

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**
Date: **27 February 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

**Confidential, *EX PARTE*, only available to the Prosecution and the Defence of
Alfred Yekatom**

**Prosecution's Response to the "Requête de la Défense de M Yekatom aux fins
d'obtenir l'autorisation d'interjeter appel de la « Fifth Decision Pursuant to
Regulation 101 of the Regulations of the Court » rendue le 15 février 2019" (ICC-
01/14-01/18-123-Conf-Exp)**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Defence's request seeking leave to appeal the "Fifth Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Decision")¹ should be rejected. It does not identify any appealable issue within the meaning of article 82(1)(d) because all suggested issues are predicated on a misunderstanding or misreading of the Decision:²

- The First Issue selectively quotes the Prosecution's prior arguments to suggest that the Prosecution (and by extension Pre-Trial Chamber II ("Chamber")) relied on arguments contained in an *ex parte* filing.³ The Chamber's determination, however, was made on its *own* prior findings and analyses available to the Defence.⁴
- The Second Issue ignores the salient part of the Chamber's analysis in arguing that the Chamber was only mindful of protecting restrictions imposed against NGAISSONA.⁵ The Chamber, however, evaluated how YEKATOM's contact with his associates could affect the investigation and outcome of proceedings against NGAISSONA given the overlap in their cases.⁶ That reasoning falls squarely within the plain terms of regulation 101(2)(b), which permits the Chamber to evaluate how contact could impact "the proceedings against a detained person, or *any other* investigation."⁷
- The Third Issue misunderstands the Chamber's analysis in arguing that the Chamber's only consideration for rejecting YEKATOM's request to lessen the restrictions against him was the administrative burden that potentially places

¹ ICC-01/14-01/18-86-Conf-Exp. This response is filed "Confidential, *EX PARTE*, only available to the Prosecution and the Defence of Alfred Yekatom" given that it responds to a filing and concerns a decision of the same designation. The Prosecution does not object to its re-classification as "Public".

² See ICC-01/04-01/10-487, paras. 32-33; ICC-01/05-01/13-1278, para. 9.

³ ICC-01/14-01/18-123-Conf-Exp, paras. 15, 18.

⁴ ICC-01/14-01/18-86-Conf-Exp, para. 14.

⁵ ICC-01/14-01/18-123-Conf-Exp, para. 21.

⁶ ICC-01/14-01/18-86-Conf-Exp, para. 14.

⁷ Regulation 101(2)(b) of the Regulations of the Court (emphasis added). *Contra* ICC-01/14-01/18-123-Conf-Exp, paras. 19-22.

on the ICC Detention Center.⁸ The Decision, however, evaluated how such burden could prevent the Detention Centre from executing the active monitoring regime required to protect witnesses and victims, and that current restrictions were sufficient given that YEKATOM could receive family visits and his contacts with his defence counsel is not restricted.

2. The Defence's rejection of the Chamber's clear reasoning does not transform the three issues advanced into anything more than a mere disagreement.

3. In any event, all three issues fail to meet both prongs of the article 82(1)(d) test.⁹ YEKATOM's stated desire to have more open communications with persons close to him to assure their well-being¹⁰ has no plausible link with the outcome or expeditious conduct of the proceedings. To the contrary, given the risks to witnesses, victims, and the ongoing investigation of unmonitored contact, the issues would delay or negatively impact the outcome of proceedings. The Defence's principle concern—avoiding having to submit regular observations concerning contact restrictions¹¹—is purely strategic or tactical, and amounts to nothing more than an administrative concern.¹²



Fatou Bensouda, Prosecutor

Dated this 27th day of February 2019
At The Hague, The Netherlands

⁸ *Contra* ICC-01/14-01/18-123-Conf-Exp, para. 23-27.

⁹ *Contra* ICC-01/14-01/18-123-Conf-Exp, para. 28-41.

¹⁰ ICC-01/14-01/18-86-Conf-Exp, para. 12.

¹¹ *See* ICC-01/14-01/18-123-Conf, paras. 31, 33, 34.

¹² *See* ICC-01/14-01/18-65-Red, para. 18.