

**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  
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public**

**Public Redacted Version of "Defence Observations on the "Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V""", (ICC-01/14-01/18-2155-Conf-Red), filed on 20 October 2023**

**Source:** Defence of Patrice-Edouard Ngaïssona

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

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## I. INTRODUCTION

1. The Defence of Mr Ngaïssona ('the Defence') hereby provides its observations on the "Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V", filed on 13 October 2023 ('Registry Report').<sup>1</sup> The Defence submits that the concerns raised in the Registry Report are unfounded. The telephone conversation between Mr Ngaïssona and [REDACTED] related to a private family matter that Mr Ngaïssona could not discuss in detail with [REDACTED] since [REDACTED] was working when the call took place.

## II. CONFIDENTIALITY

2. The present response is filed on a confidential, *ex parte* basis pursuant to Regulation 23(1)*bis* of the Regulations of the Court ('RoC') since it concerns information relating to Mr Ngaïssona's private and family life. The Defence files a confidential redacted version simultaneously and will file a public redacted version as soon as practicable.

## III. PROCEDURAL HISTORY

3. Since his transfer to the Court on 23 January 2019, and at the Prosecution's demand,<sup>2</sup> Mr Ngaïssona has been subject to measures severely restricting his contacts with the outside world. Mr Ngaïssona is only permitted to have contact with close family members. Contacts with other individuals have been suspended for almost four years, whereas his family communications have been subject to active monitoring, which includes active monitoring of Mr Ngaïssona's closest of kin.<sup>3</sup>

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<sup>1</sup> ICC-01/14-01/18-2012-Conf-Exp.

<sup>2</sup> ICC-01/14-01/18-98-Conf-Exp, para. 1, referring to ICC-01/14-01/18-2-US-Exp.

<sup>3</sup> Restrictions were imposed by the following decisions of Pre-Trial Chamber II: ICC-01/14-01/18-98-Conf-Exp; ICC-01/14-01/18-106-Conf-Exp-Red; ICC-01/14-01/18-114-Conf-Exp-Red; ICC-01/14-01/18-

4. On 13 October 2023, the Registry filed the Registry Report where it submitted that it appeared that Mr Ngaïssona was engaging in obscure and coded language with [REDACTED] since the conversation was not specific enough to be understood or clearly identified. In the brief conversation, consisting of not more than 16 lines, Mr Ngaïssona asked whether [REDACTED] gave [REDACTED] a message to which she responded, yes. Mr Ngaïssona then ended the conversation quickly saying he would let [REDACTED] continue working, to which [REDACTED] responded that when [REDACTED] returned home, [REDACTED] would do “the thing.”

#### IV. SUBMISSIONS

5. The Defence submits that the concerns raised by the CCO are unfounded since Mr Ngaïssona was not engaging in obscure and coded language with [REDACTED]. As is evident from the 16-line conversation, Mr Ngaïssona engaged in brief call with [REDACTED]. The call concerned a private family matter that was of concern to Mr Ngaïssona. Specifically, Mr Ngaïssona learned that one [REDACTED]. The family [REDACTED], and so Mr Ngaïssona asked [REDACTED], to [REDACTED], such that [REDACTED]. At the end of the conversation, when [REDACTED] stated that [REDACTED] would go home and do the “thing”, [REDACTED] meant that [REDACTED] would [REDACTED], which was [REDACTED].
6. Given the sensitivity of the subject, neither Mr Ngaïssona nor [REDACTED] wished to go into detail regarding the matter. [REDACTED] was at work, specifically [REDACTED], where [REDACTED] understandably did not want to discuss such personal family matters. Mr Ngaïssona was also aware that this was

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137-Conf-Exp; ICC-01/14-01/18-176-Conf-Red; ICC-01/14-01/18-240-Conf-Exp; ICC-01/14-01/18-357-Conf-Exp; ICC-01/14-01/18-374-Conf-Exp; ICC-01/14-01/18-413-Conf-Exp and Trial Chamber V: ICC-01/14-01/18-484-Conf-Exp; ICC-01/14-01/18-582-Conf; ICC-01/14-01/18-672-Conf; ICC-01/14-01/18-965-Conf-Exp; ICC-01/14-01/18-1136-Conf; ICC-01/14-01/18-1575-Conf.

not the place to discuss the matter, which is why he ended the conversation quickly, stating [“REDACTED”].

7. Mr Ngaïssona is authorized to have contacts with all the individuals who are the subject of this conversation - namely [REDACTED], [REDACTED], and [REDACTED]. The brief conversation did not reflect any will on behalf of Mr Ngaïssona to circumvent the current restrictions regime, but rather reflects a [REDACTED] concerns for his [REDACTED].
8. Further, the Defence submits that the Acting CCO’s understanding of what constitutes coded and obscure language is overly broad. In the Registry Report, the Acting CCO asserts that Mr Ngaïssona appeared to be engaging in coded and obscure language “since the message is not specific enough to be understood or clearly identified”.<sup>4</sup> While the Defence avers that the Acting CCO is correct that the conversation cannot be readily understood by an outsider, this is not sufficient to show coded or obscure language.
9. The prohibition on obscure and coded language is meant to prohibit the use of communication that is intended to shield information from being understood by the interceptors at the Detention Centre.<sup>5</sup> Nothing in the 16-line conversation indicates that either Mr Ngaïssona or [REDACTED] were speaking in vague terms to prevent the Detention Centre from understanding the content of their conversations. Therefore, Mr Ngaïssona did not engage in coded or obscure language. Indeed, as the Defence explained above the call was related to [REDACTED], namely [REDACTED].

## V. CONCLUSION

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<sup>4</sup> Registry Report, para. 9.

<sup>5</sup> See ICC-01/04-02/06-785-Red, para. 50.

10. The Defence trusts that it has clarified for the Registry the meaning of the term “message” employed in the conversation, and stands ready to submit, if the Chamber finds it necessary, further information related to [REDACTED].

Respectfully submitted,



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Mr Knoop, Lead Counsel for Patrice-Edouard Ngaissona

Dated this 7 November 2023

At The Hague, the Netherlands.