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**International
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TRIAL CHAMBER V

Before: Judge Bertrand 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 ROMBHOT YEKATOMAND PATRICE-EDOUARD
NGAISSONA***

Public

Public Redacted Version of the “Ngaïssona Defence Observations on ‘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-Exp)”, 09 August 2022, ICC-01/04-01/18-1540-Conf-Exp

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. Introduction

1. The Defence Team for Mr Ngaissona (the “Defence”) hereby provides its observations on the “Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaissona Ordered by Trial Chamber V”(the “Report”), and more specifically, on the contents referred to by Mr Ngaissona during his monitored conversations.¹
2. The Defence clarifies that it uses privileged channels of communication to transmit the local news to Mr Ngaissona. The local news comprise press articles and audio-visual contents from news outlets publishing on social media platforms [REDACTED]. The use of a privileged channel of communication is permissible as local news contain case-related materials necessary to the preparation of Mr Ngaissona’s defence given the significance accorded to them by the Prosecutor and the Chamber in their respective requests and decisions.
3. However, materials of a personal nature or pertaining to personal matters are transmitted by the Defence through the import procedure of the Detention Centre of the International Criminal Court (“ICC” or the “Court”), in compliance with the Regulations of the Court (“RoC”) and of the Registry (“RoR”).

II. Relevant Procedural history

4. On 1 June 2022, Trial Chamber V (the “Chamber”) issued its “Decision Recalling the Reporting Procedure for the Review of Restrictions”² and ordered, *inter alia*, the Registry to file reports on the implementation of

¹ ICC-01/14-01/18-1536-Conf-Exp.

² ICC-01/14-01/18-540.

restrictive measures and to inform the Chamber of any violation of said-measures.³

5. On 1 August 2022, the Registry submitted its Report reporting on “[REDACTED]”.⁴ The Report identifies Mr Ngaissona allegedly making references to contents that was relayed by his Defence Team [REDACTED].

III. Applicable Law

6. Pursuant to Article 67 of the Rome Statute, an accused person benefits from the right to “have adequate time and facilities for the preparation of the defence and to communicate freely with counsel [...]”.⁵ A detained persons shall be able to enforce this right in accordance with Regulation 151(1) of the RoR,⁶ and “communicate fully [...] with his or her defence counsel [...]”.⁷
7. Regulation 99 of the RoC provides for the general entitlements of detained persons, including their entitlement to keep themselves “regularly informed of the news by way of newspapers, periodicals and other publications, radio and television broadcasts”.⁸ The entitlement of keeping oneself informed of the news while being detained is further enshrined under Regulation 166(10) of the RoR.⁹

³ ICC-01/14-01/18-540, para. 13 (i).

⁴ ICC-01/14-01/18-1536-Conf-Exp, para. 1.

⁵ Article 67(1)(b) of the Rome Statute.

⁶ Regulation 151(1) of the Regulations of the Registry.

⁷ Regulation 97(1) of the Regulations of the Court.

⁸ Regulation 99(1)(d) of the Regulations of the Court.

⁹ Regulation 166(10) of the Regulation of the Registry, (“*A detained person shall be allowed to purchase at his or her own expense newspapers and other reading matter, writing materials and recreational items subject to the requirements of security and good order of the detention centre.*”).

8. In accordance with Regulations 167, 168 and 170 of the RoR,¹⁰ incoming items and mail received from outside the detention centre are subject to inspection by detention staff. Nevertheless, the Chief Custody Officer (“CCO”) may not review “items addressed to or sent by counsel for a detained person and assistants to counsel entitled to legal privilege;” as per Regulation 169 of the RoR.¹¹

IV. Confidentiality

9. In accordance with Regulation 23 bis(1) of the RoC, the present observations are classified as confidential *ex parte* only available to the Registry and the Defence for Mr Ngaïssona, as they refer to decisions with the same level of classification and contain third-party and personal information pertaining to Mr Ngaïssona’s private life. A confidential redacted version of the present observations will be filed in due time.

V. Observations

A. Audio-visual contents referred to by Mr Ngaïssona consist of local press and are case-related materials which he should have access to through privileged channels of communication.

- i. Audio-visual contents referred to by Mr Ngaïssona consist of local press in the Central African Republic*

¹⁰ Regulation 167 of the Regulations of the Registry (“Any item received from outside the detention centre, including any item brought by any visitor for a detained person, shall be subject to security controls and shall be transported through the detention centre by staff [...]”); Regulation 168 of the Regulations of the Registry (“On arrival at the detention centre, all correspondence and mail, including packages, shall be inspected.”); Regulation 17 of the Regulations of the Registry (“A detained person may receive packages, which shall be dealt with in accordance with regulations 167, 168, 169 and 192 sub-regulations 3 and 4.”).

¹¹ Regulation 169(1)(a) of the Regulations of the Registry (“The Chief Custody Officer shall review all incoming and outgoing mail with the exception of items addressed to or sent by: (a) Counsel for a detained person and assistants to counsel entitled to legal privilege; [...]”).

10. The Defence observes that social media platforms, [REDACTED], are key sources of information in the Central African Republic (“CAR”). Regardless of the accuracy of the information they relay, social media platforms remain news hubs that are imperative for gauging public opinion and understanding social movements. The widespread use of [REDACTED] audio-visual contents, such as “live” or audio-visual publications, to convey real-time news is explained by the lack of print media beyond Bangui,¹² “leaving the country’s rural regions to more accessible audio-visual media”, and by the fact that print media is written exclusively in French and not in Sango, thus excluding the less literate population.¹³ Hence, local traditional print medias and radio stations have moved onto social media platforms to spread news widely and reach indistinctively all CAR nationals.¹⁴

11. Similarly, Mr Ngaissona is entitled to receive the local press regardless of whether the relevant news are published in the printed press, the radio, or on social media platforms *via* livestreams and audio contents. Mr Ngaissona, as explained in *subsection ii* of the present observations, needs to keep track of the political and social events in CAR, including those conveyed through social media platforms and under digital format, as they may have a direct impact on the trial and trial preparations.

12. The Registry reports Mr Ngaissona making references, during his non-privileged conversations, to content circulated by different public media outlets:

- “[REDACTED]” – “[REDACTED]” is [REDACTED] ;¹⁵

¹² Central Africa, Reporters Without Borders (RSF) < <https://rsf.org/en/country/central-african-republic> > .

¹³ Bienvenu Patric Rebaile Dalemé, CAR, Media Landscapes, < <https://medialandscapes.org/country/central-african-republic/media/print> > .

¹⁴ [REDACTED]

¹⁵ [REDACTED]

- “[REDACTED]” – [REDACTED] is a political figure and the Publishing Director for [REDACTED]¹⁶ in CAR who [REDACTED] publishes videos of himself conveying, commenting and analysing the local news;
- “[REDACTED]” – [REDACTED] is a Central African politician [REDACTED] who often comments on Mr Touadéra’s politics and calls upon the population for change. His public appeals are published in the local print media;¹⁷ and
- “[REDACTED]” – [REDACTED] is a [REDACTED] journalist whose [REDACTED] is dedicated to the communication of media and political debates. [REDACTED].¹⁸

13. The Defence is of the view that Mr Ngaïssona is entitled to have access to the above mentioned contents and their authors per Regulation 99(1)(d) of the RoC.

14. The Defence equally points out, as reported by the Registry, that Mr Ngaïssona follows these audio-visual contents in conjunction with the local print media [REDACTED].¹⁹ This shows that both types of media are complementary of each other and having access to both allows Mr Ngaïssona to be fully informed of the current events happening in CAR and how the population feels, reacts and responds to them. Consequently, having access to these audio-visual contents should be regarded as one of Mr Ngaïssona’s entitlements provided for by Regulation 99(1)(d) of the RoC.

15. [REDACTED].²⁰ The Defence transmitted this post to Mr Ngaïssona as it shows how he, as a public figure, is perceived in CAR today.

¹⁶ [REDACTED]

¹⁷ [REDACTED].

¹⁸ [REDACTED]

¹⁹ ICC-01/14-01/18-1536-Conf-Exp, para. 9 (“[REDACTED]”).

²⁰ [REDACTED]

16. Therefore, the Defence concurs with [REDACTED],²¹ all of which consist of local press. The Defence further clarifies that these contents were introduced into the public arena for debate and to the effect of being followed by thousands of Central African nationals, [REDACTED].²² The Defence has always been vigilant in verifying and ensuring that all audio-visual contents are of public nature before transmitting them to Mr Ngaïssona.²³

ii. The local CAR press are case-related materials to be transmitted through privileged channels of communication

17. Local news from CAR are case-related materials and are necessary to the preparation of the defence in all aspects of the proceedings, from trial preparation to detention matters. [REDACTED].²⁴ The Defence understands from the CCO's decision that Mr Ngaïssona is allowed to receive news through privileged channels of communication as long as they are case-related materials. The Registry shares an identical understanding in paragraphs 16-17 of its Report.²⁵

18. The Prosecution relies extensively on local and international press articles to build its case against Mr Ngaïssona with [REDACTED] items categorised as "Media/ press articles" on its List of Evidence. In response, Mr Ngaïssona should be allowed to access, discuss and present evidence of similar nature in accordance with the rights provided under Article 67(e) of the Rome Statute.²⁶ In effect, the Defence has included media articles in its various Lists of

²¹ ICC-01/14-01/18-1536-Conf-Exp, para. 14 ("[REDACTED]").

²² ICC-01/14-01/18-1536-Conf-Exp, para. 8 (""[REDACTED]"").

²³ The Defence salutes and confirms the Registry's presumption that "[REDACTED]" - ICC-01/14-01/18-1536-Conf-Exp, fn 10.

²⁴ [REDACTED]

²⁵ ICC-01/14-01/18-1536-Conf-Exp, para. 16 ("[REDACTED]"); ICC-01/14-01/18-1536-Conf-Exp, para. 17 ("[REDACTED]").

²⁶ Article 67(e) of the Rome Statute ("[...] *The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute*").

Materials which were disclosed and relied upon in the context of trial proceedings relating to current affairs.²⁷ Moreover, in the course of the Defence's preparation of witnesses' testimonies, investigations, analysis and disclosure are carried out in consultation with Mr Ngaissona, hence his need to be up to date with materials communicated by the Prosecution as well as materials gathered by his Defence team, inclusive of the local press.

19. Additionally, local news convey the nature and impacts of the ever-shifting political landscape in CAR which is directly relevant to the case. For instance, the influential presence of the *Coalition des Patriotes pour le Changement* in CAR is an element which the Defence must inevitably consider during its preparation for cross-examinations of witnesses. [REDACTED]²⁸
20. Requests for in-court protective measures filed by the Prosecution are also motivated in part by information relayed by local news.²⁹ Symmetrically, the Defence submits to the Chamber responses that contain information of a similar nature³⁰ in support of Mr Ngaissona's right to a public hearing, as enshrined in Article 67 of the Rome Statute.
21. The Defence further recalls that news and media can be equally relied upon by the Prosecution and the Chamber [REDACTED].³¹ The Defence therefore relies on local news when defending Mr Ngaissona's rights as a detained person.

B. Photos of relatives and acquaintances are transmitted through the importation system at the Detention Centre

²⁷ See e.g. Defence List of Materials for P-1719 : CAR-D30-0006-0059, CAR-D30-0008-0041 ; See Defence List of Materials for P-1962 : CAR-D30-0006-0049; See Defence List of Materials for P-2453 : CAR-D30-0008-0092.

²⁸ See, e.g., ICC-01/14-01/18-T-144-CONF-ENG ET 14-07-2022 1/91 NB T, p. 89, l. 12 – 18.

²⁹ See, e.g., P-1577 : ICC-01/14-01/18-843-Conf, para 8; P-2353 : ICC-01/14-01/18-1512-Conf, para 12; P-2556 : ICC-01/14-01/18-1464-Conf-Red, para. 13.

³⁰ See, e.g., P-1577 : ICC-01/14-01/18-865-Conf, paras. 14, 22.

³¹ Regulation 101(2) of the Regulations of the Court.

22. The Defence is mindful of the restrictive measures taken against Mr Ngaissona. Hence, items and correspondence that are of personal and familial nature are not transmitted through privileged channels of communication.
23. Information which the Defence does not assess as case-related or necessary to the preparation of the defence are communicated to Mr Ngaissona following the detention import procedure and are subject to inspection as provided under Regulations 167 to 170 of the RoR.³²
24. Moreover, [REDACTED].³³

VI. Conclusion

25. The Defence transmits audio-visual contents it considers part of the local public news which Mr Ngaissona is entitled to have access to during his detention time at the Court. The Defence transmits such contents through a privileged channel of communication when it identifies them as case-related materials necessary for the preparation of the defence and ensures that items of personal nature follow the import system of the Detention Centre.
26. Nevertheless, mindful of the restrictive measures taken against Mr Ngaissona and the general procedure of communication with detained persons, the Defence stands by for further guidance from the Chamber and the Registry regarding the nature of transmissible items and the appropriate channels of communication each has to follow.

³² See, e.g., Imports number [REDACTED] , [REDACTED] , [REDACTED].

³³ [REDACTED] .

Respectfully submitted,



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The Hague, 26 September 2022