

**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 “Second Observations of the Defence of Mr. Alfred Yekatom Pursuant to the Seventh Decision (ICC-01/14-01/18-176-Conf-Red)”, 26 August 2019, ICC-01/14-01/18-291-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. James Stewart

Mr. Kweku Vanderpuye

Counsel for Mr. Yekatom

Me Mylène Dimitri

Mr. Thomas Hannis

Counsel for Mr. Ngaïssona

Me Geert-Jan Alexander Knoops

Mr. Richard Omissé-Namkeamaï

Legal Representatives of Victims

Mr. Dmytro Suprun

Mr. Abdou Dangabo Moussa

Ms. Elisabeth Rabesandratana

Mr. Yaré Fall

Ms. Marie-Edith Douzima-Lawson

Ms. Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Me Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

**Victims Participation and Reparations
Section**

Detention Section

Mr. Paddy Craig

Further to the 15 April 2019 Decision Pursuant to Regulation 101 of the Regulations of the Court¹ (“Seventh Decision”), the 15 August 2019 Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr. Alfred Yekatom Ordered by Pre-Trial Chamber II² (“Eighth Registry Report”), and the Prosecution’s Observations Pursuant to the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (ICC-01/14-01/18-176-Conf-Exp) dated 21 August 2019 (“Prosecution’s Observations”),³ Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) hereby submit:

**Second Observations of the Defence of Mr. Alfred Yekatom
Pursuant to the Seventh Decision (ICC-01/14-01/18-176-Conf-Red)
 (“Defence Observations”).**

INTRODUCTION

1. The Defence respectfully submits that in light of the Eighth Registry Report, the Pre-Trial Chamber II (“Chamber”) should (1) reject the Prosecution request whereby it’s seek to require from Mr. Yekatom to provide in advance the list of persons he wishes to call during his non-privileged telephone calls;⁴ and (2) lift the current restrictions on the communications of Mr. Alfred Rombhot Yekatom.

SUBMISSIONS

- I. **Regarding Prosecution’s request to require Mr. Yekatom to provide in advance the list of persons he intends to call**

¹ [ICC-01/14-01/18-176-Conf-Red](#).

² [ICC-01/14-01/18-277-Conf-Exp](#).

³ [ICC-01/14-01/18-287-Conf-Exp](#).

⁴ [ICC-01/14-01/18-287-Conf-Exp](#), para. 11.

2. In the Prosecution's Observations, Prosecution request that Mr. Yekatom should provide in advance to the Detention Centre a list of the persons he intends to call.
3. Contrary to the Prosecution's assertion, the current practice put in place to manage the calls of the detainees at the Detention Centre is not in contradiction with the July 9 2019 Chamber's "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Eighth Decision") order to "substantially increase the random monitoring of Yekatom's telephone calls [REDACTED]".⁵ The Eight Registry Report clearly indicates that the Chamber's Eighth Decision, has been fully implemented and that no incidents were reported.⁶
4. The Registry simply draws the Chamber's attention to the logistical challenges inherent to the monitoring of telephone calls due to the significant increase in random monitoring of specific contacts.⁷ However, despite the logistical challenge posed, the Registry did fully implement the Chamber's Eighth Decision and by significantly increasing the monitoring of the communications. Far from a regulatory privilege frustrating the full implementation of the Chamber's Eighth Decision as alleged by the Prosecution,⁸ Mr. Yekatom's freedom to call anybody from his list of contacts led to an increase of the overall monitoring that he is subjected to.
5. Finally it should be noted that requiring Mr. Yekatom to inform in advance the Detention Centre of the persons he wishes to call is not feasible and would impede on his right to maintain contacts with his family.⁹ Bearing in mind the

⁵ [ICC-01/14-01/18-241-Conf-Exp](#), para. 27.

⁶ [ICC-01/14-01/18-277-Conf-Exp](#), para. 21.

⁷ [ICC-01/14-01/18-277-Conf-Exp](#), para. 22.

⁸ [ICC-01/14-01/18-287-Conf-Exp](#), para. 11.

⁹ *Prosecutor v. Ngudjolo*, Decision on Request 1200 of the Prosecutor for Prohibition and Restrictive Measures Against Mathieu Ngudjolo with Respect to Contacts Both Outside and Inside the Detention Centre, [ICC-01/04-01/07-1243-tENG-Red](#), 24 June 2009, para. 18.

external difficulties with the telephone system,¹⁰ Mr. Yekatom is sometimes unable to reach the persons he intends to call during his scheduled session; he then spontaneously reaches someone else in his non-privileged contact list. Therefore, flexibility and ability to call another number from the list is thus a necessity.

6. For the reasons above, Prosecution's request mentioned in paragraph 11 of the Prosecution's Observation should be dismissed.

II. Regarding the lift of the restriction

7. Mr. Yekatom has been subjected to communications restrictions since the "Decision pursuant to Regulation 101 of the Regulations of the Court" issued by the Single Judge on 17 November 2018,¹¹ more than nine months ago.
8. Mr. Yekatom abode and is still abiding by the restrictions imposed upon him, the Eighth Registry Report noting that there are "no incidents or concerns to report for this reporting period".¹²
9. Regulation 99 (i) of the Regulation of the Court states that every detained person is entitled to communicate by letter or telephone with his or her family and others persons. Hence, imposition of restrictions on a detained person's contacts constitutes the exception and not the rule.¹³ Arguments put forward to deviate from the rule and apply an exception should therefore be substantiated.

¹⁰ [ICC-01/14-01/18-226-Conf-Exp](#), para. 22.

¹¹ [ICC-01/14-01/18-11-Conf-Exp](#).

¹² [ICC-01/14-01/18-277-Conf-Exp](#), para. 27.

¹³ *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.

10. Prosecution's Observations argue for the continuation of the restrictions due to "the filing of the DCC and the completion of pre-confirmation disclosure".¹⁴ However regular course of proceedings shall not be an argument justifying the continuous restrictions imposed upon Mr. Yekatom. Doing so would *de facto* justify the restrictions until the end of the trial with no valid reasons other than the normal course of proceedings.
11. Finally, it should be noted that on a number of occasions the Prosecution argued that restrictions were necessary to ensure that its witnesses are adequately protected through adequate measures implemented by the Prosecution's Protection Strategies Unit and the Victims and Witnesses Unit.¹⁵ These measures are now fully in place since at the very least the disclosure of the DCC on 19 August 2019. Consequently, security measures having been applied, it cannot be argued that the filing of the DCC and of pre-confirmation disclosure warrant the continuation and/or extension of the restrictions.
12. For the reasons above, Pre-Trial Chamber II should lift immediately the restrictions on communications applied to Mr. Yekatom.

CONCLUSION

13. In light of (i) the Eighth Registry Report which confirms Mr. Yekatom's intent to abide by the regulations in force at the Detention Centre concerning communications with non-privileged contacts; and (ii) Mr. Yekatom's conduct since his transfer in the custody of the Detention Centre which demonstrates that he has no intent to interfere with witnesses and/or undermine the Prosecution's investigations or the outcome of the proceedings.
14. The restrictions on non-privileged contacts imposed on Mr. Yekatom are no longer justified under regulation 101 of the Regulations of the Court.

¹⁴ [ICC-01/14-01/18-287-Conf-Exp](#), para. 12.

¹⁵ [ICC-01/14-01/18-130-Conf-Exp](#), pages 5- 6; [ICC-01/14-01/18-170-Conf-Red](#), pages 5-6.

CONFIDENTIALITY

15. Pursuant to Regulation 23bis(2) of the Regulations of the Court, these observations are filed on a confidential *ex parte* basis corresponding to the classification of the Eighth Registry Report.

RELIEF SOUGHT

16. In light of the above, the Defence respectfully requests Pre-Trial Chamber II to:
- DISMISS** Prosecution's suggestion to require Mr. Yekatom to give in advance to the Detention Centre a list of the persons he intends to call; and
- LIFT** all restrictions on non-privileged contacts imposed on Mr. Yekatom effective immediately.

RESPECTFULLY SUBMITTED ON THIS 17th DAY OF FEBRUARY 2021



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom



Mr. Thomas Hannis
Associate Counsel for Mr. Yekatom

The Hague, the Netherlands