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Date: **15 March 2021**

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***

Confidential

**Prosecution's Observations on the "Third Registry Report on the Implementation
of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V"
(ICC-01/14-01/18-901-Conf-Red)**

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 8 March 2021 report on the implementation of contact restrictions regarding NGAISSONA,¹ as ordered by Trial Chamber V ("Chamber") pursuant to regulation 101 of the Regulations of the Court ("RoC").²

2. The current restrictions on NGAISSONA's contacts in detention should be maintained as ordered by the Chamber in its 5 October 2020 Decision.³ This will minimise the risk to the integrity of the proceedings and to Prosecution witnesses. Moreover, these restrictions remain proportionate and minimally necessary given NGAISSONA's multiple violations of the conditions of his detention.

3. In respect of the reported violation, the Prosecution requests the Chamber to grant it access to the two letters from NGAISSONA dated 16 December 2020 and 31 January 2021 ("Two Letters"), and information concerning the identity of their intended recipients. The Prosecution is best placed to determine whether there are any witness security implications to its witnesses, regardless of the ostensible or apparent nature of the Two Letters.

4. The Prosecution notes that the reported violation requires that the Chief Custody Officer ("CCO") review all non-privileged outgoing mail, pursuant to regulation 169 of the Regulations of the Registry ("RoR").⁴ Should there be other breaches relating to NGAISSONA's non-privileged outgoing mail, or the matter otherwise indeterminate, the Prosecution requests that it be provided with all of the attendant information and/or non-privileged outgoing mail to assess potential security risks to its witnesses.

¹ ICC-01/14-01/18-901-Conf-Red ("Third Report").

² See ICC-01/14-01/18-484-Conf-Exp-Red, p. 17 ("Order").

³ ICC-01/14-01/18-672-Conf ("Third Decision").

⁴ ICC-01/14-01/18-901-Conf-Red, para. 10.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1) of the RoC, this document is filed as “Confidential”, as it refers to filings and decisions of the same classification.

III. SUBMISSIONS

A. The circumstances justifying the Order continue to prevail

6. There has been no favourable change in circumstances since the Third Decision⁵, that warrant any lifting of, or reduction to, the existing contract restrictions. On the contrary, the Two Letters clearly violated the Chamber’s Order. Thus, it is vital that the current restrictions remain in full force.

7. The risks found by the Chamber in October 2020 justifying the maintaining of the restrictions continue to prevail. *First*, as the Prosecution’s previous filing (incorporated by reference herein) notes, NGAISSONA has a history of willingness to violate the conditions of his detention.⁶ As this Chamber found, “NGAISSONA’s multiple violations of restrictions during the pre-trial phase [...] demonstrated his willingness to disregard the restrictions and to conceal conversations from the Registry”.⁷ *Second*, NGAISSONA continues to have the means to reach out to witnesses in this case, who largely reside in the Central African Republic (“CAR”).⁸ If the contact restrictions are reduced, NGAISSONA will have easier access to his network of supporters, increasing the risk of collusion and witness interference. In addition, the volatile security situation in CAR has a direct impact on the ability of NGAISSONA’s supporters to interfere with witnesses. As the Registry’s 15 January 2021 report on the political and security situation in CAR notes, the post-electoral

⁵ ICC-01/14-01/18-672-Conf.

⁶ See ICC-01/14-01/18-555-Conf, para. 5; ICC-01/14-01/18-453-Conf-Exp, paras. 1-7; ICC-01/14-01/18-413-Conf-Exp-Red, paras. 82-84.

⁷ ICC-01/14-01/18-672-Conf, para. 11.

⁸ ICC-01/14-01/18-672-Conf, para. 11.

crisis and continued violent clashes between armed groups, including the Anti-Balaka, has led to a deterioration of the security situation.⁹ The capacity of Central African law enforcement agencies to intervene to secure witnesses in these circumstances, is limited, if it exists at all in the present circumstances. This may have a chilling effect on Prosecution witnesses who may become reluctant to cooperate or to remain involved with this case.

8. Finally, NGAISSONA has a strong motive to interfere with the integrity of the proceedings. The trial has commenced. The Prosecution's case-in-chief is scheduled to start on 15 March 2021. The fact that NGAISSONA might face a significant sentence in case of a conviction, incentivises him to undertake actions to undermine the proceedings. Lifting the restrictions at this stage would create a concrete risk that the Accused will seek to intimidate Prosecution witnesses and influence their testimonies. Thus, reducing the contact restrictions would place the integrity of the proceedings at unnecessary risk.

9. By contrast, allowing NGAISSONA to maintain contact with his family and others as provided for in the Order is not unfairly restrictive or disproportionate when weighed against the serious risks to this case and the prospect of justice for the victims of the charged crimes, if the current restrictions are reduced.

B. The Chamber should grant access to the Two Letters to ensure the integrity of trial evidence

10. The Prosecution requests access to the Two Letters, and information concerning the identities of their intended recipients.

11. Regardless of the ostensible or apparent nature of the Two Letters, the Prosecution is best placed to analyse the communication to determine whether there

⁹ ICC-01/14-01/18-825-Conf-Anx, paras. 13, 14, 42. *See also*, ICC-01/14-01/18-893-Conf, para. 8.

are any risks to witnesses' security and to the integrity of evidence on which it intends to rely at trial, in accordance with its duties under article 68. Access to the Two Letters and the identities of the recipients may reasonably assist the Prosecution in assessing and implementing responsive measures to protect its witnesses and/or to preserve evidence potentially exposed to a heightened risk, as a result of NGAISSONA's violation of the Chamber's Order.

C. The Chamber should grant access to all relevant non-privileged outgoing mail to assess potential security risks to its witnesses

12. Given the reported violation, the Prosecution requests the provision of all relevant information on any other security breaches relating to NGAISSONA's non-privileged outgoing mail. This will best enable the Prosecution to assess the potential security risks to, and implement relevant measures to protect, witnesses and the integrity of the evidence.

IV. CONCLUSION

13. For the above reasons, the Chamber should (1) maintain the current restrictions on NGAISSONA's contacts in detention; (2) grant the Prosecution access to the Two Letters and information regarding the identity of their intended recipients; and (3) grant the Prosecution access to all relevant information on any other security breaches relating to NGAISSONA's non-privileged outgoing mail.



James Stewart, Deputy Prosecutor

Dated this 15th day of March 2020
At The Hague, The Netherlands