

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

**No. ICC-01/14-01/18
Date: 15 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**

Fifth 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, Registrar

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 the “ICC”) issues this fifth 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 requesting, *inter alia*, that his contacts be restricted upon his arrival at the ICC Detention Centre.² The Prosecutor submitted that there are 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.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

4. On 18 November 2018, Yekatom arrived at the ICC Detention Centre.⁸

5. On 4 December 2018, upon request by the Prosecutor,⁹ the Chamber issued the “Second Decision Pursuant to Regulation 101 of the Regulations of the Court”

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 ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant of arrest is also available, *see* 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 ICC-01/14-01/18-17-US-Exp, para. 25.

⁹ ICC-01/14-01/18-24-Conf-Red, para. 5.

provisionally extending the restrictions on Yekatom's contacts put in place by way of the 17 November 2018 Decision until 11 January 2019.¹⁰

6. On 10 January 2019, upon request by the Prosecutor,¹¹ the Single Judge, acting on behalf of the Chamber,¹² issued the "Third Decision Pursuant to Regulation 101 of the Regulations of the Court" (the "10 January 2019 Decision") provisionally extending the restrictions on Yekatom's contacts 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.¹³

7. On 1 February 2019, the Chamber issued the "Fourth Decision Pursuant to Regulation 101 of the Regulations of the Court" (the "1 February 2019 Decision"), provisionally extending the restrictions on Yekatom's contacts put in place by way of the 17 November 2018 Decision, as modified by the 10 January 2019 Decision, until 15 February 2019.¹⁴ The Chamber also ordered: (i) the Registrar to submit a report on the implementation of the 1 February 2019 Decision no later than Monday, 11 February 2019; and (ii) the Prosecutor and Yekatom to submit their observations no later than Wednesday, 13 February 2019.¹⁵

8. On 11 February 2019, the Chamber received the "Fourth Registry Report on the Implementation of the Restrictions on Contact Ordered by Pre-Trial Chamber II" (the "Fourth Registry Report").¹⁶

9. On 13 February 2019, the Chamber received the "Prosecution's Response to the 'Fourth Decision Pursuant to Regulation 101 of the Regulations of the Court' (ICC-01/14-01/18-75-Conf-Exp)"¹⁷ requesting the Chamber to: (i) extend the restrictions on

¹⁰ ICC-01/14-01/18-25-Conf-Exp.

¹¹ ICC-01/14-01/18-44-Conf-Exp with two under seal, *ex parte* annexes.

¹² Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-27.

¹³ ICC-01/14-01/18-52-Conf-Exp.

¹⁴ ICC-01/14-01/18-75-Conf-Exp, para. 18.

¹⁵ ICC-01/14-01/18-75-Conf-Exp, p. 8.

¹⁶ ICC-01/14-01/18-81-Conf-Exp. A confidential redacted version of the report was also submitted, *see* ICC-01/14-01/18-81-Conf-Red.

¹⁷ ICC-01/14-01/18-83-Conf.

Yekatom's contacts beyond 15 February 2019 for an additional 30-day period; or (ii) in the alternative gradually modify the restrictions on Yekatom's contacts.¹⁸

10. On 13 February 2019, the Chamber received the "Observations de la Défense de M. Alfred Rombhot Yekatom à la suite de la Quatrième Décision en application de la Norme 101 du Règlement de la Cour"¹⁹ requesting the Chamber to: (i) immediately rescind the restrictions on Yekatom's contacts; or (ii) in the alternative mitigate the restrictions on Yekatom's contacts by allowing him to communicate with persons close to him at least once a day.²⁰

II. SUBMISSIONS

11. The Prosecutor argues that "[t]he circumstances justifying [...] [the] restrictions [on Yekatom's contacts], as identified in the Prosecution's Application for the Warrants of Arrest, subsequent Prosecution filings, and the Chamber's prior decisions, have not changed".²¹ Furthermore, according to the Prosecutor, "[t]hat YEKATOM, to date, has ostensibly not circumvented the contact restrictions to threaten witnesses or interfere with the investigation does not indicate that he would not in their absence".²² The Prosecutor also asserts that the restrictions on Yekatom's contacts "only concern non-private related contacts and non-privileged communications" and "the extension of the contact restrictions is not indefinite and is subject to regular review by the Chamber".²³

12. The Defence for Yekatom submits that, due to the restrictions on his contacts, Yekatom is not in a position to assure himself of the well-being of persons close to him.²⁴ In addition, it is the view of the Defence for Yekatom that Yekatom has not been informed of the circumstances justifying the restrictions on his contacts.²⁵ The Defence for Yekatom also avers that, besides the initial allegations contained in the application for the issuance of a warrant of arrest, the Prosecutor has not submitted

¹⁸ ICC-01/14-01/18-83-Conf, para. 14.

¹⁹ ICC-01/14-01/18-84-Conf-Exp. A confidential redacted version was also submitted, see ICC-01/14-01/18-84-Conf-Red.

²⁰ ICC-01/14-01/18-84-Conf-Red, paras 36-37.

²¹ ICC-01/14-01/18-83-Conf, para. 5 (footnotes omitted).

²² ICC-01/14-01/18-83-Conf, para. 9 (footnote omitted).

²³ ICC-01/14-01/18-83-Conf, paras 10-11 (footnote omitted).

²⁴ ICC-01/14-01/18-84-Conf-Red, para. 14.

²⁵ ICC-01/14-01/18-84-Conf-Red, para. 18.

concrete, specific and up-to-date information satisfying the minimum standard set by the Chamber to extend the restrictions on Yekatom's contacts.²⁶ Furthermore, the Defence for Yekatom takes the view that the behaviour of Yekatom since his arrival at the ICC Detention Centre does not support the conclusion that there are reasonable grounds to believe that he would affect the investigation, witnesses or the proceedings.²⁷ Finally, the Defence for Yekatom asserts that, despite the fact that Yekatom and Patrice-Edouard Ngaïssona ("Ngaïssona") are in a position to communicate, there has been no change in the behaviour of Yekatom during his telephone conversations or any incident.²⁸

III. DETERMINATION OF THE CHAMBER

13. 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.

14. At the outset, the Chamber recalls that 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.²⁹ The Chamber has carefully reviewed the Fourth Registry Report and the arguments presented by the parties. The Chamber recalls the relevant findings made when issuing the warrant of arrest for Yekatom,³⁰ which formed the basis of the 17 November 2018 Decision.³¹ In the view of the Chamber, there are currently no indications that the circumstances justifying the restrictions on Yekatom's contacts have changed. Furthermore, considering that the case against Ngaïssona arises out of the same situation, the crimes imputed against Yekatom and Ngaïssona overlap substantially,³² and restrictions on Ngaïssona's contacts have been imposed,³³ the Chamber finds it necessary to maintain the restrictions on Yekatom's contacts so as not to defeat the purpose of the restrictions

²⁶ ICC-01/14-01/18-84-Conf-Red, para. 21.

²⁷ ICC-01/14-01/18-84-Conf-Red, para. 24.

²⁸ ICC-01/14-01/18-84-Conf-Red, para. 30.

²⁹ ICC-01/14-01/18-75-Conf-Exp, para. 15.

³⁰ ICC-01/14-01/18-1-Red, para. 22.

³¹ ICC-01/14-01/18-11-Conf-Exp, para. 5.

³² Compare ICC-01/14-01/18-1-Red, para. 18 and ICC-01/14-02/18-2-Red, para. 16.

³³ Pre-Trial Chamber II, "Redacted Version of Third Decision pursuant to Regulation 101 of the Regulations of the Court", 6 February 2019, ICC-01/14-02/18-27-Conf-Exp-Red.

on Ngaïssona's contacts. On this basis, the Chamber remains persuaded, for the time being and subject to the considerations set out below, that there are reasonable grounds to believe that contact between Yekatom and his associates could affect the investigation and the outcome of the proceedings.

15. Having said that, the Chamber notes that the Fourth Registry Report indicates that, "during the active monitoring of Mr Yekatom's telephone calls in the fourth reporting period, no incidents occurred".³⁴ The Chamber further observes that, except for one incident,³⁵ the preceding three reports submitted by the Registry since Yekatom's arrival to the ICC Detention Centre also do not indicate any breach of the restrictions imposed on his contacts.

16. 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, 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 is interfering with the Prosecutor's investigation (in particular that he poses a threat to potential witnesses and victims) or that he is engaging 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.

17. In so far as Yekatom's request to contact persons close to him at least once a day is concerned,³⁶ the Chamber considers that such an arrangement would be too burdensome for the ICC Detention Centre in view of the need to actively monitor Yekatom's telephone communications and prepare translations.³⁷ Furthermore, the Chamber observes that Yekatom may receive family visits and is not restricted in his

³⁴ ICC-01/14-01/18-81-Conf-Red, para. 13.

³⁵ ICC-01/14-01/18-75-Conf-Exp, para. 15.

³⁶ ICC-01/14-01/18-84-Conf-Red, para. 37.

³⁷ ICC-01/14-01/18-11-Conf-Exp, paras 6, 8.

contacts with his defence counsel,³⁸ thus allowing him to be additionally informed of the well-being of persons close to him through his defence counsel. Accordingly, this request is rejected.

18. In the light of the above, the Chamber decides that the measures and conditions adopted in the 17 November 2018 Decision, as modified by the 10 January 2019 Decision, shall stay in place provisionally until Friday, 1 March 2019 (inclusive).

FOR THESE REASONS, THE CHAMBER HEREBY

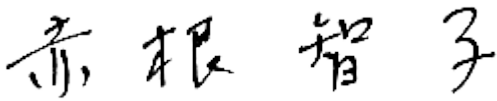
- a) **GRANTS** provisionally the extension of the restrictive measures concerning Yekatom's communications and contacts put in place by way of the 17 November 2018 Decision, as modified by the 10 January 2019 Decision, until Friday, 1 March 2019 (inclusive);
- b) **REJECTS** Yekatom's request to contact persons close to him at least once a day;
- c) **ORDERS** the Registrar to submit to the Chamber a report on the implementation of the restrictions on Yekatom's contacts no later than Monday, 25 February 2019; and
- d) **ORDERS** the Prosecutor and the Defence for Yekatom to submit their observations, including on the Registry report, if any, no later than Wednesday, 27 February 2019.

³⁸ ICC-01/14-01/18-11-Conf-Exp, para. 6.

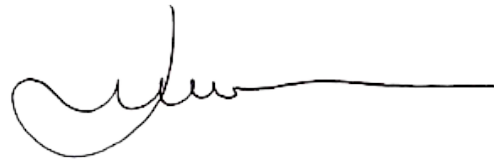
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Friday, 15 February 2019

At The Hague, The Netherlands