

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **6 May 2024**

**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 "Tenth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V"(ICC-01/14-01/18-2444-Conf)",  
ICC-01/14-01/18-2459-Conf , 19 April 2024**

**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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**Victims Participation and Reparations  
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## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) provides its observations on the Registry’s 12 April 2024 report on the implementation of restrictions on contacts on NGAISSONA (“Tenth Report”)<sup>1</sup> as ordered by Trial Chamber V (“Chamber”) pursuant to regulation 101 of the Regulations of the Court (“RoC”).<sup>2</sup> For the reasons set out below, the Chamber should maintain the restrictions regime on NGAISSONA’s contacts as outlined in its Decision of 31 October 2023 (“Order”).<sup>3</sup>

2. *First*, NGAISSONA has a significant history of violating his conditions of detention.<sup>4</sup> His numerous breaches of the restriction regime underscore the necessity of maintaining and vigilantly enforcing the Order.

3. *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 witnesses in this case reside - and to interfere with the integrity of the proceedings.<sup>5</sup>

4. *Third*, the complex and unpredictable political and security situation in CAR, as outlined in the Registry’s 26 February 2024 report,<sup>6</sup> increases the risk of witness interference.

5. The restrictions the Order imposes remain justified, proportionate and minimally necessary given NGAISSONA’s multiple prior violations of the conditions of his detention and the potentially serious consequences of a prospective breach.

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<sup>1</sup> ICC-01/14-01/18-2444-Conf (“Tenth Report”).

<sup>2</sup> ICC-01/14-01/18-540.

<sup>3</sup> ICC-01/14-01/18-2177-Conf, *see also* ICC-01/14-01/18-484-Red2, ICC-01/14-01/18-1863-Conf-Red, paras. 8-10, ICC-01/14-01/18-672-Conf, para. 21.

<sup>4</sup> 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.

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

<sup>6</sup> See Annex to Fifteenth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-2380-Conf-Anx.

## II. CONFIDENTIALITY

6. 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 maintained

7. The contact restrictions as set out in the 31 October 2023 Order<sup>7</sup> are the minimum necessary 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).

8. *First*, NGAISSONA has a long history of circumventing the conditions imposed on his detention<sup>8</sup> and there is thus a founded and serious risk that further attempts to violate the restrictions in place will occur.

9. While restrictions on contacts under the Court’s statutory framework must be re-assessed where concrete, specific, and up-to-date information comes to light, this is not representative of the current context. As acknowledged by this Chamber, the mere passage of time does not mean that a risk no longer exists.<sup>9</sup> Thus, while the Registry has not identified any particular infringements in this reporting period,<sup>10</sup> the corollary is not necessarily that the Accused is compliant with the restrictions regime. This is particularly so, given the cessation of *active* monitoring of non-privileged telephone

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<sup>7</sup> ICC-01/14-01/18-2177-Conf, modifying the contact restrictions set out in ICC-01/14-01/18-484-Red2.

<sup>8</sup> 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.

<sup>9</sup> ICC-01/14-01/18-2177-Conf, para. 30.

<sup>10</sup> ICC-01/14-01/18-2444-Conf.

calls and visits with approved individuals.<sup>11</sup> In any event, as the Chamber has previously pointed out, refraining from prohibited conduct should be the norm.<sup>12</sup> Indeed, should NGAISSONA have complied in the recent period, this merely tends to point to the effectiveness of the current restrictions, and thus the need for its continuance.

10. *Second*, as is clear from information at the disposal of the Chamber and Parties, including trial testimony, NGAISSONA retains an active support network in CAR,<sup>13</sup> where the majority of witnesses in this case continue to reside. Allowing NGAISSONA to more freely contact supporters and associates by reducing the current restrictions would significantly increase the risk of witness interference or retaliation.<sup>14</sup>

11. *Third*, the volatile political and security situation in CAR, as outlined in the Registry's 26 February 2024 report,<sup>15</sup> creates fertile conditions for witness interference in part because it impedes CAR authorities' capacity to provide adequate protection against potential intimidation and interference. The result is an increased risk of retaliation against witnesses, victims and their relatives, and of other corrupt conduct aimed at perverting the course of justice in this case.<sup>16</sup> It bears underscoring that while the Prosecution has completed its direct case, the respective Defence teams are still calling witnesses in their respective cases in chief, and the proceedings are otherwise far from complete.<sup>17</sup>

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<sup>11</sup> ICC-01/14-01/18-2177-Conf, para. 28, ICC-01/14-01/18-2444-Conf, para. 5.

<sup>12</sup> ICC-01/14-01/18-484-Red2, para. 24.

<sup>13</sup> 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.

<sup>14</sup> ICC-01/14-01/18-1819-Conf-Red, para. 7.

<sup>15</sup> See Annex to Fifteenth Periodic Report of the Registry on the Political and Security Situation in the Central African Republic, ICC-01/14-01/18-2380-Conf-Anx.

<sup>16</sup> See ICC-01/14-01/18-1575-Conf, para. 26 (noting that "the Prosecution [REDACTED] and recalls its concerns over the Prosecution's reports that witnesses have reported being 'threatened and/or otherwise sought to absent themselves or withdraw their cooperation, including out of fear'" (citations omitted).

<sup>17</sup> 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 [...]").

**B. The Restrictions in the Order are justified and proportionate**

12. The restrictions provided in the Order are justified and proportionate in the circumstances. Properly implemented with regular random monitoring of non-privileged calls pursuant to Regulation 175(1) of the Regulations of the Registry, they allow for the necessary surveillance of NGAISSONA's contacts while respecting his right to communicate with 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.

13. In the current circumstances, the Chamber should keep the amended restrictions in place until the close of the evidentiary proceedings in the case, as already deemed proportionate in its Order of 31 October 2023.<sup>18</sup> The Prosecution reserves the right to request additional restrictions on NGAISSONA's contacts and communications should further violations of the regime come to light.

**IV. CONCLUSION**

14. For the reasons above, the Chamber should maintain the restrictions on NGAISSONA's contacts and communications currently in place.



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

Dated this 6<sup>th</sup> day of May 2024  
At The Hague, The Netherlands

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<sup>18</sup> ICC-01/14-01/18-2177-Conf, para. 34.