

**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 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**

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 requests that the Trial Chamber modify the restrictions on contacts and communications to eliminate random active monitoring of Mr. Yekatom’s telephone calls during the coronavirus pandemic.

RELEVANT PROCEDURAL HISTORY

2. On 30 October 2018, the Prosecution submitted under seal, *ex parte*, an application pursuant to Article 58 of the Rome Statute (“Statute”) for, *inter alia*, restrictions of Mr. Yekatom’s communications and visits in custody.¹

3. On 17 November 2018, the Single Judge acting on behalf of Pre-Trial Chamber II (“Pre-Trial Chamber”) granted the request and ordered to restrict Mr. Yekatom’s telephone communications and visits for a two-weeks period including limiting his non-privileged telephone calls to 60 minutes a week.²

4. On 1 March 2019, the Pre-Trial Chamber reduced the requirement that all of Mr. Yekatom’s non-privileged telephone conversations be actively monitored and substituted random active monitoring.³

5. On 15 April 2019, the Chamber extended these restrictions for the remainder of the pre-trial proceedings.⁴ On 9 July 2019, the Chamber ordered the Registry to substantially increase the frequency of random monitoring of telephone calls [REDACTED].⁵ On 17 January 2020, the Chamber decided to maintain the restrictions on Yekatom’s contacts including random active monitoring of his

¹ ICC-01/14-01/18-2-US-Exp. No redacted or reclassified version of this pleading has ever been made available to the Defence.

² [ICC-01/14-01/18-11-Conf-Exp.](#)

³ [ICC-01/14-01/18-137-Conf-Exp.](#)

⁴ [ICC-01/14-01/18-176-Conf-Red.](#)

⁵ [ICC-01/14-01/18-241-Conf-Exp.](#)

telephone calls.⁶ On 6 March 2020, the Pre-Trial Chamber modified the restrictions by increasing the twice-weekly telephone calls to 90 minutes each.⁷

6. Throughout this entire 15-month period, Mr. Yekatom has been subject to active monitoring of his non-privileged telephone communications and visits. He has never attempted to interfere with the Prosecution's investigation or to engage in activities that may affect the outcome of the proceedings.⁸

APPLICABLE PROVISIONS

7. Regulation 101(2) of the Regulations of the Court provides in pertinent part:

2. The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact:

- (a) Is for the purposes of attempting to arrange the escape of a detained person from the detention centre;
- (b) Could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation;
- (c) Could be harmful to a detained person or any other person;
- (d) Could be used by a detained person to breach an order for non-disclosure made by a judge;
- (e) Is against the interests of public safety; or
- (f) Is a threat to the protection of the rights and freedom of any person.

8. Regulation 174 of the Regulations of the Registry provides that:

1. All telephone conversations of detained persons shall be passively monitored, other than those with counsel, assistants to counsel entitled to legal privilege, diplomatic or consular representatives, representatives of the independent inspecting authority, or representatives of the Registry, a Chamber or the Presidency.

⁶ [ICC-01/14-01/18-419-Conf-Exp.](#)

⁷ [ICC-01/14-01/18-441-Conf-Exp.](#)

⁸ [ICC-01/14-01/18-23-Conf-Exp;](#) [ICC-01/14-01/18-32-Conf-Exp;](#) [ICC-01/14-01/18-62-Conf-Exp;](#) [ICC-01/14-01/18-81-Conf-Exp;](#) [ICC-01/14-01/18-124-Conf-Exp;](#) [ICC-01/14-01/18-167-Conf-Exp;](#) [ICC-01/14-01/18-226-Conf-Exp;](#) [ICC-01/14-01/18-277-Conf-Exp;](#) [ICC-01/14-01/18-386-Conf-Exp;](#) [ICC-01/14-01/18-406-Conf-Exp;](#) [ICC-01/14-01/18-428-Conf-Red.](#)

2. Subject to the provision of sub-regulation 1, passive monitoring entails the recording of telephone calls but without simultaneous listening. These recordings could be listened to subsequently in cases listed under regulation 175, sub-regulation 1.

3. The detained person shall be informed of the monitoring of telephone calls.

4. Records of telephone conversations shall be erased after the completion of the proceedings.

9. Regulation 175 of the Regulations of the Registry provides in pertinent part that:

1. The Chief Custody Officer may monitor telephone calls at random. If the Chief Custody Officer has reasonable grounds to believe that the detained person or the interlocutor may be attempting to:

(a) Arrange an escape;

(b) Interfere with or intimidate a witness;

(c) Interfere with the administration of justice;

(d) Otherwise disturb the maintenance of the security and good order of the detention centre;

(e) Jeopardise the interests of public safety or the rights or freedom of any person; or

(f) Breach an order for non-disclosure made by a Chamber,

he or she may immediately terminate the call and advise the detained person concerned of his or her reasons for doing so. The Chief Custody Officer shall report the matter to the Registrar and shall seek his or her permission to actively monitor telephone calls, providing his or her reasoning for the request.

2. The Registrar alone may order that all telephone calls from the detained person, other than those with counsel, assistants to counsel entitled to legal privilege, diplomatic or consular representatives, representatives of the independent inspecting authority, or representatives of the Registry, a Chamber or the Presidency be monitored for a period considered necessary by the Registrar. The Registrar shall report the matter to the Presidency.

ARGUMENT

10. By terms of the Pre-Trial Chamber's 15 April 2019 decision, the restrictions ordered by the Pre-Trial Chamber expired at the end of the Pre-Trial proceedings.⁹ This Chamber will necessarily have to consider the issue of restrictions for itself.

11. Mr. Yekatom respectfully requests, at least for the duration of the coronavirus pandemic, that the condition of random active monitoring of his telephone contacts not be imposed.

12. In a recent decision in the *Al Hassan* case, the 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;
- (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;

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

(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.¹⁰

13. In addition, Trial Chamber VI in the *Ntaganda* case stated that “the imposition of restrictions – including increased monitoring – on a detained person’s contacts constitutes the exception and not the rule”.¹¹

14. An application of those principles to Mr. Yekatom’s case demonstrates that the proposed modest change to his restrictions is warranted.

15. Random active monitoring at the Detention Centre means that a person is randomly listening to the detainee’s telephone calls while those calls are occurring. Remote monitoring means that the calls are recorded in their entirety and listened to at a later time.

16. The only advantage to non-privileged telephone conversations being actively monitored is that a call can be terminated immediately if a breach of the rules is detected.

17. The disadvantage of active monitoring is that it requires a Sango interpreter to be present at the Detention Centre at the time the calls or visits are made. As a result of resource constraints, this has meant that Mr. Yekatom can make telephone calls only two days per week for 90 minutes each day. But for the requirement of random active monitoring, Mr. Yekatom could call his family and others on his approved list on any day of the week.

18. While the Pre-Trial Chamber declined to remove the random active monitoring requirement,¹² the outbreak of the coronavirus pandemic changes the

¹⁰ *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.

¹¹ *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).

¹² [ICC-01/14-01/18-419-Conf-Exp](#), para. 16.

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.

19. As detailed in the attached security report from Central African Republic,¹³ the coronavirus pandemic has reached the Central African Republic. In fact, the first reported case was that of an Italian priest who returned to his parish in the town of Mbaiki, and travelled between Bangui and Mbaiki. That is the precise area where Mr. Yekatom's family resides and is the area that he represented as a Member of Parliament. Mr. Yekatom is greatly concerned about the well-being of his family, which includes two wives, twelve children, and, as of 17 March 2020, his first grandchild.

20. After obeying the restrictions for 16 months, Mr. Yekatom has demonstrated that he will not pose a danger to the safety of witnesses, the preservation of evidence and the integrity of the proceedings. The passive monitoring regime, in which every call is recorded, will provide for sufficient deterrence to and monitoring of any potential violation. In addition, the Commanding Officer has the authority under Regulation 175 of the Regulations of the Registry to immediately re-impose active monitoring if a problem arises.

21. Removing the requirement of random active monitoring will also make it unnecessary [REDACTED], thus eliminating any danger of spreading the virus in the Detention Centre through [REDACTED].

22. All visits at the Detention Centre have now been cancelled during the coronavirus pandemic. This includes those of the defence team, which visited Mr. Yekatom frequently. Suddenly, Mr. Yekatom faces unprecedented social isolation at a time when he is most worried for family members and friends. Those family members and friends face an uncertain future in an area where the virus is

¹³ Annex A.

present and health facilities are poor. Allowing Mr. Yekatom to make telephone calls on a daily basis to check on his family will have a huge impact on his mental well-being, while offering little change to the ability to detect violations should there be one after 16 months of obedience to the rules.

CONCLUSION

23. The Trial Chamber has a special obligation to ensure that persons in its care are safe and supported during this unprecedented crisis. Removing the active monitoring restriction is a small step that can make a big difference in the life of Mr. Yekatom. The Trial Chamber is respectfully requested to order that random active monitoring of Mr. Yekatom's telephone contacts and communications is no longer required during the coronavirus pandemic.

CONFIDENTIALITY

24. This pleading is filed on a confidential *ex parte* basis because that is the designation provided in the previous decisions and pleadings on this subject. The Defence urges the Trial Chamber to issue its decision publicly, as the *Al Hassan* Trial Chamber has done.¹⁴ 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.¹⁵

¹⁴ *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.

¹⁵ 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.

RELIEF SOUGHT

25. In light of the above, the Yekatom Defence respectfully requests the Trial Chamber V to:

ORDER that random active monitoring of Mr. Yekatom's telephone contacts and communications is no longer required during the coronavirus pandemic.

RESPECTFULLY SUBMITTED ON THIS 17TH DAY OF FEBRUARY 2021



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