

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 1 March 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 AND
PATRICE-EDOUARD NGAÏSSONA***

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

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 Alfred Yekatom
Stéphane Bourgon
Mylène Dimitri

Counsel for Patrice-Edouard Ngaïssona
Geert-Jan Alexander Knoops

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 the “ICC”) issues this 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 warrants of arrest for Patrice-Edouard Ngaïssona (“Ngaïssona”) and Alfred Yekatom (“Yekatom”)¹ requesting, *inter alia*, that their contacts be restricted upon arrival at the ICC Detention Centre.² The Prosecutor submitted that there are reasonable grounds to believe that contact between Ngaïssona, Yekatom and their 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 for 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 communications upon his arrival at the ICC Detention Centre for a period of two weeks.⁷ The Single Judge limited the number of individuals Yekatom could make telephone calls to and receive visits from, ordered the active monitoring of his telephone calls and visits, and limited the duration of his telephone calls to 60 minutes per week and the language of communication to French and Sango.⁸

4. On 18 November 2018, Yekatom arrived at the ICC Detention Centre.⁹

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.

⁸ ICC-01/14-01/18-11-Conf-Exp, paras 6-9.

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

5. Between 4 December 2018 and 15 February 2019, upon request by the Prosecutor,¹⁰ the Chamber issued four decisions pursuant to regulation 101 of the Regulations,¹¹ extending the restrictions on Yekatom's contacts until 1 March 2019, with one modification: on 10 January 2019, Yekatom was granted the right to have private family visits (the "10 January 2019 Decision").¹²

6. On 7 December 2018, the Chamber issued a warrant of arrest for Ngaïssona.¹³

7. On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.¹⁴ On the same day, the Single Judge, acting on behalf of the Chamber,¹⁵ issued the "Decision pursuant to Regulation 101 of the Regulations of the Court" (the "23 January 2019 Decision"), restricting Ngaïssona's contacts and communications upon his arrival at the ICC Detention Centre.¹⁶ The Single Judge prohibited any exchange of contact between Ngaïssona and Yekatom, limited for a period of two weeks the number of individuals Ngaïssona could make telephone calls to and receive visits from, ordered the active monitoring of his telephone calls and visits, and limited the duration of his telephone calls to 60 minutes per week and the language of communication to French and Sango.¹⁷

8. On 29 January 2019, the Chamber rescinded the separation of Ngaïssona and Yekatom in the ICC Detention Centre (the "29 January 2019 Decision").¹⁸

¹⁰ ICC-01/14-01/18-24-Conf-Red; ICC-01/14-01/18-44-Conf-Exp; ICC-01/14-01/18-69-Conf-Exp; ICC-01/14-01/18-83-Conf.

¹¹ Second Decision Pursuant to Regulation 101 of the Regulations of the Court, 4 December 2018, ICC-01/14-01/18-25-Conf-Exp; Third Decision Pursuant to Regulation 101 of the Regulations of the Court, 10 January 2019, ICC-01/14-01/18-52-Conf-Exp; Fourth Decision Pursuant to Regulation 101 of the Regulations of the Court, 1 February 2019, ICC-01/14-01/18-75-Conf-Exp; Fifth Decision Pursuant to Regulation 101 of the Regulations of the Court, 15 February 2019, ICC-01/14-01/18-86-Conf-Exp.

¹² Third Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-52-Conf-Exp.

¹³ *Prosecutor v. Patrice-Edouard Ngaïssona*, Warrant of Arrest for Patrice-Edouard Ngaïssona, ICC-01/14-02/18-2-Conf-Exp. A public redacted version of the warrant of arrest is also available; see ICC-01/14-02/18-2-Red.

¹⁴ *Prosecutor v. Patrice-Edouard Ngaïssona*, ICC-01/14-02/18-14-US-Exp, paras 5-14.

¹⁵ *Prosecutor v. Patrice-Edouard Ngaïssona*, Decision designating a Single Judge, 6 December 2018, ICC-01/14-02/18-3.

¹⁶ *Prosecutor v. Patrice-Edouard Ngaïssona*, ICC-01/14-02/18-11-Conf-Exp.

¹⁷ *Prosecutor v. Patrice-Edouard Ngaïssona*, ICC-01/14-02/18-11-Conf-Exp, paras 8-11.

¹⁸ *Prosecutor v. Patrice-Edouard Ngaïssona*, Second Decision pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-02/18-19-Conf-Exp. A confidential *ex parte*, redacted version is also available; see ICC-01/14-02/18-19-Conf-Exp-Red.

9. On 6 February 2019, upon request by the Prosecutor,¹⁹ the Chamber provisionally extended the restrictions on Ngaïssona's contacts until 1 March 2019.²⁰

10. On 20 February 2019, the Chamber decided to join the cases against Yekatom and Ngaïssona.²¹

11. On 25 February 2019, the Chamber received the "Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II" (the "Fifth Registry Report regarding Yekatom")²² and the "Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by the Single Judge" (the "Second Registry Report regarding Ngaïssona").²³ According to both reports, no incidents have occurred during the last reporting period.²⁴

12. On 27 February 2019, the Chamber received the "Prosecution's Response to the 'Fifth Decision Pursuant to Regulation 101 of the Regulations of the Court' (ICC-01/14-01/18-86-Conf-Exp)" (the "Request for Restrictions on Yekatom's Contacts")²⁵ and the "Prosecution's Observations Pursuant to the 'Third Decision Pursuant to Regulation 101 of the Regulations of the Court' (ICC-01/14-02/18-27-Conf-Exp-Red)" (the "Request for Restrictions on Ngaïssona's Contacts"),²⁶ requesting the Chamber to extend the restrictions on contacts for both suspects for an additional 30-day period. Alternatively, the Prosecutor requests that the time allocated for Yekatom's non-privileged telephone conversations be increased and any

¹⁹ *Prosecutor v. Patrice-Edouard Ngaïssona*, ICC-01/14-02/18-25-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-02/18-25-Conf-Red.

²⁰ *Prosecutor v. Patrice-Edouard Ngaïssona*, Third Decision pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-02/18-27-Conf-Exp-Red, para. 11 and p. 7.

²¹ Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters, ICC-01/14-01/18-87.

²² ICC-01/14-01/18-124-Conf-Exp. A confidential redacted version of the report is also available; see ICC-01/14-01/18-124-Conf-Red.

²³ ICC-01/14-01/18-125-Conf-Exp. A confidential redacted version of the report is also available; see ICC-01/14-01/18-125-Conf-Red.

²⁴ ICC-01/14-01/18-124-Conf-Red, paras 14 and 17; ICC-01/14-01/18-125-Conf-Red, paras 1 and 16.

²⁵ ICC-01/14-01/18-130-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-130-Conf-Red.

²⁶ ICC-01/14-01/18-131-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-131-Conf-Red.

modifications to the current restrictions imposed on Ngaïssona be implemented gradually.²⁷

13. On 27 February 2019, the Chamber received the “Observations de la Défense de M. Alfred Rombhot Yekatom à la suite de la cinquième décision en application de la norme 101 du Règlement de la Cour”, requesting the Chamber to rescind the restrictions on contact imposed on Yekatom.²⁸

II. SUBMISSIONS

14. In the Request for Restrictions on Yekatom’s Contacts, the Prosecutor submits that restrictions continue to be justified in order to protect (potential) witnesses, victims and the ongoing investigation. The Prosecutor advances, in essence, that Yekatom has a propensity for violence and a strong motive to interfere with the investigation, he has not fully complied with the restrictions on contacts on one occasion, he enjoys continued support on the ground from (former) subordinates, the Anti-Balaka control a significant part of the territory of the CAR and the security situation remains unstable and unpredictable.²⁹ The Prosecutor further submits that restrictions on Yekatom’s contacts are also necessary in order not to defeat the purpose of restrictions on Ngaïssona’s contacts.³⁰

15. In the Request for Restrictions on Ngaïssona’s Contacts, the Prosecutor submits that restrictions continue to be justified in order to protect (potential) witnesses, victims and the ongoing investigation. The Prosecutor advances, in essence, that Ngaïssona enjoys broad support from the Anti-Balaka and he has both the motive and the means to interfere with the investigation and the proceedings against him. More precisely, the Prosecutor highlights that, following the agreement recently signed between the CAR government and armed groups, members of the Anti-Balaka may assume government positions, which would facilitate their access to witnesses. Further, the security situation in the CAR remains unstable and unpredictable. Lastly,

²⁷ ICC-01/14-01/18-130-Conf-Exp, paras 1-2 and 8; ICC-01/14-01/18-131-Conf-Exp, paras 2 and 22.

²⁸ ICC-01/14-01/18-132-Conf-Exp, para. 14 and p. 7. A confidential redacted version is also available; see ICC-01/14-01/18-132-Conf-Exp-Red.

²⁹ ICC-01/14-01/18-130-Conf-Exp, paras 4-5.

³⁰ ICC-01/14-01/18-130-Conf-Exp, para. 6.

the Prosecutor submits that restrictions on Ngaïssona's contacts are also necessary in order not to defeat the purpose of restrictions on Yekatom's contacts.³¹

16. The Defence for Yekatom argues, in essence, that the Chamber should rescind the restrictions considering that no incidents have been reported by the Registry during the last reporting period and that Yekatom is determined to comply with all applicable regulations, which is demonstrated *inter alia* by his willingness to voluntarily limit the number of persons on his list of non-privileged contacts.³² The Defence for Yekatom further submits that information to which it does not have access and on which it has not been in a position to effectively present informed views may not be relied upon to establish the "reasonable grounds to believe" standard in regulation 101(2) of the Regulations.³³ Lastly, the Defence for Yekatom argues that neither the restrictions on Ngaïssona's contacts nor the burden put on the ICC Detention Centre can justify a continuation of or a denial to ease the restrictions on Yekatom's contacts.³⁴

III. DETERMINATION OF THE CHAMBER

17. 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, 175 and 184 of the Regulations of the Registry.

18. 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.³⁵ The Chamber has carefully reviewed the submissions of the parties, as well as the two Registry reports – the Fifth Registry Report regarding Yekatom and the Second Registry Report regarding Ngaïssona. The Chamber notes in particular the Prosecutor's submission regarding the volatile political situation in the CAR and the possibility of members of the Anti-Balaka assuming government positions, following the recent agreement reached

³¹ ICC-01/14-01/18-131-Conf-Exp, paras 7-20.

³² ICC-01/14-01/18-132-Conf-Exp-Red, paras 5-8.

³³ ICC-01/14-01/18-132-Conf-Exp-Red, paras 9-10.

³⁴ ICC-01/14-01/18-132-Conf-Exp-Red, paras 11-13.

³⁵ Fifth Decision Pursuant to Regulation 101 of the Regulations of the Court, 15 February 2019, ICC-01/14-01/18-86-Conf-Exp, para. 14.

between the CAR government and armed groups.³⁶ The Chamber recalls its findings made when issuing the warrants of arrest for Yekatom and Ngaïssona that both suspects retain strong influence among the Anti-Balaka, which could allow them to reach, intimidate, or harm (potential) witnesses, their families or other individuals cooperating with the Court.³⁷ The Chamber agrees with the Prosecutor that the possibility of members of the Anti-Balaka assuming government positions only increases the capacity of Yekatom's and Ngaïssona's supporters to identify, locate and compromise witnesses. The Chamber also recalls that "nearly 80% of the territory of the CAR is still under the control of armed groups, including the Anti-Balaka",³⁸ with the security situation remaining unstable. 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, Ngaïssona and their associates could affect the investigation and the outcome of the proceedings.

19. Having said that, the Chamber notes that, according to the Fifth Registry Report regarding Yekatom and the Second Registry Report regarding Ngaïssona, no incidents have occurred during the last reporting period for either Yekatom or Ngaïssona.³⁹ In light of this and remaining attentive to the safety and well-being of witnesses and victims, the Chamber decides that Yekatom's and Ngaïssona's non-privileged telephone conversations and visits (apart from private family visits) shall henceforth be actively monitored *at random*. The Chamber leaves the practical implementation of this directive to the Registry, highlighting however that the active monitoring will have to be conducted as frequently as possible.

20. The Chamber also decides that Ngaïssona may receive private family visits – from his wife and children only – without any monitoring or the use of "sensitive listening devices".

21. In conducting the verification procedure concerning individuals whom the suspects wish to add to their non-privileged contact list and/or whom they wish to

³⁶ ICC-01/14-01/18-131-Conf-Exp, para. 15; *see also* ICC-01/14-01/18-130-Conf-Exp, p. 6.

³⁷ Warrant of Arrest for Alfred Yekatom, ICC-01/14-01/18-1-Red, para. 22; Warrant of Arrest for Patrice-Edouard Ngaïssona, ICC-01/14-02/18-2-Red, para. 22.

³⁸ Warrant of Arrest for Alfred Yekatom, ICC-01/14-01/18-1-Red, para. 22; Warrant of Arrest for Patrice-Edouard Ngaïssona, ICC-01/14-02/18-2-Red, para. 22.

³⁹ ICC-01/14-01/18-124-Conf-Red, paras 14 and 17; ICC-01/14-01/18-125-Conf-Red, paras 1 and 16.

receive visits from, the Chief Custody Officer may request the support of the Victims and Witnesses Unit.

22. Lastly, the Registry is instructed to inform the Chamber immediately of any violation of the regime concerning the restrictions on contact imposed on Yekatom and Ngaïssona.

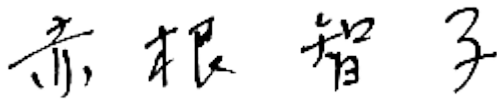
FOR THESE REASONS, THE CHAMBER HEREBY

- 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 and paragraphs 19 and 21 of this decision, until Monday, 15 April 2019 (inclusive);
- b) **GRANTS** provisionally the extension of the restrictive measures concerning Ngaïssona's communications and contacts put in place by way of the 23 January 2019 Decision, as modified by the 29 January 2019 Decision and paragraphs 19-21 of this decision, until Monday, 15 April 2019 (inclusive);
- c) **ORDERS** the Registrar to submit to the Chamber separate reports on the implementation of the restrictions on Yekatom's and Ngaïssona's contacts, together with confidential redacted versions of said reports, no later than Monday, 8 April 2019;
- d) **ORDERS** the Registrar to inform the Chamber immediately of any violation of the regime concerning the restrictions on contact imposed on Yekatom and Ngaïssona; and
- e) **ORDERS** the Prosecutor, the Defence for Yekatom and the Defence for Ngaïssona to submit their observations, including on the Registry reports, if any, no later than Wednesday, 10 April 2019.

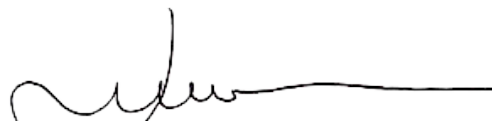
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Friday, 1 March 2019

At The Hague, The Netherlands