

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/14-01/18  
Date: 17 January 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**

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**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.<sup>1</sup> On 11 November 2018, the Chamber issued the ‘Warrant of Arrest for Alfred Yekatom’.<sup>2</sup>

2. On 17 November 2018, Yekatom was surrendered to the Court by the authorities of the Central African Republic (‘CAR’).<sup>3</sup> On the same day, the Single Judge, acting on behalf of the Chamber,<sup>4</sup> and upon a request by the Prosecutor,<sup>5</sup> issued a decision restricting Yekatom’s communications upon his arrival at the ICC Detention Centre for a period of two weeks.<sup>6</sup> On 18 November 2018, Yekatom arrived at the ICC Detention Centre.<sup>7</sup>

3. The Chamber subsequently issued a number of decisions pursuant to regulation 101 of the Regulations of the Court (the ‘Regulations’), thereby extending the restrictions on Yekatom’s contacts with certain modifications. In this regard, the Chamber recalls the procedural history set out in its previous decisions.<sup>8</sup>

4. On 16 December 2019, the Registry filed the ‘Tenth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II’ (the ‘Tenth Registry Report’).<sup>9</sup>

5. On 20 December 2019, the Prosecutor filed the ‘*Observations de l’Accusation sur le* “Tenth Registry Report on the Implementation of the Restrictions on Contact of

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<sup>1</sup> ICC-01/14-01/18-2-US-Exp, together with 11 under seal, *ex parte* annexes.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Pre-Trial Chamber II, Decision designating a Single Judge, 9 November 2018, ICC-01/14-01/18-10.

<sup>5</sup> ICC-01/14-01/18-2-US-Exp, para. 357.

<sup>6</sup> ICC-01/14-01/18-11-Conf-Exp.

<sup>7</sup> ICC-01/14-01/18-17-US-Exp, para. 25.

<sup>8</sup> *See, for example*, the Decision Pursuant to Regulation 101 of the Regulations of the Court, 6 December 2019, ICC-01/14-01/18-402-Conf-Exp.

<sup>9</sup> ICC-01/14-01/18-406-Conf-Exp.

Mr Alfred Yekatom Ordered by Pre-Trial Chamber II" (ICC-01/14-01/18-406-Conf-Exp) (the 'Prosecutor's Observations').<sup>10</sup>

6. On 24 December 2019, the Yekatom Defence filed the 'Yekatom Defence Observations on Tenth Registry Report on Contact Restrictions' (the 'Defence Observations').<sup>11</sup>

## **II. Submissions**

### **A. The Tenth Registry Report**

7. The Registry indicates that it implemented the Chamber's 17 September 2019 Decision<sup>12</sup> by 'maintaining the existing contact restrictions and continuing to actively monitor Mr Yekatom's non-privileged communications'. As calls are 'sometimes dropped' or there may be 'connection problems with the Central African Republic telephone networks', the Registry 'currently offers Mr Yekatom two time periods a week, for 60 minutes each time period, in order to facilitate his non-privileged telephone calls as best as possible. This is despite the fact that the Chamber has authorized only 60 minutes of monitored telephone calls a week'.

8. The Registry has continued to actively monitor Yekatom's calls at random, and indicates that no incidents were reported and it has 'no concerns to report to the Chamber'. Similarly, the Registry has no concerns or incidents to report in relation to Yekatom's visits or incoming/outgoing mail.

### **B. The Prosecutor's Observations**

9. The Prosecutor submits that there has been no change in the circumstances that would require the Chamber to reconsider the existing contact restrictions, and thus, that the contact restrictions currently in place for Yekatom should be maintained. Further, in the Prosecutor's view, the contact restrictions are necessary to ensure the integrity of the proceedings, and to prevent any potential interference with witnesses and the investigation.

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<sup>10</sup> ICC-01/14-01/18-412-Conf-Exp.

<sup>11</sup> ICC-01/14-01/18-414-Conf-Exp.

<sup>12</sup> Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-350-Conf-Exp.

### C. The Defence Observations

10. The Defence requests that the Chamber 'modify Mr. Yekatom's restrictions by removing the requirement of random active monitoring of his conversations'. In support of its request, the Defence submits that Yekatom 'has continued to maintain his contacts without violating any of the restrictions'. In addition, the Defence argues that when the Chamber held in its 15 April 2019 decision<sup>13</sup> that the current restriction regime would be maintained for the remainder of the pre-trial proceedings, 'it was anticipated that the pre-trial proceedings would be concluded with the Chamber's decision on the confirmation of charges in December', and that '[t]hose circumstances have changed'. In particular, the Defence submits that since 'the final French translation of [the Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona] will not be available until the end of February 2020', and considering that 'at least one party may seek leave to appeal', this will extend the pre-trial period 'for a time far greater than that anticipated by the Chamber when issuing its decision in April 2019'.

11. The Defence further submits that due to the random active monitoring regime and the 'unreliability of the Central African Republic telephone network', Yekatom is often unable to reach his intended contacts during the designated time period. Referring to a decision from the *Ntaganda* case,<sup>14</sup> the Defence argues that the imposition of restrictions should be an exception rather than a general rule, and that the Prosecutor's Observations 'do not address the unforeseen delay in the pre-trial proceedings', and fail to 'point to any serious concerns related to Mr. Yekatom's conduct that would warrant restrictions but merely refers to the security situation in the Central African Republic'.

12. The Defence further requests that the Chamber issue its decision publicly (the 'Defence Request'), as 'conditions for detainees are a legitimate subject of public interest', and the content of the decision is 'unlikely to reveal details that would jeopardise' security at the Detention Centre or infringe upon Yekatom's privacy.

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<sup>13</sup> Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-176-Conf-Red.

<sup>14</sup> *Prosecutor v. Ntaganda*, 'Decision on requests to call witnesses in relation to sentencing and for increased monitoring of Mr Ntaganda's contacts and scheduling the sentencing hearing', ICC-01/04-02-06-2384-Red, 21 August 2019, para. 57.

### III. Determination by the Chamber

13. 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.

14. 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'.<sup>15</sup> In the same decision, the Chamber also held that it 'will reassess the current regime concerning the restrictions on [...] Yekatom's [...] contacts if necessary'.

15. Turning to the Defence Observations, the Chamber notes that while Yekatom is authorized to have 60 minutes of non-privileged telephone calls per week, the Registry offers Yekatom two 60 minute periods per week during which to make calls, in order to counter any challenges presented by issues with the CAR telephone networks. Further, the Chamber considers that the time required for the translation of a confirmation decision, and the possibility that a party may seek leave to appeal, cannot be considered to be 'unforeseen delays', but are rather a normal and anticipated aspect of pre-trial proceedings.

16. In the view of the Chamber, there is no indication that the circumstances justifying the contact restrictions in place for Yekatom have changed. Furthermore, 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. Accordingly, the Chamber rejects the Defence Request, and decides to maintain the restrictions on Yekatom's contacts.

17. 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.

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<sup>15</sup>ICC-01/14-01/18-176-Conf-Exp.

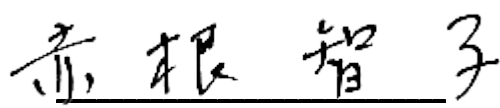
**FOR THESE REASONS, THE CHAMBER HEREBY**

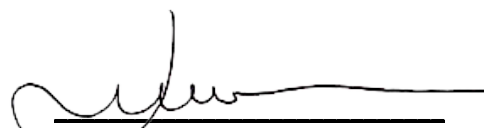
**DECIDES** to maintain the existing contact restrictions in place for Yekatom;  
and

**REJECTS** the Defence Request.

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

  
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**Judge Antoine Kesia-Mbe Mindua**  
**Presiding Judge**

  
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**Judge Tomoko Akane**

  
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**Judge Rosario Salvatore Aitala**

Dated this Friday, 17 January 2019

At The Hague, The Netherlands