

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/14-01/18
Date: 17 November 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, *EX PARTE*, only available to the Prosecutor and the Defence
for Alfred Yekatom**

Decision pursuant to Regulation 101 of the Regulations of the Court

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Paddy Craig

**Victims Participation and Reparations
Section**

Other

JUDGE TOMOKO AKANE, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”)¹ of the International Criminal Court (the “Court”) issues this decision pursuant to regulation 101 of the Regulations of the Court.

1. On 30 October 2018, the Prosecutor submitted under seal, *ex parte*, an application for the issuance of a warrant of arrest for Alfred Yekatom (“Yekatom”) for crimes against humanity and war crimes committed in the western Central African Republic between December 2013 and December 2014 by militias, collectively known as the Anti-Balaka.² In that application, the Prosecutor also requested the Chamber to order the Registry to “prohibit [Yekatom’s] telephone privileges [upon his arrival at the Court’s Detention Centre] except with regard to Counsel and direct family members until [his] initial appearance before the Chamber, subject to extension upon the Chamber’s review” (the “Request”).³ The Prosecutor submitted that she had reasonable grounds to believe that contact between Yekatom and his associates would prejudice the outcome of the investigation, within the meaning of regulation 101(2)(b) of the Regulations of the Court.⁴

2. On 11 November 2018, the Chamber issued a warrant of arrest for Yekatom for his alleged criminal responsibility pursuant to articles 25(3)(a), (b) and (c), as well as 28(a) of the Rome Statute (the “Statute”), for crimes against humanity and war crimes committed in various locations in the Central African Republic, between 5 December 2013 and August 2014.⁵

3. On 17 November 2018, Yekatom was surrendered to the Court by the authorities of the Central African Republic.

4. The Single Judge notes articles 21(1)(a) and (3) and 57(3)(a) of the Statute, regulations 97, 98, 99(1)(i) and 101 of the Regulations of the Court and regulation 174(1) of the Regulations of the Registry. Article 57(3)(a) of the Statute permits the Chamber to issue, at the Prosecutor’s request, such orders as may be

¹ Pre-Trial Chamber II, Decision designating a Single Judge, 9 November 2018, ICC-01/14-23-US-Exp.

² ICC-01/14-01/18-2-US-Exp, together with 11 under seal, *ex parte* annexes.

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

⁴ ICC-01/14-01/18-2-US-Exp, para. 357.

⁵ Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 11 November 2018, ICC-01/14-01/18-1-US-Exp.

required for the purpose of an investigation. In that regard, regulation 101 of the Regulations of the Court provides, in the relevant part, that:

2. The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact [...] (b) [c]ould prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation; (c) [c]ould be harmful to a detained person or any other person; [...] or (f) [i]s a threat to the protection of the rights and freedom of any person.

3. The detained person shall be informed of the Prosecutor's request and shall be given the opportunity to be heard or to submit his or her views. In exceptional circumstances such as in an emergency, an order may be made prior to the detained person being informed of the request. In such a case, the detained person shall, as soon as practicable, be informed and shall be given the opportunity to be heard or to submit his or her views.

5. Having regard to the submissions made by the Prosecutor, the Single Judge is persuaded that there are reasonable grounds to believe that contact between Yekatom and his associates could affect the investigation and the outcome of the proceedings against him. The Single Judge recalls the findings made by the Chamber when issuing the warrant of arrest for Yekatom that he "retains 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".⁶ The Single Judge is mindful of the facts that "nearly 80% of the territory of the [Central African Republic] is still under the control of armed groups, including the Anti-Balaka".⁷

6. Accordingly, the Single Judge considers it warranted to restrict Yekatom's telephone calls for a period of two weeks as of his arrival to the Court's Detention Centre, with the exception of: (i) calls to or from the persons identified in regulations 97 and 98 of the Regulations of the Court and regulation 174(1) of the Regulations of the Registry; and (ii) calls to a limited number of individuals, such as family members, whose identities and contact details will have to be duly verified beforehand with the support of the Victims and Witnesses Unit. Any discussion

⁶ Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 11 November 2018, ICC-01/14-01/18-1-US-Exp, para. 22.

⁷ Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 11 November 2018, ICC-01/14-01/18-1-US-Exp, para. 22.

related to the present case with the individuals referred above to under (ii) is prohibited. The use of obscure or coded language during such calls is also prohibited. In order to ensure that the above directives are followed, the Single Judge considers it appropriate to order the active monitoring of telephone calls. The Chief Custody Officer will thus be in a position to stop any call made in violation of these directives.

7. Similarly, Yekatom is prohibited from using obscure or coded language or mentioning the present case in written correspondence. The Chief Custody Officer is required to intercept or confiscate any written correspondence in violation of this directive.

8. For the active monitoring of telephone calls and any correspondence received or sent to be effective, the Single Judge considers it appropriate to furthermore (i) limit the language of communication to French and Sango; and (ii) limit the duration of telephone calls to 60 minutes per week, provided that this does not interfere with the management of the Detention Centre. The Single Judge leaves the practical implementation of this directive to the Registry, depending on the availability of resources and languages. Yekatom is also prohibited access to the telephone facilities at the disposal of the other detainees of the Detention Centre.

9. Moreover, the Single Judge considers it warranted to restrict visits for Yekatom at the Detention Centre for a period of two weeks as of his arrival to the Court's Detention Centre with the exception of (i) visits from the persons identified in regulations 97 and 98 of the Regulations of the Court and regulation 174(1) of the Regulations of the Registry; (ii) visits from a limited number of individuals, such as family members, whose identities and contact details will have been duly verified beforehand with the support of the Victims and Witnesses Unit. Any discussion related to the case is prohibited during visits referred to above under (ii). In order to ensure that this directive is followed, the Single Judge considers it appropriate to (i) limit the language of communication to French and Sango; and (ii) order the audio recording and active monitoring of such visits by a Court staff member fluent in French or Sango, as the case may be.

10. Finally, the Single Judge notes that pursuant to regulation 101(3) of the Regulations of the Court and as recalled above, "[t]he detained person shall be

informed of the Prosecutor's request and shall be given the opportunity to be heard or to submit his or her views". Regulation 101(3) of the Regulations of the Court further allows the Chamber, "in exceptional circumstances such as in an emergency", to issue an order prohibiting, regulating or setting conditions for contact *prior* to the detained person being informed of the Prosecutor's request. The Single Judge notes that the Prosecutor is requesting that the restrictions on Yekatom's contact be imposed as soon as he arrives at the Court's Detention Centre. The Single Judge is persuaded by the Prosecutor's Request in this regard, as to do otherwise may already cause irreparable prejudice to the proceedings or the investigation, or could endanger the safety and wellbeing of (potential) witnesses. The Single Judge considers therefore that "exceptional circumstances" exist within the meaning of regulations 101(3) of the Regulations of the Court – i.e. urgency – which warrant the issuance of the present decision before Yekatom is informed of the Request. Yekatom will however be notified of the present decision and will have the opportunity to be heard or submit his views thereafter.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request;

DIRECTS the Registrar to put in place the measures stated in paragraphs 6-9 of the present decision for a period of two weeks as of the arrival of Alfred Yekatom to the Court's Detention Centre;

ORDERS the Registrar to notify the present decision to counsel for Alfred Yekatom as soon as he or she is appointed;

DIRECTS the Registrar to submit to the Chamber a report on the implementation of the restrictions on contact ordered above no later than two weeks after the arrival of Alfred Yekatom to the Court's Detention Centre; and

DIRECTS the Prosecutor, if she wishes to request restrictions on contact for Alfred Yekatom beyond the two-week period mentioned above, to submit such a request to the Chamber no later than 10 days after the arrival of Alfred Yekatom to the Court's Detention Centre.

Done in both English and French, the English version being authoritative.

赤根 智子

Judge Tomoko Akane, Single Judge

Dated this Saturday, 17 November 2018

At The Hague, The Netherlands