

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 18 January 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 YEKATOM AND PATRICE-EDOUARD NGAÏSSONA***

CONFIDENTIAL

**Registry Observations on the “Request for authorization of in-person legal visits
with Mr. Yekatom” (ICC-01/14-01/18-816-Conf)**

Source: Registry

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

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I. Introduction

1. Pursuant to the instruction given by Trial Chamber V ("Trial Chamber" or "Chamber"),¹ the Registry hereby submits its observations on the "Request for authorization of in-person legal visits with Mr. Yekatom" filed on 12 January 2021 by the defence for Mr Alfred Yekatom ("Defence Request", "Defence" and "Mr Yekatom" respectively).²

II. Procedural history

2. As previously reported by the Registry,³ since 19 March 2020, measures have been in place at the International Criminal Court's Detention Centre ("ICC" and "DC" respectively) in order to protect the health, safety, and lives of detained persons during the ongoing COVID-19 pandemic, by minimizing external contacts to detained persons and thus their risk of exposure to the virus ("DC COVID-19 measures").⁴ The DC COVID-19 measures include the temporary suspension of in-person visits, including privileged visits by counsel. On 14 January 2021, pursuant to regulation 96(2) of the Regulations of the Court

¹ Email from Trial Chamber V to the Registry, "Yekatom Defence Request ICC-01/14-01/18-816-Conf", 12 January 2021 at 18:59.

² Defence, "Request for authorization of in-person legal visits with Mr. Yekatom", 12 January 2021, ICC-01/14-01/18-816-Conf.

³ Registry, "Registry Update on COVID-19 Detention Centre Measures", 3 July 2020, ICC-01/14-01/18-578-Conf; Registry, "Registry Second Update on COVID-19 Detention Centre Measures", 17 July 2020, ICC-01/14-01/18-597-Conf; Registry, "Registry Third Update on Detention Centre COVID-19 Measures", 26 August 2020, ICC-01/14-01/18-632-Conf; Registry, "Fourth Registry Update on Detention Centre COVID-19 Measures", 23 September 2020, ICC-01/14-01/18-665-Conf; Registry, "Addendum to 'Registry Fifth Update on Detention Centre COVID-19 Measures'", 29 October 2020, ICC-01/14-01/18-702-Conf; Registry, "Sixth Update on Detention Centre COVID-19 Measures", 25 November 2020, ICC-01/14-01/18-741-Conf; Registry, "Seventh Registry Update on Detention Centre COVID-19 Measures", 21 December 2021, ICC-01/14-01/18-788-Conf.

⁴ *Ibid.*; See also, International Criminal Court, "How the Court works?", at <https://www.icc-cpi.int/about/how-the-court-works> (accessed 18 January 2021): "all in-person visits to detained persons, including privileged, recreational and spiritual activities have been suspended and alternative measures have been taken to ensure the respect of the detained persons' rights and to limit the impact on them".

("RoC"), the Presidency approved an extension of the DC COVID-19 measures until 18 February 2021 (inclusive).

3. On 12 January 2021, the Defence for Mr Yekatom filed its "Request for authorization of in-person legal visits with Mr. Yekatom" requesting the Chamber to authorize "in-person visits between Counsel and their client at the International Criminal Court Detention Centre".⁵

III. Classification

4. In accordance with regulation 23 *bis* (2) of the Regulations of the Court ("RoC"), the present report is classified as confidential as it follows a submission with the same classification and contains detention matters that are not currently public.

IV. Applicable law

5. For the purposes of the present submission, the Registry has considered regulations 90, 96, 97 and 100 of the RoC, and regulations 177, 178 and 183 of the Regulations of the Registry ("RoR").⁶

V. Submissions

6. As a preliminary matter, the Defence Request refers to the temporary doubling of complaint timelines for a decision of the Chief Custody Officer ("CCO") in response to a detained person's complaint, and a detained person's request for review of a decision from the Registrar and the Presidency.⁷ The Registry

⁵ Defence Request, para. 1.

⁶ Email from the Registry to Defence Counsel, "*Mesures provisoires relatives au COVID-19*", 15 January 2021 at 12:20.

⁷ Defence Request, para. 12; Regulations 218 (5), 219(1) and 220(1) of the Regulations of the Registry.

wishes to clarify for the record that the temporary doubling of timelines for regulations 218 (5), 219(1) and 220(1) of the RoR expired on 10 June 2020.⁸ Since that date all time lines have reverted to their original length.

In relation to in-person visits by Counsel

7. The Registry acknowledges that the Defence has been using the privileged video conference ("PVC") system, and has been proactive in working with the Registry to identify solutions when technical issues arose.⁹ Furthermore, the Registry is cognizant that this is a critical stage of trial preparation, as the trial is set to commence on 9 February 2021.¹⁰ As a result, the Registry does not oppose limited in-person privileged visits for the challenges identified by the Defence, and considers this may be an appropriate stage of the proceedings, should the Chamber decide to grant an exception to the DC COVID-19 measures.
8. Regarding the Defence submission that Mr Yekatom has not yet met new associate counsel,¹¹ the Registry's position is that a detained person meeting a new member of a Defence team, be it counsel or associate counsel, is not a sufficient reason to grant exceptions to the DC COVID-19 measures, while alternatives such as PVC exist.
9. The Defence has correctly identified that modifications are in place at the DC, combining two visit rooms with a glass barrier to allow exceptionally ordered legal visits, with the use of a telephone between the detained person and the

⁸ Email from the Registry to Defence Counsel, "Extension of DC COVID-19 temporary measures", 10 June 2020 at 16:47.

⁹ See Defence Request, para. 18.

¹⁰ Trial Chamber V, "Decision Setting the Commencement Date of the Trial", 16 July 2020, ICC-01/14-01/18-589, paras. 24-25: "the Chamber decides that the trial will commence on **9 February 2021**."

¹¹ Defence Request, para. 19.

legal team.¹² Protocols will also be followed to limit the exposure of detained persons to the hallways used by the legal team.¹³ Nevertheless, the Registry recalls that its duty of care also extends to staff of the DC, and not only the detained person. The risk of contamination is not limited to Mr Yekatom, but extends to guards and staff of the ICC, the host State, and the shared international detention facilities, as Defence team members will come into contact with a variety of personnel during their visit.

10. For the information of the Chamber, the CCO has established requirements for exceptional, judicially ordered privileged visits to the DC. These strict conditions have been put in place by the Registry for another case where exceptional legal visits were ordered, with acceptable results. Therefore, in order to minimize the risk of COVID-19 to the extent possible, the Registry requires:¹⁴

- Only two Defence team members may visit each visiting day;
- One of the members must be a member with privilege (non-privileged visits are not possible with the modifications at the DC);
- An established list of maximum four Defence team members will be allowed for exceptional privileged visits, and only these four members will be allowed to rotate visits (thus limiting the list of persons who are visiting the DC);
- Visits will be limited to a strict time schedule, according to the requirements of the DC and health and safety protocols for cleaning and airing out the singular visit room (for information, the DC has two set time periods per day, one slot in the morning and one slot in the afternoon. The detained person must return to the wing for lunch);

¹² Defence Request, para. 25.

¹³ Defence Request, para. 26.

¹⁴ Regulation 177 and 178 of the Regulations of the Registry.

- A limited number of visits per week per Defence team (the CCO will organize this schedule with the Defence team, based on operational requirements such as staffing and how many Defence teams have judicially ordered exceptional privileged visits at a time);
- Visits are behind glass and communication is through a telephone;
- Face masks must be worn at all times from the front entrance until within the designated visit room.

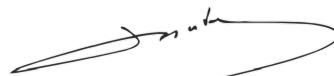
11. When entering the ICC DC, Defence team members must also pass a mandatory medical screening. In addition, Defence team members will need to strictly follow and abide to the general host State requirements and measures against COVID-19, and cannot, for example, have travelled internationally within 10 days.¹⁵

12. As a final note, the Registry highlights that the Netherlands continues to be in a total lockdown until at least 9 February 2021,¹⁶ and that new variants of COVID-19 have already been detected in country.¹⁷ The Medical Officer of the DC, under regulation 155 of the RoR, has recommended that in-person contacts to detained persons should be limited to what is of 'vital necessity' when remote alternatives do not exist. On this basis, the Registry continues to encourage the use of the alternative means of privileged communication as much as possible, such as PVC, electronic transfer of documents, and telephone conferences.

¹⁵ Government of the Netherlands, "Travelling and going on holiday", 12 January 2021, at <https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands/travel-and-holidays> (accessed on 18 January 2021).

¹⁶ Government of the Netherlands, "Netherlands to remain in lockdown until at least 9 February inclusive", 12 January 2021, at <https://www.government.nl/latest/news/2021/01/12/netherlands-to-remain-in-lockdown-until-at-least-9-february-inclusive> (accessed on 18 January 2021).

¹⁷ Ministry of Health, Welfare and Sport, National Institute for Public Health and the Environment, "South African coronavirus variant found in the Netherlands", 8 January 2021, at <https://www.rivm.nl/en/news/south-african-coronavirus-variant-found-in-netherlands> (accessed on 18 January 2021).



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 18 January 2021

At The Hague, the Netherlands