

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 “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)”, filed on 15 January 2021, ICC-01/14-01/18-824-Conf

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

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I. Introduction

1. Pursuant to an order of Trial Chamber V (“Trial Chamber” or “Chamber”),¹ the Registry hereby submits its further observations on the filing of the defence for Mr Alfred Yekatom (“Defence” and “Mr Yekatom” respectively), “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” (“Defence Response”).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. On 11 November 2020, the Chamber issued its “Third Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention” (“Third Decision”)⁴ ordering the Registry, *inter alia*, to provide its observations on its assessment of the feasibility of video-conferencing for both Mr Yekatom and Mr

¹ Email from Trial Chamber V to the Registry, “Further observations on the feasibility of video-conferencing”, 7 January 2021 at 13:10. The Chamber presented 5 specific questions, articulated in this filing.

² Defence, “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”, 22 December 2020, ICC-01/14-01/18-793-Conf-Corr.

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 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.

Patrice-Edouard Ngaïssona (“Mr Ngaïssona”) from the International Criminal Court’s Detention Centre (“ICC” and “DC” respectively).⁵

4. On 9 December 2020, the Registry submitted its “Registry Observations on the Assessment of the Feasibility of using Video-Conferencing at the Detention Centre” (“Registry Observations”),⁶ providing its 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, while ensuring the restrictions on contact as ordered by the Chamber.⁷
5. On 22 December 2020, the Defence submitted its Defence Response, requesting the Chamber, *inter alia*, to order the Registry to accommodate “two hours of videoconferencing calls on a monthly basis”.⁸

III. Classification

6. 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 and documents with the same classification, and contains discussion on the Registry’s internal operations.

IV. Applicable law

7. 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”).

⁵ *Ibid.*, para. 25.

⁶ Registry, “Registry Observations on the Assessment of the Feasibility of using Video-Conferencing at the Detention Centre”, 9 December 2020, ICC-01/14-01/18-760-Conf.

⁷ *Ibid.*, para. 6.

⁸ Defence Response, para. 27.

V. Submissions

8. As a preliminary matter, the Registry respectfully informs the Chamber that, concurrent to this Chamber's order for observations on the feasibility of video-conferencing,⁹ following the Defence request,¹⁰ the Registry is assessing the feasibility of offering video-conferencing with family members to all detained persons. The Registry considers it essential to offer this opportunity equally to all detained persons at the DC.¹¹ To this end, the Registry recalls its submissions that it envisages these video-conferencing possibilities to be alternatives to the family visits that the Registry is able to organize on the basis of the funds that may be available in the Trust Fund for Family Visits,¹² and not as a substitute for regular telephone calls and active monitoring.
9. At this time, with its current resources, the Registry anticipates being able to facilitate approximately two video-conferencing activities per month in total, and thus these approximate 24 slots of possibility would need to be shared and distributed as equally as possible amongst the detained persons in the DC, at a given time, who would like to participate. At this time it is not feasible to facilitate one video-conference a month per detained person.
10. In this regard, the Registry's submissions on facilitating one video-conference approximately every four months per detained person¹³ was calculated based on this premise of equal access. The calculation of approximately 24 sessions

⁹ Third Decision, para. 25.

¹⁰ 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.

¹¹ See also, *Prosecutor v. Karadžić*, "Registrar's submission on Karadžić's "motion for an order requiring progress reports on Skype"" stating: "I emphasise that the Registry's decision to initiate the pilot project into video communication at the UNDU is a policy choice that is intended to benefit all detainees, not only Mr. Karadžić", MICT-13-55-ES D7-D4, 3 April 2019, para. 6.

¹² Registry Observations, para. 7.

¹³ Registry Observations, "Fourth, the Registry anticipates to have the capacity to accommodate one videoconference of a one hour duration approximately every four months for Mr Yekatom and Mr Ngaïssona respectively", para. 13.

was based on the Registry being able to absorb the budget and staff requirements needed in creating a novel video-conferencing possibility within the Registry's existing budgetary and staff resources. The Registry notes that the current calculations are without prejudice to future circumstances, and the Registry will be able to evaluate further possibilities once the system is in place.

11. Calculations also take into consideration that families of the detained persons in the DC hail from diverse locations, some in remote locations, or insecure environments, some without ICC country offices, where it may be difficult to facilitate regular and consistent Internet connection for video-conferencing, necessitating additional resources to set up secure locations, technical connections, and staff missions to implement these conferences. There will also likely be different requirements when a video-conference is actively monitored vs passively monitored, and for whether the family is close to an ICC country office or in a remote location.

- i. *The differences between the platform for 'privileged video communications', offered by the Registry as an alternative to in-person legal visits at the Detention Centre since June 2020, and the 'technical platform' determined as 'sufficiently appropriate, secure and practical' to host the video-conferencing with family members of the accused*

12. The Registry confirms that the platform identified to host the video-conferencing in the locations for the two Accused is essentially the same as the one used for privileged video communications with Defence teams. [REDACTED].

- ii. *The specific 'extensive Registry resources, logistical planning, and budgetary resources, both in the field and at Headquarters' that will be required to host the video-conferencing with family members of the accused*

13. In terms of technical resources, video platforms to remote locations rely upon the existence of a good Internet connection. As a result of the technical tests with [REDACTED].
 14. For video-conferencing in remote locations, if there is not a good Internet connection then the only alternative is to utilise [REDACTED]. For the Information Management Services Section of the Registry, this may entail financial resources [REDACTED] and staff resources [REDACTED].
 15. In the experience of the Registry, the facilitation of a single video-conference entails considerable staff resources and logistical planning, but for video-conferencing at [REDACTED] these can be absorbed. [REDACTED]. In terms of logistical planning, [REDACTED]. Logistical considerations also include [REDACTED], and coordination between family members and Defence team members in organizing the arrangements for the family. Included in the Registry's global calculations is that video-conferences in other locations may entail additional resources including missions of 2-3 days, and the use of external international partners in order to facilitate some video-conferences.
 16. In terms of budget, it is not anticipated that additional staff, technology and family costs will be needed for video-conferencing for the two Accused taking place [REDACTED]. For the implementation of the DC wide video-conferencing possibility, the Registry has considered staff costs, the possibility of additional technology costs, mission costs (travel, daily subsistence allowance ("DSA"), danger pay), and possible additional costs for family members that are remote (which may require special transportation, travel, DSA, location rental costs).
- iii. *Whether extending the duration of video-conferencing from one to two hours or facilitating shorter but more frequent time slots would be technically and logistically feasible*

17. The Registry would strongly prefer a longer call rather than more frequent and shorter calls, as the bulk of the Registry resources will be dedicated to the logistical set up of facilitating each video-conference. Longer calls would be scheduled in 45 minute increments, with a break in-between, which is the standard work environment for LSS Field Interpretation. More frequent video-conferences would be technically feasible, but would have a logistical and financial impact, as articulated above.

iv. The necessity of ICC staff members monitoring the video-conference from both the location of the accused and the location of the family members; or whether remote live monitoring of the video-conference by adding a third participant to the video-conference to ensure its effective oversight would be technically feasible

18. The Registry wishes to clarify that remote live monitoring of the video-conference will be in place and that the Registry will be connected as a third participant to all video-conferences in order to actively monitor both the audio and the visual of the conference. This necessity is not only to comply with restrictions on contact, but is also to ensure that the communication does not breach any ICC Regulation, similar to the procedure how family or other visits not subject to active monitoring are still conducted within the sight and hearing of staff at the DC.¹⁴ It is also necessary in fulfilling the Registry's duty to protect victims and witnesses.¹⁵

19. On a technical level, the Registry would be listening to the audio and watching the video, therefore able to verify if an unauthorized person was speaking or present at the location of the family. However, the Registry would not be able to secure the environment where the family is located without the presence of

¹⁴ Regulation 183 (1) of the Regulations of the Registry.

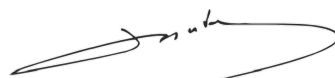
¹⁵ Article 68, Rome Statute of the International Criminal Court.

an ICC staff member (at the location).¹⁶ An insecure environment invites the possibility, for example, of a third party listening, taking photographs, or recording the video/call in violation of the Regulations of the Registry. A further consideration in the case of the current Accused are their restrictions of contact to only those individuals duly verified by the Registry.

- v. Whether the Registry has completed all necessary tests regarding the feasibility of video-conferencing in the relevant locations*

20. The Registry confirms that it has completed the necessary technical arrangements for video-conferencing from [REDACTED]. [REDACTED]. [REDACTED].

21. Finally, the Registry anticipates a pilot phase to be able to assess how video-conferencing communications unfold, with Mr Yekatom and Mr Ngaissona being the first detained persons to pilot the system.



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

Dated this 10 February 2021

At The Hague, the Netherlands

¹⁶ The ICC staff member would be at the location but not in the room listening to the video-conference, that would be done remotely.