁶ Without these restrictions, YEKATOM poses a concrete risk to the security of witnesses and the investigation — a risk which only increases with his access to further sensitive material in the case.²⁷

b. [REDACTED]

7. [REDACTED].²⁸ [REDACTED].²⁹

8. [REDACTED]³⁰ [REDACTED]³¹ — [REDACTED].³² [REDACTED].³³
[REDACTED].³⁴ [REDACTED].³⁵

9. [REDACTED].³⁶

10. [REDACTED].

11. [REDACTED].

12. [REDACTED].³⁷

²⁵ ICC-01/14-01/18-62-Conf-Red; ICC-01/14-01/18-130-Conf-Exp, para. 5.

²⁶ ICC-01/14-01/18-69-Conf-Exp, paras. 11-12; ICC-01/14-01/18-130-Conf-Exp, para. 5.

²⁷ ICC-01/14-01/18-83-Conf, paras. 7-8.

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ ([REDACTED].

c. *The contact restrictions are limited and proportional to the risks they address*

13. The contact restrictions are not unduly burdensome to the Suspects and reasonably allows for their communication with family members and others.³⁸ They also permit the Suspects to receive [REDACTED] visits from a limited number of individuals, such as family members.³⁹ In light of the circumstances and the substantial risks to witnesses noted above, the requested modification of the current restrictions is fully proportionate to their intended aims.

d. *The contact restrictions should be co-extensively re-instated for YEKATOM and NGAISSONA*

14. As noted, reinstatement of the Chamber's original contact restrictions should be *coextensively* ordered regarding YEKATOM and NGAISSONA. Doing so in respect of only one Suspect necessarily undermines the purpose.⁴⁰ This is particularly the case in light of the 20 February 2019 joinder decision⁴¹ and given that the Suspects, housed together, are also free to communicate with each other.⁴² Considering that the crimes imputed to YEKATOM and NGAISSONA overlap substantially⁴³ and are largely based on the same evidence,⁴⁴ lifting restrictions (or failing to reinstate the original restrictions as requested) for one of the Suspects provides a prospective benefit to both.

B. Active monitoring of all Detention Centre calls should be resumed [REDACTED]

³⁷ ([REDACTED]).

³⁸ ICC-01/14-01/18-11-Conf-Exp, paras. 6, 8; ICC-01/14-01/18-98-Conf-Exp, paras. 7-11.

³⁹ ICC-01/14-01/18-11-Conf-Exp, para. 9; ICC-01/14-01/18-52-Conf-Exp, para. 18; ICC-01/14-01/18-137-Conf-Exp, para. 20.

⁴⁰ See ICC-01/14-01/18-86-Conf-Exp, para. 14.

⁴¹ ICC-01/14-01/18-87, para. 14; ICC-01/14-01/18-121, para. 14.

⁴² ICC-01/14-01/18-73-Conf-Exp; ICC-01/14-01/18-106-Conf-Exp, paras. 20-21.

⁴³ ICC-01/14-01/18-86-Conf-Exp, para. 14; ICC-01/14-01/18-87, para. 11; ICC-01/14-01/18-121, para. 11.

⁴⁴ ICC-01/14-01/18-87, paras. 11, 13; ICC-01/14-01/18-121, paras. 11, 13.

15. In furtherance of the requested reinstatement of the original contact restrictions, the Chamber should order the resumption of active monitoring of all of the Suspects' Detention Centre calls in light of the security situation in CAR, ([REDACTED]).⁴⁵ The current restrictions, namely the random monitoring of calls, leaves room for the Suspects to contravene the purpose of the Chamber's order, particularly now when the Prosecution is in the process of disclosing the statements and the identities of sensitive and important witnesses.

16. ([REDACTED])—⁴⁶ ([REDACTED]).

17. ([REDACTED]).⁴⁷ ([REDACTED]).⁴⁸

18. ([REDACTED]).⁴⁹ ([REDACTED])⁵⁰ ([REDACTED]).

⁴⁵ ([REDACTED]).

⁴⁶ ([REDACTED]).

⁴⁷ ([REDACTED]).

⁴⁸ ([REDACTED])

⁴⁹ ([REDACTED]).

⁵⁰ ([REDACTED]).

IV. RELIEF SOUGHT

19. For the above reasons, the Prosecution requests the reinstatement of the original contact restrictions regarding the Suspects beyond 15 April 2019 and with that, the resumption of active monitoring of all of the Suspects' Detention Centre communications. ([REDACTED]).



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 25th day of February 2026
At The Hague, The Netherlands