



Original: English

No. ICC-01/14-01/18
Date of original: 17 April 2020
Date: 16 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
NGAISSONA

Public redacted version of

**Decision on Mr Yekatom's Restrictions on Contacts and Communications in
Detention**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 57, 61(11), 64 and 68(1) of the Rome Statute (the ‘Statute’), Regulations 96 and 99-101 of the Regulations of the Court (the ‘Regulations’) and Regulations 167-170, 173-175, 177-180, 182-185 and 187 of the Regulations of the Registry issues this ‘Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention’.

I. Procedural history and submissions

1. Upon Mr Yekatom’s surrender to the Court on 17 November 2018, Pre-Trial Chamber II (the ‘PTC II’) issued several decisions pursuant to Regulation 101 of the Regulations restricting his contacts and communications during pre-trial detention (the ‘Pre-Trial Restrictions’).¹

¹ Decision pursuant to Regulation 101 of the Regulations of the Court, 17 November 2018, ICC-01/14-01/18-11-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (the ‘17 November 2018 Decision’); Second Decision Pursuant to Regulation 101 of the Regulations of the Court, 4 December 2018, ICC-01/14-01/18-25-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (the ‘4 December 2018 Decision’); Third Decision Pursuant to Regulation 101 of the Regulations of the Court, 10 January 2019, ICC-01/14-01/18-52-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (the ‘10 January 2019 Decision’); Fourth Decision Pursuant to Regulation 101 of the Regulations of the Court, 1 February 2019, ICC-01/14-01/18-75-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (the ‘1 February 2019 Decision’); Fifth Decision Pursuant to Regulation 101 of the Regulations of the Court, 15 February 2019, ICC-01/14-01/18-86-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (the ‘15 February 2019 Decision’); Decision Pursuant to Regulation 101 of the Regulations of the Court, 1 March 2019, ICC-01/14-01/18-137-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence, the Ngaïssona Defence and the Registry (the ‘1 March 2019 Decision’); Decision Pursuant to Regulation 101 of the Regulations of the Court, 15 April 2019, ICC-01/14-01/18-176-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-176-Conf-Red) (the ‘15 April 2019 Decision’); Decision Pursuant to Regulation 101 of the Regulations of the Court, 9 July 2019, ICC-01/14-01/18-241-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (the ‘9 July 2019 Decision’); Decision Pursuant to Regulation 101 of the Regulations of the Court, 17 September 2019, ICC-01/14-01/18-350-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry; Decision Pursuant to Regulation 101 of the Regulations of the Court, 6 December 2019, ICC-01/14-01/18-402-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry; Decision Pursuant to Regulation 101 of the Regulations of the Court, 17 January 2020, ICC-01/14-01/18-419-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry; Decision Pursuant to Regulation 101 of the Regulations of the Court, 6 March 2020, ICC-01/14-01/18-441-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential *ex parte* redacted version, only available to the Prosecution, the Yekatom Defence and the Registry, notified the same day, ICC-01/14-01/18-441-Conf-Exp-Red) (the ‘6 March

2. PTC II ordered the Registry to submit reports on the implementation of its decisions pursuant to Regulation 101 of the Regulations.² Accordingly, the Registry filed these reports.³
3. On 15 April 2019, when the Chamber extended the restrictive measures for the remainder of the pre-trial proceedings, it requested the Registry to submit a report every two months on the implementation of the restrictions in place.⁴ PTC II established the following procedure for its review of Pre-Trial Restrictions (the ‘Reporting Procedure’): (i) the Registry shall submit separate reports on the implementation of the restrictive measures (the ‘Registry Reports’), together with confidential redacted versions of said reports, every two months, and inform PTC II of any violation of the applicable restrictions or

2020 Decision’). *See also* Redacted Second Decision pursuant to Regulation 101 of the Regulations of the Court, 29 January 2019, ICC-01/14-01/18-106-Conf-Exp-Red, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence, the Ngaïssona Defence and the Registry (the ‘29 January 2019 Decision’).

² *See* 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, p. 6; 4 December 2018 Decision, ICC-01/14-01/18-25-Conf-Exp, p. 6; 10 January 2019 Decision, ICC-01/14-01/18-52-Conf-Exp, p. 8; 1 February 2019 Decision, ICC-01/14-01/18-75-Conf-Exp, p. 8; 15 February 2019 Decision, ICC-01/14-01/18-86-Conf-Exp, p. 8.

³ *See* Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge, 30 November 2018, ICC-01/14-01/18-23-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (with confidential *ex parte* Annexes I and II, only available to the Yekatom Defence and the Registry) (confidential redacted version of the report and the annexes, only available to the Prosecution, the Yekatom Defence and the Registry, notified on 6 December 2018); Second Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II, 14 December 2018, ICC-01/14-01/18-32-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential redacted version, only available to the Prosecution, the Yekatom Defence and the Registry, notified the same day); Third Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II, 23 January 2019, ICC-01/14-01/18-62-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (with confidential *ex parte* Annexes I-IV, only available to the Yekatom Defence and the Registry) (confidential redacted version of the report and annexes II and IV, only available to the Prosecution, the Yekatom Defence and the Registry, notified on 25 January 2019); Fourth Registry Report on the Implementation of the Restrictions on Contact Ordered by Pre-Trial Chamber II, 11 February 2019, ICC-01/14-01/18-81-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential redacted version, only available to the Prosecution, the Yekatom Defence and the Registry, notified the next day); Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, 25 February 2019, ICC-01/14-01/18-124-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential redacted version, only available to the Prosecution, the Yekatom Defence and the Registry, notified the next day); Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, 08 April 2019, ICC-01/14-01/18-167-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (with confidential *ex parte* Annexes I-IV, only available to the Yekatom Defence and the Registry) (confidential redacted version of the report and the annexes, only available to the Prosecution, the Yekatom Defence and the Registry, notified the same day).

⁴ *See* 15 April 2019 Decision, ICC-01/14-01/18-176-Conf-Red, para. 32.

other significant developments immediately; (ii) the Office of the Prosecutor (the ‘Prosecution’) shall submit observations on the Registry Reports, if any, together with confidential redacted versions of said observations, within five days of notification; and (iii) the Yekatom and the Ngaïssona Defence shall submit observations on the respective Registry Reports, as well as on the Prosecution’s observations, if any, together with confidential redacted versions of said observations, within 10 days of notification of the Registry Reports.⁵ Accordingly, the Registry filed these reports.⁶

4. On 18 March 2020, the Yekatom Defence (the ‘Defence’) requested certain modifications to the restrictions in place, in particular, to suspend random active monitoring of his telephone contacts and communications during the Coronavirus disease (COVID-19) pandemic (the ‘Request’ and the ‘Coronavirus Pandemic’, respectively).⁷ It requests the replacement of random active monitoring with passive monitoring in these circumstances, and

⁵ 15 April 2019 Decision, ICC-01/14-01/18-176-Conf-Red, para. 32.

⁶ Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, 17 June 2019, ICC-01/14-01/18-226-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (with confidential *ex parte* Annex I and II, only available to the Yekatom Defence and the Registry) (confidential redacted version of the report and Annex I, only available to the Prosecution, the Yekatom Defence and the Registry, notified the same day); Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Yekatom, 15 August 2019, ICC-01/14-01/18-277-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry; Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, 15 October 2019, ICC-01/14-01/18-386-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry; Tenth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, 16 December 2019, ICC-01/14-01/18-406-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry; Eleventh Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, 17 February 2020, ICC-01/14-01/18-428-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential *ex parte* redacted version, only available to the Prosecution, the Yekatom Defence and the Registry, notified the same day); Twelfth Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, 17 April 2020, ICC-01/14-01/18-481-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry.

⁷ Yekatom Defence Request to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic, 18 March 2020, ICC-01/14-01/18-458-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (with confidential *ex parte* Annex A, only available to the Prosecution, the Yekatom Defence and the Registry).

reinstatement of random active monitoring, if necessary, pursuant to Regulation 175 of the Regulations of the Registry.⁸

5. In support of this request, the Defence asserts that ‘the outbreak of coronavirus pandemic changes the balance between Mr Yekatom’s right to maintain family life and contact with the outside world, and the necessity of ensuring the safety of witnesses, the preservation of evidence and the integrity of the proceedings’.⁹ The Defence states that [REDACTED].¹⁰ The Defence adds that in view of cancellation of all visits to the Detention Centre during the Coronavirus Pandemic, he faces ‘unprecedented social isolation’ and submits that this could be alleviated by allowing him to make telephone calls on a daily basis with his family.¹¹ The Defence notes additionally that, since the restrictions ordered by the PTC II expire at the end of the pre-trial proceedings, the Trial Chamber would necessarily have to itself consider the issue of restrictions.¹²
6. The Defence further requests that a decision on the Request be issued publicly because conditions of detainees are a legitimate subject of public interest and the subject-matter of the present decision is unlikely to jeopardise the security at the Detention Centre or infringe on his privacy.¹³
7. On 24 March 2020, following an inquiry by the Prosecution,¹⁴ the Chamber clarified that the Pre-Trial Restrictions remain in place until the Chamber has issued its decision on restrictions.¹⁵
8. On 27 March 2020, the Prosecution submitted a response opposing the Request (the ‘Prosecution Response’).¹⁶ It asserts that the risk that Mr Yekatom would interfere with witnesses and/or the investigation continues to remain high

⁸ Request, ICC-01/14-01/18-458-Conf-Exp, para. 20.

⁹ Request, ICC-01/14-01/18-458-Conf-Exp, para. 18.

¹⁰ Request, ICC-01/14-01/18-458-Conf-Exp, para. 19.

¹¹ Request, ICC-01/14-01/18-458-Conf-Exp, para. 22.

¹² Request, ICC-01/14-01/18-458-Conf-Exp, para. 10.

¹³ Request, ICC-01/14-01/18-458-Conf-Exp, para. 24.

¹⁴ Email from the Prosecution to the Chamber and the Yekatom Defence, 24 March 2020, at 18:06.

¹⁵ Email from the Chamber to the Prosecution and the Yekatom Defence, 24 March 2020, at 19:46.

¹⁶ Réponse de l’Accusation à la requête de la Défense ‘to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic’ (ICC-01/14-01/18-458-Conf-Exp), 27 March 2020, ICC-01/14-01/18-465-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry.

following the confirmation of charges, given that identities of Prosecution witnesses have now been communicated to him.¹⁷ According to the Prosecution, suspension of these measures would increase the potential for violations.¹⁸ The Prosecution avers that Mr Yekatom continues to have at his disposal a network of supporters likely to interfere with the integrity of the proceedings.¹⁹ It also reasserts that the security situation in the Central African Republic (the ‘CAR’) continues to remain volatile.²⁰ As regards the request concerning the Coronavirus Pandemic, the Prosecution points out that there exists no indication as to how long the pandemic is expected to last in the CAR and therefore, any suspension of active random monitoring because of the Coronavirus Pandemic would imply that Mr Yekatom could continue to engage in violations indefinitely.²¹ In response to the request to render the present decision publicly, the Prosecution responds that rendering this decision publicly would risk informing Mr Yekatom’s contacts and supporters of the details of the measures in place, and especially of the temporary suspension of the active monitoring, should the Chamber grant the Request.²²

9. On 30 March 2020, as directed by the Chamber,²³ the Detention Section filed its observations (the ‘Registry Observations’).²⁴ The Registry submits that, as of 13 March 2020, all visits to the Detention Centre have been temporarily suspended, including legal visits, which can continue to take place through telephone and the Defence network.²⁵ It provides details about alterations in the

¹⁷ Prosecution Response, ICC-01/14-01/18-465-Conf-Exp, paras 6-8.

¹⁸ Prosecution Response, ICC-01/14-01/18-465-Conf-Exp, para. 8.

¹⁹ Prosecution Response, ICC-01/14-01/18-465-Conf-Exp, para. 8.

²⁰ Prosecution Response, ICC-01/14-01/18-465-Conf-Exp, para. 10.

²¹ Prosecution Response, ICC-01/14-01/18-465-Conf-Exp, para. 7.

²² Prosecution Response, ICC-01/14-01/18-465-Conf-Exp, para. 14.

²³ The Chamber directed the Detention Centre to make submissions on the Request. See email from the Chamber to the Detention Section, the Prosecution and the Yekatom Defence, 19 March 2020, at 17:21.

²⁴ Registry Observations on ‘Yekatom Defence Request to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic’, (ICC-01/14-01/18-458-Conf-Exp) and Report on Active Monitoring, ICC-01/14-01/18-467-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry (with confidential *ex parte* Annex I, only available to the Yekatom Defence and the Registry; and confidential *ex parte* Annex II, only available to the Prosecution, the Yekatom Defence and the Registry).

²⁵ Annex II to the Registry Observations, ICC-01/14-01/18-467-Conf-Exp-AnxII, p. 2.

conduct of the active monitoring operations and reports that there are no challenges preventing active monitoring for Mr Yekatom in its current form.²⁶

10. The Registry further indicates that [REDACTED].²⁷ [REDACTED].²⁸ Lastly, the Registry reports an incident of a telephone call between Mr Yekatom and another speaker discussing Mr Yekatom's case in obscure language.²⁹

II. Classification

11. The Chamber first turns to the Defence's request that a decision on the Request should be issued publicly.³⁰ The Chamber notes that the Registry filed its observations confidential *ex parte*, only available to the Defence, the Prosecution, and the Registry, as they contain sensitive information on Mr Yekatom's private life and detention-related matters.³¹
12. Taking into account the circumstances of the case as a whole as well as the Chamber's analysis of the Defence's arguments provided below, the Chamber is not persuaded that the public interest in rendering this decision publicly outweighs the concerns of maintaining security at the Detention Centre and the integrity of the proceedings. The Chamber notes that the Request concerns, *inter alia*, the internal management and security of the Detention Centre and, for this reason, considers that it is appropriate to issue this decision confidentially, with a public redacted version to follow.

III. Analysis

A. The restrictions in place

13. The restrictions currently in place are as follows (the 'Current Restrictions'):

²⁶ Registry Observations, ICC-01/14-01/18-467-Conf-Exp, paras 16, 18.

²⁷ See Registry Observations, ICC-01/14-01/18-467-Conf-Exp, para. 17.

²⁸ Registry Observations, ICC-01/14-01/18-467-Conf-Exp, paras 20-23.

²⁹ Registry Observations, ICC-01/14-01/18-467-Conf-Exp, paras 25-26.

³⁰ Request, ICC-01/14-01/18-458-Conf-Exp, para. 24.

³¹ Registry Observations, ICC-01/14-01/18-467-Conf-Exp, para. 11.

- i. *Contact between Mr Yekatom and Mr Ngaïssona:* Mr Yekatom is allowed to have contact with Mr Ngaïssona.³²
- ii. *Non-privileged telephone calls:*
 - a. Identities and contact details of individuals have to be duly verified beforehand by the Chief Custody Officer, who may request support of the Victims and Witnesses Unit (the ‘VWU’).³³
 - b. Family: Mr Yekatom may call members of his family.³⁴
 - c. Other individuals: Mr Yekatom may call other individuals where they have been duly verified.
 - d. All telephone calls are subject to random active monitoring.³⁵
 - e. After two persons [REDACTED] were added to Mr Yekatom’s non-privileged telephone contact list, the Chamber ordered the Registry to substantially increase the frequency of the random monitoring of Mr Yekatom’s telephone calls with these persons.³⁶
 - f. Mr Yekatom may use 90 minute periods, two days a week for these calls (i.e. 180 minutes per week).³⁷
- iii. *Non-privileged visits:*
 - a. Identities and contact details of individuals have to be duly verified beforehand by the Chief Custody Officer, who may request support of the VWU.³⁸
 - b. Family: Mr Yekatom may receive visits from his wife and children without any monitoring or the use of sensitive listening devices.³⁹
 - c. Other individuals: Mr Yekatom may receive visits from individuals whose identities have been verified.⁴⁰ These visits are subject to random active monitoring.⁴¹

³² 29 January 2019 Decision, ICC-01/14-01/18-106-Conf-Exp-Red, paras 20-21.

³³ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, para. 6; modified by 1 March 2019 Decision, ICC-01/14-01/18-137-Conf-Exp, para. 21.

³⁴ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, para. 6.

³⁵ 1 March 2019 Decision, ICC-01/14-01/18-137-Conf-Exp, para. 19; 6 March 2020 Decision, ICC-01/14-01/18-441-Conf-Exp-Red, para. 20.

³⁶ 9 July 2019 Decision, ICC-01/14-01/18-241-Conf-Exp, para. 27.

³⁷ 6 March 2020 Decision, ICC-01/14-01/18-441-Conf-Exp-Red, para. 20.

³⁸ 1 March 2019 Decision, ICC-01/14-01/18-137-Conf-Exp, para. 21.

³⁹ 10 January 2019 Decision, ICC-01/14-01/18-52-Conf-Exp, para. 18; 15 April 2019 Decision, ICC-01/14-01/18-176-Conf-Red, para. 32; 1 March 2019 Decision, ICC-01/14-01/18-137-Conf-Exp, para. 20.

- iv. *Written correspondence:*
 - a. The Chief Custody Officer is required to intercept or confiscate any written correspondence which violates the prohibition of using obscure or coded language or mentioning the present case.⁴²
- v. *Further restrictions on form of communication:*
 - a. Mr Yekatom is prohibited from using obscure or coded language or mentioning the present case.⁴³
 - b. Mr Yekatom is only permitted to communicate in French and Sango during telephone calls, visits, and in written correspondence.⁴⁴

B. The Chamber's determinations

14. At the outset, the Chamber notes that the Defence confines the Request to the suspension of random active monitoring due to the Coronavirus Pandemic and points to his compliance and good behaviour in detention and passage of time.⁴⁵ It has not argued for other modifications to the Current Restrictions. However, while not addressing the remainder of the conditions directly, the Defence also appears to be requesting the Chamber to consider the issue of restrictions at trial as a whole.⁴⁶ The Chamber will address these in turn.

- i. *Assessment of risks meriting continuation of restrictions on contacts and communications*

15. Before turning to its analysis of the Current Restrictions, the Chamber addresses the Defence's submission that the restrictions imposed by PTC II expired with the transfer of the case to this Chamber.⁴⁷ In this regard, the Chamber recalls its recent communication to the parties, clarifying that the Current Restrictions

⁴⁰ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, para. 9; 15 April 2019 Decision, ICC-01/14-01/18-176-Conf-Red, para. 32.

⁴¹ 1 March 2019 Decision, ICC-01/14-01/18-137-Conf-Exp, para. 19.

⁴² 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, para. 7.

⁴³ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, paras 6-7; 10 January Decision, ICC-01/14-01/18-52-Conf-Exp, para. 3.

⁴⁴ 17 November 2018 Decision, ICC-01/14-01/18-11-Conf-Exp, para. 8.

⁴⁵ Request, ICC-01/14-01/18-458-Conf-Exp, para. 11.

⁴⁶ Request, ICC-01/14-01/18-458-Conf-Exp, para. 10.

⁴⁷ See above para. 5.

remain in place until this Chamber has reviewed the matter.⁴⁸ Accordingly, the Defence's submissions are dismissed as moot.

16. The Chamber notes that a detained person is entitled to 'receive correspondence, mail and packages', 'communicate by letter or telephone with his or her family and other persons' and 'to receive visits', pursuant to Regulations 99(g) and (h) and 100(1) of the Regulations. The Chamber further considers that the accused's right to privacy and family is implicitly recognised under the Court's statutory framework.⁴⁹ Moreover, the Chamber recalls that the right to privacy and family life is an internationally recognised human rights principle⁵⁰ and thus also guides the Chamber's interpretation of the Court's legal framework by virtue of Article 21(3) of the Statute.⁵¹
17. Nonetheless, the Chamber notes that these rights are not absolute and may be subject to restrictions. Notably, restrictions on contacts may be imposed (i) pursuant to Regulation 101(2) of the Regulations, *inter alia*, 'if the Prosecution has reasonable grounds⁵² to believe that such contact [...] could prejudice the outcome of the proceedings against a detained person, or any other investigation'⁵³ or '[i]s a threat to the protection of the rights and freedom of any person';⁵⁴ or (ii) 'in the interests of the administration of justice or for the maintenance of the security and good order of the detention centre' as set out in

⁴⁸ Email from the Chamber to the Prosecution and the Defence, 24 March 2020, at 19:46.

⁴⁹ See for instance Regulation 99(1)(i) of the Regulations; Regulations 179(1) and 186(2)(h) of the Regulations of the Registry.

⁵⁰ See Article 17 of the International Covenant on Civil and Political Rights, Article 8 of the European Convention on Human Rights, Article 11 of the American Convention on Human Rights. See also Principle 5 of the Basic Principles for the Treatment of Prisoners.

⁵¹ See also Trial Chamber VI, *The Prosecutor vs. Bosco Ntaganda*, Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts, 18 August 2015, ICC-01/04-02/06-785-Red, para. 42; *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, 14 December 2006, ICC-01/04-01/06-772 (OA 4), para. 36.

⁵² The Chamber considers that the same standard also applies to the Chamber's assessment. See also Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on Mr Bosco Ntaganda's appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 March 2017, ICC-01/04-02/06-1817-Conf, para. 48 (public redacted version notified the same day, ICC-01/04-02/06-1817-Red) (the '*Ntaganda Appeals Chamber Judgment*'),

⁵³ Regulation 101(2)(b) of the Regulations.

⁵⁴ Regulation 101(2)(f) of the Regulations.

the Regulations of the Registry,⁵⁵ pursuant to Regulation 99(2) and 100(3) of the Regulations of the Court. Furthermore, Articles 64(2) and 68(1) of the Statute mandate the Chamber to balance the rights of the accused with ensuring the well-being of victims and witnesses, and its objectives to ensure fair and expeditious conduct of trial.⁵⁶

18. The Chamber further recalls that the Appeals Chamber has previously considered that ‘the passage of time is a factor that could become more significant as more time elapses and that [a] Trial Chamber must continue to actively review the restrictions in place and carefully balance the need for and proportionality of the restrictions against the important right accorded to detained persons to have contact’.⁵⁷
19. Accordingly, the Chamber will consider the aforementioned factors during its considerations on whether the Current Restrictions are still necessary and proportionate. The Chamber additionally takes into account the factors considered by PTC II in ordering the Current Restrictions, the Registry Reports, and the parties’ submissions.
20. Before turning to these issues, the Chamber first addresses Mr Yekatom’s arguments concerning the length of pre-trial detention. The Chamber notes that Mr Yekatom has spent over 16 months in detention. The Chamber recalls that while the passage of time is a factor that could become more significant as more time elapses, the Appeals Chamber has also held that this does not mean *per se* that the risks in question no longer exist and/or that restrictions have become disproportionate.⁵⁸ Therefore, the Chamber will assess the length of detention together with the other factors below in determining whether or not the restrictions continue to be warranted in the present instance. The Chamber also

⁵⁵ Chapter 5 of the Regulations of the Registry provides further specific regulations regarding detention matters, including in respect to correspondence, telephone communications and visits.

⁵⁶ See also *Ntaganda* Appeals Chamber Judgment, ICC-01/04-02/06-1817- Red, paras 44, 72, 102; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Mr Al Hassan’s restrictions and accesses while in detention, 21 January 2020, ICC-01/12-01/18-557-Exp, (public redacted version notified on 14 February 2020), para. 10.

⁵⁷ *Ntaganda* Appeals Chamber Judgment, ICC-01/04-02/06-1817-Red, para. 72. See also paras 44, 102. See further PTC II, Decision Pursuant to Regulation 101 of the Regulations of the Court, 23 December 2019, ICC-01/14-01/18-413-Conf-Exp-Red, para. 78.

⁵⁸ See *Ntaganda* Appeals Chamber Judgment, ICC-01/04-02/06-1817-Red, para. 72.

considers that these factors must be assessed in light of the fact that PTC II has since confirmed parts of the charges against Mr Yekatom.

21. The Chamber notes that the security situation in the CAR continues to remain fragile and volatile.⁵⁹ Given his position as a member of the parliament during his arrest,⁶⁰ the Chamber considers that Mr Yekatom would have the means to continue to exercise influence over the members of the Anti-Balaka in his immediate and extended community.⁶¹ The Chamber also considers it relevant that a significant number of Prosecution witnesses reside in the CAR and could fall within Mr Yekatom's sphere of influence, leaving them amenable to a risk of interference and/or security. This is especially the case for witnesses whose identities are known to Mr Yekatom and whose security is at risk.
22. The Chamber also takes note of the recent breach of restrictions by Mr Yekatom.⁶² The Chamber considers that the transcripts of the conversation between Mr Yekatom and the interlocutor are demonstrative of Mr Yekatom discussing case-related issues and using obscure language.⁶³
23. In view of the aforementioned, the Chamber thus finds the Current Restrictions necessary and proportional to ensure a fair trial and protect the integrity of the proceedings. The Chamber also finds that the aforementioned restrictions and their underlying reasons strike an appropriate balance with the exercise of Mr Yekatom's right to family life and privacy. The Chamber considers that there are reasonable grounds to believe that the lifting of the Current Restrictions could prejudice the outcome of the proceedings, namely by negatively impacting on the Prosecution's ongoing investigations and the protection of victims and witnesses in this case.

⁵⁹ Annex II to the Registry Submissions in View of the upcoming Status Conference, 8 April 2020, ICC-01/14-01/18-470-Conf-AnxII-Red (the 'Annex II to the Registry Submissions on Status Conference'), paras 11-15. *See also* Annex II to the Transmission of observations from the Kingdom of the Netherlands and the Central African Republic on interim release of Alfred Yekatom, 14 April 2020, ICC-01/14-01/18-478-Conf-AnxII (the 'Observations of the CAR'), pp 8-9.

⁶⁰ Public Redacted Version of "Warrant of Arrest for Alfred Yekatom", ICC-01/14-01/18-1-US-Exp, 11 November 2018, 17 November 2018, ICC-01/14-01/18-1-Red, p. 3.

⁶¹ *See further* Annex II to the Registry Submissions on Status Conference, ICC-01/14-01/18-470-Conf-AnxII-Red, paras 13, 17-18. [REDACTED].

⁶² Registry Observations, ICC-01/14-01/18-467-Conf-Exp, para. 26.

⁶³ Annex I to the Registry Observations, ICC-01/14-01/18-467-Conf-Exp-AnxI.

24. Nonetheless, the Chamber acknowledges its obligation to regularly review the restrictions in place and will do so where circumstances change and require reassessment of the Current Restrictions.

ii. Request pertaining to the Coronavirus Pandemic

25. The Chamber notes that, as of 13 March 2020, the Chief Custody Officer implemented urgent measures at the Detention Centre to protect the detainees against the spread of Coronavirus Pandemic (the ‘Temporary Detention Centre Measures’).⁶⁴
26. The Chamber notes that these measures are taken independently of any communication and contact restrictions imposed by the Chamber. Restrictions on Mr Yekatom’s visits were made as part of urgent and temporary measures taken by the Detention Centre to protect the health and safety of all detainees as well as that of the personnel charged with their care.⁶⁵ These measures amount to decisions of a medical nature pursuant to Regulation 155(2) of the Regulations of the Registry. The Chamber also notes that these measures are part of those adopted by the prison authorities of the host State following the outbreak of the Coronavirus Pandemic.⁶⁶ The Court also recalls that these measures are exceptional and result from an unprecedented situation beyond anyone’s immediate control. These measures are not imposed on Mr Yekatom specifically. Complaints against these Temporary Detention Centre Measures must be made in accordance with the complaints procedure on detention matters, as set out in the Regulations of the Registry.⁶⁷
27. The Chamber recalls that Mr Yekatom is currently permitted to have non-privileged telephone calls for 180 minutes a week subject to random active monitoring.⁶⁸

⁶⁴ Registry Observations, ICC-01/14-01/18-467-Conf-Exp, para. 10.

⁶⁵ Annex II to the Registry Observations, ICC-01/14-01/18-467-Conf-Exp-AnxII.

⁶⁶ Annex II to the Registry Observations, ICC-01/14-01/18-467-Conf-Exp-AnxII, p.2.

⁶⁷ See Chapter 5, Section 5 of the Regulations of the Registry.

⁶⁸ 6 March 2020 Decision, ICC-01/14-01/18-441-Conf-Exp-Red, para. 20.

28. Having regard to the risks identified and considered by the Chamber in respect of retention of the Current Restrictions, the Chamber is further satisfied that their retention is justified during the Coronavirus Pandemic. The Chamber is not convinced that the measures imposed on account of health and safety of detainees and personnel in the Detention Centre, without more, necessarily warrant reduction in random active monitoring. This is especially so, given the risk of interference with witnesses and/or investigations continues to exist, as exemplified by the recent breach of the restrictions by Mr Yekatom.
29. The Chamber takes also into account the assurances from the Registry that there are currently no challenges preventing active monitoring to continue in its current form and that it would inform the Chamber should that change.⁶⁹ However, given the uncertainty of the present situation, the Defence is advised to resort to procedures in place for adding individuals to his non-privileged telephone list to maintain further contact during these times as Mr Yekatom deems necessary.
30. In respect of the amount of time, the Registry advises the Chamber of maintaining the limit of 180 minutes to keep the interpretation workload to a manageable level.⁷⁰ The Chamber notes that while the Defence has indicated that Mr Yekatom's request is based on being able to have easier contact with his family in the CAR during the Coronavirus Pandemic, he did not make submissions on the time allotted to him per week. In any event, given the [REDACTED] challenges in increasing the amount of call time in the current situation and the Chamber's obligation to ensure continuing effective administration of the trial, the Chamber decides to maintain the limit of 180 minutes. The Chamber understands the allotted time period for calls to not include the time required to set up the telephone calls.
31. There are no other changes in circumstances affecting the balance that warrant further modifications to the restrictions on Mr Yekatom's contacts and communications during the Coronavirus Pandemic.

⁶⁹ Registry Observations, ICC-01/14-01/18-467-Conf-Exp, para. 18.

⁷⁰ Registry Observations, ICC-01/14-01/18-467-Conf-Exp, paras 20, 22.

C. The Reporting Procedure

32. Finally, in order to regularly monitor the implementation of the Current Restrictions, the Chamber adopts the Reporting Procedure put in place by PTC II,⁷¹ with the modification that the Registry is now ordered to submit its reports every three months.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request;

DECIDES that the Current Restrictions as described in paragraph 13 be maintained;

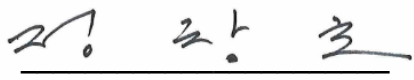
ORDERS the Registry to submit reports on the implementation of the Current Restrictions and any violations thereof, together with confidential redacted versions of said reports, every three months, as set out above in paragraph 32;

ORDERS the Prosecution to submit observations on the Registry reports, if any, together with confidential redacted versions of said observations, within five days of notification, as set out above in paragraph 32;

ORDERS the Defence to submit observations on the Registry reports, as well as on the Prosecution's observations, if any, together with confidential redacted versions of said observations, within 10 days of notification of the Registry reports, as set out above in paragraph 32.

⁷¹ 15 April 2019 Decision, ICC-01/14-01/18-176-Conf-Red, para. 32. *See also* paras 2-3 above.

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

 _____ Judge Péter Kovács	 _____ Judge Bertram Schmitt Presiding Judge	 _____ Judge Chang-ho Chung
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Dated 16 February 2021

At The Hague, The Netherlands