

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 10 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 YEKATOM***

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

Third 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

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

I. PROCEDURAL HISTORY

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”)² in which the Prosecutor requested, *inter alia*, that Yekatom’s communications be restricted.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.⁴

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 2014.⁵

3. On 17 November 2018, the Single Judge, acting on behalf of the Chamber,⁶ issued the “Decision pursuant to Regulation 101 of the Regulations of the Court” (the “17 November 2018 Decision”)⁷ 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.⁸ The Single Judge also ordered, *inter alia*, the Registrar to notify the 17 November 2018 Decision to counsel for Yekatom “as soon as he or she is

¹ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-27.

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, 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.

⁶ Pre-Trial Chamber II, Decision designating a Single Judge, 9 November 2018, ICC-01/14-01/18-10.

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

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

appointed”, and to submit a report on the implementation of the restrictions on contact.⁹

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” (the “First Registry Report”).¹⁰

6. On 4 December 2018, upon request of the Prosecutor,¹¹ the Chamber issued the “Second Decision Pursuant to Regulation 101 of the Regulations of the Court” (the “4 December 2018 Decision”), provisionally extending until 11 January 2019 Yekatom’s communications restrictions put in place by way of the 17 November 2018 Decision.¹² It also ordered, *inter alia*, the Registrar to submit a second report on the implementation of the 4 December 2018 Decision, and Yekatom, who had appointed a new counsel in the meantime,¹³ to submit his views until 20 December 2018.¹⁴

7. On 14 December 2018, the Registry submitted the “Second Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II” (the “Second Registry Report”).¹⁵

8. On 20 December 2018, the Defence submitted the “Defence views on the ‘Prosecutor’s submission regarding the extension of contact restrictions concerning Alfred Yekatom’s pre-trial detention’” (the “20 December 2018 Observations”).¹⁶

9. On 27 December 2018, the Prosecutor submitted the “Prosecution’s Request that the Chamber Extend the Contact Restrictions Imposed in the ‘Second Decision

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

¹⁰ ICC-01/14-01/18-23-Conf-Exp with two confidential *ex parte* annexes. A confidential redacted version of the report and its annexes was also submitted.

¹¹ ICC-01/14-01/18-24-Conf-Red, para. 5.

¹² Pre-Trial Chamber II, Second Decision Pursuant to Regulation 101 of the Regulations of the Court, 4 December 2018, ICC-01/14-01/18-25-Conf-Exp.

¹³ Pre-Trial Chamber II, Decision on Withdrawal of Counsel, 29 November 2018, ICC-01/14-01/18-21. Stéphane Bourgon accepted appointment as Yekatom’s counsel on 26 November 2018, *see* ICC-01/14-01/18-20, para. 4 and ICC-01/14-01/18-20-Anx.

¹⁴ 4 December 2018 Decision, ICC-01/14-01/18-25-Conf-Exp, p. 6.

¹⁵ ICC-01/14-01/18-32-Conf-Exp; ICC-01/14-01/18-32-Conf-Red.

¹⁶ ICC-01/14-01/18-37-Conf-Exp with two confidential *ex parte* annexes.

Pursuant to Regulation 101 of the Regulations of the Court' (ICC-01/14-01/18-25-Conf-Exp" (the "Request").¹⁷

10. On 7 January 2019, the Defence responded to the Request (the "7 January 2019 Response").¹⁸

II. SUBMISSIONS

11. In the 20 December 2018 Observations, the Defence requests that the Chamber "immediately end the restrictions on Mr. Yekatom's non-privileged communications and visits".¹⁹ It argues, in essence, that (i) the available documentation does not show reasonable grounds to believe that contacts between Yekatom and his associates could affect the Prosecutor's investigations and the outcome of the proceedings against him;²⁰ and that (ii) as indicated in the Registry's reports, no violations of the Chamber's decisions have occurred and that Yekatom undertook to abide by such conditions.²¹ In case the Chamber would maintain the restrictions, the Defence requests, alternatively, that the 60-minute/week limit on Yekatom's non-privileged telephone calls be increased to 120 minutes/week distributed over four different days, that active monitoring of his non-privileged telephone communications be terminated, and that private visits between Yekatom and his wife be authorised.²²

12. In the Request, the Prosecutor requests that the Chamber extend the contact restrictions imposed on Yekatom beyond 11 January 2019.²³ The Prosecutor argues, in essence, that the circumstances justifying the impositions of the restrictions have not changed;²⁴ indeed, they "remain justified to protect prospective victims, witnesses, and the ongoing investigation". In this context, the Prosecutor makes reference to the volatile security situation in the Central African Republic (the "CAR"), Yekatom's past behaviour, his support among the Anti-Balaka leadership, the heightened Anti-Balaka activities and threats directed against ongoing

¹⁷ ICC-01/14-01/18-44-Conf-Exp with two under seal *ex parte* annexes.

¹⁸ ICC-01/14-01/18-49-Conf-Exp with one confidential *ex parte* annex.

¹⁹ 20 December 2018 Observations, ICC-01/14-01/18-37-Conf-Exp, para. 6.

²⁰ 20 December 2018 Observations, ICC-01/14-01/18-37-Conf-Exp, paras 3, 25-35.

²¹ 20 December 2018 Observations, ICC-01/14-01/18-37-Conf-Exp, paras 5, 43-49; ICC-01/14-01/18-37-Conf-Exp-AnxA.

²² 20 December 2018 Observations, ICC-01/14-01/18-37-Conf-Exp, para. 51.

²³ Request, ICC-01/14-01/18-44-Conf-Exp, para. 1.

²⁴ Request, ICC-01/14-01/18-44-Conf-Exp, paras 4, 11.

proceedings and the vulnerability of potential witnesses and victims.²⁵ She contends that Yekatom's compliance with the Chamber's conditions "just over a month since his transfer to the Court" does not mitigate the serious risks of lifting [the restrictions] at this early stage of the proceedings".²⁶ The Prosecutor requests the "continuation of contact restrictions without modification beyond 11 January 2019".²⁷

13. In the 7 January 2019 Response, the Defence repeats that the Prosecutor's arguments and "unverified information" do not satisfy the "reasonable grounds" threshold of regulation 101 of the Regulations,²⁸ recalls that Yekatom has abided by the Chamber's decisions, as demonstrated by the Registry's reports,²⁹ disputes the Prosecutor's allegations about Yekatom's past behaviour,³⁰ underlines that Yekatom is not responsible for the activities of the Anti-Balaka leadership in the CAR and that the risks to potential witnesses and victims are independent of Yekatom's will.³¹ Lastly, the Defence stresses that the Chamber take into account the Registry reports and the fact that Yekatom has abided with the Chamber's decisions and cooperated with the Court.³² The Defence requests that the restrictions on Yekatom's contacts are terminated or, alternatively, significantly modified.³³

III. DETERMINATION OF THE SINGLE JUDGE

14. The Single Judge notes articles 21(1)(a) and (3) and 57(3)(a) of the Rome Statute, regulations 97, 98, 99(1)(i), 100 and 101 of the Regulations and regulations 174 and 175 of the Regulations of the Registry.

15. At the outset, the Single Judge underscores that the 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. Having carefully reviewed the material and arguments presented by the parties, the Single Judge is, for the moment, still persuaded, subject to what is said below, that there are reasonable grounds to

²⁵ Request, ICC-01/14-01/18-44-Conf-Exp, paras 5-8.

²⁶ Request, ICC-01/14-01/18-44-Conf-Exp, paras 1, 9-11.

²⁷ Request, ICC-01/14-01/18-44-Conf-Exp, para. 12.

²⁸ 7 January 2019 Response, ICC-01/14-01/18-49-Conf-Exp, paras 4-6, 26-29, 32-34, 37-38, 52.

²⁹ 7 January 2019 Response, ICC-01/14-01/18-49-Conf-Exp, paras 24, 48-49, 50.

³⁰ 7 January 2019 Response, ICC-01/14-01/18-49-Conf-Exp, paras 7, 33-36.

³¹ 7 January 2019 Response, ICC-01/14-01/18-49-Conf-Exp, paras 7, 24, 30-32, 39-40.

³² 7 January 2019 Response, ICC-01/14-01/18-49-Conf-Exp, paras 9, 24, 48-49, 51-52.

³³ 7 January 2019 Response, ICC-01/14-01/18-49-Conf-Exp, paras 50, 53, 56.

believe that contacts between Yekatom and his associates could affect the investigation and the outcome of the proceedings against him. The Single Judge recalls the relevant findings made by the Chamber when issuing the warrant of arrest for Yekatom,³⁴ which formed the basis of the Single Judge's 17 November 2018 Decision.³⁵

16. However, the Single Judge notes the two Registry reports that indicate that Yekatom, since his arrival in the ICC Detention Centre, has not breached the conditions imposed on his communications and contacts. Also, while remaining attentive to the safety and well-being of witnesses and victims, the Single Judge notes 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.

17. Therefore, the Single Judge is prepared to revisit the matter again, depending on the information that will be presented. To this end, the Registrar is ordered to prepare a report on the implementation of the Chamber's decision setting out 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.

18. The Single Judge decides that Yekatom may have private family visits, namely from his wife and children, without any monitoring or the use of "sensitive listening devices"³⁶ and that, otherwise, the measures and conditions, as adopted in the 17 November 2018 Decision, should stay in place provisionally until Friday, 1 February 2019.

³⁴ Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 17 November 2018, ICC-01/14-01/18-1-Red, para. 22.

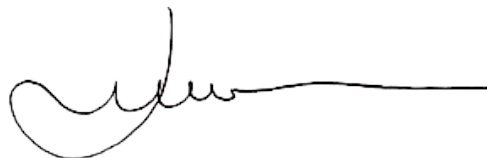
³⁵ 17 November 2018 Decision, para. 5.

³⁶ See 7 January 2019 Response, ICC-01/14-01/18-49-Conf-Exp, footnote 38.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **GRANTS** Alfred Yekatom the right to have private family visits, namely from his wife and children, as described in paragraph 18;
- b) **GRANTS** provisionally the extension of the restrictive measures concerning Alfred Yekatom's communications and contacts put in place by way of the 17 November 2018 Decision until Friday, 1 February 2019;
- c) **ORDERS** the Registrar to submit to the Chamber a report on the implementation of the restrictions on contact ordered no later than Wednesday, 23 January 2019; and
- d) **ORDERS** the Prosecutor and the Defence to submit their observations, including on the Registry report, if any, no later than Monday, 28 January 2019.

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



**Judge Rosario Salvatore Aitala,
Single Judge**

Dated this Thursday, 10 January 2019

At The Hague, The Netherlands