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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

**Fifth 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 (the ‘Regulations’), and Regulations 168-169, 173-175, and 187 of the Regulations of the Registry, issues this ‘Fifth 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 ‘Fourth Restrictions Decision’), where it decided to maintain the restrictions previously imposed on Mr Yekatom (the ‘Current Restrictions’).¹
2. On 6 October 2021, the Registry filed its fourth report on the implementation of the restrictions on Mr Yekatom’s contacts and communications in detention (the ‘Fourth Registry Report’).² The Registry indicates that, during the reporting period, no incidents have taken place regarding the video-conferencing, written correspondence, and in-person visits.³ In addition, the Registry notes that it offers Mr Yekatom the possibility to make non-privileged telephone calls three times a week, instead of two, for a total of 180 minutes, including on full-day trial hearings.⁴
3. The Registry informs that, on [REDACTED] 2021, Mr Yekatom had an exchange with an unauthorised third party through his interlocutor during a non-privileged telephone call (‘the Call’ and the ‘Incident’, respectively). According to the

¹ See Fourth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, 27 May 2021, ICC-01/14-01/18-1008-Conf, para. 1.

² Fourth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V, ICC-01/14-01/18-1130-Conf-Exp, confidential *ex parte* only available to the Yekatom Defence and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-1130-Conf-Red) (with one confidential *ex parte* annex, only available to the Yekatom Defence and the Registry, ICC-01/14-01/18-1130-Conf-Exp-Anx)

³ Fourth Registry Report, ICC-01/14-01/18-1130-Conf-Red, paras 10-12.

⁴ Fourth Registry Report, ICC-01/14-01/18-1130-Conf-Red, para. 6.

Registry, this ‘may appear to undermine the terms of the Chamber’s orders on restrictions on contacts and communications’.⁵

4. On 11 October 2021, the Office of the Prosecutor (the ‘Prosecution’) filed its observations on the Fourth Registry Report (the ‘Prosecution Observations’).⁶ It requests that the Current Restrictions be maintained, arguing that the circumstances underlying the Chamber’s earlier decisions continue to persist,⁷ and further noting that it is the fifth time that Mr Yekatom wilfully breaches the restrictions imposed by the Chamber.⁸
5. Additionally, the Prosecution requests that the random active monitoring of his non-privileged communications be more frequent, even systematic, to safeguard witnesses, their relatives, and the integrity of the proceedings (the ‘First Request’). In this regard, the Prosecution considers that, given the number of violations committed by Mr Yekatom, it is probable that he will continue to do so in the future.⁹ Finally, it requests that the transcripts of the Call, as well as the identity of his interlocutor and the unauthorised third party, be shared with the Prosecution to assess the severity of the Incident (the ‘Second Request’).¹⁰
6. On 15 October 2021, the Yekatom Defence (the ‘Defence’) filed its observations to the Fourth Registry Report (the ‘Defence Observations’).¹¹ It submits that while the Incident is regrettable, the Current Restrictions should be maintained. The Defence argues that the conversation between Mr Yekatom and the unauthorised third party remained indirect, was limited to private matters unrelated to his ongoing case before the Court and does not represent in any way

⁵ Fourth Registry Report, ICC-01/14-01/18-1130-Conf-Red, para. 7; *see also* the relevant transcript excerpts in the annex to the Fourth Registry Report, ICC-01/14-01/18-1130-Conf-Exp-Anx.

⁶ 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*” (ICC-01/14-01/18-1130-Conf-Red), ICC-01/14-01/18-1135-Conf.

⁷ Prosecution Observations, ICC-01/14-01/18-1135-Conf, paras 2, 6-10, 17.

⁸ Prosecution Observations, ICC-01/14-01/18-1135-Conf, paras 2, 6.

⁹ Prosecution Observations, ICC-01/14-01/18-1135-Conf, paras 2, 11-13, 17.

¹⁰ Prosecution Observations, ICC-01/14-01/18-1135-Conf, paras 3, 14-17.

¹¹ 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, confidential *ex parte* only available to the Registry and the Prosecution, ICC-01/14-01/18-1138-Conf-Exp (confidential redacted version notified the same day, ICC-01/14-01/18-1138-Conf-Red).

an attempt to interfere with Prosecution witnesses or these proceedings.¹² In addition, the Defence indicates that while it does not object to the Second Request, it opposes the First Request on the basis that it is excessive and unfounded.¹³

II. Analysis

7. The Chamber recalls the standard and assessment criteria as previously set out,¹⁴ as well as the circumstances underlying the Fourth Restrictions Decision and the findings therein.¹⁵ 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 Fourth Restrictions Decision.
8. With regard to the Incident, the Chamber observes that Mr Yekatom had an exchange during the Call with an unauthorised third party through his interlocutor who, according to the Defence, are both [REDACTED] relatives of Mr Yekatom.¹⁶ Having reviewed this conversation, the Chamber further observes that Mr Yekatom and the unauthorised third party seemingly discussed matters related to the latter's [REDACTED], among other issues of private concern. Also, while Mr Yekatom mentioned a person of interest in these proceedings during the Call, it appears that he did so in the context of suggesting the unauthorised third party to [REDACTED].¹⁷
9. The Chamber recalls that Mr Yekatom is only allowed to have non-privileged telephone calls with individuals duly verified in advance by the Registry.¹⁸ Therefore, the Chamber finds that, irrespective of the nature of the exchange, Mr Yekatom breached this restriction. In this regard, the Chamber stresses that it is not the first time that Mr Yekatom has had contact with an unauthorised third

¹² Defence Observations, ICC-01/14-01/18-1138-Conf-Red, paras 2, 12-18, 25, 27.

¹³ Defence Observations, ICC-01/14-01/18-1138-Conf-Red, paras 19-25, 27.

¹⁴ 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.

¹⁵ See Fourth Restrictions Decision, ICC-01/14-01/18-1008-Conf, paras 11-13.

¹⁶ See Defence Observations, ICC-01/14-01/18-1138-Conf-Red, paras 13, 15-16.

¹⁷ See Annex to the Fourth Registry Report, ICC-01/14-01/18-1130-Conf-Exp-Anx; see also Defence Observations, ICC-01/14-01/18-1138-Conf-Red, para. 23.

¹⁸ First Restrictions Decision, ICC-01/14-01/18-485-Conf-Red, para. 13(ii)(c).

party during a non-privileged telephone call, among other similar infringements.¹⁹ While it takes note of the Defence's acknowledgment of the Incident and the explanations provided,²⁰ the Chamber nevertheless urges the Defence to remind Mr Yekatom to comply with the Current Restrictions.

10. Notwithstanding the above, the Chamber finds that the substance of the conversation between Mr Yekatom and the unauthorised third party during the Call does not appear to relate to matters that tend to compromise witness security or the integrity of the proceedings. Consequently, the Chamber considers that the Incident does not warrant a modification of the Current Restrictions and thus rejects the First Request.
11. In light of these circumstances, the Chamber finds that the Current Restrictions continue to be necessary and proportional and shall therefore be maintained.
12. In relation to the Second 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 Call to the Prosecution, including the identity of the interlocutor and the unauthorised third party. Accordingly, it directs the Registry to reclassify filing ICC-01/14-01/18-1130-Conf-Exp-Anx as confidential *ex parte*, only available to the Yekatom Defence, the Registry and the Prosecution.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES to maintain the Current Restrictions;

REJECTS the First Request;

GRANTS the Second Request;




¹⁹ See *inter alia*, First Restrictions Decision, ICC-01/14-01/18-485-Conf-Red, para. 22; Second Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 21 August 2020, ICC-01/14-01/18-627, para. 16; Third Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 11 November 2020, ICC-01/14-01/18-727-Conf, paras 17-18.

²⁰ See Defence Observations, ICC-01/14-01/18-1138-Conf-Red, paras 12, 15, 17.

ORDERS the Registry to reclassify filing ICC-01/14-01/18-1130-Conf-Exp-Anx as confidential *ex parte*, only available to the Yekatom Defence, the Registry and the Prosecution; and

ORDERS the Registry, the Prosecution, and the Yekatom Defence to file public redacted versions of filings ICC-01/14-01/18-1130-Conf-Red, ICC-01/14-01/18-1135-Conf, and ICC-01/14-01/18-1138-Conf-Red, 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 Péter Kovács	Judge Bertram Schmitt Presiding Judge	Judge Chang-ho Chung

Dated 17 June 2022

At The Hague, The Netherlands