



Original: English

No. ICC-01/14-01/18
Date of original: 15 April 2019
Date: 8 February 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, Prosecutor
James Stewart, Deputy Prosecutor
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoop
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 (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 and Alfred Yekatom,¹ and further 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 the ‘Warrant of Arrest for Alfred Yekatom’.⁴

3. On 17 November 2018, Yekatom was surrendered to the Court by the authorities of the Central African Republic (the ‘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 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.

4. 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 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').¹²

5. On 7 December 2018, the Chamber issued the 'Warrant of Arrest for Patrice-Edouard Ngaïssona'.¹³

6. 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'), thereby 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

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

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 ICC-01/14-01/18-52-Conf-Exp.

¹³ 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.

¹⁴ ICC-01/14-01/18-101-US-Exp, paras 5-14.

¹⁵ Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-90.

¹⁶ ICC-01/14-01/18-98-Conf-Exp.

¹⁷ ICC-01/14-01/18-98-Conf-Exp, paras 8-11.

Ngaïssona and Yekatom in the ICC Detention Centre (the ‘29 January 2019 Decision’).¹⁸

8. On 6 February 2019, upon request by the Prosecutor,¹⁹ 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 2019.²⁰

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.²¹

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) Yekatom’s and Ngaïssona’s non-privileged telephone conversations and visits (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 list and/or whom they wish to receive visits from, the Chief Custody Officer may request the support of the Victims and Witnesses Unit (the ‘1 March 2019 Decision’).²²

11. On 1 March 2019, the Chamber received the ‘Defence Observations Pursuant to the “Third Decision Pursuant to Regulation 101 of the Regulations of the Court” (ICC-

¹⁸ 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.

¹⁹ ICC-01/14-01/18-112-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-112-Conf-Red.

²⁰ 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.

²¹ ICC-01/14-01/18-87.

²² ICC-01/14-01/18-137-Conf-Exp.

01/14-02/18-27-Conf-Exp-Red) and Application for an Extension of a Time Limit Pursuant to Regulation 35(2) of the Regulations of the Court’.²³

12. On 8 April 2019, the Chamber received the ‘Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II’ (the ‘Sixth Registry Report Regarding Yekatom’)²⁴ and the ‘Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by Pre-Trial Chamber II’ (the ‘Third Registry Report Regarding Ngaïssona’)²⁵. According to both reports, no incidents occurred during the reporting period.²⁶

13. On 10 April 2019, the Chamber received the ‘Prosecution’s Observations Pursuant to the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (ICC-01/14-01/18-137-Conf-Exp)’ (the ‘Prosecutor’s Observations’),²⁷ the ‘Observations de la Défense de M. Alfred Rombhot Yekatom suite à la « Decision Pursuant to Regulation 101 of the Regulations of the Court » (ICC-01/14-01/18-137-Conf-Exp)’ (the ‘Yekatom Defence Observations’),²⁸ and the ‘Defence Observations Pursuant to the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (ICC-01/14-01/18-137-Conf-Exp)’ (the ‘Ngaïssona Defence Observations’).²⁹

14. On 12 April 2019, the Chamber received the ‘Joint Defence Request to Disregard the Redacted Submissions or Lift the Redactions in “Prosecution’s Observations Pursuant to the ‘Decision Pursuant to Regulation 101 of the Regulations of the Court’ (ICC-01/14-01/18-137-Conf-Exp)” (ICC-01/14-01/18-170-Conf-Red)’³⁰ (the ‘Joint

²³ ICC-01/14-01/18-138-Conf-Exp. The Chamber notes that these observations were submitted after the 1 March 2019 Decision had been rendered and that, therefore, the Defence request for an extension of time became moot.

²⁴ ICC-01/14-01/18-167-Conf-Exp together with 4 under seal, *ex parte* annexes. A confidential redacted version is also available; see ICC-01/14-01/18-167-Conf-Red.

²⁵ ICC-01/14-01/18-166-Conf-Exp together with 5 under seal, *ex parte* annexes. A confidential redacted version is also available; see ICC-01/14-01/18-166-Conf-Red.

²⁶ ICC-01/14-01/18-167-Conf-Red, paras 14-22; ICC-01/14-01/18-166-Conf-Red, para. 1.

²⁷ ICC-01/14-01/18-170-Conf-Exp together with 2 under seal, *ex parte* annexes. A confidential redacted version is also available; see ICC-01/14-01/18-170-Conf-Red.

²⁸ ICC-01/14-01/18-172-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-172-Conf-Red.

²⁹ ICC-01/14-01/18-171-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-171-Conf-Red.

³⁰ ICC-01/14-01/18-175-Conf.

Defence Request') requesting the Chamber to either disregard the redacted submissions contained in the Prosecutor's Observations or to order the Prosecutor to lift the redactions in the Prosecutor's Observations.³¹

II. Submissions

15. In the Prosecutor's Observations, the Prosecutor requests that the Chamber 'reinstate the original contact restrictions initially imposed on [...] [Yekatom and Ngaïssona] beyond 15 April 2019 [...], including the resumption of active monitoring of all Detention Centre communications' and, in addition, [REDACTED] (the 'Prosecutor's Requests').³²

16. The Prosecutor submits that the justifications contained in her previous filings and the Chamber's previous decisions continue to justify the restrictions of Yekatom's and Ngaïssona's contacts.³³ The Prosecutor reiterates that: (i) Yekatom and Ngaïssona 'have strong motives to interfere with the Prosecution's investigation'; (ii) Yekatom and Ngaïssona 'continue to have influence over their supporters and associates in CAR'; (iii) '[t]he Anti-Balaka are still active throughout CAR'; (iv) '[t]he security situation in CAR is unstable'; and (v) '[w]itnesses face a real risk of harm if the Suspects leak their identities'.³⁴ In addition, the Prosecutor recalls that Yekatom: (i) 'has a demonstrated propensity for violence and disregard for the rule of law'; and (ii) 'has not fully complied with the Chamber's order to date'.³⁵

17. Furthermore, the Prosecutor submits that: [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED].³⁸ [REDACTED].³⁹ [REDACTED].⁴⁰

18. The Prosecutor asserts that '[t]he current restrictions, namely the random monitoring of calls, leaves room for the Suspects to contravene the purpose of the

³¹ ICC-01/14-01/18-175-Conf, para. 20.

³² ICC-01/14-01/18-170-Conf-Exp, paras 1-2.

³³ ICC-01/14-01/18-170-Conf-Exp, para. 4.

³⁴ ICC-01/14-01/18-170-Conf-Exp, para. 5.

³⁵ ICC-01/14-01/18-170-Conf-Exp, para. 6.

³⁶ ICC-01/14-01/18-170-Conf-Exp, paras 7-9.

³⁷ ICC-01/14-01/18-170-Conf-Exp, para. 10.

³⁸ ICC-01/14-01/18-170-Conf-Exp, paras 7, 10.

³⁹ ICC-01/14-01/18-170-Conf-Exp, para. 11.

⁴⁰ ICC-01/14-01/18-170-Conf-Exp, para. 12 (emphasis in original).

Chamber's order, particularly now when the Prosecution is in the process of disclosing the statements and the identities of sensitive and important witnesses'.⁴¹ [REDACTED].⁴² [REDACTED].⁴³

19. In the Yekatom Defence Observations, the Yekatom Defence requests that the restrictions on Yekatom's contacts be lifted.⁴⁴

20. The Yekatom Defence avers that the arguments previously raised by the Prosecutor in relation to the extension of the restrictions on Yekatom's contacts are weak. In this regard, the Yekatom Defence asserts that the Prosecutor initially emphasised the importance of the Registry reports and that she subsequently ignored these reports when no incidents regarding Yekatom were reported.⁴⁵ Furthermore, the Yekatom Defence is of the view that, on several occasions, the Prosecutor invoked arguments in favour of restricting his contacts which were not specific, concrete or up-to-date.⁴⁶ The Yekatom Defence also asserts that the Prosecutor relied on a minor incident mentioned in one of the Registry reports which does not satisfy the requirements of regulation 101(2) of the Regulations.⁴⁷ In addition, the Yekatom Defence argues that the fact that the Chamber did not accept any of the Prosecutor's arguments and instead *proprio motu* referred to another argument in one of the Chamber's decisions extending the restrictions on Yekatom's contacts reveals the weakness of the Prosecutor's arguments.⁴⁸ The Yekatom Defence further advances that, if the Prosecutor would base her current request for an extension of the restrictions on Yekatom's contacts on the political situation in the CAR, he would not be able to effectively repudiate such arguments as such developments occur independently of his will and are beyond his control.⁴⁹ Finally, the Yekatom Defence underlines that, even though the identities of certain witnesses have been disclosed by the Prosecutor since

⁴¹ ICC-01/14-01/18-170-Conf-Exp, para. 15.

⁴² ICC-01/14-01/18-170-Conf-Exp, para. 16.

⁴³ ICC-01/14-01/18-170-Conf-Exp, paras 17-18.

⁴⁴ ICC-01/14-01/18-172-Conf-Red, para. 24.

⁴⁵ ICC-01/14-01/18-172-Conf-Red, paras 3-6.

⁴⁶ ICC-01/14-01/18-172-Conf-Red, paras 7-8, 11.

⁴⁷ ICC-01/14-01/18-172-Conf-Red, paras 9-10.

⁴⁸ ICC-01/14-01/18-172-Conf-Red, para. 12.

⁴⁹ ICC-01/14-01/18-172-Conf-Red, para. 15.

27 March 2019 and Yekatom's calls have been actively monitored at random, no incidents have been reported.⁵⁰

21. The Yekatom Defence further questions the usefulness of the Registry reports considering that none of the decisions extending the restrictions on Yekatom's contacts has been based on the fact that Yekatom has not made use of his communications with others in order to harm or influence in any way the conduct of the proceedings or the investigation at any time.⁵¹

22. In the Ngaïssona Defence Observations, the Ngaïssona Defence requests that the restrictions on Ngaïssona's contacts be lifted or, in the alternative, varied.⁵²

23. The Ngaïssona Defence submits that 'it cannot make concrete, specific and up-to-date submissions on a potential continuation of the restrictions'.⁵³ In this regard, the Ngaïssona Defence avers that the 23 January 2019 Decision was issued on the basis of regulation 101(3) of the Regulations and that, therefore, 'it did not have the opportunity to submit [...] [its] observations on the request seeking the application of restrictions'.⁵⁴ In addition, the Ngaïssona Defence is of the view that 'the Chamber has ordered twice the Prosecution and the Defence to present observations on the same day, which renders it materially impossible for the Defence to respond to the Prosecution's requests to maintain restrictions on Mr Ngaïssona's communications'.⁵⁵ The Ngaïssona Defence also argues that it 'still has no access to the Prosecution's Application for a Warrant of Arrest against Patrice-Edouard Ngaïssona, nor does it have access to the initial and original Prosecution's application under Regulation 101 of the Regulations contained in this application'.⁵⁶

24. With reference to the Third Registry Report Regarding Ngaïssona, the Ngaïssona Defence 'submits that this repeated absence of incidents should be taken into account by the Chamber to lift the restrictions imposed or, in the alternative to modify and

⁵⁰ ICC-01/14-01/18-172-Conf-Red, para. 16.

⁵¹ ICC-01/14-01/18-172-Conf-Red, paras 21-22.

⁵² ICC-01/14-01/18-171-Conf-Red, paras 42-43.

⁵³ ICC-01/14-01/18-171-Conf-Red, para. 11.

⁵⁴ ICC-01/14-01/18-171-Conf-Red, para. 13.

⁵⁵ ICC-01/14-01/18-171-Conf-Red, para. 15.

⁵⁶ ICC-01/14-01/18-171-Conf-Red, para. 17.

lighten them’.⁵⁷ The Ngaïssona Defence also considers that Ngaïssona ‘himself limited the number of persons on his list of non-privileged contacts’, which demonstrates his ‘will and determination to comply with the rules applying before the Court and at the Detention Centre’.⁵⁸

25. Furthermore, the Ngaïssona Defence asserts that, ‘on 27 February 2019, the Prosecution presented a number of unsubstantiated arguments that would allegedly justify the extension of restrictions on communications, all of them [sic] actually related to speculative risks’.⁵⁹

26. The Ngaïssona Defence further argues that ‘[t]he current restrictions imposed on Mr Ngaïssona’s contact with the outside world, and in particular, the considerable restrictions on his telephone communications, are unnecessary, disproportionate and incompatible with Regulation 101 of the Regulations and with Mr Ngaïssona’s fundamental and internationally recognized human rights’.⁶⁰ According to the Ngaïssona Defence, ‘[o]ne and a half hours per week is clearly insufficient for Mr Ngaïssona to remain updated with all of his children and his [extensive] immediate family’, including a particular member of his immediate family.⁶¹ The Ngaïssona Defence also claims that Ngaïssona’s ‘call allowance is, in reality, significantly reduced because the time for Detention Unit staff to set up each individual call is counted towards his overall call allowance’ and requests the Chamber to instruct the Detention Centre to ‘ensure that Mr Ngaïssona’s already limited calling time is not further curtailed by the logistics of setting up the phone calls’.⁶² The Ngaïssona Defence next submits that ‘the limit on the duration of Mr Ngaïssona’s telephone calls per week does not take into consideration cultural context or norms, insofar as the notion of “family” in Central African Republic, as in many other African countries, does not necessarily correspond to Euro-centric notions of family’.⁶³ Moreover, the Ngaïssona Defence

⁵⁷ ICC-01/14-01/18-171-Conf-Red, para. 19.

⁵⁸ ICC-01/14-01/18-171-Conf-Red, para. 20.

⁵⁹ ICC-01/14-01/18-171-Conf-Red, para. 22. *See also* ICC-01/14-01/18-171-Conf-Red, paras 23-29.

⁶⁰ ICC-01/14-01/18-171-Conf-Red, para. 30.

⁶¹ ICC-01/14-01/18-171-Conf-Red, para. 31.

⁶² ICC-01/14-01/18-171-Conf-Red, paras 32-33.

⁶³ ICC-01/14-01/18-171-Conf-Red, para. 34.

asserts that ‘telephone calls are Mr Ngaïssona’s main method of communication with his family and to an extent, his lifeline’.⁶⁴

27. Finally, ‘the Case Manager of Mr Ngaïssona’s Defence team was not permitted to visit Mr Ngaïssona alone’⁶⁵ and the Ngaïssona Defence is of the view that ‘such limits to Mr Ngaïssona’s access to his Defence team are unjustified, and curtail his right to have “adequate time and facilities for the preparation of the defence”’.⁶⁶ Thus, the Ngaïssona Defence ‘requests that the Chamber include the Case Manager position [sic] in the list of persons entitled to privileged visits with Mr Ngaïssona’.⁶⁷

III. Determination of the Chamber

28. 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.

29. 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.⁶⁸

30. With regard to the Prosecutor’s Requests, the Chamber considers that the arguments invoked by the Prosecutor, [REDACTED],⁶⁹ fail to establish that either Yekatom or Ngaïssona was involved in these events in any way. [REDACTED].⁷⁰ [REDACTED]. Third, the Chamber observes that, with the exception of one incident which is unconnected to the matter under consideration, the Registry reports indicate that no incidents have occurred in relation to Yekatom’s contacts and communications either during the time that all his communications were actively monitored or during the time that his communications were actively monitored at random.⁷¹ The same applies to Ngaïssona’s contacts and communications.⁷² Based on the above, the

⁶⁴ ICC-01/14-01/18-171-Conf-Red, para. 35.

⁶⁵ ICC-01/14-01/18-171-Conf-Red, para. 38.

⁶⁶ ICC-01/14-01/18-171-Conf-Red, para. 39.

⁶⁷ ICC-01/14-01/18-171-Conf-Red, para. 40.

⁶⁸ ICC-01/14-01/18-137-Conf-Exp, para. 18.

⁶⁹ ICC-01/14-01/18-170-Conf-Exp, para. 17.

⁷⁰ ICC-01/14-01/18-170-Conf-Exp-AnxA, p. 1; ICC-01/14-01/18-170-Conf-Exp-AnxB, paras 7-9.

⁷¹ ICC-01/14-01/18-23-Conf-Red; ICC-01/14-01/18-32-Conf-Red; ICC-01/14-01/18-62-Conf-Red; ICC-01/14-01/18-81-Conf-Red; ICC-01/14-01/18-124-Conf-Red; ICC-01/14-01/18-167-Conf-Red.

⁷² ICC-01/14-01/18-115-Conf-Exp, ICC-01/14-01/18-125-Conf-Red, ICC-01/14-01/18-166-Conf-Red.

Chamber is not persuaded that the Prosecutor has demonstrated that [REDACTED]. Therefore, the Prosecutor's Requests, as specified in paragraph 15 of the present decision, are rejected. The Chamber further finds that, having rejected the Prosecutor's Requests, the Joint Defence Request has become moot.

31. The Chamber turns to the requests of the Yekatom Defence and the Ngaïssona Defence to lift the restrictions on the contacts of Yekatom and Ngaïssona. The Chamber has carefully reviewed the submissions of the parties, as well as the Sixth Registry Report Regarding Yekatom and the Third Registry Report Regarding Ngaïssona. The Chamber reiterates that it has previously found that the political situation in the CAR is fragile, Yekatom and Ngaïssona retain strong influence among the Anti-Balaka, 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, and nearly 80% of the territory of the CAR is still under the control of armed groups, including the Anti-Balaka.⁷³ The Chamber considers that these considerations are still applicable. In addition, the Chamber finds that, although it does not implicate either Yekatom or Ngaïssona, the incidents [REDACTED] reveal the risks witnesses and other persons affiliated with the Court have to contend with in general as well as the difficulties of protecting such persons in the CAR. Contrary to the arguments of the Yekatom Defence and the Ngaïssona Defence, these considerations are neither unspecific nor speculative but establish that the alleged roles of Yekatom and Ngaïssona in the events that are the subject of the warrants of arrest issued against them, as assessed against the current situation in the CAR, warrant restrictions on their contacts and communications. Finally, with regard to the submissions of the Yekatom Defence regarding the usefulness of the Registry reports, the Chamber recalls that the conclusions of such reports constitute one of the factors it considers in its determination and that, in the 1 March 2019 Decision, the conclusions of the relevant Registry reports led the Chamber to vary these restrictions.⁷⁴ In light of the foregoing, the Chamber remains persuaded 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.

⁷³ ICC-01/14-01/18-137-Conf-Exp, para. 18.

⁷⁴ ICC-01/14-01/18-137-Conf-Exp, para. 19.

32. Therefore, the Chamber decides to extend the current 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. Nevertheless, the Registry is ordered to submit separate reports on the implementation of the restrictive measures concerning Yekatom's and Ngaïssona's communications and contacts, together with confidential redacted versions of said reports, every two months. The Prosecutor shall submit observations, if any, on the Registry reports within five days of notification of these reports. The Yekatom Defence and the Ngaïssona Defence shall submit observations on the Registry's reports and the Prosecutor's observations, if any, within 10 days of notification of the Registry's reports. The Chamber further instructs the Registry to inform the Chamber immediately of any violation of the regime concerning the restrictions on contact imposed on Yekatom and Ngaïssona or any other significant developments. The Chamber will reassess the current regime concerning the restrictions on Yekatom's and Ngaïssona's contacts if necessary.

33. In relation to the request of the Ngaïssona Defence to direct the Detention Centre to ensure that the time allotted to Ngaïssona to make telephone calls is not curtailed by the logistics of setting up the telephone calls,⁷⁵ the Chamber considers that the time afforded to Ngaïssona to make telephone calls must be interpreted as referring to the time Ngaïssona speaks on the telephone. This means that any time required to set up a telephone call should not affect the time allotted to Ngaïssona to speak on the telephone as that would be an unwarranted and disproportionate restriction. Accordingly, this request is granted and, for reasons of fairness, must be extended to Yekatom as well. The Chamber observes that the Ngaïssona Defence does not present any other specific requests to vary the restrictions on Ngaïssona's contacts. To the extent that the Ngaïssona Defence is requesting the Chamber to increase the time allotted to Ngaïssona to make telephone calls,⁷⁶ the Chamber notes that, as acknowledged by the Ngaïssona

⁷⁵ ICC-01/14-01/18-171-Conf-Red, paras 32-33.

⁷⁶ ICC-01/14-01/18-171-Conf-Red, para. 31.

Defence,⁷⁷ the Registry has already increased such time from one hour to one and a half hours per week in implementing the 1 March 2019 Decision.⁷⁸ In addition, as specified in paragraphs 31 and 32 of the present decision, the Chamber has decided to maintain the restrictions on Ngaïssona's contacts as defined in the 1 March 2019 Decision. Accordingly, any other requests to vary the restrictions on Ngaïssona's contacts are rejected.

34. Lastly, as regards the request of the Ngaïssona Defence to include the case manager in the list of persons entitled to privileged visits with Ngaïssona,⁷⁹ the Chamber notes that Ngaïssona does not have a co-counsel. In addition, the Chamber considers that the case manager forms part of the Defence team and is, as such, entitled to the same privileges and subject to the same obligations as counsel. Accordingly, this request is granted.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) REJECTS** the Prosecutor's Requests;
- b) FINDS** that the Joint Defence Request has become moot;
- c) ORDERS** 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 the 1 March 2019 Decision, for the remainder of the pre-trial proceedings;
- d) ORDERS** 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 the 1 March 2019 Decision, for the remainder of the pre-trial proceedings;
- e) ORDERS** the Registrar to submit to the Chamber separate reports on the implementation of the restrictive measures concerning Yekatom's and Ngaïssona's

⁷⁷ ICC-01/14-01/18-171-Conf-Red, para. 31.

⁷⁸ ICC-01/14-01/18-166-Conf-Red, para. 10.

⁷⁹ ICC-01/14-01/18-171-Conf-Red, para. 40.

communications and contacts, together with confidential redacted versions of said reports, every two months;

- f) **ORDERS** the Registrar to inform the Chamber immediately of any violation of the regime regarding the restrictive measures concerning Yekatom's and Ngaïssona's communications and contacts;
- g) **ORDERS** the Prosecutor to submit observations on the aforementioned Registry reports, if any, together with confidential redacted versions of said observations, within five days of the notification of the Registry reports;
- h) **ORDERS** the Yekatom Defence and the Ngaïssona Defence to submit observations on the aforementioned Registry reports, as well as on the Prosecutor's observations, if any, together with confidential redacted versions of said observations, within 10 days of notification of the Registry reports;
- i) **INSTRUCTS** 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;
- j) **REJECTS** any other requests to vary the restrictive measures concerning Ngaïssona's communications and contacts; and
- k) **GRANTS** the request of the Ngaïssona Defence to include its case manager in the list of persons entitled to privileged visits with Ngaïssona.

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 8 February 2021

At The Hague, The Netherlands