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No. ICC-01/14-01/18

Date: 5 April 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of

**Eighth 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 64(2) and 68(1) of the Rome Statute (the ‘Statute’), Regulations 99-101 of the Regulations of the Court, and Regulations 168-169, 173-175, and 187 of the Regulations of the Registry (the ‘Registry Regulations’), issues this ‘Eighth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention’.

I. Procedural history

1. The Chamber recalls the procedural history set out in its ‘Seventh Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention’ (the ‘Seventh Restrictions Decision’).¹ It further recalls the restrictions currently in place for Mr Yekatom (the ‘Current Restrictions’), as set out in the Seventh Restrictions Decision, the ‘Decision on the Yekatom Defence Request to Amend Mr Yekatom’s Contact Restrictions based on a Proposed Agreement with the Prosecution’ (the ‘Decision to Re-add the Individual’)² and the ‘Decision on the Second Yekatom Defence Request to Amend Mr Yekatom’s Contact Restrictions based on a Proposed Agreement with the Prosecution’ (the ‘Decision to Increase Duration of Calls with the Individual’).³
2. On 13 February 2023, the Registry filed its seventh report on the implementation of the restrictions on Mr Yekatom’s contacts and communications in detention (the ‘Seventh Registry Report’).⁴ It indicates that it does not have any incidents to report concerning non-privileged in-person visits, written correspondence or

¹ Seventh Restrictions Decision, 29 September 2022, ICC-01/14-01/18-1590-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-1590-Conf-Red), para. 1.

² Decision to Re-add the Individual, 18 October 2022, ICC-01/14-01/18-1622-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (public redacted version notified the same day, ICC-01/14-01/18-1622-Red).

³ Decision to Increase Duration of Calls with the Individual, 8 February 2023, ICC-01/14-01/18-1745-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (public redacted version notified the same day, ICC-01/14-01/18-1745-Red).

⁴ 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, 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 redacted version notified the same day, ICC-01/14-01/18-1750-Conf-Red).

non-privileged telephone calls, but that it does have ‘a potential concern to report’ with respect to the latter.⁵ In particular, it reports that from the transcript of a non-privileged telephone call between Mr Yekatom and [REDACTED] (the ‘Interlocutor’) on 1 February 2023, ‘it appears that the telephone of [the Interlocutor] was on speakerphone and that the voice of [REDACTED] (the ‘Individual’)] was heard’ (the ‘1 February Call’).⁶

3. On 24 February 2023, the Yekatom Defence (the ‘Defence’) provided its observations to the Seventh Registry Report (the ‘Defence Observations’), requesting that the Chamber (i) find that the 1 February Call does not constitute a violation of the Current Restrictions (the ‘Request to Find No Violation’); and (ii) lift the restrictions imposed on the telephone calls between Mr Yekatom and his children, in line with the agreement reached with the Office of the Prosecutor (the ‘Prosecution’ and the ‘Request to Partly Lift the Restrictions’, respectively).⁷
4. On 23 March 2023,⁸ the Prosecution provided its observations to the Defence Observations.⁹ It submits that it ‘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’; and requests that the Chamber (i) maintain the remainder of the Current Restrictions, and (ii) grant it access to the transcript of the 1 February Call (the ‘Request for Access to the Transcript’).¹⁰

⁵ Seventh Registry Report, ICC-01/14-01/18-1750-Conf-Red, paras 1, 7, 9-10.

⁶ Seventh Registry Report, ICC-01/14-01/18-1750-Conf-Exp, para. 7.

⁷ 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, confidential *ex parte*, only available to the Yekatom Defence, the Prosecution and the Registry (public redacted version notified on 8 March 2023, ICC-01/14-01/18-1771-Red), paras 3-4, p. 16.

⁸ See email from the Chamber on 20 March 2023, at 18:49, in which the Single Judge ordered the Prosecution to submit observations on the Defence Observations by 24 March 2023.

⁹ 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), ICC-01/14-01/18-1813-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (public redacted version notified the same day, ICC-01/14-01/18-1813-Red) (the ‘Prosecution Observations’).

¹⁰ Prosecution Observations, ICC-01/14-01/18-1813-Red, paras 2-4, 12.

II. Analysis

5. The Chamber recalls the standard and assessment criteria as previously set out.¹¹ It further recalls the circumstances underlying the Seventh Restrictions Decision, the Decision to Re-add the Individual and the Decision to Increase Duration of Calls with the Individual, as well as the findings therein.¹² Noting that these circumstances have not changed, the Chamber will assess whether the Current Restrictions remain warranted in light of any new circumstances.
6. The Chamber takes note of the Registry's submissions concerning the 1 February Call. In particular, the Registry indicates that while 'the conversation was related to private and family matters and do[es] not have concern on the substance', it nevertheless notes that (i) the Individual is not registered as an additional contact under the Interlocutor's telephone and is therefore not allowed to talk to Mr Yekatom under this telephone number; (ii) speakerphones are not allowed to prevent unauthorised persons to listen to the conversations; and (iii) the monthly scheduled call with the Individual had already taken place.¹³
7. The Chamber further notes that the Defence submits that this call does not constitute a violation of the Current Restrictions given, *inter alia*, that (i) the Individual is part of Mr Yekatom's non-privileged telephone contact list; (ii) the conversation in question was limited to matters of private nature; (iii) the Individual's interventions were addressed to the Interlocutor only and he did not directly communicate with Mr Yekatom; and (iv) while conceding '*la maladresse dont a fait preuve* [the Interlocutor] *en tentant d'user du haut-parleur de son*

¹¹ See Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-485-Conf (public redacted version notified on 16 February 2021, ICC-01/14-01/18-485-Red), paras 16-18, 20.

¹² See Seventh Restrictions Decision, ICC-01/14-01/18-1590-Conf-Red, paras 6-13; Decision to Re-add the Individual, ICC-01/14-01/18-1622-Red, paras 7-9; Decision to Increase Duration of Calls with the Individual, ICC-01/14-01/18-1745-Red, paras 4-6.

¹³ Seventh Registry Report, ICC-01/14-01/18-1750-Conf-Red, para. 7.

téléphone’, Mr Yekatom objected to the use of the speakerphone on one occasion.¹⁴

8. Having reviewed the transcript of the 1 February Call,¹⁵ the Chamber observes that (i) the Interlocutor informed Mr Yekatom several times that the Individual was present and/or hearing the conversation;¹⁶ and (ii) the Individual intervened or attempted to intervene in the conversation on at least six occasions.¹⁷ At the same time, the Chamber observes that Mr Yekatom indicated to the Interlocutor that *‘aujourd’hui ce n’est pas le jour prévu pour faire la conversation avec lui [the Individual] tu pourras lui dire’* and that *‘tu lui laisses, laisses lui le temps que tu finisses avec moi et vous allez en parler’*.¹⁸ It further notes that the conversation in question was related to private and family matters. Therefore, the Chamber does not consider the 1 February Call to constitute a clear breach of the Current Restrictions. Accordingly, the Chamber grants the Request to Find No Violation.
9. The Chamber notes that the Registry further reported that during two non-privileged telephone calls between Mr Yekatom and [REDACTED] (one of them being the Interlocutor), on 10 and 17 February 2023, they made negative comments about the work of the Detention Section, which the Registry interpreted as ‘veiled threats against the staff of the Registry’.¹⁹ The Chamber recalls that, noting the nature and content of these calls and the fact that the Registry had already warned Mr Yekatom to refrain from repeating this behaviour, it did not consider that further action was necessary besides instructing

¹⁴ Defence Observations, ICC-01/14-01/18-1771-Red, paras 22-28.

¹⁵ Annex to the Seventh Registry Report, ICC-01/14-01/18-1750-Conf-Exp-Anx.

¹⁶ See Annex to the Seventh Registry Report, ICC-01/14-01/18-1750-Conf-Exp-Anx, p. 1, line 14, p. 2, lines 30, 32.

¹⁷ See Annex to the Seventh Registry Report, ICC-01/14-01/18-1750-Conf-Exp-Anx, p. 1, lines 19, 21, p. 2, line 27, p. 3, line 53, p. 4, lines 65, 68.

¹⁸ See Annex to the Seventh Registry Report, ICC-01/14-01/18-1750-Conf-Exp-Anx, p. 2, line 31, p. 3, line 55, respectively.

¹⁹ Email from the Registry to the Chamber, 6 March 2023, at 16:33. See also email from the Registry to the Chamber, 10 March 2023, at 13:30.

the Registry to include this information in its next regular report due on 18 August 2023.²⁰

10. The Chamber now turns to its assessment of the necessity and proportionality of the Current Restrictions. In this regard, it takes note of the Defence's arguments that the restrictions to telephone communications between Mr Yekatom and his children are no longer necessary since (i) the presentation of evidence by the Prosecution is coming to an end; (ii) none of the reported telephone conversations have jeopardised witness security or the integrity of the proceedings; and (iii) Mr Yekatom has shown '*une attitude proactive de prévention des violations*'.²¹ The Defence further argues that lifting these restrictions would allow to strike a balance between the need and proportionality of the restrictions imposed on Mr Yekatom and his right to preserve his family ties.²² In this regard, it highlights that only [REDACTED] children have been able to visit him in the past four years.²³
11. The Chamber observes that at present, it has heard the evidence of the majority of witnesses called by the Prosecution, whose case is nearing completion.²⁴ It further notes that while Mr Yekatom breached the Current Restrictions in the past, his last breach occurred in September 2021 and the Chamber concluded that it '[d]id not appear to relate to matters that tend to compromise witness security or the integrity of the proceedings'.²⁵ Importantly, the Chamber also notes that the Prosecution does not oppose the Request to Partly Lift the Restrictions, and that Mr Yekatom's telephone calls with his children would in any event be subject to passive monitoring pursuant to Regulation 174 of the Registry Regulations.

²⁰ Email from the Chamber to the Registry, 10 March 2023, at 11:38. *See also* email from the Chamber, 21 March 2023, at 13:34, whereby the Single Judge shared with the participants a redacted version of the communications exchanged between the Registry and the Chamber on 6 and 10 March 2023.

²¹ Defence Observations, ICC-01/14-01/18-1771-Red, para. 15. *See also* paras 16-37.

²² Defence Observations, ICC-01/14-01/18-1771-Red, paras 3, 38. *See also* paras 41-44.

²³ Defence Observations, ICC-01/14-01/18-1771-Conf-Exp, para. 39.

²⁴ *See* Prosecution's Observations pursuant to the Chamber's "Order regarding the Remainder of the Prosecution's Presentation of Evidence and Order pursuant to Article 64(6)(d) of the Statute", ICC-01/14-01/18-1739-Conf, 31 January 2023, 10 March 2023, ICC-01/14-01/18-1791-Conf (with one confidential annex, ICC-01/14-01/18-1791-Conf-Anx, including the Prosecution's revised witness list).

²⁵ Fifth Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 27 October 2021, ICC-01/14-01/18-1148-Conf (public redacted version notified on 17 June 2022, ICC-01/14-01/18-1148-Red), paras 9-10.

12. In these circumstances, based on the available information and in light of the passage of time and of Mr Yekatom's right to preserve his family ties, the Chamber finds that it is no longer necessary nor proportionate to maintain the restrictions imposed on the telephone calls between Mr Yekatom and his children. Accordingly, it grants the Defence's Request to Partly Lift the Restrictions.
13. Nonetheless, having balanced Mr Yekatom's rights against the necessity of protecting victims and witnesses and ensuring the integrity of the proceedings,²⁶ the Chamber is of the view that the remaining restrictions continue to be necessary and proportionate, and should therefore be maintained.
14. Lastly, noting that it does not consider the 1 February Call to constitute a clear breach of the Current Restrictions and that it cannot discern any risk for victims, witnesses or other individuals, the Chamber does not consider it necessary for the Prosecution to have access to the transcript of the 1 February Call. Accordingly, it rejects the Prosecution's Request for Access to the Transcript.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request to Find no Violation;

GRANTS the Request to Partly Lift the Restrictions;

ORDERS the Registry to facilitate telephone calls between Mr Yekatom and his children, subject to passive monitoring;

DECIDES to maintain the remainder of the Current Restrictions;

REJECTS the Request for Access to the Transcript; and

ORDERS the Registry to file a public redacted version of the Seventh Registry Report, ICC-01/14-01/18-1750-Conf-Exp, within two weeks of notification of this decision.

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



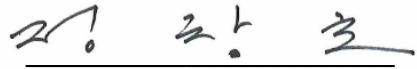
²⁶ See, in this regard, Seventh Restrictions Decision, ICC-01/14-01/18-1590-Conf-Red, para. 9. See also Prosecution Observations, ICC-01/14-01/18-1813-Red, paras 6-9.



Judge Péter Kovács

Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 5 April 2023

At The Hague, The Netherlands