

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No. ICC-01/14-01/18
Date: **6 December 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, the Yekatom Defence, and the
Detention Section**

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

Counsel for Alfred Yekatom
Mylène Dimitri
Peter Robinson

Counsel for Patrice-Edouard Ngaïssona

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

Detention Section
Paddy Craig

**Victims Participation
and Reparations Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this Decision Pursuant to Regulation 101 of the Regulations of the Court.

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 and Alfred Yekatom.¹ The Prosecutor further requested, *inter alia*, a restriction of contacts upon the arrival of the suspects at the ICC Detention Centre, submitting 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 of the Court (the 'Regulations').²

2. On 11 November 2018, the Chamber issued the 'Warrant of Arrest for Alfred Yekatom'.³

3. On 17 November 2018, Yekatom was surrendered to the Court by the authorities of the Central African Republic ('CAR').⁴ On the same day, the Single Judge, acting on behalf of the Chamber,⁵ issued the 'Decision pursuant to Regulation 101 of the Regulations of the Court' (the '17 November 2018 Decision'), thereby restricting Yekatom's communications upon his arrival at the ICC Detention Centre for a period of two weeks.⁶ 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 as well as the languages of communication to French and Sango.⁷ On 18 November 2018, Yekatom arrived at the ICC Detention Centre.⁸

4. Between 4 December 2018 and 15 February 2019, upon requests by the Prosecutor,⁹ the Chamber issued four decisions pursuant to regulation 101 of the

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-01/14-01/18-1-US-Exp. A public redacted version of the warrant of arrest is also available; see [ICC-01/14-01/18-1-Red](#).

⁴ Registry, Rapport du Greffe sur l'Arrestation et la Remise de M. Alfred Yekatom, ICC-01/14-01/1817-US-Exp, paras 19-24.

⁵ Pre-Trial Chamber II, Decision designating a Single Judge, 9 November 2018, ICC-01/14-01/18-10.

⁶ ICC-01/14-01/18-11-Conf-Exp.

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

Regulations,¹⁰ thereby each time extending the restrictions on Yekatom's contacts, with one modification: Yekatom was granted the right to have private family visits on 10 January 2019 (the '10 January 2019 Decision').¹¹

5. On 7 December 2018, the Chamber issued the 'Warrant of Arrest for Patrice-Edouard Ngaïssona'.¹²

6. On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.¹³ On the same day, the Single Judge, acting on behalf of the Chamber,¹⁴ issued the 'Decision pursuant to Regulation 101 of the Regulations of the Court' (the '23 January 2019 Decision'), thereby restricting Ngaïssona's contacts and communications upon his arrival at the ICC Detention Centre.¹⁵ 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 as well as the languages of communication to French and Sango.¹⁶

7. On 29 January 2019, the Chamber issued the 'Second Decision pursuant to Regulation 101 of the Regulations of the Court', thereby rescinding the separation of Ngaïssona and Yekatom (the '29 January 2019 Decision').¹⁷

8. On 6 February 2019, upon request by the Prosecutor,¹⁸ the Chamber issued the 'Third Decision pursuant to Regulation 101 of the Regulations of the Court', thereby provisionally extending the restrictions on Ngaïssona's contacts until 1 March 2019.¹⁹

¹⁰ ICC-01/14-01/18-25-Conf-Exp; ICC-01/14-01/18-52-Conf-Exp; ICC-01/14-01/18-75-Conf-Exp; ICC-01/14-01/18-86-Conf-Exp.

¹¹ ICC-01/14-01/18-52-Conf-Exp.

¹² ICC-01/14-01/18-89-Conf-Exp. A public redacted version of the warrant of arrest is also available; see [ICC-01/14-01/18-89-Red](#).

¹³ Registry, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, ICC-01/14-01/18-101-USExp, paras 5-14.

¹⁴ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-90.

¹⁵ ICC-01/14-01/18-98-Conf-Exp.

¹⁶ ICC-01/14-01/18-98-Conf-Exp, paras 8-11.

¹⁷ ICC-01/14-01/18-106-Conf-Exp. A confidential *ex parte*, redacted version is also available; see ICC-01/14-01/18-106-Conf-Exp-Red.

¹⁸ ICC-01/14-01/18-112-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-112-Conf-Red.

¹⁹ ICC-01/14-01/18-114-Conf-Exp, para. 11, p. 7. A confidential *ex parte*, redacted version is also available; see ICC-01/14-01/18-114-Conf-Exp-Red.

9. On 20 February 2019, the Chamber issued the 'Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters', thereby joining the cases against Yekatom and Ngaïssona.²⁰

10. On 1 March 2019, the Chamber issued the 'Decision Pursuant to Regulation 101 of the Regulations of the Court', thereby provisionally extending, until 15 April 2019 (inclusive), the contact restrictions for Yekatom and Ngaïssona put in place by way of the 17 November 2018 Decision and the 23 January 2019 Decision respectively, as modified by the 10 January 2019 Decision and the 29 January 2019 Decision respectively, with the following modifications: (i) non-privileged telephone conversations and visits for Yekatom and Ngaïssona (apart from private family visits) are to be actively monitored at random; (ii) Ngaïssona may receive private family visits – from his wife and children only – without any monitoring or the use of 'sensitive listening devices'; and (iii) in conducting the verification procedure concerning individuals whom the suspects wish to add to their non-privileged contact lists and/or from whom they wish to receive visits, the Chief Custody Officer may request the support of the Victims and Witnesses Unit (the '1 March 2019 Decision').²¹

11. On 15 April 2019, the Chamber issued the 'Decision Pursuant to Regulation 101 of the Regulations of the Court', thereby: (i) rejecting the Prosecutor's request to reinstate the original contact restrictions initially imposed on Yekatom and Ngaïssona as well as the Prosecutor's related requests; (ii) deciding to extend the regime of restrictions on contacts – put in place by way of the 17 November 2018 Decision, as modified by the 10 January 2019 Decision and the 1 March 2019 Decision for Yekatom and put in place by way of the 23 January 2019 Decision, as modified by the 29 January 2019 Decision and the 1 March 2019 Decision for Ngaïssona - and to maintain it for the remainder of the pre-trial proceedings; (iii) ordering the Registrar to submit to the Chamber separate reports on the implementation of the restrictive measures concerning the contact restrictions for Yekatom and Ngaïssona every two months and to inform the Chamber immediately of any violation of the applicable regime; (iv) ordering the Prosecutor to submit observations on the Registry reports, if any, within five days of the notification of the Registry reports, and ordering the

²⁰ [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-121](#).

²¹ ICC-01/14-01/18-137-Conf-Exp.

Yekatom Defence and the Ngaïssona Defence to submit observations on the Registry reports and the Prosecutor's observations, if any, within 10 days of notification of the Registry reports; (v) instructing the Registry to ensure that any time required to set up a telephone call does not affect the time allotted to Yekatom and Ngaïssona to speak on the telephone; (vi) rejecting any other requests to vary the restrictive measures concerning Ngaïssona's communications and contacts; and (vii) granting the request by the Ngaïssona Defence to include its case manager in the list of persons entitled to privileged visits with Ngaïssona (the '15 April 2019 Decision').²²

12. On 9 July 2019, the Chamber issued the 'Decision Pursuant to Regulation 101 of the Regulations of the Court' (the '9 July 2019 Decision'),²³ thereby ordering, *inter alia*, the Registry to substantially increase the frequency of random monitoring of Yekatom's telephone calls for specific contacts identified in the 'Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II' (the 'Seventh Registry Report').²⁴

13. On 17 September 2019, the Chamber issued the 'Decision Pursuant to Regulation 101 of the Regulations of the Court', thereby, *inter alia*, maintaining the restrictions on Yekatom's contacts.²⁵

14. On 15 October 2019, the Chamber received the 'Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II (the 'Ninth Registry Report').²⁶

15. On 21 October 2019, the Chamber received the 'Prosecution's Observations Pursuant to the "Decision Pursuant to Regulation 101 of the Regulations of the Court" (ICC-01/14-01/18-176-Conf-Exp)' (the 'Prosecutor's Observations').²⁷

16. On 28 October 2019, the Chamber received the 'Yekatom Defence Observations on Ninth Registry Report on Contact Restrictions' (the 'Defence Observations').²⁸

²² ICC-01/14-01/18-176-Conf-Exp. A confidential redacted version is also available; see ICC-01/1401/18-176-Conf-Red.

²³ ICC-01/14-01/18-241-Conf-Exp.

²⁴ ICC-01/14-01/18-226-Conf-Exp, 17 June 2019.

²⁵ ICC-01/14-01/18-350-Conf-Exp.

²⁶ ICC-01/14-01/18-386-Conf-Exp.

²⁷ ICC-01/14-01/18-387-Conf-Exp.

²⁸ ICC-01/14-01/18-389-Conf-Exp.

II. Submissions

A. The Ninth Registry Report

17. The Registry indicates that during the reporting period Yekatom made telephone calls to the individuals on his non-privileged telephone contact list according to an implemented time schedule. According to the Registry, it actively monitored the scheduled telephone calls at random pursuant to the 1 March 2019 Decision. In accordance with the 9 July 2019 Decision, the Registry increased the frequency of random monitoring for the specific contacts identified in the Seventh Registry Report, and confirms that no incidents were reported during this period.

18. The Registry further reports that it has implemented the Chamber's instructions from the 1 March 2019 Decision to actively monitor, at random and as frequently as possible, Yekatom's non privileged visits, with the exception of family visits from his wife and children, and that no incidents have occurred during such visits. Finally, the Registry indicates that there are no incidents to report with regard to any written correspondence or packages that were sent from or received by Yekatom.

B. The Prosecutor's Observations

19. The Prosecutor submits that there has been no change in the circumstances that would require the Chamber to reconsider the existing contact restrictions, and that they 'remain proportionate and minimally necessary to attenuate some of the risks posed regarding the integrity of the on-going investigation pursuant to Regulation 101(2)(b), and as concerns the protection of witnesses and victims pursuant to Regulation 101(2)(c) and (f)'. In this regard, the Prosecutor notes that, following the submission of the Document Containing the Charges and the completion of the confirmation of charges hearing, Yekatom has a clear understanding of 'the statements of the Prosecution Witnesses whose identities, with few exceptions, have been fully disclosed'. Under these circumstances, the risk posed to the victims, either directly or indirectly, is amplified.

20. The Prosecutor asserts that Yekatom's 'recent Detention Centre history does not diminish the previously assessed risk to the security of witnesses, particularly given the inherent vulnerabilities of the Detention Centre monitoring regime'. Furthermore, the Prosecutor stresses that the current contact restrictions 'are also necessary to avoid defeating those imposed' on Ngaïssona, since Yekatom and Ngaïssona are free to

communicate with one another, and that the 'salient aspects of the case against both substantially overlap, heightening the risk of their collusion to undermine on-going investigations'. In the view of the Prosecutor, lifting or modifying the current contact restrictions imposed on Yekatom would increase the risk of collusion.

C. The Defence Observations

21. The Defence requests that the Pre-Trial Chamber end the random active monitoring of Yekatom's telephone calls (the 'Defence Request'). Instead, the Defence submits that Yekatom's calls and visits should be recorded in their entirety and listened to at a later time. The Defence points out that random active monitoring requires the presence of a Sango interpreter at the time that the calls or visits are made, and as a result, Yekatom can only make telephone calls two days per week for 45 minutes each day. Since telephone service in CAR is spotty, it is very difficult to get through to someone in CAR by phone without making repeated attempts at various times of the day.

22. Frequently, Yekatom is unable to reach someone during the 60 minute period during which he is able to make phone calls, and is then unable to try again until three or four days later. The Defence argues that the Chamber should reassess the necessity of the restrictions in light of the fact that Yekatom's calls and visits have been subject to active monitoring for almost one year, and in this time, there has not been a single incident. The Defence draws attention to the fact that 'unlike in the *Ntaganda* and *Ngudjolo* cases, the restrictions were imposed upon Mr Yekatom at the outset of his detention, rather than after a violation'.

23. The Defence further submits that the Prosecutor's arguments regarding possible collusion between the two suspects should be dismissed as the Chamber has already 'rejected this reasoning as "mere speculation"'. Lastly, the Defence proposes that if the Chamber ends the active monitoring of Yekatom's contacts that, as an 'additional safeguard', it could give authorisation to the Detention Centre's Commanding Officer to 'immediately re-impose the active monitoring regime in the event of a breach of the rules by Mr Yekatom'.

24. The Defence also urges the Pre-Trial Chamber to issue its decision publicly as 'conditions for detainees are a legitimate subject of public interest and the matters

contained in any decision are unlikely to reveal details that would jeopardise security at the Detention Centre or infringe on Mr. Yekatom's privacy'.

III. Determination by the Chamber

25. The Chamber notes articles 57(3)(a) and 68(1) of the Rome Statute, regulations 99(1)(i), 100 and 101 of the Regulations, and regulations 173, 174, 175, 183 and 184 of the Regulations of the Registry.

26. The Chamber recalls that, in its 15 April 2019 Decision, it decided 'to extend the current regime of restrictions on contacts [...] and to maintain it for the remainder of the pre-trial proceedings'.²⁹ In the same decision, the Chamber also held that it 'will reassess the current regime concerning the restrictions on [...] Yekatom's [...] contacts if necessary'.

27. The Chamber has reviewed the Ninth Registry Report as well as the observations of the parties. The Chamber recalls that restrictions must be proportionate to the legitimate aim pursued, and that a balance must be reached between the necessity of the restrictions in place and a suspect's right to privacy and family life.

28. Noting in particular the volatile situation in the CAR, the Chamber finds that the existing contact restrictions strike an appropriate balance between Yekatom's right to privacy and family life, on the one hand, and the need to ensure the safety of victims and witnesses and the integrity of the proceedings, on the other. Furthermore, in the view of the Chamber, there is currently no indication that the circumstances justifying the restrictions on the suspect's contacts have changed. Accordingly, the Chamber rejects the Defence Request, and decides to maintain the restrictions on Yekatom's contacts.

29. Turning to the Defence request that the Chamber issue this decision publicly, the Chamber finds that, given the nature and content of the decision, it is appropriate to maintain the existing classification level for the time being.

²⁹ICC-01/14-01/18-176-Conf-Exp.

FOR THESE REASONS, THE CHAMBER HEREBY

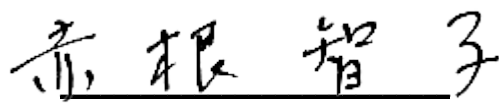
REJECTS the Defence Request; and

DECIDES to maintain the existing contact restrictions in place for Yekatom.

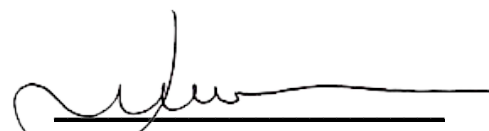
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Friday, 6 December 2019

At The Hague, The Netherlands