



Original: English

No. **ICC-01/14-01/18**
Date of original: **9 July 2019**
Date: **28 January 2021**

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

Public redacted version of

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
James Stewart
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

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

Harry Tjonk

**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*, that their contacts be restricted upon arrival 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.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

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-01/14-01/18-17-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.

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 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

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.

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-US-Exp, 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.

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

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 restrictive measures concerning Yekatom’s and Ngaïssona’s communications and contacts 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 by Yekatom and Ngaïssona and visits to them (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 whom they wish to receive visits from, the Chief Custody Officer may request the support of the Victims and Witnesses Unit (the ‘VWU’ and 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

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.

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

²¹ ICC-01/14-01/18-137-Conf-Exp.

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 Yekatom's and Ngaïssona's communications and contacts 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 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 15 May 2019, the Chamber issued the 'Decision on the "Prosecution's Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines"', thereby deciding that the confirmation hearing in the case against Yekatom and Ngaïssona shall commence on 19 September 2019.²³

13. On 17 June 2019, the Chamber received 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

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

²³ [ICC-01/14-01/18-199](#).

²⁴ ICC-01/14-01/18-226-Conf-Exp, together with 2 confidential, *ex parte* annexes. Confidential redacted versions of the Seventh Registry Report and Annex I to this Report are also available; *see* ICC-01/14-01/18-226-Conf-Exp-Red; ICC-01/14-01/18-226-Conf-Exp-Anx1-Red. Annex II to the Seventh Registry Report was reclassified as 'Confidential, Ex-Parte Defence of Alfred Yekatom, Office of the Prosecutor and Registry' on 20 June 2019; *see* ICC-01/14-01/18-226-Conf-Exp-AnxII.

14. On 24 June 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 Observations’).²⁵

15. On 1 July 2019, the Chamber received the ‘Observations of the Defence of Mr. Alfred Yekatom pursuant to the Seventh Decision’ (the ‘Yekatom Defence Observations’).²⁶

II. Submissions

A. The Registry

16. The Seventh Registry Report indicates that, ‘[s]ince March 2019, considering the reasonable demands of the daily schedule at the [ICC Detention Centre] and the availability of the interpreter, Mr Yekatom is able to make non-privileged telephone calls for one and a half hours every week’. The Registry further reports that the ICC Detention Centre actively monitored certain calls made by Yekatom at random and that no incidents occurred during these calls.

17. Furthermore, the Registry indicates that ‘Mr Yekatom currently has eight individuals on his non-privileged telephone contact list out of the 25 allowed’. According to the Seventh Registry Report, Yekatom made three requests to add persons to his non-privileged telephone contact list. In this regard, the Registry states that the ICC Detention Centre contacted the persons concerned in order to confirm their relationship with Yekatom and the additional information provided by him. In addition, according to the Registry, the Chief Custody Officer ‘requested the support of the VWU to further verify the identit[ies] and contact details’ of these persons. For two requests submitted by Yekatom, the Seventh Registry Report specifies that, after the VWU concluded that [REDACTED]’. In relation to the remaining request submitted by Yekatom, the Registry indicates that, at the time of filing, the VWU had not concluded its verification process concerning the individuals concerned and these persons were not included in Yekatom’s non-privileged telephone contact list for the time being. In addition, according to the Seventh Registry Report, ‘the Registry has

²⁵ ICC-01/14-01/18-229-Conf-Exp. A confidential redacted version is also available; *see* ICC-01/14-01/18-229-Conf-Exp-Red.

²⁶ ICC-01/14-01/18-235-Conf-Exp. A confidential redacted version is also available; *see* ICC-01/14-01/18-235-Conf-Exp-Red.

ensured that any time required to set, connect, reconnect or get a telephone call answered does not affect the time allocated to Mr Yekatom [...] to speak on the telephone’.

18. The Registry also indicates that Yekatom received non-privileged visits on several occasions in [REDACTED] 2019. Finally, the Seventh Registry Report states that ‘Mr Yekatom has not received or sent any written correspondence or packages’.

B. The Prosecutor Observations

19. The Prosecutor requests that ‘the Chamber impose the most stringent conditions on YEKATOM’s contacts in detention’ as ‘[w]itness security in these proceedings remains precarious, and [REDACTED]’ (the ‘Prosecutor’s First Request’).

20. Furthermore, the Prosecutor asserts that she is ‘seriously concerned by the decision of the ICC Detention Centre Chief Custody Officer [...] authorising the addition of individuals to YEKATOM’s non-privileged telephone list, [REDACTED]’. According to the Prosecutor, ‘[w]hile it cannot be said that in every case a Suspect will seek to violate the rules of the Detention Centre, what is at issue here is the reasoned and reasonable balancing of *risk*, which the [Chief Custody Officer’s] decision fails adequately to address’. The Prosecutor adds that ‘[i]t is well-known that the ICC Detention Centre has been the subject of serious breaches by Suspects in custody’. In addition, the Prosecutor argues that ‘[a]uthorising YEKATOM’s request to include the proposed individuals in his non-privileged telephone list on the sole basis of an “absence of any concerns brought to the attention of the [Chief Custody Officer]”, relies on the trustworthiness of the Suspect alone to assess the potential risk to victims and witnesses’. According to the Prosecutor, this approach is ‘unacceptable in view of the Court’s statutory obligations’ and proceeding on the basis ‘that “no information is good information” only exacerbates the error’.

21. On the basis of the preceding arguments, the Prosecutor further requests the Chamber to ‘[REDACTED]’ (the ‘Prosecutor’s Second Request’).

C. The Yekatom Defence Observations

22. The Yekatom Defence submits that ‘the restrictions imposed on Mr. Yekatom are no longer necessary and should be terminated forthwith’ (the ‘Yekatom Defence Request’). According to the Yekatom Defence, as with the previous Registry Reports regarding contact restrictions, the Seventh Registry Report

indicates that ‘no incident has been reported’ during the telephone calls monitored by the Registry. Furthermore, the Yekatom Defence contends that ‘the disclosure of evidentiary material to the Defence has not resulted in any attempt by Mr. Yekatom to interfere with witnesses and/or undermine the Prosecution’s investigations or the outcome of the proceedings’. In the view of the Yekatom Defence, ‘the restrictions on non-privileged contacts imposed on Mr. Yekatom impact significantly on his recognized fundamental right to private and family life’. The Yekatom Defence considers that ‘the current regime is disproportionate when compared to the intended objective of Regulation 101 of protecting the integrity of the proceedings and investigation’. In addition, the Yekatom Defence asserts that ‘the alleged prevalent instability in the Central African Republic, together with the participation of members of armed groups associated with Mr. Yekatom in the present government, do not give rise to reasonable grounds to believe that contact between Mr. Yekatom and any other person could prejudice or otherwise affect the outcome of the proceedings or any other investigations pursuant to Regulation 101 (2)’.

23. Moreover, according to the Yekatom Defence, ‘[t]he Prosecution’s suggestion that stringent restrictions [...] should be imposed commensurate to the risk regarding [...] the on-going investigation is plainly wrong, legally and factually’, since ‘what is at issue here is not “the reasoned and reasonable balancing of risk” but whether there are reasonable grounds to believe [...] that contact between Mr. Yekatom and any other person could prejudice or otherwise affect the outcome of the proceedings or any other investigations pursuant to Regulation 101 (2)’. In this regard, the Yekatom Defence adds that ‘it is wholly inappropriate for the Prosecution to provide the Chamber with allegations related to [sic] incident appearing to be linked to Mr. Yekatom on an *ex parte* basis, thereby depriving Mr. Yekatom of a genuine opportunity to respond and offer informed observations’. The Yekatom Defence further asserts that it is ‘improper for the Prosecution to argue that “it is incumbent on the Chamber here to act” given the well-known security breaches which have occurred within the confines of the ICC [Detention Centre] in the past’ as ‘[t]he case referred to by the Prosecution can be distinguished from the present case in many ways’. Finally, the Yekatom Defence disagrees with the Prosecutor’s assertion ‘that the Chief Custody Officer’s [...] decision to add individuals on Mr. Yekatom’s non-privileged telephone list is “untenable” since ‘the [Chief Custody Officer] is an officer of the [Court]’, his decision

to ‘authorise additional individuals to be added to Mr. Yekatom’s contact list [...] is in line with his discretion accorded by the [1 March 2019 Decision]’ and, in any event, ‘Mr. Yekatom’s calls [...] are actively monitored at random and no incident has been reported by the Registry’.

III. Determination by the Chamber

24. The Chamber notes articles 57(3)(a) and 68(1) of the Rome Statute (the ‘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.

A. The Prosecutor’s Requests

25. With regard to the Prosecutor’s First Request, the Chamber notes that the Prosecutor has not provided any specific information in relation to her assertion that [REDACTED]. Similarly, in relation to the Prosecutor’s contention that certain previous ‘filings and the Chamber’s decisions elaborate the relevant and still prevailing justifications’, the Chamber recalls that it rejected an identical request by the Prosecutor in the 15 April 2019 Decision and observes that she has not provided any arguments demonstrating why the Chamber should depart from that finding in the present circumstances. Therefore, the Prosecutor’s First Request is unsubstantiated and must, accordingly, be rejected.

26. The Chamber turns to the Prosecutor’s Second Request. The Chamber is mindful of the difficulties in establishing the identities of the individuals whom suspects wish to add to their non-privileged contact lists and/or the identities of the individuals from whom the suspects wish to receive visits. However, the Chamber is of the view that such difficulties cannot undermine Yekatom’s right to ‘communicate by [...] telephone with his [...] family and other persons’ pursuant to regulation 99(1)(i) of the Regulations. In this regard, the Chamber also takes into account that, as with the other Registry reports regarding the implementation of the restrictions imposed on Yekatom’s contacts, the Seventh Registry Report indicates that no incidents occurred during the telephone calls that were monitored by the Registry. Accordingly, the Chamber rejects the Prosecutor’s Second Request.

27. Nevertheless, the Chamber finds it appropriate to order the Registry to substantially increase the random monitoring of Yekatom’s telephone calls [REDACTED]. This additional safeguard duly balances the obligation to protect

victims and witnesses under article 68(1) of the Statute and Yekatom's aforementioned right pursuant to regulation 99(1)(i) of the Regulations. The Chamber leaves the practical implementation of this order to the Registry.

B. The Yekatom Defence Request

28. The Chamber notes that, in support of the Yekatom Defence Request, the Yekatom Defence repeats arguments considered and rejected by the Chamber in previous decisions adopted pursuant to regulation 101 of the Regulations.²⁷ Furthermore, the Chamber recalls that, in the 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'. In the same decision, it also held that it 'will reassess the current regime concerning the restrictions on Yekatom's [...] contacts if necessary'. In the view of the Chamber, there are currently no indications that the circumstances justifying the restrictions on Yekatom's contacts have changed. Accordingly, the Chamber considers that the Yekatom Defence has failed to establish that the Chamber should reassess the current regime regarding the restrictions on Yekatom's contacts. Therefore, the Chamber rejects the Yekatom Defence Request.

²⁷ ICC-01/14-01/18-86-Conf-Exp, paras 12, 14; ICC-01/14-01/18-137-Conf-Exp, paras 16, 19; ICC-01/14-01/18-176-Conf-Red, paras 20, 21, 31.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **REJECTS** the Prosecutor's First and Second Requests;
- b) **ORDERS** the Registry to substantially increase the random monitoring of Yekatom's telephone calls [REDACTED]; and
- c) **REJECTS** the Yekatom Defence Request.

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

/Signed/

Judge Antoine Kesia-Mbe Mindua

Presiding Judge

/Signed/

Judge Tomoko Akane

/Signed/

Judge Rosario Salvatore Aitala

Dated this 28 January 2021

At The Hague, The Netherlands