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**International
Criminal
Court**

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

Date: **3 November 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 “Yekatom Defence Response to the ‘Fourth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V’, 6 October 2021, ICC-01/14-01/18-1130-Conf-Exp”, 15 October 2021, ICC-01/14-01/18-1138-Conf-Exp

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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INTRODUCTION

1. Defence Counsel for Mr. Alfred Rombhot Yekatom ('Defence') hereby responds to the '*Fourth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V*' ('Report') dated 6 October 2021.¹
2. The Defence respectfully submits that the [REDACTED] incident reported by the Registry in its Report,² while regrettable, does not qualify as a change of circumstances warranting a modification of current restrictions on contact for Mr. Yekatom, as it was a private exchange and in no way comprises an attempt by Mr. Yekatom to interfere with investigations or with Prosecution witnesses.
3. In light of the limited extent of this incident, and in the absence of any attempt to interfere with the proceedings, it is submitted that current restrictions on contact ('Restrictions') should be maintained; and further, that the Prosecution's request in its *Observations de l'Accusation sur le "Fourth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V* ('Observations')³ to increase monitoring of non-privileged telephone calls of Mr. Yekatom is excessive and should be denied.
4. The Defence does not oppose the transmission of the transcript [REDACTED] telephone call and the interlocutors' identities to the Prosecution.

PROCEDURAL BACKGROUND

5. On 17 November 2018, Mr. Yekatom was incarcerated at the ICC Detention Centre.⁴ The same day, Pre-Trial Chamber II implemented restrictions on the

¹ Registry, "Fourth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber", 6 October 2021, ICC-01/14-01/18-1130-Conf-Exp.

² [ICC-01/14-01/18-1130-Conf-Exp](#), para. 7.

³ [ICC-01/14-01/18-1135-Conf.](#)

⁴ [ICC-01/14-01/18-17-US-Exp-Red.](#)

communications of Mr. Yekatom.⁵ Those restrictions have been implemented continuously ever since and have also been confirmed by Trial Chamber V ('Chamber').⁶

6. In its latest decision on this matter dated 27 May 2021,⁷ the Chamber recalled that Mr. Yekatom is allowed to have non-privileged telephone calls for 180 minutes per week subject to random active monitoring.⁸ The Chamber maintained the restrictions on contacts on the basis there were reasonable grounds to believe that their lifting could "prejudice the outcome of the proceedings, namely by negatively impacting the Prosecution's ongoing investigations and the protection of victims and witnesses in this case".⁹
7. On 6 October 2021, the Registry filed its "Fourth Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom"¹⁰ in which it was reported that during a non-privileged telephone call on [REDACTED], Mr. Yekatom exchanged "questions and answers to an unauthorised third party through an approved non-privileged contact".¹¹
8. On 11 October 2021, the Prosecution filed its Observations¹² seeking the maintenance of the current restrictions on communications; additional monitoring of non-privileged telephone calls; and the communication of the transcript of the telephone call that took place on [REDACTED] as well as the identity of the interlocutors.¹³

⁵ [ICC-01/14-01/18-11](#).

⁶ [ICC-01/14-01/18-485-Red](#).

⁷ [ICC-01/14-01/18-1008-Conf](#), para. 1, 13.

⁸ *Ibid*, para. 1.

⁹ *Ibid*, paras 11-12.

¹⁰ [ICC-01/14-01/18-1130-Conf-Exp](#). A Confidential Redacted Version was filed the same day.

¹¹ [ICC-01/14-01/18-1130-Conf-Red](#), para. 7.

¹² [ICC-01/14-01/18-1135-Conf](#).

¹³ *Ibid*, para. 17.

APPLICABLE LAW

9. The Regulation 99(1)i) of the Regulations of the Court states that:

Every detained person shall be entitled, inter alia, to [...] communicate by letter or telephone with his or her family and other persons.

10. The Regulation 101(2) of the Regulations of the Court states that:

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: [...] (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; [...] (f) Is a threat to the protection of the rights and freedom of any person.

SUBMISSIONS

11. The Defence acknowledges the Chamber's recommendation to parties to only respond to Reports by the Registry when deemed necessary in the light of a change of circumstances warranting a modification.¹⁴ Although the Defence is not seeking any modification to the current restrictions following the latest Registry's Report, it nevertheless wishes to submit the present response to inform the Chamber and parties as to the limited nature of the [REDACTED] incident.

12. The Defence acknowledges the [REDACTED] incident mentioned in the Report. However, this conversation remains a minor incident unrelated to Mr. Yekatom's case before the Court. The Defence respectfully submits that this exchange does not undermine the terms of the Chamber's orders on restrictions on contacts and communications as it was strictly limited to private matters.

¹⁴ [ICC-01/14-01/18-727-Conf](#), para. 33

The [REDACTED] Incident

13. The Report mentioned that on [REDACTED] Mr. Yekatom had a non-privileged telephone call with his [REDACTED], whom he asked to convey questions to [REDACTED], a family member, who was physically close to [REDACTED].
14. This exchange with an unauthorised third party through an approved non-privileged phone call was reported by the Registry as appearing to undermine the terms of the Chamber's orders on restrictions on contacts and communications.¹⁵
15. Mr. Yekatom understands the extent of his restrictions on contacts which have been implemented for nearly three years. This minor incident was driven by his excitement to discover the nearby presence of a close relative with whom he had not spoken to for quite some time and not by any disrespect for the rules in place.
16. [REDACTED] and [REDACTED] are both family members of Mr. Yekatom. Their exchange remained at all time indirect,¹⁶ which is apparent from the audio recording of the conversation whereby the Defence noticed that the phone was never put on speaker neither was the phone ever handed to [REDACTED]. Furthermore the conversation was limited to private matters unrelated to his ongoing case before the ICC. Mr. Yekatom was overly eager to inquire on her wellbeing, her professional position and advancement, and other relatives' professional situation.¹⁷ This personal exchange with his relative does not represent in any way an attempt to interfere with Prosecution witnesses or these proceedings.

¹⁵ [ICC-01/14-01/18-1130-Conf-Red](#), para. 7.

¹⁶ Although the transcript of the telephone call states that Mr. Yekatom directly addressed [REDACTED], it can be observed from the same transcript extract that [REDACTED] nonetheless acted as an intermediary through the entire exchange.

¹⁷ [ICC-01/14-01/18-1130-Conf-Exp-Anx](#).

17. Mr. Yekatom's contact with the outside world has been strictly restricted for nearly three years. While the Defence acknowledges the regrettable character of this incident, it nonetheless submits that it is foreseeable that the continued imposition of strict restrictions of communication with Mr. Yekatom's relatives over an extended period of time may lead to minor incidents.
18. A slight misstep in such a context does not demonstrate that Mr. Yekatom wilfully disregarded restrictions on contact ordered by the Chamber. On the contrary, it is apparent that this particular oversight or misstep on the part of Mr. Yekatom was simply the result of a momentary lapse of judgment that nevertheless demonstrates that at no point in time did he have any intention to prejudice the outcome of the proceedings or of the investigation or endanger witnesses.

Prosecution's Observations

19. As a preliminary matter, the Defence informs the Chamber that it has no objection to the provision of the transcription of the [REDACTED] phone call to the Prosecution as requested.¹⁸ The provision of this transcript will prove that the reported incident is minor and does not concern the substance of the case. In addition, consistent with its previous position on the matter,¹⁹ the Defence believes it will allow the Prosecution to assure itself that the aforementioned call does not comprise in any way the security of its witnesses.
20. Turning to the Prosecution's request that the Chamber order additional monitoring of non-privileged telephone calls on the basis that Mr. Yekatom's past incidents and his "apparent intention" to overlook his restrictions increase

¹⁸ [ICC-01/14-01/18-1135-Conf](#), para. 14.

¹⁹ [ICC-01/14-01/18-606-Conf](#), para. 8.

the risk of future interference with witnesses or proceedings,²⁰ the Defence respectfully submits that this request is excessive and unfounded.

21. The Defence reiterates that Mr. Yekatom's past incidents, as well as the one mentioned in the latest Report by the Registry, were not related to any attempts to interfere with the investigation or witnesses.²¹ These incidents were already addressed by the Chamber, which considered that the content of the conversations reported did not warrant a modification of the Restrictions.²²
22. The Prosecution's request is based on the unsupported and speculative presumption that this minor incident increases the risk of Mr. Yekatom interfering with Prosecution witnesses or the proceedings. The Prosecution did not submit any information or evidence that this exchange or any past incidents interfered in any way with Mr. Yekatom's ongoing case.
23. It is acknowledged that during the conversation, reference was made to [REDACTED], an individual of interest in these proceedings. However, it was strictly in his current capacity as [REDACTED] that [REDACTED]'s name arose during the conversation. Specifically, as the transcript shows, Mr. Yekatom encouraged [REDACTED] to [REDACTED] to discuss a [REDACTED] and [REDACTED].
24. In the absence of any evidence or reasonable grounds to believe that Mr. Yekatom interfered or has attempted to interfere with witnesses or his ongoing case, it cannot be inferred from the [REDACTED] incident that "une surveillance plus fréquente, voire systématique" of Mr. Yekatom's communications is necessary.

²⁰ [ICC-01/14-01/18-1135-Conf](#), para. 9

²¹ See [ICC-01/14-01/18-957-Red](#), para. 13.

²² [ICC-01/14-01/18-1008-Conf](#), para. 11.

CONCLUSION

25. As set out above, it is submitted that in the circumstances, the [REDACTED] incident does not warrant a modification of Mr. Yekatom's restrictions on contact or any additional monitoring of his non-privileged phone calls.

CONFIDENTIALITY

26. This Response is filed on a confidential *ex parte* basis corresponding to the classification of the Report. A confidential redacted version will be filed forthwith.

RELIEF SOUGHT

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

MAINTAIN current restrictions on contact and communication for Mr. Alfred Yekatom; and

DENY the Prosecution's Request for additional monitoring of non-privileged telephone calls of Mr. Alfred Rombhot Yekatom.

RESPECTFULLY SUBMITTED ON THIS 3RD DAY OF NOVEMBER 2021²³



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²³ The Defence thanks Legal Interns Ms Yousra Lamqaddam & Ms Léa Benoit for their precious assistance in the drafting of this filing.