

ANNEX 3
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 04 August 2023 16:30
To: [REDACTED]; Office of the Director DJSS
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Registry Request concerning Decision about [REDACTED] Family Visit to Mr Yekatom

[ICC] RESTRICTED

Dear colleagues from the Registry,

The Single Judge takes note of the request below.

In light of the explanations provided, and noting the imminence of the decision to be rendered by the Registrar, the Single Judge grants the request.

Kind regards,

TC V

From: [REDACTED]
Sent: 03 August 2023 17:14
To: Trial Chamber V Communications [REDACTED]
Cc: [REDACTED] Office of the Director DJSS
 <[REDACTED]>
Subject: Notification of potential concern [REDACTED] family visit Yekatom

Dear Trial Chamber V,

The Registry wishes to bring to the attention of the Chamber the matter below, and kindly requests the Chamber's authorisation to use extracts transcripts of around [REDACTED] non-privileged telephone calls of Mr Yekatom in the context of [REDACTED], in the context of family visits. The decision of the Registrar must be sent to Mr Yekatom by the close of business on Monday 7 August 2023.

- **Facts:**

The Registry has applied redactions on names to protect the privacy and personal information pertaining to the detained person and his family.

The Registry has organised [REDACTED] family visits. [REDACTED]

In implementing the Chamber's orders (ICC-01/14-01/18-485-Conf, para. 30), the Registry has been monitoring the telephone conversations of Mr Yekatom. The summaries of the calls shows that, apparently, some of Mr Yekatom's [REDACTED].

For example:

On Wednesday 26th October 2022, Mr Yekatom had a call with [REDACTED]. On the transcript of that call, one can read that Mr Yekatom [REDACTED]. Instead, he says: [REDACTED]

Moreover, two days later the 28th of October Mr Yekatom mentioned again [REDACTED]. The transcript states : [REDACTED]

On the 22nd of April 2022, Mr Yekatom had a call with [REDACTED]. During this call, the transcript states : [REDACTED]

A similar conversation happened on the 12th of August 2022 with a [REDACTED] during one of the visits, in which he mentions: [REDACTED]

On multiple phone calls Mr Yekatom refers to [REDACTED] as well as globally facilitating the arrival and stay of Yekatom's family, which is normal, if limited to assist the family in taking steps for the visit. [REDACTED] these same individuals have since then [REDACTED]. One such occurrence was on the 8th of May 2023, in a phone call to [REDACTED] in which Mr Yekatom shares : [REDACTED]

A few months earlier, the 13th of March 2023, in a call to [REDACTED], Mr Yekatom mentions that [REDACTED] : [REDACTED]. [REDACTED] had been mentioned in a phone call on the 23rd of September 2019. In a phone call to [REDACTED], Mr Yekatom says: [REDACTED]. To which she answers: [REDACTED]

The main concern linked to this issue of individuals [REDACTED] is that they are [REDACTED]. During [REDACTED]'s visit on the 3rd of January 2020, [REDACTED] informed Mr Yekatom that [REDACTED] is going to [REDACTED] : [REDACTED]. This same [REDACTED] has been mentioned once more in a phone call on the 14th of November 2022 between Mr Yekatom and [REDACTED] : [REDACTED]

Another [REDACTED] was mentioned in the phone call in the past year for [REDACTED]. [REDACTED]. One example is the phone call on Monday 19 June 2023 in which they discuss [REDACTED]

- **Risks identified:**

The Registry finds that this type of risk exists for any visit in detention and when granting a permit for a [REDACTED] family visit, however this risk is usually accepted as it is outweighed by the right to a [REDACTED] family visit for [REDACTED] detained person. However, in this particular case, the Registry is even more aware of this risk potentially materialising,

as the Registry is now in possession of information in the summaries and has requested transcripts of the identified non-privileged telephone conversations. It is important to underline the specificity of this situation which [REDACTED]

Should this continue to materialise, the Registry has identified the following risks that such [REDACTED] might entail:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- A breach occurring under Regulation 180 of the *'Regulations of the Registry'*, criteria for granting permission for visits, paragraph (a)(iii) when the detainee may be attempting to *'interfere with the administration of justice'* or (iv) *'otherwise disturb the maintenance of the security and good order of the detention centre'*. There would be the destruction of the family visitation system altogether, which results in the unfair loss of rights for the other detainees, even though they have not [REDACTED]. This would further affect their general well-being and could potentially result in hunger strikes or other consequences. As a result of this situation, [REDACTED] have expressed their concerns. [REDACTED], this could furthermore be prejudicial to other detained persons.

Considering the nature of the potential [REDACTED] the Registry feels it needs to do its utmost to prevent such [REDACTED] from happening again.

- **Legal analysis:**

The Registry notes that transcripts of non-privileged telephone calls are part the confidential detention record of a detained person, as per regulation 189 of the Regulations of the Registry and contain information pertaining to third-party and personal information pertaining to Mr Yekatom's private life. In relation to information sought that is in the detention record of Mr Yekatom, regulation 92 of the Regulations of the Court ("RoC") requires the detention record of detained persons to be confidential, and that the views of the detained person be sought prior to access. In exceptional circumstances, such as an emergency, an order may be made prior to the detained person being informed, but that they should be informed and given the opportunity to be heard or submit their views as soon as practicable.

Taking into consideration that this transcript is based on a judicial monitoring order in the context of victims/witnesses' protection, the Registry notes that this transcript is analysed [REDACTED] relating to [REDACTED]. This is why the Registry wishes to use these excerpts of the transcript when assessing the request from Mr Yekatom to benefit from a [REDACTED] family visits [REDACTED].

Taking into consideration that the extracts of the transcripts being used by [REDACTED] will be transmitted to the defence, in case of a positive result from the chambers, together with the [REDACTED] on family visit. It would further be given to [REDACTED].

Therefore, the Registry, taking into consideration regulation 23(bis)3 of the Regulations of the Court, respectfully requests the Chamber's authorisation for the use the extracts of the transcripts.

Kind regards,

[REDACTED]
Intern at the Office of the Director Division of Judicial Services
On behalf of the Registry