

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No. ICC-01/14-01/18

Date: 1 June 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

Decision Recalling the Reporting Procedure for the Review of Restrictions

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

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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 Regulation 24(1) of the Regulations of the Court (the 'Regulations'), issues this 'Decision Recalling the Reporting Procedure for the Review of Restrictions'.

I. Procedural history and submissions

1. Upon Mr Yekatom's surrender to the Court on 17 November 2018, Pre-Trial Chamber II (the 'PTC II') issued several decisions pursuant to Regulation 101 of the Regulations restricting his contacts and communications during pre-trial detention (the 'Pre-Trial Restrictions').¹
2. On 15 April 2019, when PTC II extended the restrictive measures in place at the time for the remainder of the pre-trial proceedings, it requested the Registry to submit a report every two months on the implementation of the restrictions in place.²
3. PTC II established the following procedure for its review of the Pre-Trial Restrictions (the 'PTC II Reporting Procedure'): (i) the Registry shall submit separate reports on the implementation of Pre-Trial Restrictions (the 'Registry Reports'), together with confidential redacted versions of said reports, every two months, and inform PTC II of any violation of the applicable restrictions or other significant developments immediately; (ii) the Office of the Prosecutor (the 'Prosecution') shall submit observations on the Registry Reports, if any, together with confidential redacted versions of said observations, within five days of notification; and (iii) the Yekatom and the Ngaïssona Defence shall submit observations on the respective Registry Reports, as well as on the

¹ See overview of the procedural history in Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-485-Conf-Exp, confidential *ex parte* only available to the Prosecution, the Yekatom Defence and the Registry (the '17 April 2020 Decision').

² Decision Pursuant to Regulation 101 of the Regulations of the Court, 15 April 2019, ICC-01/14-01/18-176-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-176-Conf-Red) (the '15 April 2019 Decision'), para. 32.

Prosecution's observations, if any, together with confidential redacted versions of said observations, within 10 days of notification of the Registry Reports.³

4. On 18 March 2020, the Yekatom Defence (the 'Defence') requested the Chamber to review and modify certain restrictions in place,⁴ to which the Prosecution responded on 27 March 2020.⁵ The Chamber directed the Detention Centre to make submissions on this request⁶ which were filed on 30 March 2020.⁷
5. On 17 April 2020, the Registry filed the twelfth of the Registry Reports pursuant to the PTC II Reporting Procedure (the 'Twelfth Registry Report').⁸
6. On the same day, the Chamber issued its decision maintaining the restrictions on Mr Yekatom's contacts and communications (the 'Current Restrictions').⁹ The Chamber also adopted the PTC II Reporting Procedure with the modification that the Registry is now required to submit its reports every three months (the 'TC V Reporting Procedure').¹⁰

³ 15 April 2019 Decision, ICC-01/14-01/18-176-Conf-Red, para. 32.

⁴ Yekatom Defence Request to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic, 18 March 2020, ICC-01/14-01/18-458-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (with confidential *ex parte* Annex A, only available to the Prosecution, the Yekatom Defence and the Registry).

⁵ Réponse de l'Accusation à la requête de la Défense '*to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic*' (ICC-01/14-01/18-458-Conf-Exp), 27 March 2020, ICC-01/14-01/18-465-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry.

⁶ See email from the Chamber to the Detention Section, the Prosecution and the Yekatom Defence, 19 March 2020, at 17:21.

⁷ 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; and confidential *ex parte* Annex II, only available to the Prosecution, the Yekatom Defence and the Registry).

⁸ Twelfth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, ICC-01/14-01/18-481-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry.

⁹ 17 April 2020 Decision, ICC-01/14-01/18-485-Conf-Exp, p. 16; *see also* para. 13.

¹⁰ 17 April 2020 Decision, ICC-01/14-01/18-485-Conf-Exp, para. 32.

7. On 28 April 2020, the Defence filed its observations on the Twelfth Registry Report, requesting further modifications to the Current Restrictions (the 'Observations').¹¹
8. On 5 May 2020, the Single Judge rejected the requested modifications to the Current Restrictions.¹²
9. On 11 May 2020, the Prosecution responded to the Observations, requesting the Chamber to maintain the Current Restrictions (the 'Response').¹³

II. Analysis

10. At the outset, the Single Judge notes that the Prosecution seemingly filed its Response to address the Defence's submissions in the Observations to the Twelfth Registry Report pursuant to Regulations 24(1) and 34(b) of the Regulations.
11. However, the Single Judge recalls that the Twelfth Registry Report was transmitted to the Chamber pursuant to the PTC II Reporting Procedure and therefore, this procedure and the timelines set out therein also apply to the Observations by the parties. The Single Judge emphasises that the PTC II Reporting Procedure does not provide the Prosecution with the right to respond to the respective defence observations to the Registry Reports.
12. The Single Judge thus considers that the Prosecution disregarded the PTC II Reporting Procedure by responding to the Observations.

¹¹ 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, para. 10.

¹² Decision on the Yekatom Defence's Request to Modify the Active Monitoring Restriction, ICC-01/14-01/18-507-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (the '5 May 2020 Decision').

¹³ Réponse de l'Accusation aux "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), ICC-01/14-01/18-512-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry.

13. Therefore, in the interest of clarity for future submissions, the Single Judge sees the need to recall the TC V Reporting Procedure for the benefit of all parties involved, applicable following the 17 April 2020 Decision:¹⁴
- (i) the Registry shall file Registry Reports on the implementation of the restrictive measures for Mr Yekatom and Mr Ngaïssona, respectively, together with confidential redacted versions of said reports, every three months, and inform the Chamber of any violation of the applicable restrictions or other significant developments immediately;
 - (ii) the Prosecution shall submit observations on the Registry Reports, if any, together with confidential redacted versions of said observations, within five days of notification; and
 - (iii) the Yekatom and the Ngaïssona 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.
14. The Single Judge clarifies that, similar to the PTC II Reporting Procedure, the TC V Reporting Procedure also does not provide the Prosecution with a right to respond to the observations filed by the defence. Regulation 24(1) of the Regulations does not apply, since the Chamber explicitly established a different system. The Single Judge is confident that the parties and the participants will pay heed in the future to the deadline(s) and procedure(s) set out by the Chamber. Where it deems them necessary, the Chamber will seek further submissions from the parties and the participants, as the case may be.
15. The Single Judge recalls that the request contained in the Observations has been adjudicated¹⁵ and there is no further action necessary on the part of the Chamber at this point.

¹⁴ 17 April 2020 Decision, ICC-01/14-01/18-485-Conf-Exp, paras 3, 32.

¹⁵ See 5 May 2020 Decision, ICC-01/14-01/18-507-Conf-Exp, p. 7.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DECLINES to consider the Response; and

DIRECTS the Prosecution to abide by the TC V Reporting Procedure, as clarified in paragraphs 13-14 above.

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



Judge Bertram Schmitt

Single Judge

Dated 1 June 2020

At The Hague, The Netherlands