

**Cour
Pénale
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**International
Criminal
Court**

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No.: **ICC-01/14-01/18**

Date: **17 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of the “Observations of the Defence of Mr. Alfred Yekatom pursuant to the Seventh Decision”, 1 July 2019,
ICC-01/14-01/18-235-Conf**

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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Further to the “Decision pursuant to Regulation 101 of the Regulations of the Court” (“Seventh Decision”) issued by Pre-Trial Chamber (“Chamber”) on 15 April 2019,¹ the “Seventh Registry Report on the Implementation on the Restrictions on Contact of Mr Alfred Yekatom ordered by Pre-Trial Chamber II” (“Seventh Registry Report”) submitted on 18 April 2019² and the “Prosecution’s Observations Pursuant to the ‘Decision Pursuant to Regulation 101 of the Regulation of the Court’”, submitted on 24 June 2019³ (“Prosecution 24 June Observations”), Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) hereby submits:

Observations of the Defense of Mr. Alfred Yekatom pursuant to the Seventh Decision

(“Defence Observations”).

SUBMISSIONS

1. Mr. Yekatom has now been detained at the International Criminal Court Detention Center (“ICC DC”) for more than eight months. From the beginning, contact restrictions have been imposed on Mr. Yekatom including the active monitoring of his telephone conversations with limited and restricted non-privileged contacts.⁴ Upon being informed of the ICC DC regulations concerning communications and visits with non-privilege contacts, Mr. Yekatom undertook to

¹ Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-176-Conf-Red, 15 April 2019 (“Seventh Decision”).

² Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Pre-Trial Chamber II, ICC-01/14-01/18-226-Conf-Exp, 18 June 2019 (“Seventh Registry Report”).

³ Confidential Redacted version of “Prosecution’s Observations Pursuant to the ‘Decision Pursuant to Regulation 101 of the Regulation of the Court’ (ICC-01/14-01/18-176-Conf), 24 June 2019, ICC-01/14-01/18-229-Conf-Exp”, ICC-01/14-01/18-229-Conf-Exp-Red, 24 June 2019 (“Prosecution 24 June Observations”).

⁴ On 1 March 2019, the Chamber issued its sixth “Decision Pursuant to Regulation 101 of the Regulations of the Court”, ICC-01/14-01/18-137 in which it replaced active monitoring with random monitoring, as frequently as possible (para. 19).

abide by the same. He also demonstrated the determination to respect the regulations in force by ensuring that his visitors were well aware of the applicable guidelines.

2. From his transfer to the ICC DC, until the Seventh Decision on 15 April 2019, no incident occurred suggesting any intention on the part of Mr. Yekatom to interfere with witnesses and/or undermine the Prosecution's investigations or the outcome of the proceedings.

3. The Seventh Registry Report indicates, once again,⁵ that "no incident has been reported".⁶ Hence, Mr. Yekatom's conduct since his transfer in the custody of the ICC DC, does not suggest that he ever attempted to or interfered with witnesses or displayed any intent to undermine the Prosecution's investigations or the outcome of the proceedings.

4. In the absence of any information or events involving Mr. Yekatom personally and directly – giving rise to reasonable grounds to believe that contact between Mr. Yekatom and any other person could prejudice or otherwise affect the outcome of the proceedings or any other investigations pursuant to Regulation 101 – the restrictions imposed on Mr. Yekatom are no longer necessary and should be terminated forthwith.

5. Notably and contrary to the Prosecution's previous submission,⁷ the disclosure of evidentiary material to the Defence has not resulted in any attempt by

⁵ See Second Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II, ICC-01/14-01/18-32-Conf-Exp, 14 December 2018, para.1; Fourth Registry Report, para.13; Fifth Registry Report, para.14; Sixth Registry Report, para.15; Seventh Registry Report, para.1.

⁶ Seventh Registry Report, para.1.

⁷ In the "Prosecution's Response to the 'Fourth Decision Pursuant to Regulation 101 of the Regulations of the Court' (ICC-01/14-01/18-75-Conf-Exp)", ICC-01/14-01/18-83-Conf, 13 February 2019, at para. 7, the Prosecution stated "The Prosecution's case depends on several witnesses whose identities will soon be disclosed to the Defence. Allowing YEKATOM to freely contact his supporters and associates would necessarily increase the risk of tampering with witnesses who may become reluctant to cooperate or to remain involved with this case"; See also Confidential Redacted version of "Prosecution's Observations Pursuant to the 'Decision Pursuant to Regulation 101 of the Regulations

Mr. Yekatom to interfere with witnesses and/or undermine the Prosecution's investigations or the outcome of the proceedings. Indeed, the disclosure so far of evidentiary material related to some 88 witnesses, including their identities has had no impact on Mr. Yekatom's behaviour and/or his determination to fully respect the confidentiality of the material disclosed.

6. Yet, the restrictions on non-privileged contacts imposed on Mr. Yekatom impact significantly on his recognized fundamental right to private and family life.⁸ To provide but one example, on 12 June 2019, Mr. Yekatom's brother passed away. The Defence sent a request⁹ to permit Mr. Yekatom to talk with his family during his brother's funeral. The Defence request was denied due to the inability of the ICC DC to permit phone calls to a detainee under monitoring regime outside working hours.¹⁰

7. The current restrictions on non-privileged contacts imposed to Mr. Yekatom further illustrates how the current regime is disproportionate when compared to the intended objective of Regulation 101 of protecting the integrity of the proceedings and investigation.

8. Considering the aim intended to be achieved by the imposition of restrictions, the fact that there are no suggestions of Mr. Yekatom being involved in the dissemination of confidential information and/or interference with witnesses and the impact of the restrictions imposed on Mr. Yekatom private and family life, it is evident that the current restrictions on communications with non-privileged contacts are disproportionate to the intended objective of Regulation 101 :

of the Court' (ICC-01/14-01/18-137-Conf-Exp)", ICC-01/14-01/18-170-Conf-Exp, ICC-01/14-01/18-170-Conf-Red, 10 April 2019, para. 6.

⁸ The Prosecutor v. Dominic Ongwen, Decision on Request for Disclosure and Related Orders Concerning Mr Ongwen's Family, ICC-02/04-01/15-1444, 12 February 2019, para. 23; United Nations, General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners, 17 December 2015, A/RES/70/175, Rules 43(3), 58(1) and 106 ("Nelson Mandela Rules").

⁹ Email from Defence co-counsel to Registry on 13 June 2019, available upon request.

¹⁰ Email from Registry to Defence counsel on 15 June 2019, available upon request.

The Chamber is mindful of how important it is for a detained person to maintain contact with the outside, particularly to maintain personal and emotional ties with his family. For this reason, it must ensure that the restrictions requested by the Prosecution are justified and proportionate to the aim pursued, by applying and by interpreting the provisions for limitation on contact in accordance with internationally recognized human rights.¹¹

9. In this regard, the Defence recalls international regulations governing the minimum treatment of prisoners, which provide that “disciplinary sanctions or restrictive measures must not consist of a prohibition on contact with the family”¹² and that a particular attention should be paid to maintaining and improving relations between the prisoner and his family, where this is desirable in the interest of both parties.¹³

10. The defence does not dispute the fact that the security and safety of prospective witnesses before the Court is a serious matter. However, contrary to the Prosecution’s assertion, the alleged prevalent instability in the Central African Republic, together with the participation of members of armed groups associated with Mr. Yekatom in the present government, do not give rise to reasonable grounds to believe that contact between Mr. Yekatom and any other person could prejudice or otherwise affect the outcome of the proceedings or any other investigations pursuant to Regulation 101 (2).

11. First, the Prosecution has not demonstrated the existence of any concrete association or interaction between Mr. Yekatom and members of the present government. Second, the present government is composed of members of numerous armed groups, many of which were not associated with the Anti-Balaka movement.

¹¹ The Prosecutor v. Mathieu Ngudjolo Chui, Decision on Request 1200 of the Prosecutor for Prohibition and Restrictive Measures Against Mathieu Ngudjolo with Respect to Contacts Both Outside and Inside the Detention Centre, ICC-01/04-01/07-1243-tENG-Red, 24 June 2009, para. 18.

¹² Nelson Mandela Rules, Rule 58(1).

¹³ Nelson Mandela Rules, Rule 106.

Third, the instability in the CAR is unrelated to any acts and/or the conduct of Mr. Yekatom.

12. The Prosecution's suggestion that stringent restrictions are necessary should be imposed commensurate to the risk regarding the risk of the on-going investigation is plainly wrong, legally and factually. As the Prosecution concedes, "it cannot be said that in every case a Suspect will seek to violate the rules of Detention Centre".¹⁴ Moreover, what is at issue here is not "the reasoned and reasonable balancing of risk"¹⁵ but whether there are reasonable grounds to believe – related directly to Mr. Yekatom – that contact between Mr. Yekatom and any other person could prejudice or otherwise affect the outcome of the proceedings or any other investigations pursuant to Regulation 101 (2), which requires a case by case analysis which must take into consideration the factual context specific to Mr. Yekatom.

13. In this regard, the Prosecution's submission that it is in the process of investigation certain recent incidents, which appeared to be linked to suspects in this case is inappropriate and must be given no weight. Indeed, it is wholly inappropriate for the Prosecution to provide the Chamber with allegations related to incident appearing to be linked to Mr. Yekatom on an *ex parte* basis, thereby depriving Mr. Yekatom of a genuine opportunity to respond and offer informed observations.¹⁶ It is also incorrect for the Prosecution to argue that witness security in these proceedings remain precarious while requesting that the Defence be excluded from status conferences during which witness security issues are discussed between the Prosecution, the Witness Protection Unit and the Chamber.

¹⁴ Prosecution 24 June Observations, para. 10.

¹⁵ Prosecution 24 June Observations, para. 10.

¹⁶ Regulations of the Court, regulation 101(3); *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Public Redacted Version of Judgment on the appeal of Mr Laurent Gbagbo against the oral decision on redactions of 29 November 2016, ICC-02/11-01/15-915-Red, 31 July 2017, para. 61; Prosecution v. Bosco Ntaganda, Judgment on Mr Bosco Ntaganda's appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 mars 2017, ICC-01/04-02/06-1817-Red, para. 87; Prosecution v. Bosco Ntaganda, Decision on the Prosecution request for restrictions on contact and the Defence request for access to logs, 8 December 2014, ICC-01/04-02/06-410-Conf-Exp.

14. The Prosecution also improper for the Prosecution to argue that “it is incumbent on the Chamber here to act” given the well-known security breaches which have occurred within the confines of the ICC DC in the past. The case referred to by the Prosecution can be distinguished from the present case in many ways. In that case¹⁷ restrictions were imposed against Mr. Ntaganda on the basis of Trial Chamber VI’s findings that there were reasonable grounds to believe pursuant to regulation 101 (2) directly linked to a telephone conversation involving Mr. Ntaganda himself.

15. The Prosecution 24 June Observations¹⁸ alleging that the Chief Custody Officer’s (CCO) decision to add individuals on Mr. Yekatom’s non-privileged telephone list is “untenable”¹⁹ are a blatant disregard of the CCO’s integrity and responsibilities as well as the Chamber’s operative order on restrictions on non-privileged contacts imposed on Mr. Yekatom.

16. *First*, the CCO is an officer of the International Criminal Court (“Court”).²⁰ As such, the CCO is required to “uphold the highest standards of efficiency, competence and integrity in the discharge of [his] functions”.²¹ *Second*, the decision of the CCO to authorise additional individuals to be added to Mr. Yekatom’s contact list – in absence of any concern [REDACTED] – is in line with his discretion accorded by the Decision Pursuant to Regulation 101 of the Regulations of the Court on 1 March 2019 (“1st March Decision”).²²

17. The monitoring regime was last amended by the 1st March Decision²³ whereby “the Chief Custody Officer may request the support of the Victims and Witnesses

¹⁷ ICC-01/04-02/06-785-Red

¹⁸ Prosecution 24 June Observations, paras. 9-13.

¹⁹ Prosecution 24 June Observations, para. 12.

²⁰ Regulations of the Court, regulation 2(1).

²¹ Staff Rules of the International Criminal Court, rule 101(9).

²² Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-137, 1 March 2019, para. 21 (“1st March Decision”).

²³ Seventh Decision, para. 32.

Unit”²⁴ [emphasis added] as opposed to the previous decision ordering that “identities and contact details will have to be duly verified beforehand with the support of the Victims and Witnesses Unit.”²⁵ [Emphasis added].

18. The CCO, through the ICC DC Staff, confirmed the identity and the relationship of the added individuals.²⁶ Requesting the support of the VWU through its vetting process is simply an additional, yet optional, layer to confirm the identity and relationship of those individuals. Contrary to the Prosecution’s assertion,²⁷ the CCO’s decision does not solely rely on the information provided by Mr. Yekatom. The CCO, through his ICC DC Staff, undergoes its own verification.

19. In any event, Mr. Yekatom’s calls, including those to the newly added individuals, are actively monitored at random and no incident has been reported by the Registry. The Prosecution’s alarming and misplaced concern regarding the CCO’s decision to authorise the additional individuals on Mr. Yekatom non-privileged telephone contact list is unwarranted thereof and the Chamber should therefore reject the Prosecution’s request to vacate the CCO’s decision.

CONCLUSION

20. In light of (i) the Seventh Registry Report, which confirms Mr. Yekatom’s intent to abide by the regulations in force at the ICC DC concerning communications with non-privileged contacts; and (ii) Mr. Yekatom’s conduct since his transfer in the custody of the ICC DC which demonstrates that he has no intent to interfere with witnesses and/or undermine the Prosecution’s investigations or the outcome of the proceedings.

²⁴ 1st March Decision, para. 21.

²⁵ First Decision, para. 6.

²⁶ Seventh Registry Report, paras. 19-21.

²⁷ Prosecution 24 June Observations, para. 12.

21. It is thus evident that the restrictions on non-privileged contacts imposed on him are no longer justified under regulation 101.

CONFIDENTIALITY

22. These observations are filed on a “confidential *ex parte*” basis corresponding to the classification of the Seventh Registry Report and due to the sensitive information relating to Mr. Yekatom’s contacts and personal life. A confidential redacted version will be filed forthwith.

RELIEF SOUGHT

23. In light of the above, the Defence respectfully requests the Chamber to:

LIFT all restrictions on non-privileged contacts imposed on Mr. Yekatom effective immediately.

RESPECTFULLY SUBMITTED ON THIS 17TH DAY OF FEBRUARY 2021



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