

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 September 2024

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Confidential

**Yekatom Defence Response to the "Prosecution's Observations on the
"Tenth Registry Report on the Implementation of the Restrictions on
Contact for Mr Alfred Yekatom Ordered by Trial Chamber V" (ICC-01/14-
01/18-2658-Conf)", 3 September 2024, ICC-01/14-01/18-2668-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Defence for Mr. Alfred Rombhot Yekatom ("Defence") hereby responds to the *"Prosecution's Observations on the "Tenth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V" (ICC-01/14-01/18-2658-Conf)"* notified on 3 September 2024 ("Observations").¹
2. The present Defence response is made necessary to clarify the record in light of the Prosecution's prejudicial claim that *"[i]t is incontestable that YEKATOM has a longstanding history of non-compliance with the Chamber's orders regarding the conditions of his detention"*, in the context of Observations that allude or imply to the fact that Mr Yekatom would interfere with witnesses or the outcome of the trial.
3. Indeed, during the last five and half years of detention Mr Yekatom's communications were monitored through various regimes of contact restrictions, at no point was he found to have attempted to interfere with witnesses or on the outcome of the proceedings. At the dusk of this trial, the Defence deems it necessary to recall this reality to both the Chamber, and to the public, who should not be swayed in their perception of Mr Yekatom by the Prosecution's attack on his integrity and on his respect of the present proceedings.

PROCEDURAL BACKGROUND

4. On 17 November 2018, Mr Yekatom was incarcerated at the ICC Detention Centre in The Hague.² On the same day Pre-Trial Chamber II implemented

¹ ICC-01/14-01/18-2668-Conf.

² ICC-01/14-01/18-17-US-Exp-Red.

restrictions on the communications of Mr Yekatom, which in practice meant that his calls were actively monitored.³

5. On 27 August 2024, the *Prosecution's Request for the Submission of Rebuttal Evidence* was notified.⁴ The Prosecution sought leave to submit rebuttal evidence which "*reflects improper contact and/or influence by the Defence and persons linked to the Accused as regards Prosecution witnesses*",⁵ at no point in this submission did the Prosecution spell out who was targeted by "Defence" and "Accused", nor indicated that it was not a reference to Mr Yekatom.
6. On 28 August 2024, the *Tenth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V* was notified ("Report").⁶ The Registry indicates that it has no incident to report.⁷
7. On 3 September 2024, the Prosecution's Observations were notified.⁸
8. On 4 September 2024, the *Yekatom Defence Response to 'Prosecution's Request for the Submission of Rebuttal Evidence'* (ICC-01/04-01/18-2657) was notified.⁹ The Yekatom Defence indicated that it was not seeking to intervene on the merits of the Prosecution's request, but that it was "*necessary to correct the record to ensure that there is no implied inference that Mr. Yekatom or his Defence are alleged to have been involved in the improper conduct as alleged in the [r]equest*".¹⁰

APPLICABLE LAW

9. In its *Decision Recalling the Reporting Procedure for the Review of Restrictions*, the Chamber set the procedure as regards to Parties submissions further to a

³ [ICC-01/14-01/18-11](#).

⁴ ICC-01/14-01/18-2657-Conf.

⁵ ICC-01/14-01/18-2657-Conf, para. 1.

⁶ ICC-01/14-01/18-2658-Conf.

⁷ ICC-01/14-01/18-2658-Conf, para. 6.

⁸ ICC-01/14-01/18-2668-Conf.

⁹ ICC-01/14-01/18-2672-Conf.

¹⁰ ICC-01/14-01/18-2672-Conf, paras 2, 4.

Registry report on the implementation of restrictions of communications. It inter alia indicated that :

the Yekatom and the Ngaissona Defence shall submit observations on the respective Registry Reports, as well as on the Prosecution's observations, if any, together with confidential redacted versions of said observations, within 10 days of notification of the Registry Reports.¹¹

SUBMISSIONS

10. The Defence first recalls that the Chamber stated on numerous occasions, as regard to the Registry's report on the implementation of restrictions on contact, that *"while it is the parties' right to respond to these reports or make requests regarding restrictions at any time, the Chamber strongly encourages the parties to only do so to the extent that there is a change of circumstances warranting a modification"*.¹²
11. In the present instance the Registry's Report does not mention any information that could be considered as a change of circumstances, as it merely indicates that it has no incident to report further to its monitoring. The Prosecution's Observations make no reference to any change of circumstances concerning Mr Yekatom, nor do they request any modification to the current restriction as a form of relief.
12. The Prosecution's decision to file the Observations, against the direction of the Chamber in such circumstances, consequently appears to be nothing more than a deliberate and opportunistic move to manufacture prejudicial allegations and insinuations against Mr Yekatom before the Chamber, and the public when said Observations will be reclassified.
13. Indeed, the Prosecution first mentions its discovery of alleged inappropriate contacts between some of its witnesses and the Defence team for Mr Ngaissona to assert of the *"inherent frailty of the Court's system"* put in place to safeguard

¹¹ [ICC-01/14-01/18-540](#).

¹² See ICC-01/14-01/18-672-Conf, para. 26 ; see also [ICC-01/14-01/18-965-Red](#), para. 11.

the integrity of the proceedings.¹³ It then proceeds with an assertion that *"it is incontestable that YEKATOM has a longstanding history of non-compliance with the Chamber's orders regarding the conditions of his detention"*.¹⁴

14. While the Prosecution indicates that the inappropriate contacts with its witnesses *"are not attributable to YEKATOM or his Defence team"*, the fact that those incidents are mentioned in close proximity with the assertion that Mr Yekatom has a *"longstanding history of non-compliance with the Chamber's orders"* is designed to raise the suspicion that Mr Yekatom has been involved in such misconduct in the past, and would suggest that he would also be ready to do so in the future. This prejudicial confusion is even more likely given that these events are artificially linked to Mr Yekatom, in order to use them to justify the need to maintain his current contact restrictions, despite the fact that they are wholly unrelated to him.
15. In only a matter of a few days it is the second time¹⁵ that it could be inferred from Prosecution's filings that Mr Yekatom engaged, or would engage, in interference with witnesses; which constitute an Article 70 offence. Those repeated writings are alarming as they smear the reputation of Mr Yekatom, without any basis.
16. Either Mr Yekatom is interfering with witnesses or he is not. The Prosecution, as an officer of the Court should not resort to insinuations and veiled allegations. To do so, marks a disregard of Mr Yekatom's presumption of innocence¹⁶ and of the Prosecution's obligation to substantiate any allegations made by facts and evidence. As regard to Mr Yekatom, neither exists. The

¹³ Observations, para. 5.

¹⁴ Observations, para. 6.

¹⁵ The first one being the Prosecution's request for introduction of rebuttal evidence ICC-01/14-01/18-2657-Conf. See also paras 5 & 8 above.

¹⁶ [Code of Conduct for the Office of the Prosecutor](#), Introduction - Five Fundamental Rules : *"4) Respect human rights and fundamental freedoms, the principle of equality before the law, the presumption of innocence and right to a fair trial"*.

Defence consequently expects the Prosecution to hold itself to its fundamental rule, and motto, of integrity¹⁷ by making representation in good faith and refraining itself from throwing such serious insinuations given the negative perception they give of Mr Yekatom's conduct in the present proceedings.

17. In this context, the Defence deems necessary to straighten the record and clarify that at no point during the last five and a half year has Mr Yekatom been found to have interfered, or attempted to interfere, with a witness during his telephone communications, contrary to what could be inferred from the Prosecution's unsubstantiated Observations.¹⁸
18. The Defence emphasizes that not a single deviation from the rules, as identified by the Registry and assessed by the Chamber, during its monitoring of Mr Yekatom's conversations, was linked to witness interference or manipulations to influence the outcome of the trial.
19. As an example an incident occurred when an interlocutor of Mr Yekatom recorded a message to pass it on to a third person, the Chamber found that this was in violation of the rules but noted that *"the substance of the conversation does not appear to relate to matters that may tend to compromise witness security"* and that Mr Yekatom *"informed the Interlocutor to remind the Third Party about the restrictions on his non-privileged telephone contact list, in particular that he may only speak with individuals who have been verified in advance by the Registry"*.¹⁹
20. Another such example was when one of Mr Yekatom's daughter put him on speaker phone, in the presence of one of his son. An incident during which the Chamber noted that Mr Yekatom told his daughter that it was not the day that

¹⁷ [Code of Conduct for the Office of the Prosecutor](#), Introduction - Five Fundamental Rules : "2) *Conduct yourself in a manner befitting the status of international civil servants, displaying the highest standards of integrity, independence, impartiality professionalism and confidentiality*".

¹⁸ The Defence notes that despite mentioning that it was "incontestable that YEKATOM has a longstanding history of non-compliance", the Prosecution did not cite any decision from the Chamber about a violation that it would be concerned about.

¹⁹ [ICC-01/14-01/18-627](#), para. 20.

he could speak to his son, in addition to the fact that the "*conversation in question was related to private and family matters*".²⁰

21. The only incident where the Chamber found that Mr Yekatom mentioned the case during a call was when Mr Yekatom discussed with one interlocutor about finding a potential new member for his Defence team.²¹ A conversation that cannot, under any circumstances, be considered as suggesting that Mr Yekatom engaged in witness interference nor did he even attempted to. This conclusion is supported by the Chamber's decision finding that the incident did not warrant a modification of his restrictions.²²
22. The Defence sincerely regrets that the Prosecution's Observations appear to imply that Mr Yekatom condoned and implicated himself in behaviors that would compromise the integrity of the proceedings. It hopes that the present submissions will clarify the record and prevent any misconceptions, from anyone, as regard to the behavior of Mr Yekatom during the current proceedings, over the course of his last five and a half years of detention.
- Confidentiality

CONFIDENTIALITY

23. The present response is filed on a confidential basis corresponding to the classification of the Prosecution's Observations. The Defence does not oppose the reclassification of the present Response as public.

²⁰ [ICC-01/14-01/18-1830-Red](#), para. 8.

²¹ ICC-01/14-01/18-727-Conf, paras 17-18.

²² *Ibid*, para. 18.

RELIEF SOUGHT

24. In light of the above, the Defence respectfully requests Trial Chamber V to take into consideration those submissions when assessing the current restrictions on the communications of Mr Yekatom.

RESPECTFULLY SUBMITTED ON THIS 9th DAY OF SEPTEMBER 2024²³



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²³ The Defence is grateful for the researches conducted by Legal Intern Amaury Mandosse for the drafting of this response.