



Original: **English**

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

Date: **1 June 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of “Prosecution’s Observations on the “Third Registry
Report on the Implementation of the Restrictions on Contact for Mr Alfred
Yekatom” (ICC-01/14-01/18-945-Conf)”, 8 April 2021, (ICC-01/14-01/18-949-Conf)**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) provides its observations on the Registry’s 6 April 2021 report on the implementation of contact restrictions regarding YEKATOM,¹ as ordered by Trial Chamber V (“Chamber”) pursuant to regulation 101 of the Regulations of the Court (“RoC”).² The Chamber should maintain the current restrictions on YEKATOM’s contacts in detention,³ including restricting YEKATOM’s non-privileged mail communications to verified individuals on his non-privileged contact list.⁴

2. Absent any positive change of circumstances, the current restrictions on YEKATOM’s contacts in detention should be maintained as ordered by the Chamber in its 11 November 2020 Decision.⁵ This will minimise the risk to the integrity of the proceedings and to witnesses whose identities are known to the Accused. Moreover, these restrictions remain proportionate and minimally necessary given YEKATOM’s previous violations of the conditions of his detention.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the RoC, this document is filed as “Confidential”, as it refers to filings and decisions of the same classification.

¹ ICC-01/14-01/18-945-Conf (“Third Report”).

² See ICC-01/14-01/18-485-Conf-Exp, p. 16 (“Order”).

³ ICC-01/14-01/18-485-Conf-Exp.

⁴ ICC-01/14-01/18-485, para. 13.

⁵ ICC-01/14-01/18-727-Conf (“Third Decision”).

III. SUBMISSIONS

A. The circumstances justifying the Order continue to prevail

4. There has been no favourable change in circumstances since the Third Decision,⁶ that warrant any lifting of, or reduction to, the existing contract restrictions. These restrictions remain proportionate and minimally necessary to attenuate some of the risks posed regarding the integrity of the proceedings pursuant to regulation 101(2)(b), and as concerns the protection of witnesses and victims pursuant to regulation 101(2)(c) and (f).

5. The risks found by the Chamber in November 2020 justifying the maintaining of the restrictions continue to prevail. *First*, as the Prosecution's previous filing (incorporated by reference herein) notes, YEKATOM has a history of willingness to violate the conditions of his detention.⁷ *Second*, YEKATOM continues to have the means to reach out to witnesses in this case, who largely reside in the Central African Republic ("CAR").⁸ If the contact restrictions are reduced, YEKATOM will have easier access to his sphere of influence, increasing the risk of collusion and witness interference.

6. In addition, the volatile security situation in CAR has a direct impact on the ability of Anti-Balaka supporters to interfere with witnesses. [REDACTED].⁹ [REDACTED]. This may have a chilling effect on Prosecution witnesses who may become reluctant to cooperate or to remain involved with this case.

7. Finally, the fact that YEKATOM's case is moving forward and that he might face a significant sentence in case of a conviction, incentivises action to undermine the

⁶ ICC-01/14-01/18-727-Conf.

⁷ ICC-01/14-01/18-69-Conf-Exp, para. 11, ICC-01/14-01/18-465-Conf-Exp, para. 9, ICC-01/14-01/18-599-Conf, paras. 6-8, ICC-01/14-01/18-679-Conf, paras. 7-8.

⁸ ICC-01/14-01/18-727-Conf

⁹ ICC-01/14-01/18-825-Conf-Anx, paras. 13, 14, 42. *See also*, ICC-01/14-01/18-893-Conf, para. 8.

proceedings. Thus, any lesser restrictions than those the Order imposes would not *effectively* ensure the integrity of these proceedings.

B. The restriction of YEKATOM's non-privileged mail communications to verified individuals on his non-privileged contact list should be maintained

8. Given YEKATOM's history of violating the court-ordered contact restrictions,¹⁰ he and his current and former associates and supporters continue to present a genuine risk to Prosecution Witnesses. Easing restrictions on YEKATOM's non-privileged mail communications would allow him to more easily contact supporters and associates, heightening the risk of witness interference. As such, the Chamber should continue to restrict YEKATOM's non-privileged mail communications to those individuals on his non-privileged *contact* list,¹¹ as well as the existing restrictions on the *content* of all non-privileged correspondence.¹²

9. By contrast, allowing YEKATOM to maintain contact with his family and verified individuals on his non-privileged contact list is not unfairly restrictive or disproportionate when weighed against the serious risks to this case and the prospect of justice for the victims of the charged crimes, if the current restrictions are reduced.

¹⁰ ICC-01/14-01/18-69-Conf-Exp, para. 11, ICC-01/14-01/18-465-Conf-Exp, para. 9, ICC-01/14-01/18-599-Conf, paras. 6-8, ICC-01/14-01/18-679-Conf, paras. 7-8.

¹¹ ICC-01/14-01/18-485, para. 13; Note ICC-01/14-01/18-945-Conf, para. 16 ([REDACTED]).

¹² ICC-01/14-01/18-485, para. 13.

IV. CONCLUSION

10. For the above reasons, the Chamber should maintain the current restrictions on YEKATOM's contacts in detention, including restricting his non-privileged mail communication to verified individuals on his non-privileged contact list.



Fatou Bensouda, Prosecutor

Dated this 1st day of June 2021
At The Hague, The Netherlands