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PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF PROSECUTOR *v.* ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA**

**Confidential, EX PARTE, only available to the Prosecution, Ngaissona Defence, the
Registrar, and the Detention Section**

**Prosecution's Response to the "*Defence request for access to original audio
recordings and Sango transcripts of conversations underlying the Fifth,
Sixth and Seventh Registry Reports*" (ICC-01/14-01/18-440-Conf-Exp)**

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") defers in part to the discretion of Pre-Trial Chamber II ("Chamber") regarding the Ngaissona Defence's request for access to original audio recordings and Sango transcripts of conversations underlying the Fifth, Sixth and Seventh Registry Reports.¹

2. The Prosecution takes no position on the Request as such, particularly if the audio files, transcripts and translations sought ("Recorded Conversations") are *not relevant* to any effort to interfere with witnesses or tamper with evidence in this case. However, absent such a determination by the Chamber — that is, if the *possible relevance* of the Recorded Conversations to a potential breach of articles 68 or 70 cannot be affirmatively excluded — the Registry should be directed to release them to the Prosecution.

II. CONFIDENTIALITY

3. In accordance with regulation 23*bis*(1) of the Regulations of the Court, this document is filed as "Confidential, *EX PARTE*, only available to the Prosecution, Ngaissona Defence, the Registrar, and the Detention Section" as it responds to a filing of the classification.

III. SUBMISSIONS

4. The Prosecution does not oppose the Request and defers to the Chamber's discretion, as noted. To the extent that the Chamber assesses that any of the Recorded Conversations *might* involve the Accused's efforts to interfere with, or undermine,

¹ ICC-01/14-01/18-440-Conf-Exp ("Request").

witnesses or evidence in this case, it should direct that the Registry make them fully available to the Prosecution.

5. *First*, the Prosecution is best positioned to assess the potential impact of the Accused's misconduct on the security and safety of its witnesses, as well as the integrity of its evidence. Article 68 further obliges the Prosecution to take such steps as are necessary to protect victims and witnesses.

6. In addition, the Court's regulatory framework vests the Prosecution with the authority and responsibility to investigate potential article 70 offences², including the improper interference with witnesses and tampering with evidence. This responsibility applies irrespective of whether the conduct concurrently comprises an administrative breach of the Regulations of the Registry or of the Chamber's orders.

7. *Second*, to mitigate against the *risks* to the integrity of the proceedings posed by the Accused while in detention, the Chamber determined that contact restrictions, as previously ordered and modified, should remain in place for the duration of the pre-trial phase.³ The Accused's violation of these conditions include that: "on multiple occasions, Ngaissona has engaged in conduct intended to circumvent the imposed [contact] restrictions"⁴ by communicating with non-authorised individuals and using coded language;⁵ and that "Ngaissona was attempting to circumvent the Detention Centre's verification process."⁶ Notably, the Registry related that "the course of conduct of Mr Ngaissona and his interlocutors has been one which sought to allow undisclosed, and non-vetted people who were not approved by the [Detention

² See generally, article 70(c) particularly; see also rules 163 and 165 of the Rules of Evidence and Procedure ("Rules").

³ ICC-01/14-01/18-413-Conf-Exp-Red, para. 86 ; ICC-01/14-01/18-374-Conf-Exp-Red, para. 41.

⁴ ICC-01/14-01/18-413-Conf-Exp-Red, para. 82.

⁵ ICC-01/14-01/18-413-Conf-Exp-Red, para. 82.

⁶ ICC-01/14-01/18-413-Conf-Exp-Red, para. 83.

Section] to partake in his telephone conversations which took place even though their role was silent”.⁷

8. This pattern of conduct is of a nature which reasonably and logically raises substantial concerns directly implicating the Prosecution’s duties under articles 68 and 70. That the restrictions are intended to “achieve the objective of ensuring the integrity of the proceedings”, and that the Chamber has previously determined that “there is a high risk that Ngaissona may engage in further attempts to circumvent the restrictive measures in place”⁸ only underscores this.

9. Barring the Chamber’s assessment and determination that the violations of the contact restrictions as reflected in the Recorded Conversations have *no relevance* to these significant institutional considerations, releasing them to the Prosecution is not only compatible with the statutory interests at stake, but fully justified.

IV. CONCLUSION

10. For the above reasons, the Prosecution (1) defers to the Chamber’s discretion as set out above; and (2) requests that the Chamber direct the Registry to release the Recorded Conversations to the Prosecution where their possible relevance to a breach of articles 68 or 70 cannot be affirmatively excluded.



Fatou Bensouda, Prosecutor

Dated this 10th day of March 2020
At The Hague, The Netherlands

⁷ ICC-01/14-01/18-413-Conf-Exp-Red, para. 73.

⁸ ICC-01/14-01/18-413-Conf-Exp-Red, paras. 85, 86.