



**Original: English**

No. **ICC-01/14-01/18**  
Date of original: **20 May 2022**  
Date: **16 June 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**  
***THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD***  
***NGAISSONA***

**Public redacted version of**

**Sixth Decision on Mr Yekatom's Restrictions on Contacts and Communications  
in Detention**

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

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**TRIAL CHAMBER V** of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2) and 68(1) of the Rome Statute (the ‘Statute’), Regulations 99-101 of the Regulations of the Court, and Regulations 168-169, 173-175, and 187 of the Regulations of the Registry, issues this ‘Sixth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention’.

## **I. Procedural history and submissions**

1. The Chamber recalls the procedural history set out in its latest decision on Mr Yekatom’s restrictions on contacts and communications in detention (the ‘Fifth Restrictions Decision’), where it decided to maintain the restrictions previously imposed on Mr Yekatom (the ‘Current Restrictions’).<sup>1</sup>
2. On 6 April 2022, the Registry filed its fifth report on the implementation of the restrictions on Mr Yekatom’s contacts and communications in detention (the ‘Fifth Report’).<sup>2</sup> The Registry reports that during one of Mr Yekatom’s calls to an individual by the name of [REDACTED], who is on his non-privileged contact list (the ‘Approved Person’), Mr Yekatom spoke to the Approved Person’s [REDACTED], who is not on this list (the ‘Non-Approved Person’ and the ‘[REDACTED] Call’, respectively). It indicates that the conversation ‘appeared to mainly refer to private matters’ and did not concern the substance of the case. It further reports that the Chief Custody Officer (the ‘CCO’) thereafter reminded Mr Yekatom of the restrictions, notably that he is not allowed to speak with individuals not approved by the Registry.<sup>3</sup> No incidents were reported with respect to in-person visits or written correspondence.<sup>4</sup>

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<sup>1</sup> See Fifth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, 27 October 2021, ICC-01/14-01/18-1148-Conf.

<sup>2</sup> Fifth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V, ICC-01/14-01/18-1348-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-1348-Conf-Red).

<sup>3</sup> Fifth Report, ICC-01/14-01/18-1348-Conf-Red, paras 6-7.

<sup>4</sup> Fifth Report, ICC-01/14-01/18-1348-Conf-Red, paras 8-9.

3. On 19 April 2022, the Prosecution provided observations to the Fifth Report (the ‘Prosecution Observations’). It requests that the Chamber (i) maintain the Current Restrictions; (ii) order the Registry to increase the frequency of random active monitoring (the ‘First Prosecution Request’); and (iii) order that it be provided with the transcript of the [REDACTED] Call and the identity of the Non-Approved Person (the ‘Second Prosecution Request’).<sup>5</sup>
4. On the same day, the Yekatom Defence (the ‘Defence’) provided its observations (the ‘Defence Observations’). It requests that the Chamber (i) find that the [REDACTED] Call did not constitute a breach of the Current Restrictions (the ‘First Defence Request’); (ii) order the Registry to re-add [REDACTED] to Mr Yekatom’s non-privileged contact list (the ‘Second Defence Request’); and (iii) modify the Current Restrictions in order to allow non-actively monitored calls with some members of Mr Yekatom’s immediate family, ‘*i.e* without active monitoring and not limited to only 180-minutes per week’ (the ‘Third Defence Request’).<sup>6</sup>
5. On 20 April 2022, the Defence filed an addendum, containing a signed undertaking by the [REDACTED], in which he acknowledges the rules applicable to non-privileged phone conversations with Mr Yekatom.<sup>7</sup>

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<sup>5</sup> 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, ICC-01/14-01/18-1365-Conf, paras 2-3, 5-15.

<sup>6</sup> Yekatom Defence Response to the “Fifth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V”, 6 April 2022, ICC-01/14-01/18-1348-Conf-Exp, ICC-01/14-01/18-1366-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (with confidential *ex parte* Annexes A and B, only available to the Yekatom Defence and the Registry, ICC-01/14-01/18-1366-Conf-Exp-AnxA and ICC-01/14-01/18-1366-Conf-Exp-AnxB) (public redacted version notified the same day, ICC-01/14-01/18-1366-Red), paras 2, 16-17, 21-22, p. 10.

<sup>7</sup> Addendum to the “Yekatom Defence Response to the “Fifth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V”, 6 April 2022, ICC-01/14-01/18-1348-Conf-Exp”, 19 April 2022, ICC-01/14-01/18-1366-Conf-Exp, ICC-01/14-01/18-1371 (with confidential *ex parte* Annex A, only available to the Yekatom Defence and the Registry, ICC-01/14-01/18-1371-Conf-Exp-AnxA) (the ‘Addendum’).

## II. Analysis

6. The Chamber recalls the standard and assessment criteria as previously set out,<sup>8</sup> as well as the circumstances underlying the Fifth Restrictions Decision and the findings therein.<sup>9</sup> Noting that these circumstances have not changed, the Chamber will assess whether the Current Restrictions remain warranted in light of any new circumstances since the Fifth Restrictions Decision.
7. With respect to the [REDACTED] Call, the Chamber notes the Defence's submission that Mr Yekatom spoke to the Non-Approved Person *bona fide*, due to a misunderstanding of the applicable forms at the Detention Centre.<sup>10</sup> In this regard, it particularly takes note of the fact that Mr Yekatom indicated the Non-Authorised Person's name when filling out the field '*Indiquer les autres personnes (additionnelles) avec lesquelles vous êtes susceptibles de parler à ce numéro de téléphone*' in the form [REDACTED] on 7 January 2022 (the '7 January Form').<sup>11</sup>
8. Although the explanations provided by the Defence appear comprehensible to a certain extent, the Chamber also observes that the 7 January Form, as provided to Mr Yekatom, clarifies the process of registering [REDACTED]. Notably, it states that [REDACTED].<sup>12</sup> Moreover, it recalls that multiple explanations have been given to Mr Yekatom regarding the scope of the Current Restrictions throughout the course of the proceedings, including as to whom he may call.
9. The Chamber therefore finds it unclear whether Mr Yekatom intentionally circumvented the Current Restrictions concerning whom he may call in this instance. For that reason, and further noting that the conversation reportedly does

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<sup>8</sup> See Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-485-Conf (public redacted version notified on 16 February 2021, ICC-01/14-01/18-485-Red) (the 'First Restrictions Decision'), paras 16-18, 20.

<sup>9</sup> See Fifth Restrictions Decision, ICC-01/14-01/18-1148, paras 7-11, n. 15 referring to Fourth Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 27 May 2021, ICC-01/14-01/18-1008-Conf, paras 11-13.

<sup>10</sup> Defence Observations, ICC-01/14-01/18-1366-Red, paras 9-11.

<sup>11</sup> Annex A to the Yekatom Defence Observations, ICC-01/14-01/18-1366-Conf-Exp-AnxA.

<sup>12</sup> Annex A to the Yekatom Defence Observations, ICC-01/14-01/18-1366-Conf-Exp-AnxA.

not appear to concern the substance of the case,<sup>13</sup> the Chamber will abstain from making any findings on whether the [REDACTED] Call constituted a breach of the Current Restrictions. Accordingly, the First Defence Request is rejected. In this context, the Chamber further takes note of the fact that Mr Yekatom has meanwhile submitted the correct form for the Non-Authorised Person and that, according to the Defence, this has been processed by the Registry.<sup>14</sup>

10. With respect to the Defence's submissions regarding Mr Said's contact restrictions, the Chamber recalls that restrictions must be assessed with regard to a specific accused, taking into account the specific circumstances of a case. It is therefore not surprising that Mr Yekatom and Mr Said – despite being charged with crimes in the same country – are subject to different contact restrictions. In this regard, the Chamber notes in particular that Mr Said reportedly never breached his contact restrictions,<sup>15</sup> which constitutes a significant difference to Mr Yekatom's situation. Accordingly, the Chamber does not accept that there has been a 'breach of [...] equality of treatment', nor does it consider Trial Chamber VI's decision to constitute a 'change of circumstances', as argued by the Defence.<sup>16</sup>
11. As regards the Defence's arguments pertaining to the passage of time, the Chamber recalls that this needs to be considered together with other factors in determining whether or not the restrictions continue to be warranted.<sup>17</sup> At present, the Prosecution is still in the middle of its evidence presentation, and risks of witness interference and witness safety persist.<sup>18</sup> The Chamber is of the view that

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<sup>13</sup> See Fifth Report, ICC-01/14-01/18-1348-Conf-Red, para. 6, which states that 'the substance of the case was not discussed during this conversation which appeared to mainly refer to private matters.'

<sup>14</sup> Annex B to the Yekatom Defence Observations, ICC-01/14-01/18-1366-Conf-Exp-AnxB, '[REDACTED]', submitted on 6 April 2022; Defence Observations, ICC-01/14-01/18-1366-Red, para. 15.

<sup>15</sup> Trial Chamber VI, *The Prosecutor v. Mahamat Said Kani*, Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions, 2 March 2022, ICC-01/14-01/21-247-Conf (public redacted version notified on 3 March 2022, ICC-01/14-01/21-247-Red), para. 43.

<sup>16</sup> Defence Observations, ICC-01/14-01/18-1366-Red, para. 29.

<sup>17</sup> See First Restrictions Decision, ICC-01/14-01/18-485-Red, para. 20.

<sup>18</sup> See, for a similar example, Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the measures restricting Mr Al Hassan's contacts while in detention, 11 June 2020, ICC-01/12-01/18-871-Conf-Exp, confidential *ex parte*, only available to the Registry (public redacted version notified on 4 November 2021, ICC-01/12-01/18-871-Red4), para. 41.

this factor, compounded by the other circumstances at hand,<sup>19</sup> weighs in favour of maintaining the Current Restrictions at this point.

12. Consequently, the Chamber considers that no modification of the Current Restrictions is warranted. In light of the circumstances at hand and noting that Mr Yekatom continues to be able to speak to his family – albeit with the caveat of random active monitoring – the Chamber finds that the Current Restrictions continue to be necessary and proportional, and should be maintained. Accordingly, it rejects the First Prosecution Request, as well as the Third Defence Request.
13. With regard to the Second Prosecution Request, noting the Prosecution’s obligations pursuant to Article 68 of the Statute and the fact that the Defence does not object, the Chamber finds it appropriate to provide the transcript of the [REDACTED] Call to the Prosecution, including the identity of the Non-Approved Person. Accordingly, it directs the Registry to file the transcript of the [REDACTED] Call on the record and make it available to the Defence, the Prosecution and the Chamber. Additionally, the Chamber instructs the Registry to provide transcripts of relevant conversations to the Chamber as an annex to its reports in the future, as done in previous instances.
14. With regard to the Second Defence Request concerning the re-adding of Mr Yekatom’s [REDACTED] to the non-privileged contact list, the Chamber recalls that this individual was removed by the CCO [REDACTED], following an incident during which this individual recorded a conversation with Mr Yekatom.<sup>20</sup> The Chamber is mindful that this person is [REDACTED] of Mr Yekatom and the fact that Mr Yekatom has not been able to speak to [REDACTED] for more than one and a half years. Moreover, it recalls the

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<sup>19</sup> See Fifth Restrictions Decision, ICC-01/14-01/18-1148, paras 7-11, n. 15 referring to Fourth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, 27 May 2021, ICC-01/14-01/18-1008-Conf, paras 11-13.

<sup>20</sup> First Registry Report on the Implementation of the Restrictions on Contact of Mr Alfred Yekatom Ordered by Chamber Trial V, 17 July 2020, ICC-01/14-01/18-592-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-592-Conf-Red) (with a confidential *ex parte* annex, available only to the Yekatom Defence and the Registry) (the ‘First Report’), para. 16.

Registry's assessment at the time that the conversation concerned only private matters<sup>21</sup> and takes note of the fact that [REDACTED] recently signed an undertaking in which he acknowledges the rules applicable to non-privileged phone conversations with Mr Yekatom.<sup>22</sup>

15. Nonetheless, the Chamber observes that the [REDACTED] name and [REDACTED] are only included in the *ex parte* versions of the relevant Defence filings, which are not available to the Prosecution.<sup>23</sup> It further notes that the Prosecution indicated that it is [REDACTED].<sup>24</sup> Consequently, the Chamber is of the view that, out of an abundance of caution, a ruling on the Second Defence Request can only be made after hearing the Prosecution's views on the matter. The Defence is therefore instructed to file a confidential redacted version of its Defence Observations within one week of notification of this decision. The Prosecution is instructed to provide its views on the Second Defence Request five days thereafter.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**DECIDES** to maintain the Current Restrictions;

**REJECTS** the First Prosecution Request;

**GRANTS** the Second Prosecution Request;

**INSTRUCTS** the Registry to provide the Prosecution, the Defence and the Chamber with the transcript of the [REDACTED] Call and the identity of the Non-Approved Person;

**REJECTS** the First and Third Defence Requests;

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<sup>21</sup> First Report, ICC-01/14-01/18-592-Conf-Red, para. 13.

<sup>22</sup> Annex to the Addendum, ICC-01/14-01/18-1371-Conf-Exp-AnxA.

<sup>23</sup> The Chamber notes that the information is contained in the Defence Observations, ICC-01/14-01/18-1366-Conf-Exp, paras 17-21, p. 10, but redacted from the public redacted version, ICC-01/14-01/18-1366-Red. No confidential version has been notified at this point. Similarly, the individual's name and [REDACTED] are not included in the Addendum, ICC-01/14-01/18-1371 and Annex thereto, which have been filed as confidential *ex parte*, only available to the Registry and the Defence, *see* ICC-01/14-01/18-1371-Conf-Exp-AnxA.

<sup>24</sup> Prosecution Observations, ICC-01/14-01/18-1365-Conf, para. 8.



**DEFERS** its determination on the Second Defence Request;

**ORDERS** the Defence to file a confidential redacted version of the Defence Observations, or request reclassification, within one week of notification of this decision;

**ORDERS** the Prosecution to provide its views on the Second Defence Request within five days of notification of the confidential redacted version of the Defence Observations; and

**ORDERS** the Registry and the Prosecution to file public redacted versions of the Fifth Report and the Prosecution Observations, respectively, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.




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**Judge Bertram Schmitt**

**Presiding Judge**




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**Judge Péter Kovács**




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**Judge Chang-ho Chung**

Dated 16 June 2022

At The Hague, The Netherlands