

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 19 February 2025

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

SITUATION IN CENTRAL AFRICAN REPUBLIC II

***IN THE CASE OF THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public Document

Public Redacted Version of the “Ngaïssona Defence consolidated Observations on the “Twelfth Registry Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona Ordered by Trial Chamber V” and “Observations de l’Accusation sur la version confidentielle expurgée du ‘Twelfth Registry Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona Ordered by Trial Chamber V’”, 23 January 2025, ICC-01/14-01/18-2754-Conf-Red

Source: Defence of Patrice-Edouard Ngaïssona

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I. INTRODUCTION

1. The Defence of Mr Ngaïssona ('the Defence') hereby provides its consolidated observations on (i) the "Twelfth Registry Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona Ordered by Trial Chamber V", filed on 10 January 2025 ('Observations' and 'Registry Report')¹ and (ii) the Prosecution's "Observations de l'Accusation sur la version confidentielle expurgée du *"Twelfth Registry Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona Ordered by Trial Chamber V"* (ICC-01/14-01/18-2752-Conf-Red)", filed on 17 January 2025 ('Prosecution's Observations').²
2. The Defence submits that the concerns raised in the Registry Report are overstated in that they do not constitute a violation of Mr Ngaïssona's restrictions regime. While information related to the public hearings of 9 December 2024 was indeed discussed, this cannot be qualified as prohibited case-related discussions as they did not compromise the integrity of the proceedings or jeopardize the safety of potential witnesses. Moreover, at no point was obscure language used by Mr Ngaïssona.
3. The Defence further submits that the Prosecution's arguments are unsubstantiated, not warranting any change in the restrictions imposed on Mr Ngaïssona.

II. CONFIDENTIALITY

4. 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 contains third-party information and details relating to Mr Ngaïssona's private life. The Defence files a confidential redacted version simultaneously and will file a public redacted version as soon as practicable.

¹ ICC-01/14-01/18-2752-Conf-Exp.

² ICC-01/14-01/18-2753-Conf ('Prosecution's Observations').

III. PROCEDURAL HISTORY

5. As mentioned in the Registry Report, the current framework governing the restrictions is as follows: (1) non-privileged phone calls and non-privileged visits limited to the individuals on Mr Ngaïssona's non-privileged contact list, subject to verification of their identity and contact details by the Chief Custody Officer ("CCO"); (2) written correspondence limited to the individuals on his non-privileged contact list; (3) non-privileged communications in French and/or Sango; and (4) the prohibition of obscure or coded language and discussions related to his case during non-privileged communications.³
6. On 10 December 2024, Mr Ngaïssona had a non-privileged phone conversation ('December Call') with one of the individuals on his non-privileged contact list, [REDACTED] ('Interlocutor').⁴
7. On 3 January 2025, the Registry informed Trial Chamber V ('the Chamber') about the December Call.⁵
8. On 7 January 2025, the Chamber directed the Registry to "advance and file its next report on 10 January 2025", and thereafter "follow the usual intervals for filing its regular reports".⁶
9. On 10 January 2025, the Registry filed the Registry Report in which it submitted the following: (i) Mr Ngaïssona appeared to be commenting on a document allegedly presented to him, i.e. "*les factures*" and (ii) part of the conversation appeared to be related to the Interlocutor's [REDACTED] and was conducted in obscure

³ 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-01/14-01/18-137-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, as well as by the following decisions of Trial Chamber V: ICC-01/14-01/18-484-Red2; ICC-01/14-01/18-582; ICC-01/14-01/18-672-Conf; ICC-01/14-01/18-965-Red; ICC-01/14-01/18-1136-Conf; ICC-01/14-01/18-1575-Conf; ICC-01/14-01/18-1863-Conf-Red; ICC-01/14-01/18-2177-Conf; ICC-01/14-01/18-2475-Conf; ICC-01/14-01/18-2741-Conf.

⁴ ICC-01/14-01/18-2752-Conf-Exp, para. 7.

⁵ See ICC-01/14-01/18-2752-Conf-Exp, fn. 3.

⁶ ICC-01/14-01/18-2752-Conf-Exp, para. 2.

language.⁷ The Registry Report characterised both of these alleged instances as appearing to be case-related.⁸

10. On 17 January 2025, the Prosecution filed its Observations, requesting (1) access to the unredacted version of the Registry Report and its Annex; (2) at minimum, the maintenance of the applicable contact restrictions; and (3) the temporary reinforcement of the monitoring of the accused's contacts and communications by setting up active surveillance, in the event that the Chamber would assess the reported violation as serious based on the Registry Report.⁹

IV. SUBMISSIONS

11. At the outset, it is evident that the Registry Report is based on incomplete and inaccurate information. The Registry lacks the necessary context regarding the discussions that took place on 10 December 2024, and thus is unable to have a comprehensive understanding of the events in question. As such, the Defence seeks to provide the Chamber with necessary clarifications and an accurate account of the events that transpired.

a. Mr Ngaïssona's comments on "les factures"

12. The Registry alleges that the part of Mr Ngaïssona's conversation with the Interlocutor regarding "*les factures*" relates to a document presented to Mr Ngaïssona on which he commented.¹⁰ This conclusion, however, is flawed.

13. On 9 December 2024, a day before Mr Ngaïssona had the December Call, the Prosecution presented part of its closing submissions, which the Interlocutor followed [REDACTED].¹¹ During their pleadings, the Prosecution referred to item CAR-OTP-2124-0903 to support their claim that Mr Ngaïssona "was approached to provide military equipment and money for Anti-Balaka elements in Bangui and in

⁷ ICC-01/14-01/18-2752-Conf-Exp, paras 7-8.

⁸ Ibid.

⁹ Prosecution's Observations, paras 12, 15.

¹⁰ ICC-01/14-01/18-2752-Conf-Exp, para. 7. See also ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 2, lns 33-34.

¹¹ ICC-01/14-01/18-2752-Conf-Exp-Anx, p 1, ln. 10 to p. 2, ln. 25.

other locations”.¹² The content of the item was read out by the Prosecution in open session¹³ and the item itself was included in the PowerPoint presentation shown to the public.¹⁴ Mr Ngaïssona’s comments specifically pertained to this document and were made in that context. Mr Ngaïssona made no specific mention of any Prosecution or Defence witness.

14. It is acknowledged that Mr Ngaïssona is prohibited from engaging in case-related discussions. Nonetheless, the discussion that Mr Ngaïssona had does not fall within the prohibitions against discussing case-related information under Regulation 101 of the Regulations of the Court; rather, it was a circumscribed comment on matters publicly discussed during the Prosecution’s closing statement. Mr Ngaïssona, like any individual, has a fundamental need to engage in discussions with his support system, especially while in detention and during a critical juncture of the trial. Mr Ngaïssona engaged with his support system within the strict confines of the contact restrictions in place. Indeed, Mr Ngaïssona was reacting to the Interlocutor informing him that he was following the closing statements. Mr Ngaïssona’s desire to seek the perspectives and thoughts of [REDACTED] on such a pivotal public moment in his trial and personal life is understandable and natural; hence, he mentions that [REDACTED].¹⁵

15. Mr Ngaïssona’s comments on the Prosecution’s closing statement are thus completely inconsequential, as no confidential information was divulged. The content related to widely disseminated public information that was intended for the public’s consumption. Therefore, no threat to the integrity of the Court or the safety of protected witnesses can be reasonably construed based on this exchange.

b. Alleged use of obscure language

¹² ICC-01/14-01/18-T-306-CONF-ENG ET, p. 55, lns 22-24.

¹³ ICC-01/14-01/18-T-306-CONF-ENG ET, p. 55, ln. 22 to p. 56, ln. 22.

¹⁴ See slide no. 5 of the Prosecution’s PowerPoint presentation titled “Prosecution’s Closing Statements presentation 1” (email sent from the Prosecution to the Chamber, the parties and participants on 10 December 2024, at 17:31).

¹⁵ ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 5, ln. 104.

16. The second issue raised by the Registry in its Report relates to lines 68-74 of the Annex, where the Interlocutor appears to mention [REDACTED].
17. Analysing the content of the December Call in its totality, it strongly appears that the phrase [REDACTED]. The Interlocutor [REDACTED],¹⁶ and the discussion could pertain to [REDACTED],¹⁷ as well as [REDACTED].¹⁸ This does not qualify as a case-related discussion *per se* but rather [REDACTED]. Furthermore, it was the Interlocutor who introduced the topic, and Mr Ngaïssona's response was minimal; Mr Ngaïssona barely engaged in this discussion and tried to politely terminate it by asserting that he was unaware of [REDACTED].¹⁹ While the Interlocutor persisted on the matter, Mr Ngaïssona clearly redirected the conversation to an entirely different topic.²⁰
18. The Registry's claim that this conversation was conducted in obscure language is unfounded. *First*, the prohibition on obscure and coded language is meant to prohibit the use of communication by Mr Ngaïssona that is intended to shield information from being understood by the interceptors at the Detention Centre.²¹ None of the words which were identified by the Registry as "obscure" were spoken by Mr Ngaïssona. *Second*, while certain aspects of the discussion may seem unclear to an uninformed listener or one unfamiliar with the speaker's communication style, this does not inherently render the conversation coded or obscure.
19. *Third*, even if the Chamber were to find that obscure language was used during the conversation, it was not by Mr Ngaïssona. As previously mentioned, it was the Interlocutor who introduced this topic, while Mr Ngaïssona engaged minimally, attempted to terminate the discussion, and ultimately redirected the conversation to a different subject.²² Consequently, this segment of the discussion does not

¹⁶ [REDACTED]. [REDACTED].

¹⁷ ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 4: [REDACTED].

¹⁸ ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 3: [REDACTED].

¹⁹ ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 4, lns 70-73: [REDACTED].

²⁰ ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 4, lns 74-77.

²¹ See ICC-01/04-02/06-785-Red, para. 50.

²² See ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 4, ln. 77: [REDACTED], where Mr Ngaïssona redirects the discussion to [REDACTED].

constitute a violation of Mr Ngaïssona's restrictions. At most, it raises questions about the Interlocutor's [REDACTED].

c. The Prosecution's request for reclassification of the Registry Report and its Annex is unjustified and should be rejected

20. The Prosecution's request for reclassification of the Registry Report and its Annex should be rejected in its entirety.

21. *First*, the Prosecution failed to provide a valid basis for requesting the reclassification of the Annex, other than the flawed assumption that a document was shown to Mr Ngaïssona and the related conjecture that reviewing the December Call transcript would help them evaluate potential security risks to the document's alleged source.²³

22. The Prosecution's approach is premature, prioritizing access to Mr Ngaïssona's private communications before the Chamber has had an opportunity to determine whether there has been a violation of the current restrictions' regime. This sequence of events places the cart before the horse, bypassing the essential determination of whether any breach has occurred. This is particularly significant in a case where the incidents reported do not involve disclosure to the public of confidential information, and clearly does not compromise the identity or safety of any protected witness, as explained above.

23. *Second*, and contrary to the Prosecution's assertion,²⁴ it is not within the Prosecution's mandate to determine whether obscure language has been used or whether this constitutes a violation of the restrictions' regime. Such determinations fall squarely within the purview of the Chamber, which possesses all the necessary information to make an informed decision.

²³ Prosecution's Observations, para. 7.

²⁴ Prosecution's Observations, para. 7 : « Le contenu de la Communication permettra à l'Accusation d'évaluer si cette obscurité du langage utilisé était délibérée et effectivement constitutive d'une violation, de déterminer l'étendue de la discussion par NGAÏSSONA de l'affaire, qui constitue en soi une violation, et de s'assurer que le contenu de la conversation n'est pas autrement prohibé ».

24. Disclosing the transcript in its entirety would be a disproportional infringement of Mr Ngaïssona's right to privacy, as it relates to a private conversation between Mr Ngaïssona and [REDACTED], including discussions about [REDACTED].²⁵ While the Interlocutor appears to have disclosed information to Mr Ngaïssona about [REDACTED], this disclosure happened without any soliciting or prompting on Mr Ngaïssona's part. If the Chamber determines that the transcript of the December Call should be disclosed to the Prosecution, the Defence respectfully requests that the Chamber carefully balance the interests of the Prosecution with Mr Ngaïssona's fundamental right to privacy. As such, only the portion of the transcript related to the discussion about the Prosecution's public closing statements and indicated in the footnote below²⁶ should be made available to the Prosecution, while the remainder of it should be redacted.

d. The Prosecution's arguments regarding the alleged violation are unsubstantiated

25. Notwithstanding the Prosecution's assertion that they lack sufficient information to fully assess the scope of the alleged breach and the associated security risks, they nevertheless contend that the potential violation appears to be of significant gravity,²⁷ thereby justifying not only the current restrictions' regime, but also the imposition of further restrictions on Mr Ngaïssona's non-privileged communications.²⁸ Once again, the Prosecution's arguments are founded entirely on conjecture and lack any substantive evidentiary support.

26. *First*, while it is uncontested that witnesses should be afforded protection throughout all stages of the proceedings, there is no indication of any risks arising from the reported conversation. Furthermore, the assertion that potential reprisals

²⁵ See for example ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 2, ln. 45 and p. 3, lns 57-63,

²⁶ ICC-01/14-01/18-2752-Conf-Exp-Anx, p. 2, lns 30-36.

²⁷ Prosecution's Observations, para. 13: « À ce stade, l'Accusation ne peut que constater que la violation semble grave au vu des informations limitées portées à sa connaissance ».

²⁸ ICC-01/14-01/18-2753-Conf, paras 8-12.

may result from the sought sentence²⁹ is wholly unsubstantiated and devoid of merit.

27. *Second*, the repeated references to the Article 70 Investigation must cease.³⁰ The Prosecution cannot rely on these allegations as a substitute for substantive evidence to support their claims, as such conduct is prejudicial to Mr Ngaïssona; especially, in this context, where Mr Ngaïssona's conduct is not at issue for the purposes of the Prosecution's Article 70 investigation. Moreover, if the Prosecution had concrete evidence against the targets of that investigation, they would have brought formal charges by now, rather than using vague allegations as a blanket justification to violate Mr Ngaïssona's right to privacy.

28. *Lastly*, the Prosecution's claim that Mr Ngaïssona has committed many violations of the restrictions imposed by the Chamber, and continues to do so, « *de manière flagrante et délibérée* », ³¹ is ill-founded. As shown above, any potential breach of the prohibition on discussing "case-related" matters by Mr Ngaïssona was not within the scope of conversations Regulation 101 was intended to prohibit. The Prosecution provides no example of the "many violations" Mr Ngaïssona has allegedly committed, yet employs such an argument to justify the continuation of the restrictions. Besides that, it is perplexing that the Prosecution was able to conclude that the violation was both flagrant and deliberate based on the same Registry Report they assert contained limited information, which allegedly hindered their ability to comprehend the full scope of the violation.³²

V. CONCLUSION

29. The Defence acknowledges the general comments made by Mr Ngaïssona regarding the Prosecution's public closing statement. However, the Defence

²⁹ ICC-01/14-01/18-2753-Conf, para. 9.

³⁰ Prosecution's Observations, para. 10.

³¹ Prosecution's observations, para. 11.

³² Prosecution's Observations, para. 6 : « L'Accusation n'est donc pas en capacité d'évaluer précisément sa gravité, les risques sécuritaires qu'elle a pu engendrer, et de saisir la Chambre d'une requête circonstanciée aux fins de renforcement de la surveillance des contacts de l'accusé si cela est justifié ».

respectfully submits that these comments related to the public discussions regarding the closing statement in Mr Ngaïssona's case. They arose in a singular moment in the trial that is intended for the public's consumption. The conversation arose out of the significance of this public moment in the trial and Mr Ngaïssona's natural desire to seek the Interlocutor's perspective on the matter.

30. For the reasons explained above the Defence respectfully requests the Chamber to:

- **REJECT** the Prosecution's request for reclassification of the Registry Report and its Annex, or in the alternative, allow access only to the portion related to the Prosecution's closing statement as indicated in paragraph 24 above; and
- **REJECT** the Prosecution's request for temporary reinforcement of the monitoring of Mr Ngaïssona's contacts and communications by setting up active surveillance.

Respectfully submitted,



G. G. J. Alexander Knoops
on behalf of
Patrice-Édouard Ngaïssona

Dated this 19 February 2025

At The Hague, the Netherlands