



Original: **English**

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

Date: **27 May 2022**

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 “Fifth Registry
Report on the Implementation of the Restrictions on Contact for Mr Alfred
Yekatom” (ICC-01/14-01/18-1348-Conf-Red), 6 April 2022”,
19 April 2022, ICC-01/14-01/18-1365-Conf**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan QC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Landry Omissé-Namkeamaï
Ms Marie-Hélène Proulx

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)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) provides its observations on the Registry’s 6 April 2022 “Fifth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V” (“Fifth Report”).¹

2. Trial Chamber V (“Chamber”) should maintain the current restrictions on YEKATOM’s contacts in detention as outlined in its Decision of 11 November 2020 (“Order”).² YEKATOM’s latest violation of the contact restrictions as detailed in the Fifth Report, marks the sixth such occurrence³ and demonstrates his repeated and flagrant disregard of the Order.⁴ Maintaining the restrictions and increasing the frequency of random active monitoring will minimise the risk of interference with witnesses, victims and their relatives, and to the integrity of the proceedings as a whole.

3. In addition, the Prosecution requests that the transcripts of the call of [REDACTED],⁵ the subject of YEKATOM’s disclosure violation, be made immediately available to the Prosecution to assess the severity of the incident.

¹ ICC-01/14-01/18-1348-Conf-Red.

² ICC-01/14-01/18-485-Conf.

³ Registry reports ICC-01/14-01/18- 62-Conf-Red, paras. 10-11, ICC-01/14-01/18-467-Conf, paras. 25-26, ICC-01/14-01/18-592-Conf-Red, paras. 10-12, ICC-01/14-01/18-673-Conf-Red, paras. 12-13; ICC-01/14-01/18-1348-Conf-Red, para. 6; Pre-Trial Chamber II and Trial Chamber V decisions ICC-01/14-01/18-75, para. 15; ICC-01/14-01/18-485-Conf, para. 22; ICC-01/14-01/18-627, para. 16; ICC-01/14-01/18-727-Conf, paras. 17-18; ICC-01/14-01/18-1148-Conf, para. 9.

⁴ ICC-01/14-01/18-485-Conf.

⁵ ICC-01/14-01/18-1348-Conf-Red, para. 6.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential”, as it refers to filings and decisions of the same classification.

III. SUBMISSIONS

A. The circumstances underlying the Order persist

5. The current contact restrictions on YEKATOM remain essential to protect witnesses and victims pursuant to regulation 101(2)(c) and (f) of the RoC and for the integrity of the proceedings pursuant to regulation 101(2)(b). The circumstances in which the Chamber issued and has extended the Order persist.⁶ Rigorous control of the Accused’s contacts is necessary and proportionate, as his repeated violations demonstrate.

6. *First*, YEKATOM has a history of wilfully disregarding the Order, despite repeated reminders regarding the restrictions on his contacts.⁷ The Registry has now reported YEKATOM’s violation of the conditions of his detention six times,⁸ demonstrating his ongoing intention to contravene the restrictions imposed.

7. *Second*, YEKATOM retains an active support network in the Central African Republic (“CAR”) where the majority of Prosecution witnesses reside, and offering him easy opportunity to reach those within his sphere of influence would substantially increase the risk of witness interference in this case.

⁶ See ICC-01/14-01/18-485-Conf, para. 21; ICC-01/14-01/18-627, paras. 13-15; ICC-01/14-01/18-727-Conf, paras. 14-16; ICC-01/14-01/18-1008-Conf, paras. 11-13; and ICC-01/14-01/18-1148-Conf, paras. 7-11.

⁷ See *infra*, para. 10.

⁸ See *supra*, fn. 3.

8. *Third*, the dire political and security situation in CAR, [REDACTED],⁹ [REDACTED]. The result is an increased risk of witnesses becoming reluctant or unwilling to continue their cooperation with the Prosecution. [REDACTED].¹⁰

9. Finally, the restrictions are proportionate. They allow for the necessary monitoring of YEKATOM's contacts while respecting his right to communicate with his family and those close to him.

B. The frequency of random active monitoring should be increased

10. Despite the Chamber's 27 October 2021 Decision urging the Defence to remind YEKATOM to comply with the current restrictions ("Fifth Decision"),¹¹ and numerous reminders from the Registry to the same effect,¹² the Accused continues to violate his conditions of detention.

11. The steadily increasing number of times YEKATOM has violated the contact restrictions has a corresponding impact on the *risk* that his intentional and repeated conduct will affect (or has affected) Prosecution witnesses directly or indirectly.

12. Although the Fifth Report indicates that "mainly [...] private matters" were referred to during this latest contact violation,¹³ the fact that the conversation occurred at all demonstrates YEKATOM's determination to disregard the Order. In the circumstances, more frequent and systematic monitoring of the Accused's communications is necessary to curtail the his conduct, to minimise the possibility of

⁹ Annex to Sixth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-1992-Conf-Anx.

¹⁰ The Prosecution is prepared to provide the Chamber with more specific information, as the Chamber may deem necessary.

¹¹ ICC-01/14-01/18-1148-Conf, para. 9.

¹² See ICC-01/14-01/18-592-Conf-Red, paras. 14-15; ICC-01/14-01/18-1130-Conf-Red, para. 8; and ICC-01/14-01/18-1348-Conf-Red, para. 7.

¹³ ICC-01/14-01/18-1348-Conf-Red, para. 6.

his network reaching witnesses, victims and their relatives, and to reduce the risk to the integrity of the proceedings.

C. The transcripts of the call and the identity of the interlocutor should be made available to the Prosecution

13. The Prosecution requires access to the transcripts of the call of [REDACTED], the subject of YEKATOM's latest disclosure violation, to analyse the severity of the incident and assess if additional measures should be requested.

14. The Prosecution is mindful of its obligations under article 68(1) and requests that the Chamber, as in its Fifth Decision,¹⁴ to direct the Registry to make the transcript and identity of the interlocutor immediately available to the Prosecution.

IV CONCLUSION

15. For the reasons above, the Chamber should (i) maintain the current restrictions on YEKATOM's contacts in detention, (ii) order the Registry to increase the frequency of the random active monitoring, and (iii) order the Registry to provide the transcript of the call of [REDACTED], together with the identity of the interlocutor, to the Prosecution.



Karim A. A. Khan QC, Prosecutor

Dated this 27th day of May 2022
At The Hague, The Netherlands

¹⁴ ICC-01/14-01/18-1148-Conf, para. 12.