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**International
Criminal
Court**



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

Date: 19 March 2021

TRIAL CHAMBER V

Before: Judge 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
NGAÏSSONA***

Confidential

**With confidential, EX PARTE, Annexes I and II only available to the Registrar and
the Defence for Mr Ngaïssona**

**Confidential Redacted Version of "Defence 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-Exp)"**

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. Pursuant to Trial Chamber V ("the Chamber")'s "Third Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention",¹ the Defence of Mr Patrice-Edouard Ngaïssona ("Defence") hereby presents its Observations in relation to the "Third Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V"² ("Third Registry Report").
2. The Defence respectfully submits that the incident reported in the Third Registry Report was due to an inadvertent and inconsequential mistake on Mr Ngaïssona's part. Furthermore, the Defence takes the opportunity of these submissions to request that three additional family members be added to Mr Ngaïssona's list of non-privileged contacts.

II. Confidentiality

3. In accordance with regulation 23*bis*(1) of the Regulations of the Court ("Regulations"), these submissions are filed "confidential, EX PARTE, only available to the Registrar and the Defence for Mr Ngaïssona" as they concern information regarding Mr Ngaïssona's private life and detention-related matters, and also respond to documents of the same classification. The Defence will file a confidential redacted version of these submissions simultaneously.

III. Procedural history

4. Since his transfer to the Court on 23 January 2019 and at the Prosecution's request,³ Mr Ngaïssona has been subjected to considerable limitations on his

¹ ICC-01/14-01/18-672-Conf

² ICC-01/14-01/18-901-Conf-Exp

³ ICC-01/14-01/18-98-Conf-Exp, para. 1, referring to ICC-01/14-01/18-2-US-Exp.

contacts with the outside world, including with his immediate family members.

5. Following the reporting of alleged incidents by the Registry in 2019,⁴ the Pre-Trial Chamber imposed additional restrictions on Mr Ngaïssona's contact with the outside world, by *inter alia*: prohibiting telephone contact with non-family members included in Mr Ngaïssona's list of non-privileged contacts; prohibiting contact between Mr Ngaïssona and a number of close family members; and imposing an active monitoring order on Mr Ngaïssona's non-privileged family phone calls and family visits.⁵ These conditions have been maintained by the Chamber and remain in place to this day.⁶
6. On 8 March 2021, pursuant to the Trial Chamber's order to report on the restrictions on Mr Ngaïssona's contacts every six months,⁷ the Registry issued its Third Registry Report, informing the Chamber that, during the monitoring of Mr Ngaïssona's contacts since 8 September 2020, one incident had taken place.⁸

IV. Submissions

A. The incident reported in the Third Registry Report was due to an inadvertent and inconsequential mistake on Mr Ngaïssona's part

7. In its Third Registry Report, the Registry informed the Chamber that [REDACTED], two handwritten letters signed by Mr Ngaïssona

⁴ ICC-01/14-01/18-276-Conf-Exp, paras 15-17; ICC-01/14-01/18-337-Conf-Exp, paras 13-16; ICC-01/14-01/18-390-Conf-Exp, paras 13-31.

⁵ ICC-01/14-01/18-374-Conf-Exp, para. 40 and ICC-01/14-01/18-413-Conf-Exp, para. 84.

⁶ ICC-01/14-01/18-484-Conf-Exp, para. 25; ICC-01/14-01/18-582-Conf, para. 17; ICC-01/14-01/18-672-Conf, para 24.

⁷ ICC-01/14-01/18-672-Conf, para. 25.

⁸ ICC-01/14-01/18-901-Conf-Exp, para. 1.

[REDACTED].⁹ The Registry submits that [REDACTED] amounts to a violation of the restrictions in place, as [REDACTED] does not appear on Mr Ngaïssona's list of non-privileged contacts.¹⁰ Further, the Registry considers that [REDACTED] amounts to an improper circumvention of the Regulations of the Registry, which require that the CCO reviews all non-privileged outgoing mail.¹¹

8. At the outset, the Defence wishes to convey Mr Ngaïssona's apologies for this inadvertent attempt to circumvent the Chamber's order and the Regulations of the Registry. Mr Ngaïssona informed the Defence that he was unaware that [REDACTED] would amount to a violation of the restrictions regime, as well as the Regulations of the Registry.
9. As far as the restrictions regime is concerned, Mr Ngaïssona informed the Defence that he was unaware that he could only send written correspondence to the persons appearing on his list of non-privileged contacts. Given the nature of the list of non-privileged contacts, which includes persons' phone numbers, Mr Ngaïssona was under the mistaken belief that the scope of the list was limited to establishing the persons with whom he could have telephone contact.
10. In the past year and a half, Mr Ngaïssona has never sent written correspondence. Hence, while the full extent of the restrictions regime was communicated to him at the time they were put in place one year and a half ago, Mr Ngaïssona was not familiar with this specific restriction. Following this incident, he is now fully aware that he may only address correspondence to the persons appearing in his list of non-privileged contacts, and he will strictly comply with the Chamber's order in this regard.

⁹ ICC-01/14-01/18-901-Conf-Exp, para. 9.

¹⁰ Ibid, para. 10.

¹¹ Ibid.

11. Furthermore, Mr Ngaïssona has informed the Defence that [REDACTED]. [REDACTED]. [REDACTED].

12. Lastly, as averred by the Registry, the letters are not in vague or coded language and do not concern case-related information, thereby rendering the alleged violation inconsequential. Rather, they simply [REDACTED].¹² The Defence respectfully submits that the letters' content should dispel any concern for the integrity of the proceedings. Hence, the Prosecution's request to be granted access to the letters as well as to information on their intended recipient should be rejected.

B. Request to order the Detention Centre to add three family members to Mr Ngaïssona's non-privileged contact list

13. On 11 October 2020, Mr Ngaïssona requested that [REDACTED], who is [REDACTED], be added to his list of non-privileged contacts. On 29 October 2020, Mr Ngaïssona requested that [REDACTED], who is [REDACTED], be added to his list of non-privileged contacts. Both requests were rejected by the CCO on 3 November 2020, on the grounds that [REDACTED] and [REDACTED] are not members of Mr Ngaïssona's family.¹³ To clarify, the Detention Centre informed Mr Ngaïssona that its definition of family is limited to: *"la mère, le père, les beaux-parents, la famille d'accueil, les frères, les sœurs, le conjoint reconnu et les enfants d'une personne détenue."*¹⁴

14. The Defence submits that the Detention Centre's definition of family is excessively limited, [REDACTED]. While the Western concept of family is typically limited to the nuclear family, the concept of family in many African

¹² ICC-01/14-01/18-901-Conf-Exp-Anx.

¹³ DC memo DS/2020/085/HT/mb, 3 November 2020, Annex I, p. 1.

¹⁴ Ibid.

communities is generally more extensive, encompassing family members such as aunts, uncles, cousins and grandparents. This Court has confirmed, in the assessment of victim applications, that "family" must be understood in its proper cultural context when it determined:

*"The Chamber moreover recalls that the concept of "family" must be understood in light of the relevant family and societal structures. In Katanga, it therefore treated the concept of "family" with due regard for family and societal structures in the DRC."*¹⁵

15. Hence, the Defence respectfully submits that the Detention Centre should adopt a similarly culturally sensitive approach when determining whether a person can be qualified as a detained person's "family member".

16. Lastly, on 8 March 2021, Mr Ngaïssona requested that [REDACTED], who is [REDACTED],¹⁶ be added to his list of non-privileged contacts. The request was rejected by the CCO on 12 March 2021, on the grounds that [REDACTED] is not a member of Mr Ngaïssona's family.¹⁷ In spite of the Detention Centre's assessment, the Defence respectfully submits that [REDACTED]. Further, [REDACTED].

17. In light of the above, the Defence respectfully requests the Chamber to order the Detention Centre to add [REDACTED], [REDACTED] and [REDACTED] to Mr Ngaïssona's list of non-privileged contacts.

RELIEF SOUGHT

¹⁵ ICC-01/04-01/06-3379-Red-Corr-tENG, para. 168.

¹⁶ See Annex II.

¹⁷ DC memo DS/2021/020/HT/ml, 12 March 2021, Annex I, p. 2.

18. The Defence respectfully requests the Chamber to:

- **REJECT** the Prosecution's request to be granted access to the two letters, as well as to information on their intended recipients;
- **ORDER** the Detention Centre to add [REDACTED], [REDACTED] and [REDACTED] to Mr Ngaïssona's list of non-privileged contacts.

Respectfully submitted,



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 19 March 2021,

At The Hague, the Netherlands.