

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 1 February 2019

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**

Fourth 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 fourth 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”)¹ whereby she requested, *inter alia*, that Yekatom’s communications be restricted upon his arrival at the ICC Detention Centre.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.⁴

3. On 17 November 2018, Yekatom was surrendered to the Court by the authorities of the Central African Republic (“CAR”).⁵ On the same day, 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”) restricting Yekatom’s telephone communications and visits for a two-week period upon his arrival at the ICC Detention Centre, prohibiting Yekatom from using obscure or coded language, and ordering the active monitoring of telephone calls, visits and any correspondence received or sent.⁷ 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 appointed”, and to submit a report on the implementation of the restrictions on contact.⁸

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 ICC-01/14-01/18-17-US-Exp, paras 19-24.

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

⁷ ICC-01/14-01/18-11-Conf-Exp, paras 6-9.

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

4. On 18 November 2018, Yekatom arrived at the ICC Detention Centre.⁹
5. On 30 November 2018, the Registry submitted the “Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge”.¹⁰
6. On 4 December 2018, upon request by 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 Yekatom’s restrictions on contact put in place by way of the 17 November 2018 Decision until 11 January 2019.¹² The Chamber also ordered, *inter alia*, the Registrar to submit a report on the implementation of the 4 December 2018 Decision.¹³
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”.¹⁴
8. On 10 January 2019, upon request by the Prosecutor,¹⁵ the Single Judge, acting on behalf of the Chamber,¹⁶ issued the “Third Decision Pursuant to Regulation 101 of the Regulations of the Court” (the “10 January 2019 Decision”), provisionally extending Yekatom’s restrictions on contact put in place by way of the 17 November 2018 Decision until 1 February 2019, with one modification: the Single Judge granted Yekatom the right to have private family visits.¹⁷ The Chamber also ordered, *inter alia*, (i) the Registrar to submit a report on the implementation of the 10 January 2019 Decision, and (ii) the Prosecutor and Yekatom to submit their observations no later than Monday, 28 January 2019.¹⁸

⁹ ICC-01/14-01/18-17-US-Exp, para. 25.

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, *see* ICC-01/14-01/18-23-Conf-Red.

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

¹² ICC-01/14-01/18-25-Conf-Exp.

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

¹⁴ ICC-01/14-01/18-32-Conf-Exp; a confidential redacted version of the report was also submitted, *see* ICC-01/14-01/18-32-Conf-Red.

¹⁵ ICC-01/14-01/18-44-Conf-Exp with two under seal, *ex parte* annexes.

¹⁶ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-27.

¹⁷ ICC-01/14-01/18-52-Conf-Exp.

¹⁸ 10 January 2019 Decision, ICC-01/14-01/18-52-Conf-Exp, p. 8.

9. On 23 January 2019, the Registry submitted the “Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II” (the “Third Registry Report”),¹⁹ whereby the Registry brought to the attention of the Chamber an incident which occurred on 10 January 2019, when Yekatom spoke to an individual who was not on his list of non-privileged contacts. According to the Registry, the matters discussed were of a private nature.²⁰

10. On 28 January 2019, the Chamber received the “Prosecution’s Response to the ‘Third Decision Pursuant to Regulation 101 of the Regulations of the Court’ (ICC-01/14-01/18-52-Conf-Exp)”, whereby the Prosecutor requested the Chamber to (i) extend the restrictions on contact currently in place for an additional period of 30 days; or alternatively (ii) increase the time limit for telephone conversations from 60 minutes to 120 minutes per week or otherwise order the random monitoring of Yekatom’s telephone calls (the “Request”).²¹

11. On 28 January 2019, the Chamber received the “Defence observations further to the Third Decision Pursuant to regulation 101 of the Regulations of the Court”, whereby the Defence requested the Chamber to rescind the restrictions on contact imposed on Yekatom (the “Observations”).²²

II. SUBMISSIONS

12. In the Request, the Prosecutor requests the Chamber to extend the restrictions on contact imposed on Yekatom beyond 1 February 2019, for an additional period of 30 days.²³ The Prosecutor argues, in essence, that the restrictions are justified in light of Yekatom’s past violent behaviour, his continued support on the ground from subordinates and the Anti-Balaka leadership, Anti-Balaka’s control over a significant part of the territory of the CAR, and the serious crimes and potential lengthy term of imprisonment faced by Yekatom if convicted, all of which provide him with the motivation and means to reach, intimidate, interfere with or harm (potential)

¹⁹ ICC-01/14-01/18-62-Conf-Exp; a confidential redacted version is also available, *see* ICC-01/14-01/18-62-Conf-Red.

²⁰ Third Registry Report, ICC-01/14-01/18-62-Conf-Red, paras 10-11.

²¹ ICC-01/14-01/18-69-Conf-Exp, with one under seal *ex parte* annex.

²² ICC-01/14-01/18-71-Conf.

²³ Request, ICC-01/14-01/18-69-Conf-Exp, paras 1 and 18.

witnesses.²⁴ The Prosecutor further highlights that Yekatom has not fully complied with the current restrictions on contact and refers to the 10 January 2019 incident mentioned in the Third Registry Report.²⁵ Lastly, the Prosecutor stresses that the process of implementing safeguards and contingency plans is still ongoing and lifting restrictions at this point may cause irreparable prejudice to the investigation and endanger (potential) witnesses.²⁶ Alternatively, the Prosecutor proposes the measures, as summarised in paragraph 10 above.²⁷

13. In its Observations, the Defence requests the Chamber to rescind the restrictions imposed on Yekatom's non-privileged telephone communications.²⁸ It argues, in essence, that the "reasonable grounds to believe" test in regulation 101 of the Regulations has not been met as there is no information giving rise to the suspicion that Yekatom is engaging in activities that may affect the investigation and outcome of the processings, or that he poses a threat to (potential) witnesses and victims.²⁹ Regarding the 10 January 2019 incident, the Defence underscores that the matters discussed were of a private nature – as stated in the Third Registry Report – and that this incident was minor and isolated.³⁰ Further, the Defence submits that Yekatom will voluntarily limit the number of persons on his list of non-privileged contacts and not include any resource person and/or investigator in his Defence team, if restrictions imposed on him are lifted.³¹ This goes to show, in the view of the Defence, that Yekatom has no intention of interfering with the investigation.³²

III. DETERMINATION OF THE CHAMBER

14. The Chamber 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.

²⁴ Request, ICC-01/14-01/18-69-Conf-Exp, paras 5-8.

²⁵ Request, ICC-01/14-01/18-69-Conf-Exp, paras 1, 11-12.

²⁶ Request, ICC-01/14-01/18-69-Conf-Exp, para. 14.

²⁷ Request, ICC-01/14-01/18-69-Conf-Exp, paras 16-17.

²⁸ Defence Observations, ICC-01/14-01/18-71-Conf, para. 35.

²⁹ Defence Observations, ICC-01/14-01/18-71-Conf, paras 4 and 18-21.

³⁰ Defence Observations, ICC-01/14-01/18-71-Conf, paras 24-25.

³¹ Defence Observations, ICC-01/14-01/18-71-Conf, paras 5 and 25-27.

³² Defence Observations, ICC-01/14-01/18-71-Conf, para. 28.

15. At the outset, the Chamber recalls that the restrictions on contact and communication under the Court's statutory framework must be (re-)assessed in light of concrete, specific and up-to-date information.³³ The Chamber has carefully reviewed the Third Registry Report, as well as the arguments and material presented by the parties. The Chamber notes, in particular, the incident reported by the Registry in its Third Registry Report, which occurred on 10 January 2019, when Yekatom deliberately asked his interlocutor to put the telephone on speaker so that he could talk to an individual who was not on his non-privileged telephone contact list.³⁴ The Chamber finds this to be a clear violation of the regime concerning the restrictions on contact imposed on Yekatom.³⁵ The Chamber also recalls the relevant findings made when issuing the warrant of arrest for Yekatom,³⁶ which formed the basis of the 17 November 2018 Decision.³⁷ In light of the above, the Chamber is still persuaded, for the moment and subject to what is said below, that there are reasonable grounds to believe that contacts between Yekatom and his associates could affect the investigation and the outcome of the proceedings against him.

16. Having said that, the Chamber also notes that the conversation that Yekatom had on 10 January 2019 with the individual not included on his non-privileged telephone contact list appears to relate to private matters.³⁸ The Chamber also notes that this incident was isolated, considering that the three reports submitted by the Registry since Yekatom's arrival in the ICC Detention Centre do not indicate any other breach of the conditions imposed on his communications and contacts.

17. While remaining attentive to the safety and well-being of witnesses and victims, the Chamber considers that more concrete information is needed to demonstrate the need to maintain the restrictions on Yekatom's contacts and communications during the entire pre-trial stage of this case. The Chamber is prepared to revisit the matter again, depending on the information that will be presented. To this end, the Registrar

³³ 10 January 2019 Decision, ICC-01/14-01/18-52-Conf-Exp, para. 15.

³⁴ Third Registry Report, ICC-01/14-01/18-62-Conf-Red, paras 10-11.

³⁵ See the 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp; the 4 December 2018 Decision, ICC-01/14-01/18-25-Conf-Exp; and the 10 January 2019 Decision, ICC-01/14-01/18-52-Conf-Exp.

³⁶ Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, 17 November 2018, ICC-01/14-01/18-1-Red, para. 22.

³⁷ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, para. 5.

³⁸ See the Third Registry Report, ICC-01/14-01/18-62-Conf-Red, para. 11.

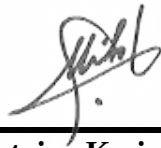
is ordered to prepare a report on the implementation of the Chamber's decision setting out any relevant information relating to Yekatom's behaviour or communications that may give rise to suspicion that he interferes with the Prosecutor's investigation (in particular that he poses a threat to potential witnesses and victims) or that he engages in activities that may affect the outcome of the proceedings. The Chamber also encourages the Prosecutor to accelerate the process of implementing the requisite safeguards and contingency plans for the protection of witnesses and victims.

18. In light of all of the above, the Chamber decides that the measures and conditions, as adopted in the 17 November 2018 Decision and as modified by the 10 January 2019 Decision, should stay in place provisionally until Friday, 15 February 2019 (inclusive).

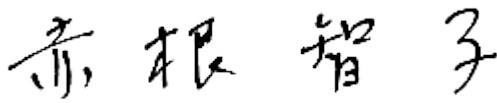
FOR THESE REASONS, THE CHAMBER HEREBY

- a) **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 and as modified by the 10 January 2019 Decision until Friday, 15 February 2019 (inclusive);
- b) **ORDERS** the Registrar to submit to the Chamber a report on the implementation of the restrictions on contact ordered no later than Monday, 11 February 2019; and
- c) **ORDERS** the Prosecutor and the Defence to submit their observations, including on the Registry report, if any, no later than Wednesday, 13 February 2019.

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 Friday, 1 February 2019

At The Hague, The Netherlands