

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 25 October 2023

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***

Confidential

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

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Harry Tjonk

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, 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 167-170, 173-175, 177-180, 182-185 and 187 of the Regulations of the Registry (the ‘Registry Regulations’), issues this ‘Ninth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention’.

I. Procedural history

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 ‘Eighth Restrictions Decision’), where it decided, *inter alia*, to lift the restrictions imposed on telephone calls between Mr Yekatom and his children and to maintain the restrictions previously imposed on Mr Yekatom (the ‘Current Restrictions’).¹
2. On 14 August 2023, the Registry filed its eighth report on the implementation of the restrictions on Mr Yekatom’s contacts and communications in detention (the ‘Eighth Registry Report’).² It raises a matter of potential concern regarding certain monitored non-privileged telephone conversations of Mr Yekatom.
3. The Registry indicates that during two calls on 12 July and 2 August 2023, reference was made to Mr Yekatom having access to ‘lives’ videos (the ‘Disputed Material’) through the privileged defence network (the ‘Privileged Network’) on his computer at the Detention Centre. It states that if the Disputed Material is

¹ Eighth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, 5 April 2023, ICC-01/14-01/18-1830-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Prosecution and the Registry (public redacted version notified the same day, ICC-01/14-01/18-1830-Red), paras 1, 12-13. *See also* Decision on the Implementation of the Eighth Decision on Mr Yekatom’s Restrictions on Contacts and Communications in Detention, 29 May 2023, ICC-01/14-01/18-1895-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Prosecution and the Registry (with one confidential *ex parte* annex, only available to the Yekatom Defence, the Prosecution and the Registry) (confidential redacted version notified the same day, ICC-01/14-01/18-1895-Conf-Red) (the ‘Decision on the Implementation of the Eighth Restrictions Decision’), para. 10.

² Eighth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V, ICC-01/14-01/18-2027-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence and the Registry (with confidential *ex parte* Annexes I and II, only available to the Yekatom Defence and the Registry, ICC-01/14-01/18-2027-Conf-Exp-AnxII) (confidential redacted version notified the next day, ICC-01/14-01/18-2027-Conf-Red).

determined to be case-related, Mr Yekatom is prohibited from discussing matters related to his case during his non-privileged communications. It also notes that as the Registry does not have access to the Disputed Material, it has not been monitored.³ Further, and as instructed by the Chamber in the Eighth Restrictions Decision,⁴ the Registry includes information about two non-privileged telephone calls between Mr Yekatom and two of his family members in February 2023 (the 'February Calls').⁵ The Registry otherwise does not have any incident to report in relation to non-privileged visits or written correspondence.⁶

4. On 21 August 2023, the Single Judge denied a request of the Office of the Prosecutor (the 'Prosecution') for further information about the Disputed Material⁷ (the 'Prosecution Email Request') and directed it to instead provide its views in its observations on the Eighth Registry Report and make any requests therein.⁸
5. On the same day, the Prosecution filed its observations on the Eighth Registry Report. It requests the Chamber to (i) direct the Registry to provide 'the transcripts of the [12 July] Call, the identity of the interlocutors and of those persons providing the [Disputed Material] to the Accused as well as the [Disputed Material] itself, to the extent identified and/or can be recovered' (the 'Transmission Request'); and (ii) continue to apply the restrictions on Mr Yekatom's contacts, as set out in the Eighth Restrictions Decision (the 'Restrictions Request'), until comprehensive information is obtained on the nature of the Disputed Material and the status of the individual(s) providing it to the accused.⁹

³ Eighth Registry Report, ICC-01/14-01/18-2027-Conf-Red, paras 1, 10-13.

⁴ Eighth Restrictions Decision, ICC-01/14-01/18-1830-Red, para. 9 *with further references*.

⁵ Eighth Registry Report, ICC-01/14-01/18-2027-Conf-Red, paras 7-9.

⁶ Eighth Registry Report, ICC-01/14-01/18-2027-Conf-Red, paras 14-15.

⁷ Email from the Prosecution to the Chamber, 16 August 2023, at 12:14, confidential *ex parte*, only available to the Prosecution.

⁸ Email from the Chamber to the Prosecution, 21 August 2023, at 12:45, confidential *ex parte*, only available to the Prosecution.

⁹ Prosecution's Observations on the "Eighth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V" (ICC-01/14-01/18-2027-Conf-Red), ICC-01/14-01/18-2039-Conf (public redacted version notified the same day, ICC-01/14-01/18-2039-Red) (the 'Prosecution's Observations'), paras 3, 16, 23.

6. On 24 August 2023, the Yekatom Defence (the 'Defence') provided its observations to the Eighth Registry Report, regarding the February Calls and the Disputed Material; and requests that the Chamber lift the Current Restrictions imposed on Mr Yekatom's contacts and communications (the 'Request to Lift the Current Restrictions'). It also submits that it does not oppose providing the transcript of the 12 July call (the 'Transcript') to the Prosecution, nor the identity of the broadcaster of the Disputed Material, and/or the link to the Disputed Material if deemed necessary by the Chamber.¹⁰

II. Analysis

7. Before turning to its analysis, the Chamber notes the Registry's inclusion of information on the February Calls in the Eighth Registry Report¹¹ as well as the Defence's provision to the Chamber of a related complaint¹² which it submitted to the Registry. The Chamber recalls its decision that no further action was necessary regarding the February Calls.¹³
8. The Chamber recalls the standard and assessment criteria as previously set out.¹⁴
9. Having reviewed the Transcripts of both the 12 July and 2 August 2023 calls,¹⁵ the Chamber considers that Mr Yekatom's discussions about the Disputed Material with the interlocutor were not case related and focused on private and family matters. Consequently, the Chamber finds that Mr Yekatom did not violate the Current Restrictions. In any event, the Chamber notes the Defence's submissions on the process used to transfer items containing content relevant to

¹⁰ Réponse de la Défense de M. Yekatom au « Eighth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V », ICC-01/14-01/18-2027-Conf-Exp, ICC-01/14-01/18-2052-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-01/14-01/18-2052-Conf-Exp-AnxA) (confidential redacted version notified the next day, ICC-01/14-01/18-2052-Conf-Red) (the 'Defence Observations'), paras 2, 9-13, 14-37, p. 14.

¹¹ Eighth Registry Report, ICC-01/14-01/18-2027-Conf-Red, paras 7-9.

¹² Defence Observations, ICC-01/14-01/18-2052-Conf-Red, paras 3-13; *see also* Annex A to the Defence Observations, ICC-01/14-01/18-2052-Conf-Exp-AnxA, pp. 1-9.

¹³ Eighth Restrictions Decision, ICC-01/14-01/18-1830-Red, para. 9.

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* Annex II to the Eighth Registry Report, ICC-01/14-01/18-2027-Conf-Exp-AnxII.

the case to Mr Yekatom.¹⁶ Further noting the Defence's submission on the content of the Disputed Material and the reasons for it being transmitted via the Privileged Network,¹⁷ the Chamber does not consider that the transmission of the Disputed Material in this instance amounts to an abuse of the Privileged Network.

10. As the Chamber does not consider the call on 12 July 2023 to constitute a breach of the Current Restrictions nor does it discern any risk for victims, witnesses or other individuals, the Chamber does not consider it necessary for the Prosecution to be provided with the Transcript or the Disputed Material. Accordingly, it rejects the Transmission Request.
11. The Chamber is mindful of the fact that, given the continued use of the Privileged Network, there is a likelihood that the Registry continues to report similar incidents of potential concern in the future. In order to avoid unnecessary litigation, the Yekatom Defence is advised to continue to inform the Chief Custody Officer (the 'CCO') in advance that items sourced from social media¹⁸ will be transmitted through the Privileged Network and/or used during a particular meeting, identifying such material with as much detail as possible. The Chamber trusts that, with enhanced communication between the participants, the CCO's ability to detect incidents of potential concern will henceforth be better facilitated.
12. The Chamber now turns to its assessment of the necessity and proportionality of the Current Restrictions. In this regard, it takes note of the Prosecution's arguments in support of the Restrictions Request,¹⁹ as well as the Defence's arguments in support of the Request to Lift the Current Restrictions.²⁰

¹⁶ Defence Observations, ICC-01/14-01/18-2052-Conf-Red, paras 15-23.

¹⁷ Defence Observations, ICC-01/14-01/18-2052-Conf-Red, paras 24-29.

¹⁸ See Defence Observations, ICC-01/14-01/18-2052-Conf-Red, para. 21.

¹⁹ See Prosecution's Observations, ICC-01/14-01/18-2039-Conf, paras 17-18, including, *inter alia*, that Mr Yekatom retains an active support network in the CAR, where most of the witnesses reside, which may enable him to reach those within his sphere of influence; that the continuing dire political and security situation in the CAR and the authorities' reduced ability to protect witnesses, creates fertile ground for witness interference; and the mere fact of the Prosecution case being fully presented 'is not dispositive of the risk to the integrity of the proceedings which, *inter alia*, may entail the Defence or the Prosecution calling further witnesses at a later stage'.

²⁰ Defence Observations, ICC-01/14-01/18-2052-Conf-Red, paras 30-37.

13. The Chamber observes that the circumstances have changed since its Eighth Decision. In particular, it gives regard to the current stage of the trial and the fact it has now heard the evidence of all witnesses called by the Prosecution, that the time allocated to the witnesses of the Common Legal Representatives of the Victims is limited and the Chamber will only hear one witness as Chamber witness.
14. While cognisant that there remains a continued risk of retaliatory attacks against witnesses who have already testified, and in response to the Prosecution's concerns, the Chamber considers that the risk of interference with the Prosecution witnesses and, consequently, the risk to their safety is now significantly reduced at this current stage of the proceedings. The Chamber also notes the Defence's submission that there is jurisprudence supporting the notion that the end of the presentation of proof phase may constitute an important factor gravitating in favour of the relaxation of restrictions.²¹
15. The Chamber further notes, in relation to Mr Yekatom's own conduct, that while Mr Yekatom breached the Current Restrictions in the past, the Chamber concluded that it '[d]id not appear to relate to matters that tend to compromise witness security or the integrity of the proceedings'.²²
16. In view of the foregoing and having balanced 'the need for and proportionality of the restrictions against the important right accorded to detained persons to have contact',²³ the Chamber finds that the complete maintenance of the Current Restrictions is no longer necessary or proportionate and considers that alternative

²¹ Defence Observations, ICC-01/14-01/18-2052-Conf-Red, para 33 *with further references*.

²² Fifth Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 27 October 2021, ICC-01/14-01/18-1148-Conf (public redacted version notified on 17 June 2022, ICC-01/14-01/18-1148-Red), paras 9-10; *see also* Defence Observations, ICC-01/14-01/18-2052-Conf-Red, paras 35-36 in which it is submitted that the Prosecution has not provided a specific allegation against Mr Yekatom to support its arguments; and the absence of any attempt by Mr Yekatom, since his arrest, to harm or otherwise influence witnesses or the outcome of the proceedings, demonstrates that the risk of threats against witnesses is minimal.

²³ First Restrictions Decision, ICC-01/14-01/18-485-Red, para. 18 *referring to Appeals Chamber, The Prosecutor v. Bosco Ntaganda*, Judgment on Mr Bosco Ntaganda's appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 March 2017, ICC-01/04-02/06-1817-Conf (OA4) (public redacted version notified the same day, ICC-01/04-02/06-1817-Red), para. 72. *See also* paras 44, 102.

and less restrictive measures are warranted. It accordingly rejects the Restrictions Request and the Request to Lift the Current Restrictions.

17. The Chamber first recalls its findings in the Eighth Restrictions Decision and the Decision on the Implementation of the Eighth Restrictions Decision in which it lifted the restrictions imposed on the telephone calls between Mr Yekatom and his children.²⁴ In light of the current circumstances, as regards the individuals on Mr Yekatom's approved list of non-privileged contacts, the Chamber considers it is no longer necessary or proportionate to maintain the random active monitoring of Mr Yekatom's non-privileged telephone calls and visits. Instead, it is sufficient and appropriate that they be passively monitored pursuant to Regulations 174 and 183 of the Registry Regulations.
18. Having balanced Mr Yekatom's rights against the necessity of protecting victims and witnesses and ensuring the integrity of the proceedings, the Chamber is of the view that the remaining restrictions continue to be necessary and proportionate, and should therefore be maintained.
19. As per the Chamber's previous directions,²⁵ in order to allow the Chamber to take prompt action if and where necessary, the Registry is instructed to continue reporting any incidents, significant developments, or challenges in relation to the implementation of the restrictions as soon as they arise.
20. Lastly, the Chamber considers it proportionate to impose the abovementioned amended restrictions regime in place until the end of the evidentiary phase of the case. This timeframe will be reviewed upon application, or *proprio motu* if considered necessary.

²⁴ Eighth Restrictions Decision, ICC-01/14-01/18-1830-Red, para. 12; Decision on the Implementation of the Eighth Restrictions Decision, ICC-01/14-01/18-1895-Conf-Red, para. 10.

²⁵ First Restrictions Decision, ICC-01/14-01/18-485-Red, para. 32; Decision Recalling the Reporting Procedure for the Review of Restrictions, 1 June 2020, ICC-01/14-01/18-540-Conf, para. 13.

Pursuant to Trial Chamber V's instruction dated 14 July 2025, this document is reclassified as Public

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request to Lift the Current Restrictions;

REJECTS the Restrictions Request;

REJECTS the Transmission Request;

ORDERS that the amended restrictions to Mr Yekatom's non-privileged contacts, as set out in paragraph 17, shall be implemented immediately and shall remain in place until the end of the evidentiary phase of the case;

ORDERS the Prosecution to share the Prosecution Email Request with all participants, within one week of notification of this decision; and

ORDERS the Registry and the Yekatom Defence to file public redacted versions of the Eighth Registry Report, ICC-01/14-01/18-2027-Conf-Red; and the Defence Observations, ICC-01/14-01/18-2052-Conf-Red, respectively, within one week of notification of this decision.

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



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 25 October 2023

At The Hague, The Netherlands