

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **7 November 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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

**Public redacted version of "Prosecution's Observations on the "Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V"(ICC-01/14-01/18-2143-Conf-Red)",
ICC-01/14-01/18-2154-Conf, 20 October 2023**

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 13 October 2023 report on the implementation of contact restrictions regarding NGAISSONA¹ as ordered by Trial Chamber V (“Chamber”) pursuant to regulation 101 of the Regulations of the Court (“RoC”).² For the reasons set out below, Trial Chamber V (“Chamber”) should reinstate the restrictions on NGAISSONA’s contacts in detention, as provided in its 17 April 2020 Decision (“Order”).³

2. *First*, NGAISSONA has a history of systematically violating the conditions of his detention. His recent breach of the contact restrictions detailed in the Ninth Report is the latest in a long line of violations.⁴ It underscores not only the need for the reinstatement of the Order, but for its vigilant enforcement. *Second*, NGAISSONA continues to have at his disposal a network of supporters prepared to exercise influence in the Central African Republic (“CAR”) — where the majority of Prosecution witnesses reside — and to interfere with the integrity of the proceedings.⁵ *Third*, the fragile political and security situation in CAR, as outlined in the Registry’s 25 August report,⁶ increases the risk of witness interference.

3. In the circumstances, reinstating the Order will minimise the risk of interference with witnesses, victims and their relatives, and to the integrity of the proceedings as a whole.

¹ ICC-01/14-01/18-2143-Conf-Red (“Ninth Report”).

² ICC-01/14-01/18-540. *See also*, email from the Chamber to the Registry sent on 12 October 2023 at 09:39.

³ ICC-01/14-01/18-484-Red2.

⁴ ICC-01/14-01/18-474-Conf, para. 22 (noting that, “In the Chamber’s view, these incidents demonstrate his willingness to disregard the restrictions and to conceal conversations from the Registry and ultimately the Chamber”). *See also*, ICC-01/14-01/18-357-Red2, para. 49, ICC-01/14-01/18-1536-Conf-Red, ICC-01/14-01/18-2039-Conf-Red.

⁵ ICC-01/12-01/18-2100-Conf, para. 15.

⁶ See Annex to Thirteenth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-2063-Conf-Anx.

4. The Prosecution also requests the Chamber to grant it access to information concerning the identity of the third party to a call made by NGAISSONA [REDACTED],⁷ [REDACTED] Call”), the telephone number used to communicate with them, and to the relevant transcripts. In this way, the Prosecution may fully and independently assess any potential security implications concerning its witnesses.

II. CONFIDENTIALITY

5. Pursuant to regulation 23bis(2) of the Regulations of the Court, this document is classified as “*Confidential*” because it responds to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. The Order should be reinstated

6. The contact restrictions as set out in the Chamber’s 17 April 2020 Order⁸ are 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 facts presented in the Ninth Report warrant the Chamber’s careful control of the Accused’s contacts and, moreover, an effective and consistent mechanism of enforcement.⁹

7. *First*, as is clear from information at the disposal of the Chamber and Parties, including trial testimony, NGAISSONA retains an active support network in CAR,¹⁰ where the majority of Prosecution witnesses continue to reside. Allowing NGAISSONA to contact his supporters and associates by reducing the current

⁷ ICC-01/14-01/18-2143-Conf-Red, para. 8.

⁸ See ICC-01/14-01/18-484-Red2.

⁹ ICC-01/14-01/18-2143-Conf-Red, para. 8. See also, ICC-01/14-01/18-1575-Conf, para. 26 (noting that, “[..] [REDACTED]).

¹⁰ See e.g., ICC-01/14-01/18-T-092-CONF-RED-ET, p. 6, ln. 19 - p. 7, ln. 22; see also ICC-01/14-01/18-1971-Conf, paras. 34-36, 39-41, 59-63; see also, CAR-OTP-00000071, CAR-OTP-00001430.

restrictions, rather than reinstating those required by the Order, would increase the risk of witness interference in this case.¹¹

8. *Second*, the dire political and security situation in CAR, outlined in the Registry's 25 August report,¹² creates fertile ground for witness interference due to the reduced capacity of the CAR authorities to provide protection against potential intimidation and interference. The result is an increased risk of chilling witnesses' prospective cooperation with the Court; of retaliation; and of other corrupt conduct aimed at perverting the course of justice in this case.¹³ It bears underscoring that while the Prosecution has completed its direct case, the proceedings are far from complete.¹⁴

9. Finally, the restrictions provided in the 17 April 2020 Order are justified and proportionate in the circumstances. They allow for the necessary monitoring of NGAISSONA's contacts while respecting his right to communicate with his family and those close to him. They further accommodate the Court's compelling interests in witness security under article 68, and the Chamber's truth-finding responsibilities.

B. The transcripts of the call and the identity of the interlocutor should be made available

10. The Prosecution requests access to information on the identity of the third party involved in the [REDACTED] Call, the telephone number that was used to communicate with them, and the corresponding transcripts.

11. The Prosecution is best placed to analyse the communication to determine whether there are any risks to witnesses' security and to the integrity of evidence on

¹¹ ICC-01/14-01/18-1819-Conf-Red, para. 7.

¹² See Annex to Thirteenth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-2063-Conf-Anx.

¹³ See ICC-01/14-01/18-1575-Conf, para. 26 (noting that [REDACTED] (citations omitted).

¹⁴ ICC-01/14-01/18-2089, footnote 3 (noting that, "[...] The Prosecution reserves the right to adduce such further evidence as may be appropriate, including in rebuttal, to address any defences for which article 31 and rules 79 and 80 [...]").

which it intends to rely at trial, in accordance with its duties under article 68. Access to the identity and telephone number of the third party along with the transcripts may reasonably assist the Prosecution in assessing and implementing responsive measures to protect witnesses and/or to preserve evidence potentially exposed to a heightened risk as a result of NGAISSONA's violation of the contact restrictions order.

IV. CONCLUSION

12. For the reasons above, the Chamber should: (i) reinstate its April 2020 Decision on contact restrictions, as set out above; and (ii) grant the Prosecution access to information regarding the identity of the third party to the [REDACTED] Call, the telephone number used to communicate with them, and to the corresponding transcripts.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a period.

Karim A. A. Khan KC, Prosecutor

Dated this 7th day of November 2023

At The Hague, The Netherlands