

Original: **English**No.: **ICC-01/14-01/18**Date: **20 September 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 Observations on the "Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V" (ICC-01/14-01/18-1536-Conf-Red), 1 August 2022", ICC-01/14-01/18-1542-Conf; 11 August 2022**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) provides its observations on the Registry’s 6 April 2022 “Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V” (“Sixth Report”).<sup>1</sup>

2. Trial Chamber V (“Chamber”) should maintain the current restrictions on NGAISSONA’s contacts in detention, as extended by its 12 October 2021 Decision (“Order”).<sup>2</sup>

3. The Sixth Report raises several concerning issues regarding NGAISSONA’s potential access to unauthorised information through a computer available to him at the ICC Detention Centre. Moreover, the Sixth Report is equivocal on whether NGAISSONA’s conduct breaches the conditions of his detention. It is apparent that the Registry is unable to state definitively that the material to which NGAISSONA has had access [REDACTED]<sup>3</sup> [REDACTED]— is in fact privileged. The alternative, would likely establish that he has routinely accessed non-privileged material in breach of the Order.

4. In the circumstances, maintaining the current restrictions and increasing the frequency of random active monitoring at a minimum, will limit the risk of interference with witnesses, victims, and their relatives, and better safeguard the integrity of the proceedings as a whole.

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<sup>1</sup> ICC-01/14-01/18-1536-Conf-Red.

<sup>2</sup> ICC-01/14-01/18-1136-Red; *see also* ICC-01/14-01/18-485-Conf.

<sup>3</sup> *See* ICC-01/14-01/18-1136-Red, para. 14 ([REDACTED]).

5. The Prosecution also requests that the transcripts of the telephone calls of 13 June 2022,<sup>4</sup> 15 June 2022,<sup>5</sup> 6 July 2022,<sup>6</sup> 18 July 2022,<sup>7</sup> and 20 July 2022<sup>8</sup> (“Calls”) be made available immediately. Further, the identities of the interlocutors should also be made available. In addition, both the identities of the purveyors the Content discussed in the Calls and the Content itself, as the Registry may further identify or which can be recovered, should be similarly provided. In this way, the Prosecution may fully and independently assess any potential security implications concerning witnesses.

## II. CONFIDENTIALITY

6. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this document is filed as “Confidential”, as it refers to filings and decisions of the same classification.

## III. SUBMISSIONS

### A. The circumstances underlying the Order persist

7. The current contact restrictions on NGAISSONA remain essential to protect witnesses and victims pursuant to regulation 101(2)(c) and (f) of the RoC, and to safeguard the integrity of the proceedings, pursuant to regulation 101(2)(b). The circumstances in which the Chamber issued and has extended the Order continue<sup>9</sup> and, in view of the facts presented in the Sixth Report,<sup>10</sup> careful control of the Accused’s contacts is necessary and proportionate.

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<sup>4</sup> ICC-01/14-01/18-1536-Conf-Red, para. 8.

<sup>5</sup> ICC-01/14-01/18-1536-Conf-Red, para. 9.

<sup>6</sup> ICC-01/14-01/18-1536-Conf-Red, para. 10.

<sup>7</sup> ICC-01/14-01/18-1536-Conf-Red, para. 11.

<sup>8</sup> ICC-01/14-01/18-1536-Conf-Red, paras. 12-13.

<sup>9</sup> See ICC-01/14-01/18-1536-Conf-Red, paras. 6-8 ; see also ICC-01/14-01/18-965-Red, paras. 12-13, 17.

<sup>10</sup> ICC-01/14-01/18-1536-Conf-Red, paras. 15-16.

8. Although the Registry states that [REDACTED],<sup>11</sup> this does not extend to the Content at NGAISSONA's disposal. Indeed, the Sixth Report provides that the CCO [REDACTED]<sup>12</sup> and that NGAISSONA's [REDACTED],<sup>13</sup> [REDACTED]<sup>14</sup>

9. *Second*, as is clear from information at the disposal of the Chamber and Parties, including trial testimony, NGAISSONA retains an active support network in the Central African Republic ("CAR").<sup>15</sup> As is known, the majority of Prosecution witnesses reside in CAR, providing NGAISSONA with the opportunity to reach those within his sphere of influence. Attenuating the contact restrictions to any extent would thus substantially increase the risk of witness interference in this case.

10. *Third*, the dire political and security situation in CAR, [REDACTED],<sup>16</sup> [REDACTED]. The result is an augmented risk of witnesses becoming reluctant or unwilling to continue their cooperation with the Prosecution.<sup>17</sup> [REDACTED].<sup>18</sup>

11. Finally, the restrictions are proportionate. Properly and fully implemented, they allow for the necessary monitoring of NGAISSONA's contacts while respecting his right to communicate with his family and those close to him in an appropriate manner. They further accommodate the Court's compelling interests in witness security under article 68, and the Chamber's truth-finding responsibilities.

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<sup>11</sup> ICC-01/14-01/18-1536-Conf-Red, para. 18.

<sup>12</sup> ICC-01/14-01/18-1536-Conf-Red, para. 15.

<sup>13</sup> *I.e.*, third parties.

<sup>14</sup> ICC-01/14-01/18-1536-Conf-Red, para. 15 (emphasis added).

<sup>15</sup> *See e.g.*, ICC-01/14-01/18-T-092-CONF-RED-ET, p.6, ln.19 - p.7, ln. 22.

<sup>16</sup> *See* Annex to Eighth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-1434-Conf-Anx; *see also* ICC-01/14-01/18-1245-Corr-Red, para. 8, 13, 17; *see further* ICC-01/14-01/21-389-Red, para. 15 (similarly, Trial Chamber VI as recently recognised the seriousness of the current and prevailing security risks in CAR).

<sup>17</sup> *See* ICC-01/14-01/18-1459-Conf, para. 5 (internal citation omitted),

<sup>18</sup> The Prosecution is prepared to provide the Chamber with more specific information, as the Chamber may deem necessary.

**B. The frequency of random active monitoring should be increased**

12. The Registry's determination that NGAISSONA [REDACTED]<sup>19</sup> is alarming. Coupled with the revelation that the CCO does not have access to the Content and that without any apparent affirmative indication that the material is *privileged* [REDACTED],<sup>20</sup> the prevailing circumstances of the Accused's detention clearly present a risk.

13. The Registry's intention to "inquire with the Defence on this matter" is at best only a preliminary step. It is not a stopgap. Moreover, it appears from the Sixth Report that the Registry only discovered the fact that NGAISSONA was being provided with access to material from [REDACTED] by chance [REDACTED]"<sup>21</sup> [REDACTED] he apparently mentioned the Content at issue. That there have been no reported incidents related to *monitored* correspondence is of no moment.

14. Pending further clarity concerning NGAISSONA's access to [REDACTED] content, [REDACTED], the mechanism by which they have been made available to him, and the means by which such material may be classified, vetted, and/or monitored going forward, the prudent course would be to impose more frequent and systematic monitoring of the Accused's communications. This would best curtail the associated risks, minimise the possibility of NGAISSONA's network reaching witnesses, victims, and their relatives, and reduce inherent risks to the integrity of the proceedings.

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<sup>19</sup> ICC-01/14-01/18-1536-Conf-Red, para. 15.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

**C. Transcripts of the Calls, the identities of interlocutors and of the providers of the Content, and the Content itself should be made available to the Prosecution**

15. The Prosecution requires access to the transcripts of NGAISSONA's Calls to assess any potential security implications and to determine whether any additional measures should be requested.

16. Mindful of article 68(1), the Prosecution requests the Chamber to direct the Registry to make the transcripts and identities of the interlocutors of the Calls immediately available, as it has done in the past.<sup>22</sup>

17. Likewise, for the same reasons, the Prosecution requests that the identities of the purveyors of the Content at issue to NGAISSONA directly or indirectly, be made available, as well as the Content itself.

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<sup>22</sup> See e.g., ICC-01/14-01/18-1148-Conf, para. 12; see also ICC-01/14-01/18-502, p.5 (noting that "granting access will allow the Prosecution to assess and fully discharge its obligations to take appropriate measures to protect the safety, as well as the physical and psychological well-being, of witnesses pursuant to Article 68(1) of the Statute").

#### IV CONCLUSION

18. For the reasons above, the Chamber should (i) maintain the current restrictions on NGAISSONA's contacts in detention, (ii) direct the Registry to increase the frequency of random active monitoring, and (iii) direct the Registry to provide the Prosecution promptly with the transcripts of the Calls, the identity of the interlocutors and of those persons providing the Content to the Accused as well as the Content itself, to the extent identified and/or can be recovered.

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it. The signature is centered on the page.

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**Karim A. A. Khan KC, Prosecutor**

Dated this 20<sup>th</sup> day of September 2022  
At The Hague, The Netherlands