

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 4 December 2018

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 YEKATOM***

**Confidential *ex parte*, only available to the Prosecutor
and the Defence for Alfred Yekatom**

Second 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

Stéphane Bourgon

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

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Paddy Craig

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court” or “ICC”) issues this second decision pursuant to regulation 101 of the Regulations of the Court (the “Regulations”).

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”).¹ 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”.² 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.³

2. On 11 November 2018, the Chamber issued a warrant of arrest against Yekatom for his alleged criminal responsibility for crimes against humanity and war crimes committed in various locations in the Central African Republic, between 5 December 2013 and August 2014.⁴

3. On 17 November 2018, the Single Judge, acting on behalf of the Chamber,⁵ issued the “Decision pursuant to Regulation 101 of the Regulations of the Court” (the “17 November 2018 Decision”)⁶ restricting Yekatom’s telephone communications and visits for a two-week period upon his arrival at the Court’s Detention Centre, prohibiting Yekatom from using obscure or coded language, and ordering active monitoring of telephone calls and any correspondence received or to be sent.⁷ The Single Judge also (i) ordered the Registrar to notify the 17 November 2018 Decision to counsel for Yekatom “as soon as he or she is appointed”, and to submit a report on the implementation of the restrictions on contact; and (ii) directed

¹ ICC-01/14-01/18-2-US-Exp, together with 11 under seal, *ex parte* annexes.

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

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

⁴ Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant of arrest was issued on 17 November 2018, ICC-01/14-01/18-1-Red.

⁵ Pre-Trial Chamber II, Decision designating a Single Judge, 9 November 2018, ICC-01/14-01/18-10-US-Exp.

⁶ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp.

⁷ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, paras 6-9.

the Prosecutor, if she wished to request the prolongation of those restrictions imposed on Yekatom, to submit a request to that effect no later than 10 days after the arrival of Yekatom to the Court's Detention Centre.⁸

4. On 18 November 2018, Yekatom arrived at the ICC Detention Centre.

5. On 30 November 2018, the Registry submitted the "Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge", informing the Chamber of the implementation of the 17 November 2018 Decision and Yekatom's compliance with the orders.⁹

6. On 3 December 2018, the Prosecutor submitted, outside of the time-limit imposed by the Single Judge, a request for extension of Yekatom's contact restrictions (the "Request") arguing in essence that the circumstances justifying the imposition of the contact restrictions "have not substantially changed".¹⁰

7. The Chamber notes articles 21(1)(a) and (3) and 57(3)(a) of the Rome Statute, regulations 23bis, 97, 98, 99(1)(i), 100 and 101 of the Regulations and regulation 174(1) of the Regulations of the Registry.

8. The Chamber is still 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 Chamber recalls the relevant findings made by the Chamber when issuing the warrant of arrest for Yekatom,¹¹ which formed, in part, the basis of the Single Judge's 17 November 2018 Decision.¹² The Chamber considers that the circumstances justifying the imposition of the restrictions of contact for Yekatom have not changed. Therefore, the Chamber is of the view that the measures and conditions, as adopted in the 17 November 2018 Decision, should stay in place provisionally until Friday, 11 January 2019, unless otherwise decided.

⁸ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, p. 6.

⁹ ICC-01/14-01/18-23-Conf-Exp.

¹⁰ ICC-01/14-01/18-24-US-Exp, para. 5.

¹¹ Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 17 November 2018, ICC-01/14-01/18-1-Red, para. 22.

¹² 17 November 2018 Decision, para. 5.

9. In this regard, the Chamber recalls that regulation 101(3) of the Regulations requires Yekatom to be informed of the Prosecutor's request and be given the opportunity to be heard. Even if the order on restrictions on contact is made prior to the detained person being informed of the request, he or she shall be given the opportunity thereafter to be heard or to submit his or her views. Accordingly, the Chamber ordered the Registrar to notify the 17 November 2018 Decision to counsel for Yekatom as soon as he or she would be appointed. While the Chamber is prepared to prolong the restrictions on contact for Yekatom for the reasons given in paragraph 8 above, it finds it imperative to receive the views of Yekatom on the Prosecutor's request and the measures adopted, especially in view of the fact that Yekatom only recently designated Mr Stéphane Bourgon as his counsel.¹³ Upon receipt of Yekatom's views, the Chamber may revisit the decision in relation to his communication restrictions.

10. Furthermore, with a view to allowing the participants to provide meaningful observations on the matter at hand, the Chamber orders the Prosecutor and the Registry to indicate whether their respective filings may be re-classified as confidential without redactions or, alternatively, to submit a redacted version thereof.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **GRANTS** provisionally the extension of the measures on Alfred Yekatom's communication restrictions put in place by way of the 17 November 2018 Decision until Friday, 11 January 2019, unless otherwise decided;
- b) **ORDERS** the Registry and the Prosecutor to indicate no later than Thursday, 6 December 2018, whether their respective submissions set forth below may be re-classified as "confidential" without redactions or, alternatively, to submit redacted versions thereof:
 - ICC-01/14-01/18-23-Conf-Exp, including its two annexes;
 - ICC-01/14-01/18-24-US-Exp;

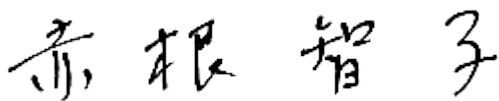
¹³ See Pre-Trial Chamber II, Decision on Withdrawal of Counsel, 29 November 2018, ICC-01/14-01/18-21.

- c) **DIRECTS** the Registrar to submit to the Chamber a report on the implementation of the restrictions on contact ordered no later than Friday, 14 December 2018; and
- d) **ORDERS** the Defence to submit its views on the Prosecutor's Request no later than Thursday, 20 December 2018.

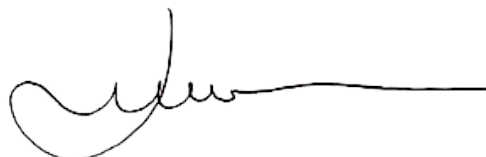
Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua,
Presiding Judge**



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Tuesday, 4 December 2018

At The Hague, The Netherlands