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**International
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Date: **21 July 2023**

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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Confidential

**Confidential Redacted Version of "Defence Request to Exceptionally Amend Mr
Ngaïssona's Restrictions on Contacts and Communications in Detention"**

Source: Defence of Patrice-Edouard Ngaïssona

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor**

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I. INTRODUCTION

1. The Defence of Mr Ngaïssona ('the Defence') hereby requests Trial Chamber V ('the Chamber') to exceptionally lift the active monitoring order on in-person communications between Mr Ngaïssona and [REDACTED], [REDACTED], [REDACTED], for the duration of their upcoming family visit, which will take place [REDACTED]. The Registry has indicated to the Defence that should the family visit be subject to active monitoring, the daily visiting time would be limited to three hours instead of the regular schedule of eight hours, due to logistical constraints imposed by the limited availability of interpreters.
2. The Defence submits that a limited and exceptional amendment of Mr Ngaïssona's restrictions on contacts and communications is warranted in order to safeguard Mr Ngaïssona's right to private and family life and allow him to exercise his rights in a meaningful way. The execution of the active monitoring order would lead to disproportionate limitations on Mr Ngaïssona's ability to spend time with his family and especially [REDACTED] during the upcoming visit, which will constitute a key moment in Mr Ngaïssona's family life.

II. CONFIDENTIALITY

3. The present response is filed on a confidential, *ex parte* basis pursuant to Regulation 23(1)*bis* of the Regulations of the Court ('Regulations') since it concerns information relating to Mr Ngaïssona's private and family life and refers to a confidential decision of the Registrar. The Defence files a confidential redacted version simultaneously, and will file a public redacted version as soon as practicable.

III. PROCEDURAL HISTORY

4. Since his transfer to the Court on 23 January 2019, and at the Prosecution's demand,¹ Mr Ngaïssona has been subject to measures severely restricting his contacts with the outside world. Mr Ngaïssona is only permitted to have contact with close family members. Contacts with other individuals have been suspended for almost four years, whereas his family communications have been subject to active monitoring, which includes active monitoring of Mr Ngaïssona's closest of kin, such as [REDACTED].²
5. On 10 May 2023, the Chamber rejected the Defence's request³ to cease the active monitoring of non-privileged calls between Mr Ngaïssona and his family members, but granted the Defence's request to cease the active monitoring of visits by Mr Ngaïssona's wife. Notably, the Chamber found that in light of the current stage of the proceedings, the absence of recent incidents, as well as Mr Ngaïssona's right to preserve his family ties, it was sufficient for visits by Mr Ngaïssona's wife to be subject to the standard monitoring regime, as opposed to active monitoring.⁴
6. On 30 June 2023, the Registrar exceptionally granted a request to fund a family visit for Mr Ngaïssona's [REDACTED].⁵ When granting the visit, the Registrar gave weight to Mr Ngaïssona's specific family circumstances, notably his [REDACTED].⁶ The Registrar found that [REDACTED].⁷ Following the decision and in collaboration with the Detention Section, the Defence initiated the organisation of this family visit, which is scheduled to take [REDACTED].

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

² 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 and Trial Chamber V: ICC-01/14-01/18-484-Conf-Exp; ICC-01/14-01/18-582-Conf; ICC-01/14-01/18-672-Conf; ICC-01/14-01/18-965-Conf-Exp; ICC-01/14-01/18-1136-Conf; ICC-01/14-01/18-1575-Conf.

³ ICC-01/14-01/18-1802-Conf-Exp.

⁴ ICC-01/14-01/18-1863-Conf-Exp, para. 8.

⁵ Decision on the Request for Review to the Registrar by Mr Patrice-Edouard Ngaïssona concerning funded family visits, 30 June 2023.

⁶ Ibid, para. 25.

⁷ Ibid, para. 31.

7. On 19 July 2023, Mr Ngaïssona was informed by the staff of the Detention Centre that, in light of the active monitoring order on his non-privileged communications, [REDACTED] would only be allowed to visit him for a maximum of three hours per day during their funded stay in The Hague.

IV. APPLICABLE LAW

8. The Defence incorporates by reference the summary of the applicable law set out in its latest request to amend Mr Ngaïssona's restrictions on contact under Regulation 101 of the Regulations of the Court.⁸
9. Nonetheless, the Defence wishes to reiterate that restrictions imposed on a detained person's ability to maintain contact with the outside world and receive visits should be necessary and proportionate. Notably, as previously ruled by the Appeals Chamber:

"[a] Trial Chamber must continue to actively review the restrictions in place and carefully balance the need for and proportionality of the restrictions against the important right accorded to detained persons to have contact".⁹

V. SUBMISSIONS

10. The Defence respectfully requests that the active monitoring order on Mr Ngaïssona's in-person communications with [REDACTED], [REDACTED], and [REDACTED], be exceptionally lifted for the duration of their upcoming family visit. This will allow Mr Ngaïssona and his family to fully avail themselves of the possibility of in-person interaction offered by this unique visit in the Hague. The upcoming visit is an opportunity for a long-awaited family reunion. In addition to [REDACTED] travelling from the Central African Republic,

⁸ ICC-01/14-01/18-1802-Conf-Exp, paras 12-17.

⁹ *The Prosecutor v. Bosco Ntaganda*, Judgment on Mr Bosco Ntaganda's appeal against the decision reviewing restrictions on contacts of 7 September 2016, ICC-01/04-02/06-1817-Red, para. 72. See also paras 44, 102. See further ICC-01/14-01/18-413-Conf-Exp-Red, para. 78.

[REDACTED], in order to join the scheduled family visit. It is to be noted that Mr Ngaïssona has not seen [REDACTED] since his arrest, and that [REDACTED] has not travelled to the Central African Republic since either. Therefore, the upcoming family visit will constitute a key moment of reconnection and a unique opportunity for Mr Ngaïssona to have his closest of kin all in the same room for the first time after many years. As such, this visit should not be subject to strict time constraints, but rather be enjoyed in full, as it will greatly contribute to Mr Ngaïssona's well-being and ability to maintain and further his family ties.¹⁰

11. The Defence recalls that, as pointed out in previous submissions, the logistics, facilities and personnel required to actively monitor visits entail the use of extensive resources, which leads the Detention Centre to schedule shorter visits when an active monitoring order is in place.¹¹ Mr Ngaïssona has been informed that for this upcoming visit, [REDACTED] will only be allowed to visit for a total of three hours per day, instead of the eight hours that would normally be allocated to passively monitored visits. It is further unlikely that they will be allowed to visit on the weekend, due to the unavailability of interpreters. This will likely deprive them of one or two additional days to visit. The Defence is aware that these circumstances are not within the Chamber's immediate control, as they pertain to the way in which the Registry implements the restrictions on contact. However, given that these circumstances are the direct consequence of active monitoring, the Chamber should take them into account in its assessment as to whether active monitoring disproportionately affects the right of the Accused to private and family life. In normal circumstances, the granting of three-hours visits for a duration of eight days may sound sufficiently acceptable. However, after an almost five-years long separation and bearing in mind the unique nature of the upcoming

¹⁰ On the importance of family ties to a detainee's well-being, as well as the crucial role of family visits, see *The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Decision on "Mr Mathieu Ngudjolo's Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar's Decision of 18 November 2008", ICC-RoR217-02/08-8, 10 March 2009, especially paras 35-36.

¹¹ ICC-01/14-01/18-1802-Conf-Exp, para. 37.

visit, the imposition of such strict time constraints and the limitation to weekly days would disproportionately encroach on Mr Ngaïssona's right to private and family life.

12. In addition to limiting the time and days available, the implementation of the active monitoring order during the upcoming family visits would amount to a considerable limitation of Mr Ngaïssona and his family's privacy, especially given the emotional nature of the encounters that are about to take place. The Defence recalls that should the active monitoring order be lifted, the visits will in any event take place within the sight and hearing of the staff of the Detention Centre and subject to video surveillance, as per the standard monitoring regime set out in Regulation 183 of Regulations of the Registry. This regime will sufficiently dispel any concerns for abuse, whilst at the same time allowing Mr Ngaïssona and his family to maintain a semblance of privacy.

13. The specific circumstances of the visitors should be considered when assessing whether the active monitoring of the upcoming visits is necessary and proportionate. The Defence notes that [REDACTED], [REDACTED] and [REDACTED] have been on Mr Ngaïssona's list of contacts ever since his transfer to the Detention Centre. Contacts between them have therefore been monitored for over four years, without any incidents ever taking place. Furthermore, none of the three individuals has any connections to the charges brought against Mr Ngaïssona, nor has demonstrated any inclination to interfere with the proceedings. As to [REDACTED], the Chamber already found in its latest decision on Mr Ngaïssona's contact restrictions that [REDACTED].¹²

¹² ICC-01/14-01/18-1863-Conf-Exp, para. 8.

14. In light of the above, the Defence respectfully requests the Chamber to exceptionally lift the active monitoring order of in-person communications for the duration of the upcoming visit and for all indicated visitors.

15. Alternatively, should the Chamber find that active monitoring remains necessary, the Defence urges the Chamber to make a limited exception and lift the active monitoring order for Mr Ngaïssona's [REDACTED] only, so that a few longer days of visits between the two of them may be organised over the course of the family visit. [REDACTED]. The upcoming family visit will constitute an invaluable opportunity to reconnect after such a long separation. [REDACTED]. [REDACTED]. Against this backdrop, the imposition of any constraints, beyond what is reasonably necessary, to Mr Ngaïssona's upcoming time with [REDACTED] would disproportionately encroach on his right to private and family life and cause unnecessary stress and suffering to an already delicate situation.

VI. RELIEF SOUGHT

In light of the above, the Defence respectfully requests the Chamber to:

- Exceptionally **LIFT** the active monitoring order on in-person communications between Mr Ngaïssona and [REDACTED], [REDACTED] and [REDACTED] for the duration of their upcoming family visit [REDACTED];
OR, in the alternative
- Exceptionally **LIFT** the active monitoring order on in-person communications between Mr Ngaïssona and [REDACTED] only, for the duration of his upcoming family visit [REDACTED].

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 21 July 2023

At The Hague, the Netherlands.