

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **7 January 2019**

**PRE-TRIAL CHAMBER II**

**Before:**

**Judge Rosario Salvatore Aitala, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF**

***THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM***

**Confidential, *ex parte*, only available to Pre-Trial Chamber II, the Prosecution and the Defence**

**With confidential *ex parte* Annex A available only to Pre-Trial Chamber II and the Defence**

**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)"**

**Source: Defence for Mr. Alfred Rombhot Yekatom**

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

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**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation / Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr. Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Further to the Decision pursuant to Regulation 101 of the Regulations of the Court ("First Decision on Restrictions" and "RoC") the confidential redacted version of the "Prosecution's submission regarding the extension of contact restrictions concerning Alfred YEKATOM's pre-trial detention" ("First Request for Extension"), the Second Decision Pursuant to Regulation 101 of the RoC issued by Pre-Trial Chamber II ("Pre-Trial Chamber") of the International Criminal Court ("Court") on 04 December 2018 ("Second Decision on Restrictions"), the "Defence views on the Prosecutor's submissions regarding the extension of Contact" ("Defence Views") on 20 December 2018 and the "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" ("Second Request for Extension") on 27 December 2018 Counsel representing Mr. Alfred Rombhot Yekatom ("Mr. Yekatom" or "Defence") hereby submit this:

**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)"**

**("Defence Response")**

**OVERVIEW**

1. On 17 November 2018, the Single Judge imposed restrictions on Mr. Yekatom's non-privileged telephone communications and visits for a period of two weeks as of his arrival to the Court Detention Centre ("ICC DC").
2. Invited by the Single Judge to submit a request – if she wishes – to extend the restrictions on contact imposed on Mr. Yekatom beyond the initial two-week period but no later than ten days after the arrival of Mr. Yekatom at the ICC DC, the

Prosecutor filed submissions,<sup>1</sup> five days late,<sup>2</sup> deferring “to the Chamber regarding the determination on the extension of contact restrictions imposed on YEKATOM in respect of his conditions of pre-trial detention”.<sup>3</sup> Therein, the Prosecutor insisted that the Pre-Trial Chamber’s decision should be based on, *inter alia*, the Chamber’s review of Yekatom’s actively and passively monitored communications, which “would particularly inform the Chamber of whether YEKATOM has breach or attempted to breach any salient condition of the Order, which is highly relevant to the Chamber’s determination on the propriety of extending its terms and conditions”.<sup>4</sup>

3. Surprisingly, having deferred to the Pre-Trial Chamber on 03 December 2018 to determine whether extending the restrictions was necessary, the Prosecutor now: (i) takes the view that “compliance with the conditions of his detention” as established in the First and Second Registry Reports<sup>5</sup> is no longer a determining factor regarding the extension of the restrictions imposed and (ii) requests that the restrictions imposed be extended beyond 11 January 2019, without putting forward new arguments.<sup>6</sup>

4. Moreover, in her 03 December 2018 Submissions the Prosecutor did *not* plead that she had reasonable grounds to believe that contact between Mr. Yekatom and

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<sup>1</sup> 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 (“First Request for Extension”).

<sup>2</sup> See 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 (“Defence Views”), paras 1 and 18.

<sup>3</sup> First Request for Extension, para 12.

<sup>4</sup> First Request for Extension, para 10.

<sup>5</sup> 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”), para 13; 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”) (collectively, “First and Second Registry Reports”), para 9.

<sup>6</sup> 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 (“Second Request for Extension”).

any other person could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation, which is yet the required standard pursuant to Regulation 101(2) of the Regulations of the Court ("RoC").

5. Significantly, in its Second Request for Extension – which has all the attributes of an unauthorized reply in disguise to the Defence Views on 20 December – the Prosecutor still did *not* plead she has the required reasonable grounds to believe pursuant to Regulation 101(2).

6. Not only does the Prosecutor fail to plead that she has the required reasonable grounds to believe pursuant to Regulation 101(2), her submissions in support of extending the restrictions imposed on Mr. Yekatom do not meet the required threshold either.

7. Indeed, the situation in the Central African Republic ("CAR") and the alleged risks to *prospective* victims and witnesses are independent of Mr. Yekatom's will. The allegation about Mr. Yekatom's character traits – based solely on media reports concerning a 29 October 2018 incident at the National Assembly which was neither investigated nor established – does not give reason to believe that Mr. Yekatom would misuse his non-privileged communication rights in spite of the findings to the contrary in the First and Second Registry Reports.

8. To the extent that Annexes A and B submitted *ex parte* (along with other references not available to the Defence) purportedly justify the Prosecution Second Request for Extension, it must be underscored, as previously argued,<sup>7</sup> that Mr. Yekatom has not been provided with a genuine opportunity to be heard in this regard. Such material must thus be disregarded.

9. Lastly, contrary to the Prosecution's new position, factors including (i) Mr. Yekatom's acknowledgement, acceptance, undertaking to comply with and

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<sup>7</sup> Defence Views.

established abidance with the terms and conditions applicable to non-privileged communications and visits from and at the ICC DC; (ii) the First and Second Registry Reports; and (iii) Mr. Yekatom's demonstrated cooperation not only with the ICC DC personnel but also with the Registry, must be taken into consideration when adjudicating the Prosecution Second Request for Extension.

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

## PROCEDURAL BACKGROUND

11. On 30 October 2018, the Prosecution filed an application pursuant to Article 58 of the Rome Statute ("Statute") for, *inter alia*, restrictions of Mr. Yekatom's communications and visits in custody.<sup>8</sup>

12. On 17 November 2018, the Single Judge acting on behalf of the Pre-Trial Chamber granted the request and ordered to restrict Mr. Yekatom's telephone communications and visits for a two-week period.<sup>9</sup>

13. On 19 November 2018, Mr. Yekatom was formally informed of the terms and conditions regarding his non-privileged communications, including the two-week restrictions, which Mr. Yekatom acknowledged and undertook to respect.

14. On 30 November 2018, the Registry submitted on an *ex parte* basis, excluding the Prosecution, the first report on the implementation of restrictions.<sup>10</sup> A confidential redacted version was made available to the Prosecution on 7 December 2018.<sup>11</sup>

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<sup>8</sup> Prosecution's Application for the Issuance of a Warrant of Arrest for Alfred Yekatom, 30 October 2018, ICC-01/14-01/18-US-Exp.

<sup>9</sup> First Decision on Restrictions.

<sup>10</sup> Registry Report on the Implementation of the Restriction on Contact Ordered by the Single Judge, ICC-01/14-01/18-23-Conf-Exp, 30 November 2018.

<sup>11</sup> First Registry Report.

15. On 3 December 2018, the Prosecution filed, out of time, its First Request for Extension on an *ex parte* basis, excluding the Defence, requesting a continuation of restrictions on Mr. Yekatom's non-privileged communications.<sup>12</sup>

16. On 4 December 2018, the Pre-Trial Chamber issued its Second Decision on Restrictions where it, *inter alia*, ordered the Defence to submit its views on the First Prosecution Request for Extension by 20 December 2018.<sup>13</sup>

17. On 14 December 2018, the Registry submitted on an *ex parte* basis, excluding the Prosecution, the first report on the implementation of restrictions.<sup>14</sup> A confidential redacted version was made available to the Prosecution on 14 December 2018.<sup>15</sup>

18. On 17 December 2018, a confidential redacted version of the First Request for Extension was made available to the Defence<sup>16</sup> pursuant to the Chamber's reclassification order on 12 December 2018.<sup>17</sup>

19. On 20 December 2018, the Defence submitted its views on the First Request for Extension.<sup>18</sup>

20. On 27 December 2018, the Prosecution filed its Second Request for Extension.<sup>19</sup>

## SUBMISSIONS

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<sup>12</sup> 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.

<sup>13</sup> Second Decision on Restriction.

<sup>14</sup> 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.

<sup>15</sup> Second Registry Report.

<sup>16</sup> First Request for Extension.

<sup>17</sup> Order on Reclassification, 12 December 2018, ICC-01/14-01/18-31-Conf.

<sup>18</sup> Defence Views.

<sup>19</sup> Second Request for Extension.

**A. Having previously deferred to the Chamber the determination whether extending the restrictions imposed on Mr. Yekatom was necessary, the Prosecutor now adopts an entirely new and unsupported position.**

21. The Prosecution drastically changed its position from the First Request for the Extension to the Second Request for Extension. The First and Second Registry Reports were a determining factor, according to the Prosecution's position in its First Request for Extension. Notably, this factor was no longer determinative according to the Prosecution's Second Request for Extension.

22. As stated in the First Request for Extension, "the Registrar's Report on the implementation of the Order; and the Registry's inspection and/or Chamber's review of YEKATOM's actively and passively monitored communications, including the content thereof [...] would particularly inform the Chamber of whether YEKATOM has breached or attempted to breach any salient condition of the Order, which is highly relevant to the Chamber's determination on the propriety of extending its terms and conditions".<sup>20</sup>

23. Surprisingly, although the Prosecution deferred to the Chamber regarding the determination on the extension of contact restrictions imposed on Mr. Yekatom, it now seems to have changed position in light of the positive outcome of the First and Second Registry Reports. It is now arguing Mr. Yekatom's "purported compliance with the conditions of his detention does not mitigate any of the above-mentioned risks. Nor does it require terminating the active monitoring of non-privileged calls".<sup>21</sup> The Prosecution's change of strategy, without advancing a change of circumstances is revealing.

24. Regardless of the Prosecution's new position, the First and Second Registry Reports are and remain a determining factor on the propriety of extending Mr. Yekatom's contact terms and conditions. Mr. Yekatom's compliance with the

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<sup>20</sup> First Request for Extension, para 10 (emphasis added).

<sup>21</sup> Second Request for Extension, para 9.

conditions of his detention should be taken into account by the Pre-Trial Chamber. Such compliance is concrete evidence that he is not personally responsible for the fragility of the potential witnesses and the security situation in CAR. The situation in CAR and the fragility, albeit unfortunate, cannot be attributed to Mr. Yekatom. Notably, the reports contain no indication that Mr. Yekatom has made any deliberate or inadvertent contact that would have worsened the situation. Nor any attempt thereof.

25. In the present case, the overall picture consists of Mr. Yekatom's compliance with the detention regulations as well as the absence of any reported incidents that can be in any way linked to Mr. Yekatom's communication with the outside world. When viewed together, it is clear that a continued restriction is neither adequate nor proportionate to ensure the safety of potential witnesses, prevent breaches of confidentiality, and ensure the integrity of the proceedings.

**B. The Prosecutor's failure to plead that she has the required reasonable grounds to believe pursuant to Regulation 101(2).**

26. In order to reach the threshold of "reasonable" in "reasonable grounds", the request must present sufficiently credible evidence showing certain impropriety has occurred or could occur should the restrictions be lifted.<sup>22</sup> To find the evidence presented in support of the request credible, the evidence must be verified. Mere allegations based on unverified information within open source reports cannot be considered as sufficiently credible, thus not "reasonable".

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<sup>22</sup> *Ble Goudé*, Decision on "Prosecution's Request for Measures under Regulation 101(2) of the Regulations of the Court", 28 August 2014, ICC-02/11-02/11-133, paras 8-9. See also, *Lukić & Lukić*, Case No. IT-98-32/1-T, Decision on Milan Lukić's Appeal Against the Registrar's Decision of 18 November 2008, 29 November 2008, para 9, citing the standard of reasonableness established in *Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, para 13, characterising an unreasonable decision as, *inter alia*, a decision "tak[ing] into account irrelevant material or fail[ing] to take into account relevant material" or "a conclusion which no sensible person who has properly applied his mind to the issue could have reached".

27. In its First Request for Extension, the Prosecution neither alleged nor sought to establish the existence of such reasonable grounds. In fact, the notion “reasonable grounds to believe” is not even mentioned in the First Request for Extension. Quite to the contrary, the Prosecution acknowledged its inability to establish such reasonable grounds to believe in absence of certain information and deferred to the Pre-Trial Chamber’s assessment in this regard.

28. When the said information became available, the Prosecution’s previous emphasis on the compliance to detention rules, albeit not misplaced, was argumentative. In the absence of an opportunity to reply to the Defence Views that took into account the First and Second Registry Reports, the Prosecutor, now attempts to downplay the weight to be attributed to content of the reports through the filing of a Second Request seeking to extend restrictions beyond 11 January 2019.

29. The Second Request for Extension falls short of any argument or any evidence, let alone the required burden. Significantly, nowhere in the Second Request for Extension is there any argument to the effect that the “Prosecutor has reasonable grounds to believe that such contact: (b) Could prejudice or otherwise affect the outcome of the proceedings [...] or any other investigation” as required by Regulation 101(2). The Prosecution limits its arguments to allegations of salient risks to “victims and prospective witnesses”.<sup>23</sup> Again, the notion “reasonable grounds to believe” is not mentioned the Second Request for Extension.

**C. The Prosecutor’s submissions do not meet the reasonable grounds to believe threshold.**

30. The situation in CAR including the press and media release and the positions taken by various political groups are independent of Mr. Yekatom’s will. The political and security situation in CAR as well as the political activities, demonstrations and/or statements from the various groups active in the country are

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<sup>23</sup> Second Request for Extension, para 7.

irrelevant to the determination as to whether or not there are reasonable grounds to believe that Mr. Yekatom's unrestricted contact "could prejudice or otherwise affect the outcome of the proceedings" or the investigation. The same holds true for the alleged threats from the Anti-Balaka Coordination to withdraw from the peace process.

31. More importantly, since his arrest, Mr. Yekatom has no means to know what the various political groups are doing in CAR or the extent of their activity or inactivity. Mr. Yekatom is not aware of the political groups or figures purported actions. Nor is he in a position to influence them in any way.

32. In addition to arguments based on irrelevant factors, some allegations made by the Prosecution are simply untrue. Significantly, the Prosecution alleges, without any reference to any supporting material, that the "recent Anti-Balaka activities [were] conducted on [Mr. Yekatom's] behalf" and have worsen the circumstances justifying the imposition of communication restrictions.<sup>24</sup> The Prosecutor's submissions are speculative and unfairly detrimental and prejudicial to Mr. Yekatom.

33. The Prosecutor additionally claims that Mr. Yekatom is "prone to violence" based on his alleged conduct during the recent Presidential election. In support of its allegations, the Prosecution refers to newscasts reporting gunshots at the National Assembly.<sup>25</sup> The only information available to the Prosecution is provided by persons who were not present during the reported incident. The media reports concerning a 29 October 2018 incident at the National Assembly was neither investigated nor established. There is no independent report available detailing what happened.

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<sup>24</sup> Second Request for Extension, para 11.

<sup>25</sup> Second Request for Extension, fn 6.

34. Unverified information and second-hand hearsay as such cannot be considered as credible thereby does not give rise to reasonable grounds to believe within the meaning of Regulation 101, particularly not at this stage.

35. In addition, initial information obtained by the Defence suggests the events at the National Assembly unfolded quite differently. The information presented by the Prosecution does not stand up to scrutiny for the purpose of directly implicating Mr. Yekatom or to suggest that his will somehow underpinned the incident. Let alone serving as an example that Mr. Yekatom is “prone to violence”.

36. It follows that the Prosecution doesn't have probative allegations implicating Mr. Yekatom or depending on his will.

37. Pursuant to Regulation 101, the imposition of restrictions on the non-privileged contacts of a person detained requires a showing of reasonable grounds to believe that, *inter alia*, such contact could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation.

38. In this case, the available documentation and information does not establish reasonable grounds to believe – in particular, following the implementation of restrictions following Mr. Yekatom's arrival at the ICC DC – 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, to the extent that his right to privacy is outweighed.

39. The Prosecution's argument that potential witnesses and victims are currently facing security risks does not justify the contact restrictions.<sup>26</sup> The Prosecution advanced no concrete evidence to show that the security and vulnerability of the potential witnesses and victims would worsen if Mr. Yekatom is ceased to be actively

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<sup>26</sup> Second Request for Extension, para 7.

monitored but remains under passive monitoring.<sup>27</sup> The same holds true with the allegations regarding the security situation in CAR.<sup>28</sup> There is no indication that the security situation will improve or deteriorate in consonance with the level of communication restriction imposed on Mr. Yekatom.

40. Most cases before the Court involve countries that undergo political instability and populations at risk. This cannot justify restricting the communications of every suspect and accused after their arrival at the ICC DC. The restrictive measures are there to actively monitor a detained person's communication for the very reason that his past communications give reasonable grounds to believe that without any future restriction he could prejudice or otherwise affect the outcome of the proceedings.

41. The Prosecution's unsupported allegation that Mr. Yekatom is a continuing danger<sup>29</sup>, is but an attempt to convince the Pre-Trial Chamber of extending restrictive communication measures in the absence of any violation of the Order since his arrival.

42. More significantly, the entire Second Request for Extension disregards the burden upon the Prosecution. At no point did the Prosecution argue that Mr. Yekatom could prejudice or otherwise affect the outcome of the proceedings.

**D. *Ex parte* Annex A and B and other information not available to the Defence must be disregarded.**

43. The Second Request for Extension is accompanied by *ex parte* and under seal annexes A and B purportedly providing further details concerning security risks. The Prosecution additionally refers to various material and documents to which the Defence is not privy.<sup>30</sup>

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<sup>27</sup> Regulation 174 of the Regulations of the Registry.

<sup>28</sup> Second Request for Extension, para 7.

<sup>29</sup> Second Request for Extension, para 5

<sup>30</sup> Second Request for Extension, fns 3 (citing ICC-01/14-01/18-5-US-Exp; ICC-01/14-27-US-Exp), and 5 (citing ICC-01/14-22-US-Exp; CAR-OTP-2074-3244; CAR-OTP-2074-3252).

44. Pursuant to Regulation 101(3), the detained person has the right to be informed of the request for restrictive measures, and to be given the opportunity to be heard or to submit his or her views. Such opportunity should not be hollow. The detained person shall be given the genuine means to challenge the information purportedly giving rise to reasonable grounds to believe the requested restriction is warranted. This imperatively requires that the detained person is provided with adequate information to submit an informed view, in the knowledge of the scope of the allegations against him or her, sufficient to understand the evidence submitted to the Chamber.

45. This right is so fundamental to Regulation 101 that the Pre-Trial Chamber found it imperative to receive Mr. Yekatom's views on the Prosecutor's request and the measures initially adopted.<sup>31</sup>

46. Nevertheless, the Prosecution, in utter disregard of this right, chose to classify the supporting material to its Second Request for Extension as *ex parte*, available to the Prosecution only.<sup>32</sup>

47. Whether or not the annexes and the referenced materials indeed contain information that can potentially justify the continuation of restrictions, the Defence is not in a position to present informed views or to challenge the information and/or allegations therein without receiving it in the first place. Consequently, in the spirit of Regulation 101(3), such allegations and/or information cannot be held against Mr. Yekatom for the purpose of extending the restrictions beyond the initial two weeks. The annexes and the referenced materials unavailable to the Defence should therefore be disregarded.

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<sup>31</sup> Second Decision on Restrictions, para 9.

<sup>32</sup> Second Request for Extension, para 7.

**E. In the absence of probative allegations involving Mr. Yekatom or resulting from his will giving raise to reasonable grounds to believe, Mr. Yekatom's established compliance with applicable rules and demonstrated cooperation with ICC DC and Registry authorities must be the determining factor.**

48. In view of the Prosecution failure to meet the threshold reasonable grounds to believe and its inability to submit probative allegations directly implicating Mr. Yekatom or allegations that pertain to his actions and/or will, the determining criteria must therefore include:

- Mr. Yekatom's acknowledgement, acceptance and undertaking to comply with;<sup>33</sup> and has indeed complied with all regulations applicable to non-privileged telephone communications and visits at the ICC DC.
- The measures taken by Mr. Yekatom *inter alia*: (i) limiting the number of persons he intends to call to a strict minimum, including only immediate family members;<sup>34</sup> and (ii) instructing Counsel to ensure that his visitor was briefed before the visit, understood all the applicable conditions and would abide with the same.<sup>35</sup> More recently, Mr. Yekatom instructed Counsel to meet with an other upcoming visitor, thereby further demonstrating his determination not only to comply by the terms and conditions but also to ensure that his visitors understand the terms and conditions of the ordered restrictions and abide by them.<sup>36</sup>
- Mr. Yekatom also demonstrated not only his determination to comply by the rules and conditions but also his willingness to cooperate with the Court. He

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<sup>33</sup> Annex A to 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-AnxA.

<sup>34</sup> First Registry Report, para 7; Second Registry Report, para 9.

<sup>35</sup> See Annex B to 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-AnxB.

<sup>36</sup> See Annex A *ex parte*.

cooperated fully with the Registry Language Service during the Panel's assessment of his French proficiency.

- Mr. Yekatom also gave his express consent to enable the Panel to evaluate his ability to read Sango in order for the Registry to assess his needs in that language. He therefore cooperated beyond the Chamber's express Order as Sango was not part of the latter.

49. So far Mr. Yekatom showed his full intention to collaborate and showed due regard to the Court Rules and Regulations. The Defence recalls that Mr. Yekatom has acknowledged, undertaken to comply and effectively complied with all regulations applicable to non-privileged telephone communications and visits<sup>37</sup> and continues to do so.

50. On this basis, the extension of the restrictions imposed on Mr. Yekatom until 11 January 2019 must be rescinded forthwith.

51. The fact that Mr. Yekatom: (i) has fully complied with the conditions set forth in the First Decision on Restrictions; (ii) has demonstrated the will and the determination to abide by all regulations and conditions applicable to his non-privileged telephone communications and visits; and that (iii) the First and Second Registry Reports confirm the absence of any violation since Mr. Yekatom's arrival at the ICC DC, plainly overcome any available information and/or documentation purportedly giving rise to reasonable grounds to believe pursuant to Regulation 101.

## CONCLUSION

52. The Prosecutor has failed to plead reasonable grounds to believe pursuant to Regulation 101 and failed to provide justification meeting the threshold. Mr. Yekatom demonstrated positive attitude and good will as well as a determination to comply and abide by all regulations and conditions applicable to his non-privileged

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<sup>37</sup> Defence Views, para 44.

telephone communications and visits. Mr. Yekatom further exhibited willingness to cooperate.

53. In these circumstances, the Defence respectfully submits that the restrictions imposed on Mr. Yekatom in the First Decision on Restrictions should be terminated forthwith.

54. Should the Pre-Trial Chamber determine that any of the restrictions should be extended beyond 11 January 2019, significantly ease the restrictions to allow Mr. Yekatom to have private family visits.<sup>38</sup>

## CONFIDENTIALITY

55. This request is classified as confidential *ex parte* as it refers to the Prosecution Submission on the Extension of Restrictions, with bears the same classification.

## RELIEF SOUGHT

56. In light of the above submissions, the Defence respectfully requests the Pre-Trial Chamber II to:

**DENY** Prosecution's Second Request for Extension, and

**TERMINATE** the restrictions imposed on Mr. Yekatom's non-privileged telephone communications and visits forthwith; or

**IN THE ALTERNATIVE,**

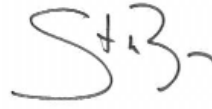
**EASE AND MODIFY** significantly the restrictions imposed on Mr. Yekatom non-privileged telephone communications and visits;

**ALLOW** Mr. Yekatom to have actively monitored private family visits.

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<sup>38</sup> Private 'actively monitored' family visits have been authorized in the past whereby a detainee could meet with his wife in private, in a room equipped with a sensitive listening device. See Decision on Prosecution requests to impose restrictions on Mr. Ntaganda's contacts, 18 August 2015, ICC-01/04-02/06-785-Red, para. 69.

**RESPECTFULLY SUBMITTED ON THIS 7<sup>TH</sup> DAY OF JANUARY 2019**



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

The Hague, the Netherlands