

**Cour
Pénale
Internationale**



**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 “Yekatom Defence Observations on Eleventh Registry Report on the Implementation of the Restrictions on Contacts by Mr. Alfred Yekatom Ordered by Pre-Trial Chamber II”, 26 February 2020,
ICC-01/14-01/18-433-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 *Eleventh Registry Report on the Implementation of the Restrictions on Contacts by Mr. Alfred Yekatom Ordered by Pre-Trial Chamber II* (“Registry Report”)¹ and *Prosecution’s Observations on the “Eleventh Registry Report on the Implementation of the Restrictions on Contact of Mr. Alfred Yekatom Ordered by Pre-Trial Chamber II”* (ICC-01/14-01/18-428-Conf-Red (“Prosecution’s Observations”)).² The Defence further requests that the Pre-Trial Chamber (“Chamber”) modify the restrictions to allow Mr. Yekatom to make phone calls four days per week, instead of the current two-day per week regime.

2. The *Registry Report* indicates that there have once again been no incidents in which Mr. Yekatom has violated the restrictions imposed upon him.³ This means that for the entire fifteen months of Mr. Yekatom’s incarceration, he has faithfully complied with the restrictions on his contact with the outside world. This kind of track record merits an easing of the restrictions when balancing the harm of the two-day per week restrictions against any detriment to witness security in increasing it to a four-day per week regime.

3. In a recent decision in the *Al Hassan* case, the Trial Chamber, including two members of this Pre-Trial Chamber, set forth a number of important principles to be applied when reviewing restrictions on contact by detainees:

(A) Contact with the outside world and visits are imperative for a detained person’s well-being;

¹ [ICC-01/14-01/18-428-Conf-Exp](#). Confidential redacted version available: [ICC-01/14-01/18-Conf-Red](#).

² [ICC-01/14-01/18-432-Conf-Exp](#).

³ The Defence appreciates the Chamber’s decision, communicated by e-mail, to make the *Registry Report* available to it without redactions. Having reviewed the redacted portions, the Defence understands that, as recognised by the Registry, they deal with private matters and do not bear upon the issue of restrictions.

- (B) Restrictions imposed on the contact of the accused person must be justified and proportionate, in accordance with internationally recognised human rights;
- (C) A balance must be struck between the right of every detained person to maintain family life and contact with the outside world, and the absolute necessity of ensuring the safety of witnesses, the preservation of evidence and the integrity of the proceedings;
- (D) Although in general detained persons have the right to communicate with others outside the detention centre, these rights are not absolute;
- (E) The restrictions imposed must be the least restrictive possible to the rights of the detained person;
- (F) Such restrictions, because they interfere with the rights of the detained person, must be based on the existence of an objectively justifiable risk;
- (G) The general security situation in [a State] and the fact that there is a general threat to Prosecution witnesses cannot be the sole basis to continue to impose all of the restrictions on the detainee.⁴

4. An application of those principles to Mr. Yekatom's case demonstrates that the proposed modification of the restrictions is warranted.

5. The current restrictions are very detrimental to Mr. Yekatom's well-being. As detailed in previous Defence submissions, due to the Central African Republic's unreliable telephone network, Mr. Yekatom frequently cannot reach someone during the 60 minutes he has to make phone calls, or if he does reach someone, the call

⁴ *Prosecutor v. Al Hassan*, [Decision on Mr. Al Hassan's restrictions and accesses while in detention](#), ICC-01/12-01/18-557-Red3, 21 January 2020, para. 10.

sometimes drops. He is then unable to try again until three or four days later when he has his next 60-minute window to make calls.⁵

6. This has resulted in Mr. Yekatom feeling extremely frustrated and helpless. Recently, when his young infant had malaria, Mr. Yekatom was forced to burden his counsel for daily updates on the child's condition while he waited for his next opportunity to call. On many other occasions, Mr. Yekatom could only ask his counsel to pass messages concerning personal issues with his wives and issues related to his business, Koya Sécurité, until the three days had passed and he could make another attempt at a call.

7. Counsel's injection into Mr. Yekatom's private life by virtue of these restrictions has strained the professional relationship between attorney and client and distracted from the work on the merits of Mr. Yekatom's case. The continuation of the current restrictions thus has a detrimental effect not only on Mr. Yekatom's well-being, but on his defence to the charges lodged against him at the Court.

8. This Chamber has previously rejected the solution proposed by the Defence that active random monitoring of Mr. Yekatom's calls be terminated in favor of passive monitoring.⁶ Mr. Yekatom proposes, as an alternative, that active random monitoring remain, but that the 60-minute window he is given to make telephone calls be increased from two to four days per week. This will eliminate any risk from unmonitored calls, since all calls will remain actively monitored at random and passively monitored through recording.

9. The Defence understands that [REDACTED]. Therefore, when balancing the right of the detained person to maintain family life and contact with the outside world, with the necessity of ensuring the safety of witnesses, the preservation of evidence and the integrity of the proceedings, the proposed expansion of time for

⁵ [ICC-01/14-01/18-226-Conf-Exp-Red](#), para. 22; [ICC-01/14-01/18-414-Conf-Exp](#), para. 5.

⁶ [ICC-01/14-01/18-419-Conf-Exp](#), para. 16.

Mr. Yekatom to make monitored telephone calls mitigates the harm to him while causing no increased risk to witnesses.

10. Such a modification would also be consistent with the principle that the restrictions imposed must be the least restrictive possible to the rights of the detained person.

11. Finally, as a review of the Prosecution's Observations reveals, the current restrictions, and the arguments for continuing them, have been based solely on the volatile security situation in Central African Republic and not on any deficiencies or violations on the part of Mr. Yekatom.⁷ In the *Al Hassan* case, the Chamber specifically stated that the security situation alone was insufficient to justify continuing the restrictions.⁸ The same standard should be applied here.

12. When it decided to continue the restrictions for the remainder of the pre-trial proceedings back in April 2019, this Chamber indicated that it would "reassess the current regime concerning the restrictions on [...] Yekatom's [...] contacts if necessary".⁹ Now, after another ten months of full compliance with the restrictions by Mr. Yekatom, and no security problems for witnesses being reported to the Chamber, it is only fair that the conditions be modified to mitigate the problems Mr. Yekatom faces in communicating with his family and other members of the outside world.

13. For all of these reasons, it is respectfully requested that the restrictions on contact be modified to allow Mr. Yekatom to make telephone calls during a 60-minute period for four days per week.

⁷ [ICC-01/14-01/18-432-Conf-Exp](#), para. 4 and fn. 6.

⁸ *Prosecutor v. Al Hassan*, [Decision on Mr. Al Hassan's restrictions and accesses while in detention](#), ICC-01/12-01/18-557-Red3, 21 January 2020, para. 10.

⁹ [ICC-01/14-01/18-176-Conf-Red](#), para. 32

CONFIDENTIALITY

14. These observations are filed on a confidential *ex parte* basis because that is the designation provided in the *Registry Report* and the *Prosecution's Observations*. The Defence does not oppose to its reclassification to confidential¹⁰ or to public. The Defence urges the Pre-Trial Chamber to issue its decision publicly, as the *Al Hassan* Trial Chamber has done.¹¹ Conditions for detainees are a legitimate subject of public interest and the matters contained in any decision are unlikely to reveal details that would jeopardize security at the Detention Centre or infringe on Mr. Yekatom's privacy.¹²

RESPECTFULLY SUBMITTED ON THIS 17TH DAY OF FEBRUARY 2021



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¹⁰ [ICC-01/14-01/18-176-Conf-Red](#), disposition paragraph h).

¹¹ *Prosecutor v. Al Hassan*, [Decision on Mr. Al Hassan's restrictions and accesses while in detention](#), ICC-01/12-01/18-557-Red3, 21 January 2020.

¹² See also *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.