

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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 “Yekatom Defence Observations on Tenth
Registry Report on Contact Restrictions”, 24 December 2019,
ICC-01/14-01/18-414-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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1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully submit their observations on the *Tenth Registry Report on the Implementation of the Restrictions on Contacts by Mr. Alfred Yekatom Ordered by Pre-Trial Chamber II (“Tenth Report”)*¹ and the *Prosecution’s Observations Pursuant to the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (ICC-01/14-01/18-412-Conf-Exp)* (“Prosecution’s Observations”).² The Defence further requests that the Pre-Trial Chamber (“Chamber”) modify Mr. Yekatom’s restrictions by removing the requirement of random active monitoring of his conversations.

2. First, the Defence points out that in its *Tenth Report*, the Registry informs the Chamber that Mr. Yekatom has continued to maintain his contacts without violating any of the restrictions,³ as has been the case throughout the pre-trial period.

3. Second, in its *Decision Pursuant to Regulation 101 of the Regulations of the Court* dated 15 April 2019, the Chamber held that the current regime of restrictions on contacts will be maintained “for the remainder of the pre-trial proceedings”.⁴ At that time it was anticipated that the pre-trial proceedings would be concluded with the Chamber’s decision on the confirmation of charges in December. Those circumstances have changed.

4. The parties have been informed that the final French translation of that decision will not be available until the end of February 2020.⁵ In addition, based on the content of that decision, it can reasonably be expected that at least one party may seek leave to appeal. This will extend the pre-trial period, and the restrictions on Mr.

¹ [ICC-01/14-01/18-406-Conf-Exp](#).

² [ICC-01/14-01/18-412-Conf-Exp](#).

³ [ICC-01/14-01/18-406-Conf-Exp](#), para. 1.

⁴ [ICC-01/14-01/18-176-Conf-Red](#), para. 32.

⁵ Email from Counsel Support Section relaying Language Services Section’s response on 16 December 2019 titled “RE: Request to LSS relating to translation of confirmation of charges decision - Ngaïssona case”, relayed by the Ngaïssona Defence to the Yekatom Defence on 16 December 2019 at 12:35 (attached as Confidential Annex A).

Yekatom's contacts, for a time far greater than that anticipated by the Chamber when issuing its decision in April 2019.

5. As a result of the random active monitoring regime, Mr. Yekatom's ability to contact his family and friends is severely restricted to two hours a week. Because of the unreliability of the Central African Republic telephone network, Mr. Yekatom is often unable to reach his family and friends during that limited time period or has a scattered conversation. If the random active monitoring requirement is eliminated, Mr. Yekatom can make his calls at any time, rather than being limited to the times that [REDACTED]. All of his calls will nevertheless continue to be recorded, subject to being listened to at any time.

6. This modest modification of the restrictions regime, when balanced against the need for active monitoring, and in light of Mr. Yekatom's record of compliance and the unforeseen delay in completion of the pre-trial proceedings, appears to be warranted at this stage.

7. As stated by Trial Chamber VI in the *Ntaganda* case, "the imposition of restrictions – including increased monitoring – on a detained person's contacts constitutes the exception and not the rule", therefore "the Chamber's analysis shall be focussed on whether the Prosecution has provided information which raises serious concerns that, were Mr Ntaganda's contacts not to be restricted, any of the situations described under Regulation 101(2)(a) to (f) of the Regulations would arise".⁶

8. The same analysis should be made regarding Mr. Yekatom's situation. The continuous restrictions upon Mr. Yekatom while he complied with the measures imposed for more than a year has evolved to a general rule rather an exception. The brief Prosecution Observations treats them as such.

⁶ *Prosecutor v. Ntaganda*, Public redacted version of 'Decision on requests to call witnesses in relation to sentencing and for increased monitoring of Mr Ntaganda's contacts and scheduling the sentencing hearing', [ICC-01/04-02/06-2384-Red](#), 21 August 2019, para. 57 (footnote omitted).

9. The Prosecution's Observations do not address the unforeseen delay in the pre-trial proceedings, nor does it provide a basis for making an exception to the rule. By stating that the circumstances have not changed,⁷ the Prosecution fails to point to any serious concerns related to Mr. Yekatom's conduct that would warrant restrictions but merely refers to the security situation in the Central African Republic. Such assertion results in the reversal of the Prosecution's burden. Accordingly, the Chamber should modify the restrictions by removing the condition of random active monitoring.

CONFIDENTIALITY

10. The observations are filed on a confidential *ex parte* basis in accordance with the designation of the Registry Report and the Prosecution's Observations, although the Defence does not oppose to its reclassification to confidential or to public. The annex is classified as confidential as it contains confidential communications between the parties and the organs of the Court.

11. Nevertheless, the Defence urges the Pre-Trial Chamber to issue its decision publicly, as conditions for detainees are a legitimate subject of public interest and the matters contained in any decision are unlikely to reveal details that would jeopardise security at the Detention Centre or infringe upon Mr. Yekatom's privacy.⁸

RESPECTFULLY SUBMITTED ON THIS 17TH DAY OF FEBRUARY 2021⁹



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Mr. Thomas Hannis
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⁷ [ICC-01/14-01/18-412-Conf-Exp](#), para. 3.

⁸ See *Prosecutor v. Blé Goudé*, Decision on Prosecution's Request for Measures under Regulation 101(2) of the Regulations of the Court, [ICC-02/11-02/11-133](#), 28 August 2014, para. 13.

⁹ The assistance of Legal Intern Pia Savart to the research of this filing is gratefully acknowledged.

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