

**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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public with confidential Annex A

**Public Redacted Version of “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**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Counsel representing Mr. Alfred Rombhot Yekatom (the “Defence”) appreciates the Registry’s continuous work on assessing the feasibility of using videoconferencing at the ICC Detention Centre (the “DC”) and hereby responds to the “Registry Observations on the Assessment of the Feasibility of using Video-Conferencing at the DC” (the “Observations”).¹
2. The Defence contends that a videoconference call with family members of 1 hour every 4 months (the equivalent of 3 hours per year) is insufficient. This proposal is:
 - A. An unreasonable temporary substitution for Mr. Yekatom’s right to receive family visits;
 - B. Inadequately substantiated by the Registry; and
 - C. At odds with the current practice of both other International Tribunals and the Host State.
3. The Defence requests 2 hours of videoconference calls conducted on a monthly basis (the equivalent of 24 hours per year).

PROCEDURAL BACKGROUND

4. On 5 October 2020, the Defence 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 »*”, requesting Mr. Yekatom to be allowed to have videoconference calls with his family once a week, in place of on of his usual telephone calls slots.²

¹ [ICC-01/14-01/18-760-Conf.](#)

² [ICC-01/14-01/18-683-Conf-Exp.](#), paras. 71-73.

5. On 11 November 2020, the Chamber stated in its Third Decision on Mr. Yekatom's Restrictions on Contacts and Communications in Detention that it [REDACTED].³
6. On 9 December 2020, the Registry in its "Registry Observations on the Assessment of the Feasibility of using Video-Conferencing at the Detention Centre", indicated that, while videoconference calls between a detainee and his family are possible, the constraints entailed by such a system would only allow for one hour of video call every four months.⁴

APPLICABLE LAW

Regulation 90 of the Regulation of the Court (the "RoC") provides that: RoC

1. Subject to the Statute, Rules and these Regulations, the Registrar shall have overall responsibility for all aspects of management of the detention centre, including security and order, and shall make all decisions relating thereto.
2. The day-to-day fulfilment of the functions described in sub-regulation 1 shall be delegated to the Chief Custody Officer. The Chief Custody Officer may, as appropriate, delegate specific functions to other persons.

Regulation 91 of the RoC provides that:

1. All detained persons shall be treated with humanity and with respect for the inherent dignity of the human person.
2. There shall be no discrimination of detained persons on grounds of gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status. Measures applied under these Regulations and the Regulations of the Registry to protect the rights and special status of particular categories of detained persons shall not be deemed to be discriminatory.

Regulation 100 of the RoC provides that:

³ [ICC-01/14-01/18-727-Conf](#), para. 25.

⁴ [ICC-01/14-01/18-760-Conf](#).

1. A detained person shall be entitled to receive visits.
2. A detained person must be informed of the identity of each visitor and may refuse to see any visitor.
3. The relevant conditions for visits as well as restrictions and supervision that may be necessary in the interests of the administration of justice or for the maintenance of the security and good order of the detention centre shall be set out in the Regulations of the Registry.

SUBMISSIONS

A. A reasonable alternative to Mr. Yekatom's right to receive family visit is required

7. The accused is presumed innocent until proven guilty. The Registry, as the entity responsible for all aspects of management of the DC, has the paramount task to ensure all detained persons are treated with humanity and with respect for the inherent dignity of the human person.⁵
8. One aspect of the inherent human dignity of the person is the entitlement to receive visits, including family visits, as stipulated in Regulation 100 of the Regulations of the Court.⁶ A suspension of this right requires a reasonable alternative to mitigate the negative effects on the detained person.
9. The responsibility to actively facilitate family visits to the DC was emphasized by the Presidency in the *Katanga & Ngudjolo* case when it recognised its importance:

The right to receive family visits fundamentally affects the well-being of the detained person; his connection to his family being a central component of his identity. The Presidency has recognised, in a previous decision, the importance of maintaining family ties for the well-being of the detained person and that the lack of family visits may cause a degree of emotional hardship for the detained person and affect his morale. The

⁵ See Regulation 90 and 91 of the Regulations of the Court.

⁶ See Regulation 100 of the Regulations of the Court.

maintenance of family ties through family visits facilitates a detained person's re-integration into society in the event of an acquittal or his social rehabilitation upon release in the event of conviction. The maintenance of family contact also assumes particular importance in the context of detention, bearing in mind the cultural isolation which might be experienced by detained persons who are transferred long distances to a new environment entailing differences in cuisine, language, religion and custom. The detained person's right correlates with the interests of other affected individuals such as those of his children of minority age who wish to have contact with their detained parent. It further coincides with the obligation upon the Registrar to fulfill her duty of care to maintain the physical and psychological well-being of detained persons.⁷

10. In the case where such family visits, as currently, are unattainable, an obligation arises to facilitate face-to-face contact between the family and the detainee to uphold the inherent dignity of the human person and the right to family visits.

B. Substantiation of additional resources by the Registry

11. The Defence takes issue with the lack of substantiation by the Registry that has led to the decision of offering only 1 hour of videoconferencing per 4 months (the equivalent of 3 hours per year). The Chamber should request the further substantiation on what Registry resources, logistical planning, and budgetary resources are incurred from using videoconferencing during allocated telephone call slots.⁸
12. *First*, the ICC staff member who “will be present at the location of the videoconferencing, in order to ensure that unauthorized persons are not present during the videoconference” is most probably a staff member who is already tasked with this duty. [REDACTED]. It is, therefore, unclear to the Defence whether or not the Registry’s Observation refers to an additional ICC staff member that needs to be present at the location of the videoconferencing to

⁷ *Prosecutor v. Katanga & 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"](#), ICC-RoR217-02/08-8, 10 March 2009, para. 35.

⁸ [ICC-01/14-01/18-760-Conf](#), para. 10.

verify the identity of the family members of Mr. Yekatom when entering the premises.⁹

13. *Second*, Mr. Yekatom's restriction on contacts implies that his telephone communications are actively monitored during his assigned time slots. The Defence believes that the active monitoring of videoconferencing,¹⁰ would be conducted in a similar manner. [REDACTED] Mr. Yekatom's non-privileged conversations will be similar if not equivalent. Their tasks or the number of staff involved should not increase.
14. *Third*, given that the Registry has also been able to offer alternatives to in person legal visits through a similar platform, known as "privileged videocommunications", since June 2020, the Defence notes that with "administrator rights" active monitoring can be conducted through that online platform, and the administrator can record the communication or cut the conversation (just like in normal telecommunication). In addition, the interpreter in charge of the active monitoring will just have to join the videocall (a feature present on all video communication software), as it is done with a regular phone call.
15. In a similar manner, the Defence notes that it is unclear why the scheduling of videoconferencing would be 'multiplied by the current seven detained persons',¹¹ if the videoconferencing is conducted during the allocated telephone call slots that are already in place. All detainees are allowed telephone calls, regardless as to whether they are monitored or not. Replacing phone calls for the detainees by videoconference calls during the same pre-scheduled time slots

⁹ [ICC-01/14-01/18-760-Conf](#), para. 11.

¹⁰ [ICC-01/14-01/18-760-Conf](#), para. 12.

¹¹ [ICC-01/14-01/18-760-Conf](#), para.13.

doesn't multiply the number of communications, it should rather be seen as a substitute.

16. In sum, the Defence remains unsure which 'extensive Registry resources' would exactly be impacted with the initiation of videoconferencing at the CO and DC¹² to a point where videoconferencing can only be offered for one hour every four months.
17. The Defence emphasizes that, once a call is initiated, there are lower sunken costs when the call is continued for a longer duration. Namely, the suggested resources invested in security and videoconference facilitation will no longer increase, and a longer duration of videoconferencing merely incurs costs for extended active monitoring. The Defence suggests that longer calls are possible considering the lower sunken costs of prolonged videoconferencing. Given the stark difference between the Defence original suggestion and the Registry proposal,¹³ the Defence contends that a proper alternative would be to allow Mr. Yekatom to have videocalls with his family, subject to active monitoring, once a month for a duration of two hours.
18. In addition, concerning the persons that are authorized to enter and initiate video-contact with Mr. Yekatom at the country office, the Defence stresses that the DC definition of family should include the mother.¹⁴ Should the Chamber allow videoconference calls with Mr. Yekatom, the Defence respectfully requests that his mother also be authorised to participate along with his wife/partners and children.¹⁵

C. Current practice of both other International Tribunals and the Host State concerning videoconferencing

¹² [ICC-01/14-01/18-760-Conf](#), para. 10.

¹³ [ICC-01/14-01/18-683-Conf-Exp](#), paras. 71-73, requesting one videocall every week.

¹⁴ [ICC-01/14-01/18-760-Conf](#), para. 10.

¹⁵ The Registry in its Observations has omitted her although she has been among the first family members added to Mr. Yekatom's non-privileged contact list.

i) The IRMCT interim approach to Video-Conferencing in the UNDU

19. The Defence notes that the Registry participated in consultations with other tribunals on the best practices concerning videoconferencing.¹⁶ The Registry, therefore, must be aware that the International Residual Mechanism for Criminal Tribunals (IRMCT) does offer videoconferencing, for example in the case of Karadžić.¹⁷ The video calls by Karadžić last 15 minutes and can be on a weekly basis (amounting to 13 hours per year).¹⁸
20. The president of the IRMCT, Carmel Agius, ordered the institution of temporary video communications because ‘neither written communications nor telephone calls could properly replace face-to-face meetings while visits were prohibited due to the pandemic’.¹⁹ As a result, the Registrar of the IRMCT informed Mr. Karadžić that video calls will be made available to detainees at the UNDU while the COVID-19 restrictions on visits are still in place.²⁰
21. The Registry at the ICC proposes to first pilot a test case and work on appropriate policy and procedural guidelines.²¹ Such an endeavour would inevitably take a long time and would require a strict time limit. However, it is also irreconcilable with the IRMCT’s precedent, where video calls were made available to detainees at the UNDU as an emergency *interim measure* due to COVID-19 restrictions on visits. The Video Telecommunication Pilot Project, even though previously put on hold, is assessed now during the COVID-19 pandemic, to see if it is to be used during ‘normal circumstances’ as well. The pilot testing and working on further appropriate policy and procedural

¹⁶ [ICC-01/14-01/18-760-Conf](#), para 7.

¹⁷ *Prosecutor v. 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 D148-D143.

¹⁸ BALKANINSIGHT, [Radovan Karadzic Temporarily Allowed Video Calls From Detention](#), 28 May 2020.

¹⁹ *Prosecution v. Karadžić*, [Decision on request for review of registrar’s decision on video communications](#), MICT-13-55-ES, 16 April 2020.

²⁰ *Prosecutor v. 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 D148-D143.

²¹ [ICC-01/14-01/18-760-Conf](#), para.8.

guidelines before starting videoconferences, as proposed by the Registry, is therefore at odds with the Mechanism's approach. It should not lead to any extensive time required to find a proper substitute to the suspension of family visits.²²

ii) The Host State's approach to videoconferencing in the UNDU

22. The Host State's practice is also at odds with the Registry observations. It also appears that the Host State has also made video-calls with family members of the detainees possible.²³
23. Similar measures with videoconferencing possibilities in weekly or monthly intervals have also been taken by Belgium²⁴, Spain²⁵, and the United States²⁶ among others.
24. Institutions such as the aforementioned prisons, but also schools and universities as well as national and international companies have rapidly adjusted to the challenges faced during the COVID-19 pandemic, whereas the ICC DC lacks the innovation needed in these challenging times. An institution such as the ICC should be in a position to rapidly respond to the challenge. While Mr. Yekatom had regularly received family visits²⁷ those have been suspended since 19 March 2020²⁸ while he had the visit of his spouse and children, including his last born which he met for the first time. Nine months without being able to receive any visit from family has a negative impact on the well-being of any individual due to the social isolation induced.

²² *Prosecutor v. Karadžić*, [Registrar's submission pursuant to the president's "decision on request for review of Registrar's decision on video communications"](#) of 16 April 2020, 15 June 2020, MICT-13-55-ES D141-D131;

²³ RTV UTRECHT, "[Tablets naar gevangenen zodat gedetineerden kunnen videobellen](#)", 10 April 2020, concerning the 850 tablets that were distributed among detainees to video call with family.

²⁴ HLN, "[Gedetineerden mogen één maal per week videochatten met familie en vrienden](#)", 2 May 2020.

²⁵ CRONICA, "[Videollamadas en la cárcel de cuatro caminos para sustituir los vis a vis](#)", 24 March 2020.

²⁶ SLATE, "[Life Has Moved to Zoom. Can Prison Visitation Do the Same?](#)", 28 April 2020; THE APPEAL, "[With prison visitation suspended due to covid-19, families of incarcerated people say phone calls should be free](#)", 2 April 2020.

²⁷ [ICC-01/14-01/18-62-Conf-Exp](#), para. 15 : [REDACTED].

²⁸ [ICC-01/14-01/18-665-Conf](#).

25. There should be a positive obligation upon the Registry to implement a reasonable amount of videoconferencing between detainees and their family. The Defence respectfully submits that 1 hour every 4 months cannot be considered reasonable. The need for organizing videoconferencing with family members for Mr. Yekatom is even more compelling given the suspension of family visits since March 2020.
26. The Registry is a neutral organ of the Court and its main purpose is to provide services to all other organs. Whether or not the implementation of secured video-conferencing is resource intensive due to logistical planning, and budgetary resources, is no reason to deprive a detainee of family visits through videoconferencing. It should not be the main consideration. The main concern should be that Mr. Yekatom is currently deprived of a human right and a reasonable alternative should be implemented to ensure the effectiveness of that right of Mr. Yekatom to receive family visits.

CONCLUSION

27. The Defence believes that two hours of videoconferencing calls on a monthly basis (the equivalent of 24 hours per year) during the currently allocated telephone call slots is reasonable and feasible. The Defence respectfully requests the Chamber to instruct the Registry as such.
28. The Defence greatly appreciates the Registry's efforts and remains committed to cooperating with the Registry to facilitate videoconferencing in the interest of rights and well-being of the detained person

CONFIDENTIALITY

29. This pleading is filed confidentially because it responds to Observation that has been filed confidentially and for which no public redacted version has yet been filed. The Chamber is respectfully requested to issue a public redacted version

of its decision and order the parties to file public redacted versions of their submissions.

RESPECTFULLY SUBMITTED ON THIS 10TH DAY OF FEBRUARY 2021²⁹



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²⁹ The assistance of Legal Consultant Alexander Wolffenbuttel in the research for this motion is gratefully acknowledged.