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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:

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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 of charges hearing in the case against Yekatom and Ngaïssona shall commence on 19 September 2019.²³

13. On 9 July 2019, the Chamber issued the 'Decision Pursuant to Regulation 101 of the Regulations of the Court' (the '9 July 2019 Decision'), thereby: (i) rejecting the Prosecutor's request to impose 'the most stringent' conditions on Yekatom's contacts and her requests regarding the decision of the Chief Custody Officer of the ICC Detention Centre [REDACTED]; (ii) ordering the Registry to substantially increase the random monitoring of Yekatom's telephone calls [REDACTED]; and (iii) rejecting the Yekatom Defence's request to terminate the restrictions on Yekatom's contacts.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-01/14-01/18-241-Conf-Exp.

14. On 15 August 2019, the Chamber received the ‘Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II (the ‘Eighth Registry Report’).²⁵

15. On 19 August 2019, the Chamber received the ‘Prosecution’s Notification of Filing of the Document Containing the Charges and List of Evidence’ (the ‘DCC’).²⁶

16. On 21 August 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

17. On 26 August 2019, the Chamber received the ‘Second Observations of the Defence of Mr. Alfred Yekatom Pursuant to the Seventh Decision (ICC-01/14-01/18-176-Conf-Red)’ (the ‘Yekatom Defence Observations’).²⁸

II. Submissions

A. The Eighth Registry Report

18. The Registry reports that it ‘extended the time available for Mr Yekatom to make phone calls from 45 minutes to one hour’. Furthermore, according to the Registry, it actively monitored the scheduled telephone calls made by Yekatom at random and no incidents occurred during these conversations. The Registry further points out that it increased the random monitoring of Yekatom’s contacts with the individuals referred to in the 9 July 2019 Decision and that no incidents occurred during these conversations. However, the Registry considers that the implementation of this decision ‘poses logistical challenges’ considering that ‘[t]he operational reality of a live monitoring environment is that it is impossible to predict which individuals a detained person will call at any moment, thereby constraining the Registry’s ability to substantially increase the random active monitoring only for the specific contacts concerned’. In this regard, the Registry indicates that it is ‘internally addressing these challenges, but [it also] informs the Chamber that in the future it may wish to seek the Chamber’s guidance on the matter’.

²⁵ ICC-01/14-01/18-277-Conf-Exp.

²⁶ [ICC-01/14-01/18-282](#), together with confidential annexes A to J.

²⁷ ICC-01/14-01/18-287-Conf-Exp.

²⁸ ICC-01/14-01/18-291-Conf-Exp.

19. The Registry further reports that it has implemented the Chamber's instructions 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 it informs the Chamber that no incidents have occurred during such visits. Finally, the Registry indicates that it has no incidents or concerns to report with regard to any written correspondence or packages that were sent or received by Yekatom.

B. The Prosecutor's Observations

20. The Prosecutor submits that '[t]he current restrictions on the Suspects' contacts are 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 adds that, following the submission of the DCC, 'YEKATOM is well informed of the nature and extent of the case against him' and '[h]e has received full disclosure, including of sensitive information concerning over 140 Prosecution witnesses'.

21. Furthermore, the Prosecutor 'remains concerned about the proper and full implementation of' the Chamber's 9 July 2019 Decision insofar as the Chamber ordered the Registry to substantially increase the random monitoring of Yekatom's telephone calls with [REDACTED]. The Prosecutor asserts that '[t]he logistical impediment of not knowing whom YEKATOM intends to contact beforehand can be managed by simply requiring such information reasonably in advance of any given day on which he is permitted to make non-privileged telephone calls' (the 'Prosecutor's Request'). In addition, the Prosecutor submits that 'if the regulatory privileges accorded to a detainee by the ICC Detention Centre effectively frustrate the full implementation of the Chamber's Order, it is clear that the privilege cannot stand'.

C. The Yekatom Defence Observations

22. In relation to the Prosecutor's assertion regarding the implementation of the Chamber's 9 July 2019 Decision, the Yekatom Defence submits that '[t]he Eight [sic] Registry Report clearly indicates that the Chamber's [9 July 2019 Decision], has been fully implemented and that no incidents were reported'. According to the Yekatom Defence, '[t]he Registry simply draws the Chamber's attention to the logistical challenges inherent to the monitoring of telephone calls due to the significant

increase in random monitoring of specific contacts'. The Yekatom Defence further points out that 'requiring Mr. Yekatom to inform in advance the Detention Centre of the persons he wishes to call is not feasible and would impede on his right to maintain contacts with his family'. Specifically, the Yekatom Defence submits that 'flexibility and ability to call another number from the list' is a necessity, since Yekatom 'is sometimes unable to reach the persons he intends to call during his scheduled session' and 'he then spontaneously reaches someone else in his non-privileged contact list'.

23. The Yekatom Defence also takes the view that the Chamber 'should lift immediately the restrictions on communications applied to Mr. Yekatom' (the 'Defence Request'). In this regard, the Yekatom Defence avers that Yekatom has abided by 'and is still abiding by the restrictions imposed upon him'. It also argues that, contrary to the Prosecutor's submission, the 'regular course of proceedings shall not be an argument justifying the continuous restrictions imposed upon Mr. Yekatom'. Finally, it contends that, 'security measures [for witnesses] having been applied, it cannot be argued that the filing of the DCC and of pre-confirmation disclosure warrant the continuation and/or extension of the restrictions'.

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.

25. The Chamber has considered the concerns expressed by the Prosecutor, and her request that the Chamber require Yekatom to notify the Detention Centre, in advance of the allotted call time, of whom he intends to phone. However, in making this request, the Prosecutor disregards the fact that the Registry has fully implemented the increased random monitoring referred to in the 9 July 2019 Decision. In the Eighth Registry Report, the Registry has merely indicated that it *may* seek the guidance of the Chamber in the future regarding certain logistical concerns. Considering that the Chamber's directive has already been fully implemented, the Chamber finds that no further action is required and rejects the Prosecutor's Request accordingly.

26. Turning to the Defence Request, 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'. In the same decision, the

Chamber also held that it ‘will reassess the current regime concerning the restrictions on [...] Yekatom’s [...] contacts if necessary’.²⁹

27. Having carefully reviewed the submissions of the parties and the Eighth Registry Report, the Chamber finds that there has been no change in circumstances that would require the Chamber to reconsider its determination regarding the contact restrictions. In light of this, the Chamber rejects the Defence Request and, on the basis of its standing decisions, maintains the restrictions on Yekatom’s contacts for the remainder of the pre-trial proceedings.

²⁹ICC-01/14-01/18-176-Conf-Red, para. 32.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **REJECTS** the Prosecutor's Request;
- b) **REJECTS** the Defence Request; and
- c) **FINDS** that the restrictions on Yekatom's contacts shall continue for the remainder of the pre-trial proceedings.

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 the 28 January 2021

At The Hague, The Netherlands