

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

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

**Date: 30 April 2020**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

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

**Confidential *ex parte*, only available to the Prosecution, the Yekatom Defence  
and the Registry**

**Decision on the Prosecution's Request for Transcripts of a Non-Privileged Call  
made by Yekatom in violation of Contact Restrictions**

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
Kweku Vanderpuye

**Counsel for the Alfred Yekatom**

Mylène Dimitri  
Peter Robinson

**Counsel for Patrice-Edouard Ngaïssona**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Paddy Craig

**Victims Participation and Reparations  
Section**

**Other**

Judge Bertram Schmitt, acting as Single Judge on behalf of 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 and 68(1) of the Rome Statute (the 'Statute') and Regulation 101(2) of the Regulations of the Court, issues this 'Decision on the Prosecution's Request for Transcripts of a Non-Privileged Call made by Yekatom in violation of Contact Restrictions'.

## **I. Procedural history and submissions**

1. On 30 March 2020, the Registry informed the Chamber of an incident which occurred during the active monitoring of Mr Yekatom's non-privileged telephone calls on 23 March 2020, during a conversation between Mr Yekatom and an interlocutor which 'appear[ed] to be a discussion about Mr Yekatom's case, in obscure language' (the '23 March Call').<sup>1</sup> Considering this 'a breach of the Chamber's orders', the Registry communicated the relevant excerpt of the conversation for the Chamber's determination.<sup>2</sup> The Registry informed the Chamber again of this incident in a subsequent report (the 'Twelfth Registry Report').<sup>3</sup>
2. On 17 April 2020, the Chamber issued a decision on Mr Yekatom's restrictions on contacts and communications in detention in which it, *inter alia*, took note of the abovementioned breach of restrictions, considering that the transcripts of the

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<sup>1</sup> Registry Observations on "Yekatom Defence Request to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic", (ICC-01/14-01/18-458-Conf-Exp) and Report on Active Monitoring, ICC-01/14-01/18-467-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (with confidential *ex parte* Annex I, only available to the Yekatom Defence and the Registry, ICC-01/14-01/18-467-Conf-Exp-AnxI; and confidential *ex parte* Annex II, only available to the Prosecution, the Yekatom Defence and the Registry) (the 'Registry Observations'), paras 25-26.

<sup>2</sup> Registry Observations, ICC-01/14-01/18-467-Conf-Exp, para. 26; Annex I to the Registry Observations, ICC-01/14-01/18-467-Conf-Exp-AnxI.

<sup>3</sup> Twelfth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, 17 April 2020, ICC-01/14-01/18-481-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry, paras 13-14.

23 March Call were indeed 'demonstrative of Mr Yekatom discussing case-related issues and using obscure language'.<sup>4</sup>

3. On 22 April 2020, the Office of the Prosecutor (the 'Prosecution') submitted a request for 'immediate access to the relevant transcript of the 23 March Call' (the 'Request'),<sup>5</sup> alleging that (i) Article 68 of the Statute requires it to ensure the safety and security of victims and witnesses, which may have been potentially put at risk by the 23 March Call; and that (ii) it is 'best placed to analyse the communication and to determine to what extent any risks may concretely arise, and whether they may affect its investigative activities and ability to ensure the integrity of evidence on which it intends to rely at trial'.<sup>6</sup> The Prosecution further submits that the requested access may assist it in 'assessing and implementing responsive measures to protect its witnesses and/or to preserve evidence potentially exposed to a heightened risk' due to Mr Yekatom's breach of restrictions.<sup>7</sup>
4. On 28 April 2020, the Yekatom Defence filed its observations to the Twelfth Registry Report, in which it submits that while Mr Yekatom 'did regrettably breach the restrictions on discussing his case', the conversation in question 'in no way involved interference with or threats to Prosecution witnesses, nor did [...] [it] prejudice the outcome of the proceedings or investigation, nor did [...] [Mr Yekatom] disclose any confidential information'.<sup>8</sup> The Yekatom Defence does not object to disclosure of the transcript of the 23 March Call to the Prosecution, 'so that it can satisfy itself that no issues related to the security of Prosecution witnesses are implicated'.<sup>9</sup>

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<sup>4</sup> 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 Prosecution, the Yekatom Defence and the Registry, para. 22.

<sup>5</sup> Prosecution's Request for Transcripts of a Non-Privileged Call made by Yekatom in violation of Contact Restrictions, ICC-01/14-01/18-490-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry, para. 8.

<sup>6</sup> Request, ICC-01/14-01/18-490-Conf-Exp, para. 6.

<sup>7</sup> Request, ICC-01/14-01/18-490-Conf-Exp, para. 7.

<sup>8</sup> Yekatom Defence Observations on Twelfth Registry Report on the Implementation of the Restrictions on Contacts by Mr. Alfred Yekatom Ordered by Pre-Trial Chamber II, ICC-01/14-01/18-494-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (the 'Yekatom Defence Observations'), para. 3.

<sup>9</sup> Yekatom Defence Observations, ICC-01/14-01/18-494-Conf-Exp, para. 4.

## II. Analysis

5. First and foremost, the Single Judge notes that the Yekatom Defence does not oppose the Request. Secondly, the Single Judge considers that granting access will allow the Prosecution to assess and fully discharge its obligations to take appropriate measures to protect the safety, as well as the physical and psychological well-being, of witnesses pursuant to Article 68(1) of the Statute. Accordingly, the Single Judge grants the Request.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**GRANTS** the Request; and

**ORDERS** the Registry to reclassify filing ICC-01/14-01/18-467-Conf-Exp-AnxI as confidential *ex parte*, available only to the Prosecution, the Yekatom Defence and the Registry.

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



**Judge Bertram Schmitt**

**Single Judge**

Dated this 30 April 2020

At The Hague, The Netherlands