

The document has been re-stamped in order to reflect the correct registration number

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **22 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-  
EDOUARD NGAÏSSONA***

**Public**

**Public Redacted Version of “Prosecution’s Views on the Second Defence Request  
regarding Restrictions on Contact for Mr Alfred Yekatom”,  
30 May 2022, ICC-01/14-01/18-1441-Conf-Exp**

**Source:** Office of the Prosecutor

The document has been re-stamped in order to reflect the correct registration number

**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

**Counsel for Patrice-Edouard Ngaïssona**

Mr Geert-Jan Alexander Knoops  
Mr Richard Omissé-Namkeamai  
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. Pursuant to Trial Chamber V's ("Chamber") Decision of 20 May 2022,<sup>1</sup> the Office of the Prosecutor ("Prosecution") hereby provides its views on the Defence Request, that the Chamber order the Registry to re-add YEKATOM's [REDACTED], to YEKATOM's non-privileged contact list ("Second Defence Request").<sup>2</sup>

2. The Prosecution opposes the Second Defence Request. Several factors militate against any mitigation of the current restrictions imposed on YEKATOM ("Current Restrictions"),<sup>3</sup> including the re-addition of YEKATOM's [REDACTED] to the non-privileged contact list.

3. YEKATOM's systematic violation of the Current Restrictions makes the passage of time irrelevant, as the risks to the outcome of the instant proceedings and to the well-being of victims and witnesses persist.

4. Moreover, [REDACTED].

## II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this document is filed as "*Ex parte*, only available to Trial Chamber V," as it contains information that, if revealed to the defence, would undermine the Prosecution's efforts to safeguard the integrity of the proceedings and the security and safety of witness, past and prospective. A confidential redacted version will be filed contemporaneously.

---

<sup>1</sup> ICC-01/14-01/18-1420-Conf-Exp ("Sixth Decision").

<sup>2</sup> Sixth Decision, para. 4.

<sup>3</sup> The Current Restrictions are outlined in ICC-01/14-01/18-485-Conf ("First Decision"), para. 13; additionally, ICC-01/14-01/18-869-Conf granted one video-conferencing session per month.

### III. SUBMISSIONS

#### A. Several factors militate against any mitigation of YEKATOM's Current Restrictions.

6. Although the right to family life is internationally recognised, it is not absolute. Thus, according to the legal framework of the Court, it can be subject to justifiable restrictions.

7. Under regulation 101(2) of the RoC, restrictions on contacts may be imposed when there are reasonable grounds to believe that they could prejudice the outcome of the proceedings against an accused, or could threaten the protection of the rights of any person.<sup>4</sup>

8. Considering the circumstances of this case, the Current Restrictions strike a fair balance with regard to YEKATOM's exercise of his right to family life. Several factors militate against any mitigation of those restrictions, including the re-addition of YEKATOM's [REDACTED] to the non-privileged contact list.

9. YEKATOM has in fact systematically disregarded and circumvented the Current Restrictions. The Registry has reported YEKATOM's breach of the conditions of his detention multiple times.<sup>5</sup> These violations are not simply due to *bona fide* mistakes or misunderstandings regarding the scope of the restrictions. Given their frequency and the Chamber's consistent admonitions, they rather show YEKATOM's firm intention to contravene the restrictions imposed.<sup>6</sup>

---

<sup>4</sup> First Decision, para. 17.

<sup>5</sup> 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.

<sup>6</sup> See the incident on 23 March 2020, in which YEKATOM discussed with an interlocutor case-related issues and used obscure language: Annex I to the Registry Observations, ICC-01/14-01/18-467-Conf-Exp-AnxI.

10. As held by the Appeals Chamber, the passage of time *per se* does not mean that the risks to the outcome of the proceedings against a detained accused, or to the well-being of victims and witnesses no longer exists and restrictions have become disproportionate.<sup>7</sup> YEKATOM's systematic failure to respect the Chamber's orders renders the passage of time irrelevant.<sup>8</sup>

11. The risks are not diminished. Rather, the circumstances that warranted the Current Restrictions persist. YEKATOM (a former Member of Parliament) still has the ability to exercise influence in the Central African Republic ("CAR"), where the majority of Prosecution witnesses reside, and to reach them through an active support network (he maintains both a political and an Anti-Balaka constituency). The fragile political and security situation in CAR, as outlined in the Registry's 26 November 2021 report,<sup>9</sup> increases the risk of witness interference. These circumstances demonstrate that the restrictions in place remain necessary and proportionate, and militate against any mitigation of the Current Restrictions, including the re-addition of YEKATOM's [REDACTED] to the non-privileged contact list.

12. Additionally, highly incriminating evidence presented by the Prosecution against YEKATOM, provides a greater incentive at this stage to undermine the proceedings. As observed by the Chamber, "[...] the risks of witness interference and witness safety persist", particularly as "[...] the Prosecution is still in the middle of its evidence presentation".<sup>10</sup> As the evidence against the Accused mounts, the risk of interference rises. Thus, relaxing the Current Restrictions at this stage unnecessarily affords YEKATOM an opportunity of last resort to hamper the Prosecution case before it is completed.

---

<sup>7</sup> ICC-01/14-02/06-1817-Red ("Ntaganda Appeals Chamber Judgment"), para. 72.

<sup>8</sup> See para. 9 above.

<sup>9</sup> 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.

<sup>10</sup> Sixth Decision, para. 11.

**B. [REDACTED]**

13. Prosecution witnesses in CAR have been the target of attacks, threats, and interference [REDACTED].

14. [REDACTED].<sup>11</sup>

15. [REDACTED].

16. [REDACTED].<sup>12</sup>

17. The incidents described above demonstrate that [REDACTED] to interfere with witnesses in the course of the trial.

18. In light of these circumstances, there are strong grounds to believe that [REDACTED]. Thus, [REDACTED] or otherwise diluting the Current Restrictions, disproportionately increases the risk of interference with Prosecution witnesses, impeding their unfettered testimony, or inviting reluctance or unwillingness to continue their cooperation altogether. The increased risk to the security of the witnesses would be a further consequence.

---

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

The document has been re-stamped in order to reflect the correct registration number

#### IV. CONCLUSION

19. Therefore, for the reasons stated above, the Prosecution opposes the Second Defence Request.

A handwritten signature in dark ink, consisting of a stylized 'K' followed by a horizontal line and a small dot.

---

Karim A. A. Khan QC, Prosecutor

Dated this 22<sup>nd</sup> day of June 2022.  
At The Hague, The Netherlands