

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/18
Date: 10 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 YEKATOM AND PATRICE-EDOUARD NGAÏSSONA***

PUBLIC

Public redacted version of “Registry Observations on the Assessment of the Feasibility of using Video-Conferencing at the Detention Centre” filed on 9 December 2020, ICC-01/14-01/18-760-Conf

Source: Registry

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

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I. Introduction

1. Following the “Third Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention” (“Third Decision”)¹ issued by Trial Chamber V (“Trial Chamber” or “Chamber”) on 11 November 2020, the Registry is ordered to provide its observations on its assessment of the feasibility of video-conferencing for both Mr Alfred Yekatom and Mr Patrice-Edouard Ngaïssona (“Mr Yekatom” and “Mr Ngaïssona” respectively) from the International Criminal Court’s Detention Centre (“ICC” and “DC” respectively).²

II. Procedural history

2. On 5 October 2020, the Defence for Mr Yekatom filed its “*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*”, requesting an order to the Registry that Mr Yekatom have video-conferencing calls with his family in place of telephone calls, once a week in the place of a telephone call.³
3. In instructing the Registry, the Chamber stated in the Third Decision that it “remains cognisant of the passage of time and the impact that continued extensions of the [COVID-19] Temporary Measures may have on the well-being of the accused. Therefore, the Chamber strongly encourages the Registry to make efforts to assess the feasibility of video-conferencing for both accused.”⁴

III. Classification

¹ Trial Chamber V, “Third Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention”, 11 November 2020, ICC-01/14-01/18-727-Conf.

² *Ibid.*, para. 25.

³ Defence, “*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. 71.

⁴ Third Decision., para. 25.

4. In accordance with regulation 23 *bis* (2) of the Regulations of the Court (“RoC”), the present report is classified as confidential as it follows a decision with the same classification and contains information on Mr Yekatom and Mr Ngaïssona’s private life.

IV. Applicable law

5. For the purpose of the present submission, the Registry has considered regulations 99(1)(i), 100 and 101 of the RoC, and regulations 173, 174, 175, 179, 180, 183, 184 and 185 of the Regulations of the Registry (“RoR”) and the “Detention Centre Policy on Family Visits pursuant to Regulation 179(1) of the Regulations of the Registry”.

V. Submissions

6. As ordered by the Chamber, the Registry has conducted an assessment on the feasibility of video-communication for family members of both Mr Yekatom and Mr Ngaïssona. The Registry observes that, while resource intensive, video-conferencing is technically and logistically feasible to be facilitated for the two accused, and provides the following initial observations on (1) the conditions under which video-conferencing is currently possible for the Registry and (2) the technical and logistical capacity of the Registry to set-up secured video-conferencing for the families of the two accused which respects the restrictions on contact in place.
7. The Registry first informs the Chamber that it has previously contemplated how video-conferenced family visits could be facilitated, in part due to the restrictions on in-person visits at the DC due to the COVID-19 pandemic,⁵ and also due to the lack of consistent funds in the Trust Fund for Family Visits,

⁵ [REDACTED].

which was set up to fund family visits to indigent detained persons at the DC. As a result, consultations [REDACTED] on best practices had taken place earlier this year. The Registry has also been pleased to offer alternatives to in-person legal visits through a similar platform, known as “privileged video communications”, since June 2020.

- i. *Observations on the conditions of video-communications between family members and detained persons*
8. If implemented, video-conferencing would be a new form of communication, resembling a ‘hybrid’ system, between a visit and a telephone call. Should video-conferencing be ordered, the Registry would propose first piloting a test case, and then subsequently working on further appropriate policy and procedural guidelines.
9. The Registry confirms that it has determined a technical platform that is sufficiently appropriate, secure and practical as a video- platform to host the video-conferencing with family members of the two accused.
10. First, the implementation of secured video-conferencing will require extensive Registry resources, logistical planning, and budgetary resources, both in the field and at Headquarters. Therefore, the Registry observes that opportunities for video-conferencing would be strictly limited to maintaining close family contacts with the detained person, as a traditional family visit to a detained person. The Registry would therefore apply the DC definition of family, being the recognized wife, partner or children of a detained person.⁶
11. Second, in order to ensure effective oversight of the video-conference, an ICC staff member will be present at the location of the video-conferencing, in order

⁶ Detention Centre Policy on Family Visits pursuant to Regulation 179(1) of the Regulations of the Registry, “Family refers to partners or a married couple and their children, including adopted and fostered children, as well as the couple’s natural children”.

to ensure that unauthorized persons are not present during the video-conference. This is based on 1) the restrictions on contact as ordered for both Mr Yekatom and Mr Ngaïssona, and the responsibility of the Registry to ensure these restrictions,⁷ as well as 2) the Registrar's responsibilities under, *inter alia*, regulations 173, 179, 180 and 183 of the RoR to approve the contacts and visitors of the detained person and to disallow unauthorized communications with detained persons.

12. Third, all video-conferencing will be actively monitored and recorded, as a security measure and to guard against misuse. This also allows the Registry to continue to ensure the restrictions on contact as ordered for both accused.

13. Fourth, the Registry anticipates to have the capacity to accommodate one video-conference of a one hour duration approximately every four months for Mr Yekatom and Mr Ngaïssona respectively. The video-conference will take the place of one day of actively monitored telephone calls on the scheduled week. This schedule is due to the extensive Registry resources and budget that will be used for each visit. Furthermore, this considers that in implementing a new mode of communication at the ICC the Registry will need to ensure equal access for all detained persons who wish to avail themselves to video-communications. Scheduling for video-conferencing is thus effectively multiplied by the current seven detained persons, and does not take into consideration future increases in detained persons.

⁷ Trial Chamber V, "Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention", 17 April 2020, ICC-01/14-01/18-484-Conf-Exp; Trial Chamber V, "Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention", 17 April 2020, ICC-01/14-01/18-485-Conf-Exp; Trial Chamber V, "Second Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention", 8 July 2020, ICC-01/14-01/18-582-Conf; Trial Chamber V, "Second Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention", 21 August 2020, Trial Chamber V, ICC-01/14-01/18-627-Conf; Trial Chamber V, "Third Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention", 5 October 2020, ICC-01/14-01/18-672-Conf; Trial Chamber V, "Third Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention", 11 November 2020, ICC-01/14-01/18-727-Conf.

14. The Registry reserves the right to implement further conditions to video-conferencing following the test case and further feasibility assessments.

ii. Observations on the technical feasibility of two identified locations

15. The Registry has determined two locations where the recognized family members for Mr Yekatom and Mr Ngaïssona primarily reside, namely, in [REDACTED], and [REDACTED]. Considering that the feasibility of a video-conference in [REDACTED] may prove the most technically and logistically challenging location, the Registry began with a test case into the feasibility of video-conferencing in [REDACTED].

[REDACTED]

16. Based on its assessment, the Registry determined that [REDACTED] was the best location to ensure technical feasibility and security as a video-conferencing location. In terms of location of family members, the Registry also considered it to be a reasonable location for the applicable family members [REDACTED] for the video-conference.

17. During the video-conferencing an ICC staff member [REDACTED] will be present at the location and will monitor the participants within the sight but not necessarily the hearing of the video-conference, unless otherwise requested by the Registry. For the purposes of ensuring the active monitoring of the video-conference, the Registry has ensured a system where staff from the DC and Language Services Section would be present at the video-conference in order to monitor the substance of the conversation.

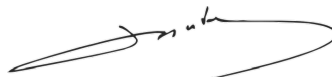
18. In terms of the technical capacity [REDACTED], the Registry conducted several tests between [REDACTED] and the DC with the support of the Information Management Services Section ("IMSS"). This was to assess the quality of the sound and images being emitted and received on both sides of the video-

conference. Steps have been taken to improve the quality, speed and efficiency of the internet connexion [REDACTED]. Family members and the accused will be reminded to speak clearly and one at a time to ensure the best sound quality and also for the interpretation.

19. The Registry further cautions that the scheduling of these video-conferencing times will be a complex endeavour scheduled weeks in advance, and will depend on the operational needs of several Registry sections, and the schedules of the family members and the accused. Therefore, should unforeseen circumstances render a video-conference of unacceptable quality during the scheduled video-conference, it may not always be possible to immediately reschedule the video-conference. Nevertheless, the Registry reports that following the testing, [REDACTED].

[REDACTED]

20. Considering that recognized family members also reside in [REDACTED], the Registry will also explore possibilities to conduct video-conferencing in [REDACTED], under the conditions articulated above. [REDACTED]. [REDACTED].



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 10 February 2021

At The Hague, the Netherlands