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**International
Criminal
Court**

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**No. ICC-01/14-01/18
Date: 11 November 2020**

TRIAL CHAMBER V

**Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAÏSSONA***

Confidential

**Third Decision on Mr Yekatom's Restrictions on Contacts and Communications
in Detention**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 57, 61(11), 64 and 68(1) of the Rome Statute (the ‘Statute’), Regulations 96 and 99-101 of the Regulations of the Court (the ‘Regulations’) and Regulations 167-170, 173-175, 177-180, 182-185 and 187 of the Regulations of the Registry, issues this ‘Third Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention’.

I. Procedural history and submissions

1. On 19 March 2020, the Detention Centre imposed temporary measures in light of the Coronavirus Pandemic following the recommendations of the medical officer of the Detention Centre. Some of these measures have been extended until 16 November 2020 (the ‘Temporary Measures’), including the suspension of all visits to the detained persons.¹
2. On 17 April 2020, the Chamber issued its first decision on Mr Yekatom’s contacts and communications (the ‘First Restrictions Decision’).² It decided, *inter alia*, to maintain the restrictions on his contacts and communications during detention (the ‘Current Restrictions’), and to adopt the reporting procedure put in place by Pre-Trial Chamber II (the ‘PTC II’) with the modification that the Registry was ordered to henceforth submit its report every three months (the ‘Reporting Procedure’ and the ‘Reporting Period’ respectively).³

¹ Fifth Registry Update on Detention Centre COVID-19 Measures, 23 October 2020, ICC-01/14-01/18-696-Conf, paras 3-4. The latest memorandum DS/2020/084/HT/mb was communicated to the detainees and their counsel on 15 October 2020. *See* Annex to Addendum to “Fifth Registry Update on Detention Centre COVID-19 Measures”, 29 October 2020, ICC-01/14-01/18-702-Conf-Anx.

² Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, ICC-01/14-01/18-485-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Prosecution and the Registry.

³ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, p. 16.

3. On 5 May 2020, the Single Judge rejected the request by the Yekatom Defence (the 'Defence') to modify the Current Restrictions (the 'Decision on the Modification Request').⁴
4. On 17 July 2020, the Registry filed its first report on the implementation of restrictions, as ordered in the First Restrictions Decision.⁵
5. On 21 August 2020, the Chamber issued its second decision maintaining the Current Restrictions (the 'Second Restrictions Decision').⁶
6. On 31 August 2020, the Office of the Prosecutor (the 'Prosecution') filed its provisional list containing information about the witnesses it intends to call to testify at trial, including brief summaries of their anticipated testimonies (the 'Provisional Witness List').⁷
7. On 5 October 2020, the Registry filed its second report on the implementation of restrictions (the 'Second Registry Report').⁸ The Registry (i) informs the Chamber that certain non-privileged telephone conversations by Mr Yekatom during the last Reporting Period appear to be case-related (the 'Potential Incidents');⁹ (ii) requests that the Defence's language assistant be removed from

⁴ Decision on the Yekatom Defence's Request to Modify the Active Monitoring Restriction, ICC-01/14-01/18-507-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Prosecution and the Registry, p. 7.

⁵ First Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Chamber Trial V, ICC-01/14-01/18-592-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (with one confidential *ex parte* annex, only available to the Yekatom Defence and the Registry) (confidential *ex parte* redacted version, only available to the Yekatom Defence, the Registry and the Prosecution, notified the same day, ICC-01/14-01/18-592-Conf-Exp-Red) (the 'First Registry Report').

⁶ Second Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, ICC-01/14-01/18-627-Conf, para. 24, p. 12.

⁷ See Notification of the Provisional List of Prosecution Witnesses with a Summary of their Anticipated Testimony, ICC-01/14-01/18-642-Conf (the 'Provisional Witness List Notification') (with confidential Annex A, ICC-01/14-01/18-642-Conf-AnxA).

⁸ Second Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Trial Chamber V, ICC-01/14-01/18-673-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (with confidential *ex parte* Annex I, ICC-01/14-01/18-673-Conf-Exp-AnxI, and Annex II, only available to the Yekatom Defence and the Registry) (confidential redacted version notified the next day, ICC-01/14-01/18-673-Conf-Red).

⁹ Second Registry Report, ICC-01/14-01/18-673-Conf-Red, para. 13. On 15 September 2020, the Registry informed the Chamber of the Potential Incidents by email as well as of its intention to report them formally when the transcripts became available. See email from Registry to the Chamber, 15 September 2020, at 13:39. See also Annex I to the Second Registry Report, ICC-01/14-01/18-673-Conf-Exp-AnxI.

the list of privileged visitors (the 'Registry Request');¹⁰ and (iii) informs the Chamber of Mr Yekatom's telephone conversations concerning the provision of equipment for Koya security company in the Central African Republic (the 'Security Company' and the 'CAR', respectively).¹¹

8. On 9 October 2020, the Prosecution filed its observations on the Second Registry Report, requesting the Chamber to (i) maintain the Current Restrictions, and (ii) grant the Registry Request.¹² Additionally, the Prosecution requests the Chamber to order Mr Yekatom to cease using non-privileged communications to operate his business in violation of international sanctions (the 'Prosecution Request').¹³
9. More specifically, the Prosecution submits that Mr Yekatom has repeatedly shown his willingness to violate restrictions on his contacts and communications, despite purportedly expressing remorse and despite the preventive measures undertaken by the Defence to avoid further violations.¹⁴ It adds that the circumstances underlying the Current Restrictions persist and these restrictions remain necessary and proportional to the risks posed to the ongoing investigations and the protection of victims and witnesses.¹⁵ The Prosecution further submits that Mr Yekatom is subject to sanctions imposed by the United Nations Security Council (the 'UNSC') and should not profit from operating his business through the Court's detention facilities.¹⁶ The Prosecution adds that

¹⁰ Second Registry Report, ICC-01/14-01/18-673-Conf-Red, para. 17 *referring to* Registry Observations on "Ngaïssona Defence Request on the scope of privileged telephone calls between Mr Ngaïssona and Defence team members", ICC-01/14-01/18-657-Conf, 29 September 2020, ICC-01/14-01/18-669-Conf. *See also* paras 14-16.

¹¹ Second Registry Report, ICC-01/14-01/18-673-Conf-Red, para. 18.

¹² Prosecution's Observations on the "Confidential Redacted Version of 'Second Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Trial Chamber V', (ICC-01/14-01/18-673-Conf-Red)", ICC-01/14-01/18-679-Conf, paras 1-2, 4, 16 (the 'Prosecution Observations').

¹³ Prosecution Observations, ICC-01/14-01/18-679-Conf, paras 1, 4, 14-16.

¹⁴ Prosecution Observations, ICC-01/14-01/18-679-Conf, para. 6.

¹⁵ Prosecution Observations, ICC-01/14-01/18-679-Conf, paras 9-10.

¹⁶ Prosecution Observations, ICC-01/14-01/18-679-Conf, paras 14-15 *referring to* UNSC, Resolution 2127, 5 December 2013, S/RES/2127 (2013); Resolution 2134, 28 January 2014, S/RES/2134 (2014); Resolution 2536, 28 July 2020, S/RES/2536 (2020).

although the Court is not charged with enforcing international sanctions, it should not contribute to their violation.¹⁷

10. On 15 October 2020, the Defence filed its observations on the Second Registry Report (the 'Defence Observations').¹⁸ It submits that the Registry has not presented evidence of any violations of the Current Restrictions by Mr Yekatom.¹⁹ It adds that the continued imposition of the Current Restrictions is not proportionate to Mr Yekatom's right to family life, considering the cumulative effect of the extension of the Temporary Measures.²⁰ It requests the Chamber to (i) find that the Potential Incidents did not amount to a violation of the Current Restrictions;²¹ (ii) lift the restrictions on Mr Yekatom's contacts imposed pursuant to Regulation 101 of the Regulations;²² and (iii) reject the Registry Request.²³
11. However, should the Chamber decide to maintain the Current Restrictions, the Defence alternatively requests the Chamber to consider the following measures: (i) increasing the frequency of non-privileged telephone calls per week;²⁴ and (ii) providing for video calls for one of the two weekly slots allocated for non-privileged telephone calls (the 'Defence Alternative Request').²⁵
12. On 9 November 2020, the Prosecution submitted, *inter alia*, its final list of witnesses (the 'Final Witness List').²⁶

¹⁷ Prosecution Observations, ICC-01/14-01/18-679-Conf, para. 15.

¹⁸ Réponse de la Défense de M. Yekatom au « Second Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Trial Chamber V », ICC-01/14-01/18-673-Conf-Exp, 5 octobre 2020, ICC-01/14-01/18-683-Conf-Exp, confidential *ex parte*, only available to the Registry and the Yekatom Defence.

¹⁹ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, paras 12, 14-29.

²⁰ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, paras 12, 41-49.

²¹ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, p. 17; *see also* paras 18-22.

²² Defence Observations, ICC-01/14-01/18-683-Conf-Exp, para. 55, p. 17; *see also* paras 50-54.

²³ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, para. 40, p. 17; *see also* paras 30-39.

²⁴ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, paras 57-66, p. 18.

²⁵ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, paras 67-73, p. 18.

²⁶ *See* Prosecution's List of Witnesses and Evidence, ICC-01/14-01/18-724-Conf (with confidential Annex A, ICC-01/14-01/18-724-Conf-AnxA, and confidential annexes B-C).

II. Analysis

13. The Chamber recalls the standard and the assessment criteria set out in its First Restrictions Decision.²⁷ Notably, the Chamber recalls that it will regularly review the restrictions in place, where circumstances change.²⁸ The Chamber continues to be guided by its obligation to review the restrictions in place and to ‘carefully balance the need for and proportionality of the restrictions against the important right accorded to detained persons to have contact’.²⁹
14. At the outset, the Chamber recalls the circumstances underlying the First Restrictions Decision, the Decision on the Modification Request and the Second Restrictions Decision. In particular, in the First Restrictions Decision, the Chamber considered the following circumstances: (i) the security situation in the CAR; (ii) Mr Yekatom’s position as a member of the parliament in the CAR at the time of his arrest; (iii) the fact that he would have the means to continue exercising influence over the members of the Anti-Balaka in his immediate and extended community; (iv) Mr Yekatom’s awareness of the identity of several Prosecution witnesses; (v) the fact that a significant number of Prosecution witnesses reside in the CAR and could fall within Mr Yekatom’s sphere of influence, leaving them amenable to security threats and a risk of interference, especially those whose identities are known to Mr Yekatom;³⁰ and (vi) the breach of the Current Restrictions by Mr Yekatom where he discussed case-related issues and used obscure language with an interlocutor over the telephone (the ‘First Breach’).³¹
15. In the Second Restrictions Decision, the Chamber considered that there had been no change in circumstances since its assessment in the First Restrictions

²⁷ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, paras 16-18, 20.

²⁸ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, para. 18.

²⁹ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, para. 18 *referring to* Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on Mr Bosco Ntaganda’s appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 March 2017, ICC-01/04-02/06-1817-Conf (OA4) (public redacted version notified the same day, ICC-01/04-02/06-1817-Red), para. 72. *See also* paras 44, 102.

³⁰ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, para. 21.

³¹ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, para. 22.

Decision and the Decision on the Modification Request.³² Furthermore, the Chamber considered new circumstances which had arisen since the First Restrictions Decision, namely: (i) the filing of the Prosecution's Preliminary Witness List and Mr Yekatom's awareness of its content; (ii) the fact that protective measures had not yet been put in place in respect of certain witnesses due to, *inter alia*, the impact of the Coronavirus Pandemic; (iii) the Prosecution's submission that the Preliminary Witness List was subject, *inter alia*, to 'witness availability, [and] security', thereby making reference to security concerns in respect of certain witnesses that may affect their ability to testify before the Chamber;³³ and (iv) the breach of the Current Restrictions, where Mr Yekatom's interlocutor recorded a message to relay to a third party who had not been duly verified by the Registry (the 'Second Breach').³⁴ Having regard to the above circumstances and considering that the Current Restrictions remained necessary and proportionate, the Chamber found that there were reasonable grounds to believe that the lifting of the Current Restrictions could prejudice the outcome of the proceedings.³⁵

16. In the Chamber's view, the circumstances described in paragraphs 14 to 15 above have not changed. Therefore, in assessing whether or not the Current Restrictions remain warranted, the Chamber will assess the circumstances that have changed since the Second Restrictions Decision.
17. First, in the Second Registry Report, the Registry recounts excerpts of Mr Yekatom's telephone conversations in which he appears to be discussing case-related issues with his interlocutors, and which raised the Chief Custody Officer's concern; it adds that the context of these conversations, however, is not clear.³⁶ Having reviewed these conversations, the Chamber finds that Mr Yekatom discussed with his interlocutors finding a potential new member

³² Second Restrictions Decision, ICC-01/14-01/18-627-Conf, para. 14.

³³ Second Restrictions Decision, ICC-01/14-01/18-627-Conf, para. 15.

³⁴ Second Restrictions Decision, ICC-01/14-01/18-627-Conf, para. 16.

³⁵ Second Restrictions Decision, ICC-01/14-01/18-627-Conf, paras 14-19, 24.

³⁶ Second Registry Report, ICC-01/14-01/18-673-Conf-Red, para. 13.

for his Defence team in the present case.³⁷ On at least one occasion, Mr Yekatom made an explicit mention of '*mon dossier*' in the excerpts.³⁸

18. The Chamber recalls that Mr Yekatom is prohibited from 'mentioning the present case' in his non-privileged communications.³⁹ Therefore, the Chamber finds that Mr Yekatom breached this restriction. However, given the content of the conversations, the Chamber considers that this specific incident does not warrant a modification of the Current Restrictions.
19. Second, the Registry also points out that Mr Yekatom's conversations indicate that he engaged in transactions linked to the Security Company.⁴⁰ The Chamber notes that Mr Yekatom continues to remain subject to financial sanctions by the UNSC Sanctions Committee (the 'Committee') established pursuant to UNSC Resolution 2127.⁴¹ As per the resolution, all UN Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the individuals or entities designated by the Committee.⁴²
20. The Chamber recalls that the present assessment is limited to whether Mr Yekatom's conversations amount to a violation of the Current Restrictions. It is not the Chamber's role to examine or determine potential violations of sanctions imposed by the UNSC. It is also not within its mandate to implement such sanctions. Thus, having regard to the relevant excerpts of Mr Yekatom's

³⁷ See e.g. Annex I to the Second Registry Report, ICC-01/14-01/18-673-Conf-Exp-AnxI, pp. 2-3 (lines 7-29), pp. 4-6 (lines 10-62), p. 7 (lines 9-14, 22-25), p. 8 (lines 3-5), pp. 9-10 (lines 4-39), p. 11 (lines 5-15), p. 12 (lines 7-18, 29).

³⁸ Annex I to the Second Registry Report, ICC-01/14-01/18-673-Conf-Exp-AnxI, p. 11 (line 11).

³⁹ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, para. 13(v)(a), 32.

⁴⁰ Second Registry Report, ICC-01/14-01/18-673-Conf-Red, para. 18.

⁴¹ UNSC, Resolution 2127, 5 December 2013, S/RES/2127 (2013), para. 57. These sanctions were extended to 31 July 2021. See UNSC, Resolution 2536, 28 July 2020, S/RES/2536 (2020), para. 4 *referring to* UNSC, Resolution 2399, 30 January 2018, S/RES/2399 (2018), para. 16.

⁴² See UNSC, Resolution 2134, 28 January 2014, S/RES/2134 (2014), paras 32-33.

conversations,⁴³ the Chamber finds that they do not breach the Current Restrictions and therefore, do not constitute a change in circumstances.

21. Third, the Chamber notes that since the Second Restrictions Decision, the Prosecution has filed its Provisional Witness List and Final Witness List, providing details about the 151 witnesses it intends to call to testify at trial, and including brief summaries of their anticipated testimonies.⁴⁴ The Chamber considers Mr Yekatom's knowledge of this list relevant to its present assessment, particularly in light of the fact that the Victims and Witnesses Unit continues to be negatively impacted in its operations with regard to the implementation of protective measures.⁴⁵ The Chamber considers this to be a changed circumstance.
22. The Chamber will now review the necessity and proportionality of the Current Restrictions. The Chamber remains persuaded that, given the First Breach and the Second Breach and considering the above changed circumstance, there are reasonable grounds to believe that the lifting of the Current Restrictions could prejudice the outcome of the proceedings, namely by negatively impacting the Prosecution's ongoing investigations and the protection of victims and witnesses in this case. This is especially the case in light of the challenges faced by the Court in complying with its obligation to take appropriate protective measures for victims and witnesses under Article 68(1) of the Statute due to the Coronavirus Pandemic. Consequently, the Chamber considers that the Current Restrictions remain necessary.

⁴³ Annex I to the Second Registry Report, ICC-01/14-01/18-673-Conf-Exp-AnxI, p. 12 (lines 24-26), pp. 13-15 (lines 7-56), p. 19 (lines 3-10); Defence Observations, ICC-01/14-01/18-683-Conf-Exp, para. 24.

⁴⁴ See Provisional Witness List Notification, ICC-01/14-01/18-642-Conf, paras 1, 3; Annex A to the Provisional Witness List Notification, ICC-01/14-01/18-642-Conf-AnxA; Prosecution's List of Witnesses and Evidence, ICC-01/14-01/18-724-Conf, paras 1-2, 4; Annex A to the Prosecution's List of Witnesses and Evidence, ICC-01/14-01/18-724-Conf-AnxA.

⁴⁵ See e.g. Victims and Witnesses Unit's Second Report regarding the Progress on the Implementation of Protective Measures for P-2582 and P-2620, 21 October 2020, ICC-01/14-01/18-693-Conf-Exp, confidential *ex parte*, only available to the Registry and the Prosecution (confidential redacted version notified the same day, ICC-01/14-01/18-693-Conf-Red), para. 7; see also Decision on the Prosecution Request to Vary the Time Limit for Disclosure of Evidence related to Witnesses on the Preliminary Witness List, 11 September 2020, ICC-01/14-01/18-648-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-648-Conf-Red), para. 39.

23. Turning to the proportionality of the Current Restrictions, the Chamber notes that the Defence requests it to consider the cumulative impact of the Current Restrictions, the Temporary Measures and the passage of time on Mr Yekatom's well-being and right to family life.⁴⁶ It submits that, should the Chamber decide not to lift the Current Restrictions, the grant of the Defence Alternative Request would strike an appropriate balance between Mr Yekatom's rights and the Chamber's obligations.⁴⁷ Therefore, in assessing the proportionality of the Current Restrictions, the Chamber has also considered the Defence Alternative Request.
24. As regards the request to increase the frequency of his non-privileged telephone calls to 60 minutes, three times a week,⁴⁸ the Chamber recalls that Mr Yekatom may use 90 minute periods, two days a week for these calls.⁴⁹ The Chamber notes that the requested three days of monitoring continues to remain unfeasible at this point in time for the same reasons indicated by the Single Judge in his earlier Decision on the Modification Request.⁵⁰ The Registry is directed to inform the Chamber should this change in the future.
25. As regards Mr Yekatom's request for video-calls with his family, the Registry informed the Chamber that it currently does not offer video-conferencing for non-privileged contacts to any of the detainees.⁵¹ Nonetheless, the Chamber remains cognisant of the passage of time and the impact that continued extensions of the Temporary Measures may have on the well-being of the accused. Therefore, the Chamber strongly encourages the Registry to make efforts to assess the feasibility of video-conferencing for both accused and instructs it to provide its observations as soon as possible and latest by

⁴⁶ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, paras 44-48; *see also* paras 63, 65.

⁴⁷ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, para. 56.

⁴⁸ Defence Observations, ICC-01/14-01/18-683-Conf-Exp, para. 66, p. 18.

⁴⁹ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Exp, para. 13(ii)(f).

⁵⁰ *See* Decision on the Modification Request, ICC-01/14-01/18-507-Conf-Exp, para. 11.

⁵¹ Email from the Registry to the Chamber, 20 October 2020, at 17:40.

9 December 2020.⁵² Accordingly, the Chamber rejects the Defence Alternative Request.

26. Having regard to the above, in reviewing the necessity and proportionality of the Current Restrictions, the Chamber has balanced Mr Yekatom's rights to preserve his family life against the necessity of protecting victims and witnesses and ensuring the integrity of the proceedings. In so doing, the Chamber has considered the passage of time, Mr Yekatom's breaches of the Current Restrictions, his knowledge of the identity of Prosecution witnesses, the impact of the Coronavirus Pandemic on the implementation of protective measures for victims and witnesses and, notably, the current stage of the proceedings. Further, the Chamber considered the cumulative impact of the Temporary Measures and the Current Restrictions on Mr Yekatom's well-being. Having regard to these considerations and the Court's obligations under Articles 68(1) and 64(2) of the Statute, the Chamber finds that these restrictions are the least restrictive available under the circumstances and are proportional to ensuring a fair trial and protecting the integrity of the proceedings.
27. The Chamber recalls its obligation to regularly review the restrictions in place and will do so where circumstances change.

III. The Prosecution Request

28. The Prosecution requests the Chamber to order Mr Yekatom to cease using non-privileged communications to operate his business in violation of the UNSC sanctions.⁵³ Recalling its conclusion above,⁵⁴ the Chamber rejects the Prosecution Request.
29. However, the Chamber clarifies that Mr Yekatom may not avail himself of the facilities of the Court to perform any activities potentially violating the imposed sanctions by the UNSC. It further considers that the information concerning

⁵² See also Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the Defence request for interim release, 5 May 2020, ICC-01/12-01/18-786-Conf (public redacted version notified on 29 May 2020, ICC-01/12-01/18-786-Red), para. 39(e).

⁵³ Prosecution Observations, ICC-01/14-01/18-679-Conf, paras 1, 4, 14-16.

⁵⁴ See above paragraph 20.

these conversations may fall under Article 5(b)(i) of the agreement between the Court and the United Nations (the 'Relationship Agreement' and the 'UN', respectively) as this information may be of interest to the UN generally.⁵⁵ Accordingly, in line with its obligations under Article 5 of the Relationship Agreement, the Chamber invites the Registry to transmit to the UN such information it considers necessary for the enforcement of the sanctions and/or determination of their alleged violation or non-compliance.⁵⁶

IV. The Registry Request

30. The Registry requests that Mr Yekatom's language interpreter be removed from his list of privileged visitors so that privileged visits between Mr Yekatom and the language assistant may only take place in the presence of privileged counsel or assistants to counsel.⁵⁷ It informs the Chamber that the language interpreter is not on Mr Yekatom's privileged telephone call list and that Mr Yekatom has not had privileged visits with the language interpreter since March 2020, on account of the Temporary Measures.⁵⁸
31. The Chamber notes that it has since clarified the scope of legal privilege of Defence team members.⁵⁹ While the communications between the French-Sango interpreter and Mr Yekatom may be covered under Rule 73(2) of the Rules, the French-Sango interpreter is not entitled to legal privilege and must therefore be accompanied by a privileged Defence team member.
32. Accordingly, the Chamber grants the Registry Request.

⁵⁵ See Negotiated Relationship Agreement between the International Criminal Court and the United Nations, 7 June 2004, A/RES/58/874 Annex, Article 5(b)(i).

⁵⁶ See further Guidelines of the Security Council Committee established pursuant to Resolution 2127 (2013), 20 March 2017, provision 2(a)(ix), available at <https://www.un.org/securitycouncil/sanctions/2127/committee-guidelines> (last accessed 11 November 2020).

⁵⁷ Second Registry Report, ICC-01/14-01/18-673-Conf-Red, para. 17.

⁵⁸ Second Registry Report, ICC-01/14-01/18-673-Conf-Red, para. 16.

⁵⁹ See Decision on the Ngaïssona Defence Request on the Scope of Privileged Communications, 4 November 2020, ICC-01/14-01/18-712-Conf, paras 16-18.

V. Amendments to the Reporting Procedure

33. The Chamber recalls that it has modified the Reporting Procedure for both accused in this case.⁶⁰ In particular, the Chamber ordered the Registry to submit its reports only every six months. The Chamber further recalls that while the parties have a right to respond to these reports or make requests regarding restrictions at any time, they are strongly encouraged to do so only to the extent that there is a change of circumstances warranting a modification.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES to maintain the Current Restrictions;

REJECTS the Defence Alternative Request;

REJECTS the Prosecution Request;

GRANTS the Registry Request;

DIRECTS the Registry to inform the Chamber should there be any changes in its capability to conduct active monitoring more than twice a week in the present case, as set out in paragraph 24 above;

INSTRUCTS the Registry to assess the feasibility of the accused using video-conferencing for non-privileged contacts and to provide observations in this regard as soon as possible and at latest by **9 December 2020**, as set out in paragraph 25 above;

INVITES the Registry to transmit to the UN any information it considers necessary for the enforcement of the sanctions and/or determination of their alleged violation or non-compliance, as set out in paragraph 29 above; and

ORDERS the Registry to reclassify the Defence Observations, ICC-01/14-01/18-683-Conf-Exp, as confidential.

⁶⁰ See Third Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, 5 October 2020, ICC-01/14-01/18-672-Conf, paras 25-26.

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

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

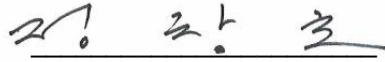


Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 11 November 2020

At The Hague, The Netherlands