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**No. ICC-01/14-01/18
Date: 26 January 2021**

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***

Public

**Decision on the Defence Requests for In-Person Legal Visits
at the Detention Centre**

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 Articles 64(2) and 67(1)(b) of the Rome Statute (the ‘Statute’), Regulations 90, 96, 97 and 103 of the Regulations of the Court and Regulations 178 and 217-218 of the Regulations of the Registry, issues this ‘Decision on the Defence Requests for In-Person Legal Visits at the Detention Centre’.

I. Procedural history and submissions

1. On 19 March 2020, the Detention Centre imposed temporary measures in light of the Coronavirus Pandemic, following recommendations by the medical officer of the Detention Centre (the ‘Temporary Measures’ and the ‘Medical Officer’, respectively). These Temporary Measures, which have been extended until 18 February 2021, include the suspension of all in-person visits to the detained persons, including by their defence teams.¹
2. On 12 January 2021, the Yekatom Defence requested the Chamber to (i) authorise counsel for Mr Yekatom to visit their client at the Detention Centre; and (ii) order the Registry to facilitate in-person visits between Mr Yekatom and his counsel (the ‘Yekatom Defence Request’).²
3. According to the Yekatom Defence, in-person legal visits with Mr Yekatom are necessary to ensure the respect of his rights and the proper administration of justice, and are warranted by ‘exceptional circumstances’.³ In this regard, the Yekatom Defence notes that (i) the filing of the Trial Brief and Final Witness List and the completion of disclosure on 9 November 2020 by the Office of the Prosecutor (the ‘Prosecution’) require a thorough analysis of the evidence, meaningful discussions and the taking of informed instructions, including on the defence strategy; (ii) despite several attempts to proceed with the available remote possibilities discussed with the Chief Custody Officer (the ‘CCO’), certain

¹ Eighth Registry Update on Detention Centre COVID-19 Measures, 19 January 2021, ICC-01/14-01/18-841-Conf, paras 3-4.

² Request for authorization of in-person legal visits with Mr. Yekatom, ICC-01/14-01/18-816-Conf (with confidential Annexes A and B), paras 1, 30.

³ Yekatom Defence Request, ICC-01/14-01/18-816-Conf, paras 16, 20.

audio/video material cannot be meaningfully analysed remotely, *inter alia*, because it needs to be compared to other evidence, which needs to be shown to Mr Yekatom simultaneously with a video screen; and (iii) since the suspension of in-person legal visits, Mr Yekatom is represented by a new associate counsel whom he has not yet met in person.⁴

4. On 18 January 2021, in line with the shortened time-limit set by the Single Judge,⁵ the Prosecution responded to the Yekatom Defence Request, submitting that it should be granted.⁶
5. On the same day, upon the Single Judge's direction,⁷ the Registry submitted its observations on the Yekatom Defence Request (the 'Registry Observations').⁸ The Registry submits that, while meeting a new defence team member is not a sufficient reason to grant exceptions to the Temporary Measures, it does not oppose limited in-person privileged visits at the current stage of the proceedings, for the reasons identified by the Yekatom Defence.⁹ It further notes that the Yekatom Defence has correctly identified the modifications at the Detention Centre, including the installation of a glass barrier in the visits room. Nonetheless, it recalls that its duty of care also extends to Detention Centre staff who will come into contact with defence team members during their visits.¹⁰ In this regard, the Registry informs the Chamber that it has established several strict conditions for 'exceptional, judicially ordered privileged visits' to the Detention Centre in order to minimise the risk of contamination, to the extent possible.¹¹ Lastly, in line with the Medical Officer's recommendation that in-person contact with detained persons should be limited to what is of 'vital necessity' when remote alternatives

⁴ Yekatom Defence Request, ICC-01/14-01/18-816-Conf, paras 17-19.

⁵ Email from the Chamber, 12 January 2021, at 18:59.

⁶ Prosecution's Response to the Request for authorisation of in-person legal visits with Mr. Yekatom (ICC-01/14-01/18-816-Conf), ICC-01/14-01/18-830-Conf, para. 7.

⁷ Email from the Chamber, 12 January 2021, at 18:59.

⁸ Registry Observations on the "Request for authorization of in-person legal visits with Mr. Yekatom" (ICC-01/14-01/18-816-Conf), ICC-01/14-01/18-832-Conf.

⁹ Registry Observations, ICC-01/14-01/18-832-Conf, paras 7-8.

¹⁰ Registry Observations, ICC-01/14-01/18-832-Conf, para. 9.

¹¹ Registry Observations, ICC-01/14-01/18-832-Conf, paras 10-11.

do not exist, the Registry continues to encourage the use of the available alternative means of privileged communication as much as possible.¹²

6. Also on 18 January 2021, the Ngaïssona Defence, while ‘fully support[ing]’ the Yekatom Defence Request, requested the Chamber to (i) allow it to meet with Mr Ngaïssona at the Detention Centre at least one week before the scheduled commencement of the opening statements on 9 February 2021; and (ii) instruct the Registry to facilitate in-person visits between Mr Ngaïssona and his defence team (the ‘Ngaïssona Defence Request’).¹³
7. Noting that the Presidency has indicated that the Temporary Measures ‘do not prevent the Registry or any Chamber from authorising in-person visits on an exceptional basis where necessary’, the Ngaïssona Defence argues that this standard is met and that exceptional circumstances justify a deviation from the suspension of in-person legal visits.¹⁴ In this regard, it submits that (i) the current stage of the proceedings warrants exceptions to the Temporary Measures since it needs to discuss and analyse the opening statement with Mr Ngaïssona in light of the overall defence case strategy and the significant amount of evidence disclosed by the Prosecution by 9 November 2020; (ii) face-to-face discussions would be more efficient in light of the amount of work to be completed; (iii) the commencement of the trial is an important juncture in the case and the Defence team needs to be able to support Mr Ngaïssona at this stage; and (iv) in-person visits are necessary to enable Mr Ngaïssona to meet the recently appointed associate counsel, who is normally working from the Central African Republic and will only stay in The Hague for the opening statements.¹⁵
8. On 20 January 2021, in line with the shortened time-limit set by the Single Judge,¹⁶ the Prosecution, incorporating by reference the submissions made in its

¹² Registry Observations, ICC-01/14-01/18-832-Conf, para. 12.

¹³ Ngaïssona Defence Request to allow in-person visits between Mr Ngaïssona and his Defence in order to prepare for Trial, ICC-01/14-01/18-833-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (with one confidential annex) (confidential redacted version notified the same day, ICC-01/14-01/18-833-Conf-Red), para. 1, pp. 11-12.

¹⁴ Ngaïssona Defence Request, ICC-01/14-01/18-833-Conf-Red, para. 22, referring to a letter sent by the Presidency to the defence teams, 2020/PRES/00140-2.

¹⁵ Ngaïssona Defence Request, ICC-01/14-01/18-833-Conf-Red, paras 23-28.

¹⁶ Email from the Chamber, 19 January 2021, at 10:54.

response to the Yekatom Defence Request, requested the Chamber to grant the Ngaïssona Defence Request.¹⁷

II. Analysis

9. The Single Judge notes at the outset that Article 67(1)(b) of the Statute provides the accused with the right to ‘have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused’s choosing in confidence’.
10. He also notes that, pursuant to Regulations 217 and 218 of the Regulations of the Registry, complaints against any matter concerning detention shall be addressed to the CCO, unless the matter concerns a decision or order which has been made by the Registrar.
11. As regards the Temporary Measures, the Single Judge recalls his previous decisions in this regard.¹⁸ In particular, the Single Judge recalls that he does not consider it to be his place or role to override the Temporary Measures decided by the Registrar and the Presidency, implemented following the advice of the Medical Officer, who is best placed to assess the particular health risks to the accused in the Court’s custody.¹⁹
12. While mindful of these considerations, the Single Judge finds that in the specific circumstances at hand, particularly noting the submissions received, an exception to the Temporary Measures is warranted. In reaching this conclusion, the Single Judge has considered, first and foremost, the current stage of the proceedings, and specifically the fact that the opening statements are scheduled to commence in less than two weeks. He further notes the recent filing of the Final Witness List and List of Evidence, and the completion of disclosure. In this regard, he also

¹⁷ Prosecution’s Response to the Ngaïssona Defence Request to allow in-person visits between Mr Ngaïssona and his Defence in order to prepare for Trial (ICC-01/14-01/18-833-Conf-Red), ICC-01/14-01/18-839-Conf (notified on 20 January 2021).

¹⁸ *E.g.* Decision on the Defence Request for In-Person Visit to Mr Ngaïssona to Prepare for First Status Conference, 29 June 2020, ICC-01/14-01/18-575-Conf (public redacted version filed on 26 January 2021, ICC-01/14-01/18-575-Red); Decision on the Defence Request to Grant Privileged Status to Medical Expert and to Allow In-Person Visits, 24 June 2020, ICC-01/14-01/18-567-Conf (public redacted version filed on 26 January 2021, ICC-01/14-01/18-567-Red).

¹⁹ ICC-01/14-01/18-575-Red, paras 23-25; ICC-01/14-01/18-567-Red, para. 33.

takes note of the Yekatom Defence's submissions on technical difficulties in discussing certain evidentiary material remotely. In addition, the Single Judge is of the view that the recent appointment of new associate counsel for both Mr Yekatom and Mr Ngaïssona, who have not yet had the opportunity to meet their respective clients in-person, is an additional factor warranting this exception.

13. Lastly, Single Judge appreciates the Registry's submissions on the new arrangements at the Detention Centre, including the installation of a glass wall, to facilitate such visits at the Detention Centre.²⁰
14. In light of the above, and on an exceptional basis, the Single Judge authorises defence counsel for Mr Yekatom and Mr Ngaïssona to meet their respective clients in-person at the Detention Centre prior to the commencement of the opening statements, on such dates to be determined with the Registry. These meetings should be strictly limited to the purposes identified by the Yekatom Defence and Ngaïssona Defence in support of their requests,²¹ and are subject to compliance with the conditions set out in the Registry Observations,²² and taking into account all required health measures.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Yekatom Defence Request;

GRANTS the Ngaïssona Defence Request;

DIRECTS the Registry to facilitate visits between counsel for Mr Yekatom and Mr Ngaïssona and their respective clients, as set out in paragraph 14 of the present decision, taking into account all required health measures; and

ORDERS the parties and the Registry to file public redacted versions of their submissions or request reclassification within one week of the notification of the present decision.

²⁰ In this regard, *see* ICC-01/14-01/18-575-Red, para. 26, where the Single Judge expressed his hope that the option of installing glass or plastic shields was being given serious consideration.

²¹ *See* paragraphs 3 and 7 of the present decision.

²² *See* Registry Observations, ICC-01/14-01/18-832-Conf, paras 10-12.

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



Judge Bertram Schmitt
Single Judge

Dated 26 January 2021

At The Hague, The Netherlands