

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 February 2021**

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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public with Confidential Annexes A & B

Public Redacted Version of "Request for authorization of in-person legal visits with Mr. Yekatom", 12 January 2021, ICC-01/14-01/18-816-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. James Stewart

Mr. Kweku Vanderpuye

Counsel for Mr. Yekatom

Me Mylène Dimitri

Mr. Thomas Hannis

Mr. Florent Pages-Granier

Counsel for Mr. Ngaïssona

Me Geert-Jan Alexander Knoops

Legal Representatives of Victims

Mr. Dmytro Suprun

Mr. Abdou Dangabo Moussa

Ms. Elisabeth Rabesandratana

Mr. Yaré Fall

Ms. Marie-Edith Douzima-Lawson

Ms. Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

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

Me Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. Counsel for Mr. Alfred Rombhot Yekatom (the “Defence” and “Mr. Yekatom”, respectively) respectfully move for an order by Trial Chamber V (the “Chamber”) authorizing in-person visits between Counsel and their client at the International Criminal Court Detention Centre (the “ICCDC”).
2. The Defence contends that such in-person visits are necessary at this stage of the proceedings, with the trial scheduled to start in less than one month. Mindful of the ongoing pandemic crisis the Defence proposes specific mitigation measures during such visits, which will strike a proper balance between the right of Mr. Yekatom to have adequate facilities to prepare his defence, enshrined in Article 67(1)(b) of the Rome Statute, and the measures taken to preserve the health of the detainees at the ICCDC.

PROCEDURAL BACKGROUND

3. On 17 November 2018, Mr. Yekatom was surrendered to the International Criminal Court and has been in detention at the ICCDC since.¹
4. On 19 March 2020, temporary measures were put in place in light of the ongoing pandemic.² These measures included the suspension of all visits at the ICCDC, including legal visits by lawyers to their clients.³
5. On 15 September 2020, Defence Counsel representing Messrs. Ntaganda, Ngaïssona and Yekatom wrote to the Presidency underlining the difficulties caused by the suspension of in-person legal visits, suggested a number of measures Counsel were willing to take to meet their clients, and indicated

¹ Press Release, Situation in Central African Republic II: Alfred Yekatom surrendered to the ICC for crimes against humanity and war crimes, [ICC-CPI-20181117-PR1418](#), 17 November 2018.

² [ICC-01/14-01/18-578-Conf](#), para. 1.

³ [ICC-01/14-01/18-578-Conf-Exp-AnxII](#), [REDACTED].

their willingness to participate in working groups to find appropriate measures.⁴

6. On 30 September 2020, the Presidency responded that [REDACTED].⁵
7. On 9 November 2020, the Prosecution filed its Trial Brief⁶ and its List of Witnesses and Evidence.⁷
8. On 15 December 2020, the Presidency approved extension of the temporary measures, including suspension of Regulation 178 of the Regulations of the Registry, until 18 January 2021.⁸

APPLICABLE LAW

Article 67(1)(b) of the Rome Statute (the “Statute”) provides that the accused is entitled:

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[.]

Regulation 178(1) of the Regulations of the Registry provides that:

The Registrar shall issue counsel with a permit for regular visits as soon as such counsel is appointed [...]

Article 64(2) of the Statute provides that:

The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

SUBMISSIONS

⁴ See Annex A: 15 September 2020 letter sent to the Presidency regarding in-person legal visits at the Detention Centre.

⁵ See Annex A: 30 September 2020 letter sent by the Presidency, reference 2020/PRES/00140-2.

⁶ [ICC-01/14-01/18-723-Conf.](#)

⁷ [ICC-01/14-01/18-724.](#)

⁸ [ICC-01/14-01/18-788-Conf.](#) para. 4.

9. As a preliminary matter the Defence will detail the admissibility of the present Request without first having followed the “Complaints Procedure” set out in the Regulations of the Registry (I). The Defence will then substantiate the necessity of allowing in-person legal visits with Mr. Yekatom (II) and suggest a set of modalities, or preventive measures, which would strike a proper balance between the need for such visits and protecting the health of the inmates (III).

I. Admissibility of the Request

10. The Defence respectfully submits that the request for in-person legal visits with Mr. Yekatom is admissible despite the existence of the “Complaint Procedure” set up in Section 5 of Chapter 5 of the Regulation of the Registry.
11. *First*, Counsel for Mr. Yekatom spoke over the phone with the former Chief Custody Officer (the “CCO”) of the ICCDC on 21 September 2020 about this issue. The CCO indicated [REDACTED].
12. *Second*, the current Complaint Procedure is inadequate given the urgency of the request. This inadequacy is a consequence of the measures taken in light of the Covid-19 pandemic which have doubled the time period for complaints to be processed.⁹ As such, the Defence would have to wait 28 days before being made aware of a quasi-guaranteed refusal, [REDACTED], and moving forward for a review by the Registrar and then the Presidency. This delay would defeat the purpose of the Request, which is to have in-person legal visits with Mr. Yekatom to prepare essential aspects linked to the start of the trial on 9 February 2021.

⁹ See Annex B: 6 April 2020 memo sent by the CCO “Extension of deadlines for complaints”, reference [REDACTED].

13. *Third*, [REDACTED].¹⁰ The Request is encompassed in this “fairness of the proceedings” condition; consequently an intervention by the Chamber is warranted. In addition, given that the measures have an impact on the rights of the accused enshrined in Article 67(1)(b) of the Statute, an intervention of the Chamber falls strictly within its prerogative of ensuring that the trial is “conducted with full respect of the rights of the accused” as set out in Article 64(2) of the Statute.
14. In that regard, the Defence underlines the Single Judge remark in *Al Hassan* on this very matter, despite the fact that it falls within the purview and mandate of the Registry and the Presidency:

Nonetheless, I think I can say that the Chamber is very concerned about this issue and these issues because, as detailed by Defence counsel today, they have a direct impact on the fairness and efficiency of the proceedings before this Chamber. So I don't think it's inappropriate that the Chamber expresses its concern about both issues, about the ability of the Defence to visit with their client physically.¹¹

15. In light of the foregoing, the Defence respectfully requests the Chamber to find the present Request admissible.

II. In-person legal visits are necessary and justified

16. The Defence contends that the advancement of the proceedings makes in-person legal visits between Mr. Yekatom and his Counsel necessary to ensure the respect of his rights before and during the trial and to ensure the proper administration of justice.
17. *First*, the Prosecution disclosed on 9 November 2020 its Trial Brief¹², its Final List of Witnesses¹³, and completed the disclosure of its evidence. The Defence

¹⁰ [REDACTED].

¹¹ *Prosecutor v. Al Hassan*, [Status Conference](#), ICC-01/12-01/18-T-015-Red-ENG, 30 June 2020, p.43, lns. 4-8.

¹² [ICC-01/14-01/18-723-Conf.](#)

¹³ [ICC-01/14-01/18-724.](#)

is now in a position to properly analyse all the evidence put forward by the Prosecution on each of the charges confirmed by Pre-Trial Chamber II in its *Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona*.¹⁴ As Counsel, it is the Defence's professional duty and obligation to thoroughly analyse the evidence with Mr. Yekatom in order to conduct meaningful discussions with him, answer any ambiguity that may arise in relation to the Prosecution's case, and take informed instructions as to the way forward, including the Defence strategy therein. This is a critical time for Mr. Yekatom and the preparation of his defence and there comes a time where it is essential to discuss some of these matters face to face.

18. *Second*, since early October the Prosecution disclosed 6804 documents through the various packages,¹⁵ for a total of more than 59,693 pages and several dozen hours of audio/video material. The Defence is already in the process of analysing this newly disclosed material, and several phone calls have been made with Mr. Yekatom to discuss and explore this evidence, its reliability, veracity, and potential leads for Defence investigations. However, for some documents, a visit with Mr. Yekatom would be required. It is especially true for audio/video material, which cannot be meaningfully analysed with the client through a share screen during a Webex meeting; in this regard, several attempts to do so have been made by the Defence to no avail. The Defence contacted the CCO about this issue and the only solution was to put the video on Mr. Yekatom's computer and call him over the phone in his cell,¹⁶ thus ruling out any analysis through a Webex shared screen, which is the *de facto* replacement of in-person visits. This solution has been used by the Defence for the vast majority of the affected material. However some materials require

¹⁴ [ICC-01/14-01/18-403-Red-Corr.](#)

¹⁵ Since 1 October 2020, the following disclosure were made to the Defence: INCRIM 52 to 76, PEXO 9 to 14, Rule 77 14 to 23. The Defence is purposely not including disclosure reclassifying documents to INCRIM as those documents were mostly disclosed before October.

¹⁶ E-mail between the Defence and the CCO available upon request by the Chamber.

examination and discussion that go beyond what can be done over the phone. For instance, some videos require us to pause and take note of Mr. Yekatom's comments on the individual appearing on the screen, identification of locations or areas. Some videos need to be compared to other material disclosed whereby the Defence needs to simultaneously show Mr. Yekatom the video screen and a picture or a satellite imagery in order to analyse the material and take instructions thereof. These are a few examples of the insufficiency of the Webex platform.

19. *Third*, since the suspension of in-person legal visits, Mr. Yekatom is now represented by a new associate counsel, Mr. Thomas Hannis.¹⁷ Mr. Yekatom and Mr. Hannis have not yet had the opportunity to meet in-person since the appointment. In order to ensure proper representation during the Trial, trust needs to be built between a lawyer and his client. This relationship can only go so far with phone calls and Webex meetings. It would be unimaginable that Mr. Yekatom would meet associate counsel Hannis for the first time in the courtroom on February 9, 2021.
20. In light of the above, the Defence contends that exceptional circumstances exist which warrant in-person visits with their client. With the trial scheduled to start in less than one month, and with the supporting evidence disclosed, preventing the Defence and Mr. Yekatom from discussing in-person crucial issues would impact the fairness of the proceedings by impeding on his right to have adequate time and facilities to prepare his defence. Before the International Residual Mechanism for Criminal Tribunals, the Trial Chamber in the *Kabuga* case shared this concern as it stated that "while telephone and video-teleconference communications on a privileged basis sufficiently protect Kabuga's fair trial rights as a general matter in the near term given the early

¹⁷ [ICC-01/14-01/18-675](#).

phase of the case, the absence of in-person consultation may frustrate case preparation in the longer term".¹⁸

21. It is also important to note that Trial Chamber X in *Al Hassan* seemed to have intervened in the balance between the right of the accused to prepare his defense and the temporary measure put in place to mitigate the impact of the Covid-19 pandemic. Indeed, it is the Defence understanding that shortly before the beginning of his trial, and since then, Mr. Al Hassan has been allowed in-person legal visits at the ICCDC.¹⁹
22. The Defence thus respectfully requests the Chamber to allow for in-person visits between Mr. Yekatom and his Defence team.

III. Preventive measures suggested to allow in-person visits

23. Mindful of the current situation in the Host State, the Defence wishes to underline some preventive measures that it undertakes to respect, which would allow in-person legal visits with Mr. Yekatom while respecting the objectives of the temporary measures taken to fight the Covid-19 pandemic.
24. *First*, it is worth noting that since March 2020, new protocols and modifications were made at the ICCDC as preventive measures.
25. Such modifications include a change in the structure of the visiting cells used for legal visits. It is the Defence's understanding that cells have been merged so as to allow space for glass dividing panels, totally separating the detainee from his legal team, presumably for the purpose of reducing and minimising the risk of aerosols/particle transmission and all communications made through a telephone connected to the common wall. This renovation work in itself, foreseen by the Chamber in its *Decision on the Defence Request for In-*

¹⁸ *Prosecutor v. Kabuga*, [Further Decision Concerning In-Person Visits between Félicien Kabuga and his Defence team](#), MICT-13-38-PT, 30 November 2020, page 3.

¹⁹ *Prosecutor v. Al Hassan*, [Public redacted version of Decision on Defence Adjournment Request](#), ICC-01/12-01/18-940-Red, 8 July 2020.

Person Visit to Mr Ngaïssona to Prepare for First status Conference,²⁰ should be a sufficient measure to prevent any transmission of the virus to the detainee.

26. Moreover, protocols have been put in place to make sure the detained person does not meet the legal team in the hallway leading to the visiting cell. The legal teams are asked to wait inside the cell while guards escort the detainee to his cell, ensuring the respect of physical distancing guidelines and further reducing the risk of particle transmission.
27. Despite those strict protocols, which of themselves seem to satisfy, by themselves (and even go beyond) the measures taken by the Host State and various countries around the world in relation to the greater public. The Defence is also willing to abide by any other measures that would be required upon the Medical Unit's recommendations, such as wearing a mask, a signed health declaration, or the completion of a medical questionnaire, etc., to the extent that they do not unduly impede Mr. Yekatom's fair trial rights.
28. The Defence submits that the combination of those proposed limitations to the visits and the existing structural and procedural modifications made by the ICCDC are sufficient to allow in-person legal visits, which are indispensable as the eve of the trial approaches.

CONFIDENTIALITY

29. The present request is filed on a confidential basis, as it is quoting confidential correspondence. The Defence respectfully request the Chamber to issue a public version of their decision. Once the Chamber's decision is issued, the Defence will use the Chamber's guidance to file a public or public redacted version.

²⁰ [ICC-01/14-01/18-575-Conf](#), para. 26.

RELIEF SOUGHT

30. In light of the above, the Defence respectfully requests Trial Chamber V to:

AUTHORIZE Counsel for Mr. Yekatom to visit their client at the ICCDC;

ORDER the Registry to facilitate in-person visits between Mr. Yekatom and his Counsel.

RESPECTFULLY SUBMITTED ON THIS 2ND DAY OF FEBRUARY 2021



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom



Mr. Thomas Hannis
Associate Counsel for Mr. Yekatom

The Hague, the Netherlands