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No.: **ICC-01/14-01/18**

Date: **6 October 2022**

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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

**Public redacted version of "Prosecution's Observations on the "Confidential
Redacted version of 'Sixth Registry Report on the Implementation of the
Restrictions on Contact for
Mr Alfred Yekatom Ordered by Trial Chamber V'",
(ICC-01/14-01/18-1544-Conf-Red)", 23 August 2022, ICC-01/14-01/18-1551-Conf**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) provides its observations on the Registry’s 12 August 2022 report on implementation of contact restrictions regarding YEKATOM,¹ as ordered by Trial Chamber V (“Chamber”) pursuant to regulation 101 of the Regulations of the Court (“RoC”).² The Chamber should maintain the current restrictions on YEKATOM’s contacts in detention, as extended by its 20 May 2022 Decision,³ and further direct the Registry to *increase* the frequency of random active monitoring of YEKATOM’s non-privileged telephone calls through the next period of review.

2. *First*, YEKATOM has a history of systematically violating the conditions of his detention. His recent breach of the contact restrictions detailed in the Sixth Report is the latest in a long line of violations.⁴ It underscores not only the need for the Order, but for its vigilant enforcement. *Second*, YEKATOM continues to have at his disposal a network of supporters prepared to exercise influence in the Central African Republic (“CAR”) — where the majority of Prosecution witnesses reside — and to interfere with the integrity of the proceedings. *Third*, the fragile political and security situation in CAR, as outlined in the Registry’s 25 May 2022 report,⁵ increases the risk of witness interference.

¹ ICC-01/14-01/18-1544-Conf-Red (“Sixth Report”).

² See ICC-01/14-01/18-485-Conf, p. 16 (“Order”).

³ ICC-01/14-01/18-1420-Conf-Red (“Sixth Decision”).

⁴ Registry reports ICC-01/14-01/18-62-Conf-Red, paras. 10-11, ICC-01/14-01/18-467-Conf, paras. 25-26, ICC-01/14-01/18-592-Conf-Red, paras. 10-12, ICC-01/14-01/18-673-Conf-Red, paras. 12-13; ICC-01/14-01/18-1348-Conf-Red, para. 6; Pre-Trial Chamber II and Trial Chamber V decisions ICC-01/14-01/18-75, para. 15; ICC-01/14-01/18-485-Conf, para. 22; ICC-01/14-01/18-627, para. 16; ICC-01/14-01/18-727-Conf, paras. 17-18; ICC-01/14-01/18-1148-Conf, para. 9, ICC-01/14-01/18-1348-Conf, para. 6.

⁵ See Annex to Eighth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-1434-Conf-Anx; see also ICC-01/14-01/18-1245-Corr-Red, para. 8, 13, 17; see further ICC-01/14-01/21-389-Red, para. 15 (similarly, Trial Chamber VI as recently recognised the seriousness of the current and prevailing security risks in CAR).

3. In the circumstances, maintaining the restrictions and increasing the frequency of random active monitoring will minimise the risk of interference with witnesses, victims and their relatives, and to the integrity of the proceedings as a whole.

4. The Prosecution also requests the Chamber to grant it access to information concerning the identity of the third party to a call made by YEKATOM [REDACTED],⁶ [REDACTED], the telephone number used to communicate with them, and to the relevant transcripts. The Prosecution is best placed to determine whether there are any witness security implications to its witnesses, regardless of the ostensible or apparent nature of the [REDACTED].

5. In addition, the Prosecution requests that the Chamber direct the Registry to review YEKATOM's non-privileged telephone calls during the last reporting period to assess whether there have been other breaches of the Order. Should this be the case, or the matter otherwise indeterminate, the Prosecution requests that it be provided with all of the attendant information and/or transcripts to assess potential security risks to witnesses.

II. CONFIDENTIALITY

6. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this document is filed as "Confidential", as it refers to filings and decisions of the same classification.

⁶ ICC-01/14-01/18-1544-Conf-Red, para. 8.

III. SUBMISSIONS

A. The current restrictions on contacts must be maintained and the frequency of random active monitoring should be increased

7. There has been no change in circumstances favourable to YEKATOM since the Chamber issued the Order⁷ warranting the lifting of, or reduction to, the existing contract restrictions. On the contrary, [REDACTED] clearly violated the Chamber's Order. Thus, it is vital that the current restrictions not only remain in full force to protect witnesses and victims pursuant to regulation 101(2)(c) and (f) of the RoC, but that the frequency of random active monitoring of YEKATOM's non-privileged telephone calls through the next period of review be increased.

8. *First*, as noted, YEKATOM has a history of willingness to violate the conditions of his detention. The Registry has now reported YEKATOM's violation of the conditions of his detention numerous times,⁸ demonstrating his ongoing intention to contravene the restrictions imposed. This Chamber took note of the YEKATOM's prior breach of restrictions in the Order — specifically, that the transcripts of the conversation between YEKATOM and the interlocutor, including references to the name [REDACTED] were “demonstrative of Mr Yekatom discussing case-related issues and using obscure language”.⁹ The Sixth Report shows that YEKATOM and the interlocutor were again discussing [REDACTED] at length during the [REDACTED].¹⁰ That YEKATOM again chose to converse about [REDACTED], particularly after the Chamber's finding, only underscores his disregard of the Order. This incident justifies *increasing* the frequency of random active monitoring of YEKATOM's telephone calls

⁷ ICC-01/14-01/18-485-Conf, para. 22.

⁸ See *supra*, fn. 4.

⁹ ICC-01/14-01/18-485-Conf, para. 22. See also, ICC-01/14-01/18-467-Conf-Exp-AnxI.

¹⁰ ICC-01/14-01/18-1544-Conf-Red, para. 9.

through the next period of review, to ensure the safety of witnesses and the integrity of the proceedings.

9. *Second*, YEKATOM retains an active support network in CAR where the majority of Prosecution witnesses reside. Providing him an easier opportunity to reach those within his sphere of influence would substantially increase the risk of witness interference in this case. Only less than two months ago, this Chamber noted that YEKATOM:

“has breached his contact restrictions *on a number of occasions* and that the Prosecution is in the middle of its evidence presentation, with a large number of witnesses known to Mr Yekatom still to be heard”.¹¹

10. *Third*, the dire political and security situation in CAR, outlined in the Registry’s 25 May 2022 report,¹² creates fertile ground for witness interference [REDACTED]. The result is an increased risk of witnesses becoming reluctant or unwilling to continue their cooperation with the Prosecution. As the Chamber is aware, [REDACTED].¹³

11. Finally, the restrictions are proportionate. They allow for the necessary monitoring of YEKATOM’s contacts while respecting his right to communicate with his family and those close to him.

B. The transcripts of the call and the identity of the interlocutor should be made available to the Prosecution

12. The Prosecution requests access to information on the identity of the third party involved in [REDACTED], the telephone number that was used to communicate with them, and the corresponding transcripts.

¹¹ ICC-01/14-01/18-1460-Red2, para. 5 (emphasis added).

¹² See Annex to Eighth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-1434-Conf-Anx; see also ICC-01/14-01/18-1245-Corr-Red, paras. 8, 13, 17; see further ICC-01/14-01/21-389-Red, para. 15 (similarly, Trial Chamber VI as recently recognised the seriousness of the current and prevailing security risks in CAR).

¹³ See ICC-01/14-01/18-1441-Conf-Red2, paras.13-18. See also, ICC-01/14-01/18-1460-Red2, para. 5.

13. The Prosecution is best placed to analyse the communication to determine whether there are any risks to witnesses' security and to the integrity of evidence on which it intends to rely at trial, in accordance with its duties under article 68. Access to the identity and telephone number of the third party along with the transcripts may reasonably assist the Prosecution in assessing and implementing responsive measures to protect its witnesses and/or to preserve evidence potentially exposed to a heightened risk, as a result of YEKATOM's violation of the contact restrictions order.

C. The Chamber should direct the Registry to review YEKATOM's non-privileged telephone calls in the last reporting period

14. Given the reported violation, the Prosecution considers it imperative that the Registry review YEKATOM's non-privileged calls in the last period. This is necessary to assess whether there have been other significant breaches of the Order, including as may concern the same interlocutor, that were not identified in conducting active random monitoring. In such case, the Prosecution further requests the provision of all relevant information to best enable it to assess the potential security risks and implement relevant measures to protect witnesses and the integrity of the evidence.

IV CONCLUSION

15. For the above reasons, the Prosecution considers that the Chamber should (1) maintain the current restrictions on YEKATOM's contacts in detention; (2) direct the Registry to *increase* the frequency of the random active monitoring of YEKATOM's non-privileged telephone calls; (3) grant the Prosecution access to information regarding the identity of the third party to the [REDACTED], the telephone number used to communicate with them, and to the corresponding transcripts; and (4) direct the Registry to review YEKATOM's non-privileged telephone calls for the last reporting period.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 6th day of October 2022

At The Hague, The Netherlands