

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 15 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
NGAISSONA***

Confidential, *EX PARTE*, only available to the Prosecution, the Defence for Alfred Rombhot Yekatom and the Defence for Patrice-Edouard Ngaiissona

Corrected version of "Ngaiissona Defence Observations to "Requête de la Défense de M. Yekatom aux fins d'obtenir l'autorisation d'interjeter appel de la « Decision Pursuant to Regulation 101 of the Regulations of the Court » rendue le 1er mars 2019", submitted on 15 March 2019, ICC-01/14-01/18-151-Conf-Exp"

Source: Defence of Patrice-Edouard Ngaiissona

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

Court to:

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
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States' Representatives

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REGISTRY

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Mr Peter Lewis

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Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Defence for Patrice-Edouard Ngaïssona ("the Defence") hereby joins the "Requête de la Défense de M. Yekatom aux fins d'obtenir l'autorisation d'interjeter appel de la « Decision Pursuant to Regulation 101 of the Regulations of the Court » rendue le 1er mars 2019" ("the Request for Leave to Appeal").¹

II. Confidentiality

2. These submissions are filed "confidential, EX PARTE, only available to the Prosecution and the Defence" as they concern decisions and filings of the same classification, as well as information which, if divulged, may defeat the purpose of the submissions. The Defence will file a confidential redacted version as soon as practicable.

III. Procedural history

3. On 23 January 2019, Mr Ngaïssona was transferred to the ICC Detention Centre where he is currently held.
4. On 6 February 2019, the Chamber issued its Third Decision in which it ordered the Registry to prepare a report on the implementation of the restrictions on contact as ordered in the First Decision "setting out any relevant information relating to Ngaïssona's behavior on 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

¹ ICC-01/14-01/18-145-Conf-Exp.

victims) or that he engages in activities that may affect the outcome of the proceedings".²

5. On 25 February 2019, the Registry issued its "Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by the Single Judge" ("the Second Report").³ In this report, the Registry reported no incidents during the monitoring of Mr Ngaïssona's contact with the outside world.
6. On 27 February 2019, the Prosecution filed its observations on the Second Report.⁴ The Prosecution also filed observations⁵ on the report issued by the Registry on Mr Yekatom.⁶ The Defence for Alfred Rombhot Yekatom ("the Yekatom Defence") filed its observations on the report issued by the Registry on Mr Yekatom.
7. On 1 March 2019, the Defence filed the "Defence Observations Pursuant to the 'Third Decision Pursuant to Regulation 101 of the Regulations of the Court' (ICC-01-14-01-18-27-Conf-Exp-Red) and Application for an Extension of a Time Limit Pursuant to Regulation 35(2) of the Regulations of the Court",⁷ that was notified on 4 March 2019.
8. On 1 March 2019, the Chamber issued the "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("the Impugned Decision").⁸
9. On 11 March 2019, the Yekatom Defence filed the Request for Leave to Appeal.⁹

² ICC-01/14-02/18-27-Conf-Exp-Red, para. 12.

³ ICC-01/14-01/18-125-Conf-Exp.

⁴ ICC-01/14-01/18-131-Conf-Exp.

⁵ ICC-01/14-01/18-130-Conf-Exp.

⁶ ICC-01/14-01/18-124-Conf-Exp.

⁷ ICC-01/14-01/18-138-Conf-Exp.

⁸ ICC-01/14-01/18-137-Conf-Exp.

IV. Submissions

10. Although the Defence failed to address its observations on the Second Report in due time, and despite the filing of an application under Regulation 35(2) of the Regulations of the Court seeking authorisation to do so after the expiration of the deadline set by the Chamber in the Third Decision,¹⁰ it considers it appropriate to present observations related to the Request for Leave to Appeal, given the importance of the matters at stake for Mr Ngaïssona.
11. The Defence hereby joins and supports the Request for Leave to Appeal. The issue identified in the Request for Leave to Appeal constitutes an appealable issue as required by article 82(1)(d) of the Rome Statute ("the Statute").¹¹ The issue identified in the Request for Leave to Appeal would significantly affect the fair and expeditious conduct of the proceedings, as required under article 82(1)(d) of the Statute.¹² The resolution of the issue identified in the Request for Leave to Appeal necessitates an immediate resolution by the Appeals Chamber to materially advance the proceedings, as required under article 82(1)(d) of the Statute.¹³
12. In particular, the Defence stresses that the arguments raised by the Yekatom Defence against the Impugned Decision also apply to Mr Ngaïssona's situation regarding restrictions on contact with the outside world.
13. For the foregoing reasons, and without need to reiterate arguments already submitted in the Request for Leave to Appeal, the Defence joins and supports the Request for Leave to Appeal.

⁹ ICC-01/14-01/18-145-Conf-Exp.

¹⁰ ICC-01/14-01/18-138-Conf-Exp, paras 11-18.

¹¹ The Request for Leave to Appeal, paras 3, 11-14.

¹² The Request for Leave to Appeal, paras 15-18.

¹³ The Request for Leave to Appeal, paras 19-23.

RELIEF SOUGHT

14. In view of the foregoing, the Defence respectfully requests the Chamber to:

- GRANT the Request for Leave to Appeal.

Respectfully submitted,



Mr. Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this

15 March 2019

At The Hague, the Netherlands