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

Date: 23 March 2023

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 “Observations de la Défense de M. Yekatom au « Seventh Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V», ICC-01/14-01/18-1750-Conf-Exp, 13 Février 2023” (ICC-01/14-01/18-1771-Conf-Exp)”,
23 March 2023

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 YEKATOM Defence’s 24 February 2023 “Observations de la Défense de M. Yekatom au « Seventh Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V” (“Request”)¹ pursuant to the Trial Chamber V’s (“Chamber”) order.²

2. The Prosecution does not oppose the modification of YEKATOM’s contact restrictions to allow telephone communications with YEKATOM and his children from 1 April 2023 as per the *inter partes* agreement.³

3. However, YEKATOM’s history of systematically violating the conditions of his detention is of concern and a factor worthy of the Chamber’s independent consideration, regardless of their nature. His recent breach of the contact restrictions ordered by the Chamber detailed in the Seventh Registry Report,⁴ is the latest in a long line of violations⁵ and it underscores the need to maintain the other existing contact restrictions.

4. In addition, the Prosecution requests the Chamber to grant it access to the transcript of the 1 February 2023 call between YEKATOM and [REDACTED],⁶ (“1 February 2023 Call”). The Prosecution is best placed to determine whether there are

¹ ICC-01/14-01/18-1771-Conf-Exp.

² Email from the Chamber on 20 March 2023, at 18.49.

³ ICC-01/14-01/18-1771-Conf-Exp, para. 9.

⁴ ICC-01/14-01/18-1750-Conf-Red, para. 7.

⁵ 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, ICC-01/14-01/18-1750-Conf-Red, para. 7.

⁶ ICC-01/14-01/18-1771-Conf-Exp, paras. 22-30.

any security implications to its witnesses regardless of the supposed innocuous⁷ nature of the 1 February 2023 Call.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential EX PARTE, only available to the Prosecution, the YEKATOM Defence, and Registry” as it concerns decisions and filings of the same classification. A public redacted version will be filed contemporaneously.

III. SUBMISSIONS

A. The other existing contact restrictions should remain

6. Contrary to the Defence assertions, the necessity of contact restrictions is not predicated determinatively on the stage of the Prosecution’s case.⁸ Nor of that of the Defence’s for that matter. As this Chamber underscored, the standard and assessment for contact restrictions is based on the criteria set out in regulation 101(2) of the RoC.⁹ The circumstances in which the Chamber issued and has extended the restrictions persist.¹⁰ Thus, the other existing contact restrictions on YEKATOM remain necessary to protect witnesses and victims pursuant to regulation 101(2)(c) and (f) of the RoC and to ensure the integrity of the proceedings pursuant to regulation 101(2)(b).

7. *First*, as noted, the Registry has reported YEKATOM’s violation of the conditions of his detention numerous times.¹¹ His reported recent breach again demonstrates his

⁷ ICC-01/14-01/18-1771-Conf-Exp, paras. 22-32.

⁸ ICC-01/14-01/18-1771-Conf-Exp, paras. 15-17.

⁹ ICC-01/14-01/18-485-Conf, paras. 16-18, (noting, “Notably, restrictions on contacts may be imposed (i) pursuant to Regulation 101(2) of the Regulations [..]”). *See also*, ICC-01/14-01/18-1590-Conf, para. 5.

¹⁰ *See* ICC-01/14-01/18-485-Conf, para. 21; ICC-01/14-01/18-627, paras. 13-15; ICC-01/14-01/18-727-Conf, paras. 14-16; ICC-01/14-01/18-1008-Conf, paras. 11-13; ICC-01/14-01/18-1148-Conf, paras. 7-11; ICC-01/14-01/18-1420-Red2, paras 7-12; and ICC-01/14-01/18-1590-Conf-Exp, paras. 5-10.

¹¹ *See supra*, fn. 5.

unwillingness or incapacity to abide by the clear restrictions imposed by order of the Chamber.

8. *Second*, YEKATOM retains an active support network in the Central African Republic (“CAR”) where the majority of Prosecution witnesses reside, and offering him easy opportunity to reach those within his sphere of influence would substantially increase the risk of witness interference in this case.

9. *Third*, the dire political and security situation in CAR, outlined in the Registry’s 27 February 2023 report,¹² creates fertile ground for witness interference, due in part to the [REDACTED]. The result is an increased risk of witnesses becoming reluctant or unwilling to continue their cooperation with the Prosecution.

10. 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 transcript of the call should be made available to the Prosecution

11. The Prosecution requests access to the transcript of the 1 February 2023 Call as it 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.

IV. CONCLUSION

12. For the above reasons, the Prosecution considers that the Chamber should (1) maintain the other existing contact restrictions on YEKATOM, subject to the

¹² Annex to Seventh Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-1772-Conf-Anx.

agreement between the *inter partes* agreement; and (2) grant the Prosecution access to the transcript of the 1 February 2023 Call.

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 23rd day of March 2023
At The Hague, The Netherlands