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**No. ICC-01/14-01/18
Date: 3 February 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 redacted version of

Decision on Non-Privileged Video-Conferencing 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 Article 64(2) and (6)(f) of the Rome Statute (the ‘Statute’), Regulation 100(1) of the Regulations of the Court (the ‘Regulations’), and Regulations 179(1), 180 and 183-184 of the Regulations of the Registry (the ‘Registry Regulations’), issues this ‘Decision on Non-Privileged Video-Conferencing 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’). These measures, which have been extended until 18 February 2021, include the suspension of all in-person visits to the detained persons, including by their families.¹
2. On 11 November 2020, the Chamber rejected a request² by the Yekatom Defence (the ‘Defence’) to allow Mr Yekatom to have video-conference calls with his family, noting that the Registry did not offer video-conferencing for non-privileged contacts (hereinafter: ‘Video-Conferencing’) to the detainees.³ However, the Chamber strongly encouraged the Registry to assess the feasibility of Video-Conferencing for Mr Yekatom and Mr Ngaïssona and instructed it to provide observations in this regard.⁴
3. On 9 December 2020, the Registry informed the Chamber that, having assessed the feasibility of Video-Conferencing, it concluded that it would be ‘technically and logistically feasible’ (the ‘Observations’).⁵ The Registry specifically reports

¹ Eighth Registry Update on Detention Centre COVID-19 Measures, 19 January 2021, ICC-01/14-01/18-841-Conf (notified on 20 January 2021) (with one confidential annex), paras 3-4.

² See Réponse de la Défense de M. Yekatom au « Second Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Trial Chamber V », ICC-01/14-01/18-673-Conf-Exp, 5 octobre 2020, 15 October 2020, ICC-01/14-01/18-683-Conf, para. 73, p. 18.

³ See email from the Registry to the Chamber, 20 October 2020, at 17:40.

⁴ Third Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, ICC-01/14-01/18-727-Conf (the ‘Third Decision on Mr Yekatom’s Restrictions’), para. 25, p. 14.

⁵ Registry Observations on the Assessment of the Feasibility of using Video-Conferencing at the Detention Centre, ICC-01/14-01/18-760-Conf, para. 6.

that (i) it anticipates having the capacity to offer one hour of video-conference every four months to each detained person, to take place *in lieu* of one day of actively monitored telephone calls;⁶ (ii) all Video-Conferencing would be actively monitored and recorded;⁷ and (iii) it should be strictly limited to family members, as defined by the Detention Centre.⁸ The Registry further reports that implementing this system would require ‘extensive Registry resources, logistical planning, and budgetary resources’, including the presence of staff from the Detention Centre and the Language Services Section (the ‘LSS’), as well as an ICC staff member at the Video-Conferencing location.⁹

4. The Registry submits that it has identified two Video-Conferencing locations for the families of Mr Yekatom and Mr Ngaïssona: (i) [REDACTED] (the ‘First Location’), [REDACTED]; and (ii) [REDACTED] (the ‘Second Location’).¹⁰
5. On 22 December 2020, the Defence requested the Chamber to instruct the Registry to provide Mr Yekatom with two hours of Video-Conferencing per month during the currently allocated telephone call slots (the ‘Request’).¹¹ In response to the Observations, the Defence argues, *inter alia*, that (i) the Registry’s proposal to offer one hour of Video-Conferencing every four months is ‘an unreasonable temporary substitution for Mr Yekatom’s right to receive visits’;¹² (ii) the Registry fails to substantiate its submissions that Video-Conferencing will require ‘extensive’ resources;¹³ and (iii) its approach is at odds with the current practice of, *inter alia*, other international tribunals, the host State and other countries.¹⁴

⁶ Observations, ICC-01/14-01/18-760-Conf, para. 13.

⁷ Observations, ICC-01/14-01/18-760-Conf, para. 12.

⁸ Observations, ICC-01/14-01/18-760-Conf, para. 10 *referring to* ‘the recognized wife, partner or children of a detained person’.

⁹ Observations, ICC-01/14-01/18-760-Conf, paras 10-11, 17.

¹⁰ Observations, ICC-01/14-01/18-760-Conf, paras 15-16, 18-20.

¹¹ Corrected version of “Mr. Yekatom’s Response to the Registry Observations on the Assessment of the Feasibility of using Video - Conferencing at the Detention Centre”, 21 December 2020, ICC-01/14-01/18-793-Conf, ICC-01/14-01/18-793-Conf-Corr (with Annex A), paras 3, 27.

¹² Request, ICC-01/14-01/18-793-Conf-Corr, paras 2, 7-10.

¹³ Request, ICC-01/14-01/18-793-Conf-Corr, paras 2, 11-17.

¹⁴ Request, ICC-01/14-01/18-793-Conf-Corr, paras 2, 19-25.

6. The Defence additionally requests, should the Chamber grant its Request, that Mr Yekatom's mother be authorised to participate in the Video-Conferencing (the 'Additional Request').¹⁵
7. On 15 January 2021, upon the Single Judge's order,¹⁶ the Registry provided further observations, clarifying that Video-Conferencing is envisaged as an alternative to the family visits arranged with the funds from the Trust Fund for Family Visits, and based on the premise of equal access to all detained persons.¹⁷ The Registry further clarifies that (i) the platform used for privileged video-conferencing is 'essentially the same' as the one identified for Video-Conferencing;¹⁸ (ii) it has a strong preference for longer calls – rather than more frequent and shorter ones – 'scheduled in 45 minute increments, with a break in-between' to accommodate the LSS field interpreters' work standards;¹⁹ and (iii) in order to actively monitor the video-conference live, the Registry would connect to the video-conference as a third participant and an ICC staff member would be present at the Video-Conferencing location of the accused's family members.²⁰
8. In addition, the Registry explains that (i) specifically for the First Location, it is not anticipated that additional resources will be required, but logistical aspects must be considered; and (ii) in other locations, such as the Second Location, Video-Conferencing may entail additional resources including 'missions of 2-3 days, and the use of external international partners'.²¹
9. Finally, the Registry confirms that (i) it has completed the 'necessary technical arrangements' for Video-Conferencing at the First Location, (ii) it will make logistical arrangements at the Second Location when Video-Conferencing is

¹⁵ Request, ICC-01/14-01/18-793-Conf-Corr, para. 18.

¹⁶ Email from the Chamber, 7 January 2021, at 13:10.

¹⁷ Registry Observations on "Corrected version of "Mr. Yekatom's Response to the Registry Observations on the Assessment of the Feasibility of using Video - Conferencing at the Detention Centre", 21 December 2020, ICC-01/14-01/18-793-Conf" (ICC-01/14-01/18-793-Conf-Corr), ICC-01/14-01/18-824-Conf (the 'Additional Observations'), paras 8-10.

¹⁸ Additional Observations, ICC-01/14-01/18-824-Conf, para. 12.

¹⁹ Additional Observations, ICC-01/14-01/18-824-Conf, para. 17.

²⁰ Additional Observations, ICC-01/14-01/18-824-Conf, paras 18-19.

²¹ Additional Observations, ICC-01/14-01/18-824-Conf, paras 15-16.

actually facilitated there,²² and (iii) a ‘pilot phase’ with the accused in the present case will be implemented to ‘assess how the video-conferencing communications unfold’.²³

II. Analysis

10. At the outset, the Single Judge recalls the Chamber’s previous findings regarding the accused’s right to privacy and family life.²⁴ Specifically with regard to family visits, the Single Judge recalls the Court’s positive obligation to provide for an effective right to family visits and the Registry’s duty to give specific attention to visits by family of the detained persons with a view to maintaining such links, under Regulation 100(1) of the Regulations and Regulation 179(1) of the Registry Regulations.²⁵

A. The Request

11. The Single Judge appreciates the efforts made by the Registry to put in place Video-Conferencing at the Detention Centre and takes note of the Registry’s submission that it can offer one hour of video-conference to each accused person every four months.²⁶ However, the Single Judge considers that, under the present circumstances, more frequent and extensive Video-Conferencing is warranted to render the accused’s right to family visits effective.
12. First, the Single Judge recalls that the Temporary Measures, which include the suspension of family visits, have now been extended until 18 February 2021²⁷

²² Additional Observations, ICC-01/14-01/18-824-Conf, para. 20.

²³ Additional Observations, ICC-01/14-01/18-824-Conf, para. 21.

²⁴ See e.g. 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 Yekatom Defence, the Prosecution and the Registry, para. 16; Decision on Mr Ngaïssona’s Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-484-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (confidential *ex parte* redacted version, only available to the Ngaïssona Defence, the Prosecution and the Registry, notified the same day, ICC-01/14-01/18-484-Conf-Exp-Red), para. 16.

²⁵ See Presidency, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on “Mr Mathieu Ngudjolo’s Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar’s Decision of 18 November 2008”, 10 March 2009, ICC-RoR217-02/08-8 *reclassified pursuant to* Order ICC-RoR217-02/08-11, 23 March 2009, para. 26. See also paras 31, 43.

²⁶ Observations, ICC-01/14-01/18-760-Conf, para. 13.

²⁷ See above paragraph 1.

and further extensions are likely.²⁸ He further recalls the accused's grievances, of which the Chamber is cognisant, over the impact of the continued extensions of the Temporary Measures on their well-being.²⁹

13. Second, the Single Judge notes that, under the Detention Centre Policy on Family Visits, detainees are ordinarily entitled to receive 'a minimum of one visit in each two-week period' of 'no less than one [...] hour' (*i.e.* at least two hours of visits every month).³⁰ The Single Judge, while mindful that Video-Conferencing cannot be fully equated to in-person visits, considers this policy instructive in assessing the appropriate frequency and duration of Video-Conferencing.
14. Third, the Single Judge takes note of the practice adopted by other international tribunals, where Video-Conferencing has been implemented while restrictions due to the Coronavirus Pandemic are still in place, with a higher frequency than the one proposed by the Registry.³¹
15. Furthermore, while mindful of the Registry's submissions that Video-Conferencing will be resource-intensive, the Single Judge notes that the use of Video-Conferencing from the First Location – where most of the family members of both accused reside – will require certain 'logistical

²⁸ See Third Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, 5 October 2020, ICC-01/14-01/18-672-Conf (the 'Third Decision on Mr Ngaïssona's Restrictions'), para. 18, n. 47.

²⁹ See Third Decision on Mr Yekatom's Restrictions, ICC-01/14-01/18-727-Conf, para. 25; Third Decision on Mr Ngaïssona's Restrictions, ICC-01/14-01/18-672-Conf, para. 18.

³⁰ 'Detention Centre Policy on Family Visits pursuant to Regulation 179(1) of the Regulations of the Registry', as amended on 1 September 2014 (the 'Family Visits Policy'), para. 17. The Single Judge notes that the Registry provided the Chamber with a copy of this policy by way of email on 28 January 2021, at 17:16.

³¹ The Single Judge notes, by way of example, that at the IRMCT, video calls have been made available to detainees at the UN Detention Unit 'while the COVID-19 restrictions on visits are still in place'; see IRMCT, *Prosecutor v. Radovan Karadžić*, Registrar's Submission in Compliance with "Decision on Request for Review of Registrar's Decision on Video Communications" of 16 April 2020, 15 June 2020, MICT-13-55-ES, para. 2; see also Request, ICC-01/14-01/18-793-Conf-Corr, para. 19. The Single Judge further notes that the KSC has implemented a 'video visits' system under which detainees can have a minimum of one weekly 'video visit' with their 'close relatives' for a maximum of 45 minutes per 'video visit'; see KSC, Registry Instruction on Video Visits, 23 September 2020, KSC-BD-34 (the 'KSC Instruction on Video Visits'), Section 7.

considerations', but will not entail additional resources in terms of staff, technology and family costs.³²

16. In light of the above, and noting the Registry's specific observations,³³ the Single Judge instructs the Registry to provide each of the accused with one Video-Conferencing session per month of 90 minutes, as soon as practicable, latest by 26 February 2021.

B. The Additional Request

17. The Single Judge takes note that the Registry proposes to apply the 'D[etention] C[entre] definition of family, being the recognized wife, partner or children of a detained person'.³⁴
18. The Single Judge further notes the Additional Request and the Defence's submission that Mr Yekatom's mother has been 'among the first family members added to M[r] Yekatom's non-privileged contact list'.³⁵
19. Taking into account the above and in light of the present circumstances,³⁶ the Single Judge considers that Mr Yekatom's mother should be added to the list of family members with whom Mr Yekatom is entitled to Video-Conferencing.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

PARTIALLY GRANTS the Request;

INSTRUCTS the Registry to facilitate one Video-Conferencing session per month of 90 minutes for each accused, as soon as practicable, latest by 26 February 2021, as set out in paragraph 16 above;

³² See Additional Observations, ICC-01/14-01/18-824-Conf, paras 15-16.

³³ Additional Observations, ICC-01/14-01/18-824-Conf, para. 17.

³⁴ Observations, ICC-01/14-01/18-760-Conf, para. 10, n. 6 *referring to* the Family Visits Policy and, in particular, to the definition of 'family' therein: '*Family* refers to partners or a married couple and their children, including adopted and fostered children, as well as the couple's natural children'.

³⁵ Request, ICC-01/14-01/18-793-Conf-Corr, para. 18, n. 15.

³⁶ The Single Judge further notes that detainees at the KSC are entitled to 'video visits' with their 'close relatives', including 'a spouse or partner, parent, child, grandchild, brother, sister [...], grandparent, and sons- and daughters-in-law'; see KSC Instruction on Video Visits, Section 7.1.

GRANTS the Additional Request; and

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

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

A handwritten signature in black ink, appearing to read 'Bertram Schmitt', is written over a horizontal line.

Judge Bertram Schmitt

Single Judge

Dated this 3 February 2021

At The Hague, The Netherlands