

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **13 December 2024**

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

Public redacted version of 'Ngaïssona Defence Response to the "Prosecution's Observations on the "Eleventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V"' (ICC-01/14-01/18-2730)', ICC-01/14-01/18-2731-Conf, 28 October 2024

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 Mr Karim A. A. Khan Mr Mame Mandiaye Niang Mr Kweku Vanderpuye	Counsel for the Defence of Mr Ngaïssona Mr Geert-Jan Alexander Knoop Ms Marie-Hélène Proulx Ms Lauriane Vandeler
	Counsel for the Defence of Mr Yekatom Ms Mylène Dimitri Mr Thomas Hannis Ms Anta Guissé Ms Sarah Bafadhel
Legal Representatives of the Victims Mr Dmytro Suprun Mr Abdou Dangabo Moussa Ms Elisabeth Rabesandratana Mr Yaré Fall Ms Marie-Edith Douzima-Lawson Ms Paolina Massidda	Legal Representatives of the Applicants
Unrepresented Victims	Unrepresented Applicants (Participation/Reparation)
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence Ms Marie O’Leary
States’ Representatives	Amicus Curiae

REGISTRY	
Registrar Mr Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section Mr Harry Tjonk
Victims Participation and Reparations Section	Other

I. INTRODUCTION

1. On 14 October 2024, the Registry produced its “Eleventh Registry Report on the Implementation of the Restrictions on Contacts of Mr. Ngaïssona Ordered by Trial Chamber V” (“Eleventh Registry Report”).¹
2. On 21 October 2024, the Prosecution filed its Observations to the “Eleventh Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona” (“Observations”), although it did not seek to modify the restrictions regime imposed over Mr Ngaïssona.² The Defence for Mr Patrice-Édouard Ngaïssona (“Defence”) hereby responds to those “Observations”.
3. The Prosecution not only disregards Trial Chamber V’s (“Chamber”) guidance³ by submitting observations when no modifications are sought, it also brings unnecessary litigation at a crucial stage of the proceedings, and makes baseless accusations against Mr Ngaïssona and his Defence team.
4. The Defence strongly opposes any suggestion of impropriety concerning Mr Ngaïssona or any members of his Defence. Given the Prosecution’s persistent frivolous filings suggesting Mr Ngaïssona and/or his Defence team’s interference in these proceedings, the Defence respectfully requests the Chamber to order the Prosecution to refrain from making unfounded and contemptible accusations against Mr Ngaïssona and his Defence in the future.

¹ ICC-01/14-01/18-2724-Conf.

² ICC-01/14-01/18-2730-Conf, para. 9.

³ ICC-01/14-01/18-2475, para. 6.

II. CONFIDENTIALITY

5. This response is filed as confidential according to the classification made by the Prosecution on its submissions. However, the Defence does not oppose reclassifying the present response as public.

III. SUBMISSIONS

6. Although it is the parties' right to respond to the reports made by the Registry regarding contact restrictions under Regulation 101 of the Regulations of the Court, the Chamber has strongly encouraged them to only do so when there is a change of circumstances that merits modifying these measures.⁴ While there being no change of circumstance, the Prosecution has filed observations in which it again attempts to suggest, with no supporting evidence, Mr Ngaïssona's and his Defence team's interference in these proceedings. Despite the frivolous nature of these observations, the Defence has no other option but to respond such that Mr Ngaïssona's fair trial rights are not prejudiced by these baseless accusations.
7. Regardless of the clear indication given by the Chamber about the presentation of observations to the Registry reports, the Prosecution submitted observations regarding the Eleventh Registry Report, in which the Registry unequivocally reported that there were no incidents involving Mr Ngaïssona's communications. Furthermore, the Prosecution acknowledged the absence of an incident and did not seek to amend the measures imposed.⁵
8. Instead of referring to Mr Ngaïssona's compliance of the restriction measures, the Prosecution focuses its submissions on nothing more than speculative allegations,

⁴ ICC-01/14-01/18-672-Conf, para. 26

⁵ ICC-01/14-01/18-2730-Conf., paras 3, 9. Although the Prosecution refers on para. 3 to the "Tenth Report", the Defence assumes that this is a typographic error, and interprets it as referring to the Eleventh Registry Report to which the Prosecution is presenting its observations.

crafting a fallacious link between its submissions on its request for rebuttal⁶ and the current monitoring regime.

9. Indeed, the Defence recalls that the Prosecution's submissions in its rebuttal request did not relate to Mr Ngaïssona's acts and conduct. Rather, they concerned accusations against the Defence for an alleged failure to comply with the Protocol on the Handling of Confidential Information and Contacts with witnesses ("Contact Protocol"),⁷ and whose violations have not been shown to have any relationship to the testimony of any witness who has come before the Court.⁸ Moreover, the Prosecution has shown no link between the alleged acts of a former Defence team member's actions and Mr Ngaïssona's thereby demonstrating the frivolous nature of the Prosecution's observations. As the Eleventh Registry Report states and the Prosecution concedes, no breach to the restrictions regime can be attributed to Mr Ngaïssona.⁹ Every other submission on this matter falls within the realm of speculation and should be dismissed by the Chamber.
10. The Defence recalls that Mr Ngaïssona has never been found by any Chamber of this Court to be interfering with witnesses or attempting to influence the proceedings.¹⁰ Much less now, in the late stage of the proceedings, when all the evidence was already submitted to the Chamber. These speculative affirmations are not only detrimental for the Chamber, which is being forced by the Prosecution to rule on frivolous litigation at a very advanced stage of the proceedings, but also to the rights of Mr Ngaïssona. In fact, he is portrayed by the Prosecution as having "[REDACTED]",¹¹ added to the fact that "[REDACTED]",¹² thus raising an erroneous suspicion that Mr Ngaïssona had been involved into

⁶ ICC-01/14-01/18-2657-Conf.

⁷ ICC-01/14-01/18-156-AnxA.

⁸ ICC-01/14-01/18-2670-Conf., para. 14.

⁹ ICC-01/14-01/18-2730-Conf., para. 6; ICC-01/14-01/18-2730-Conf., para. 3.

¹⁰ ICC-01/14-01/18-2670-Conf. paras 39-50.

¹¹ ICC-01/14-01/18-2730-Conf., para. 6.

¹² ICC-01/14-01/18-2730-Conf., para. 6.

witness interference activities in the past or that he would be willing to do so in the future.

11. The Prosecution's unsubstantiated submissions are nothing more than a violation of Mr Ngaïssona's presumption of innocence and good name, as they seek to alter the conception of his character, by the Chamber, the participants, and, ultimately, the public both in CAR and internationally.
12. Additionally, the Prosecution carelessly, and lacking any sort of substantial argumentation affirmed: "[REDACTED]",¹³ implying misconduct by Mr Ngaïssona's Counsel and the whole Defence team. The Defence deplores the state of professional courtesy in these proceedings and this most recent attempt to put Mr Ngaïssona's Defence in disrepute. This is not the first time that the Prosecution unabashedly and baselessly accuses Counsel to have acted against the Court's authority¹⁴ showing a clear disregard to its obligations of professionalism and integrity, as stated on its own Regulations¹⁵ and Code of Conduct.¹⁶
13. The Defence strongly opposes any allegation or suggestion of impropriety by current team members and recalls that these serious unfounded accusations are highly damaging for Counsel and support staff alike.¹⁷ For these reasons, the Defence requests the Chamber to order the Prosecutor to abstain from this behaviour in the future, seeing as the Prosecution is constantly seizing upon every opportunity to prejudice Mr Ngaïssona's right to a fair trial by capitalizing on accusations of misconduct made against an individual who is no longer associated with the Ngaïssona Defence.

IV. RELIEF SOUGHT

¹³ ICC-01/14-01/18-2730-Conf., para. 6.

¹⁴ See ex. ICC-01/14-01/18-2657-Conf.

¹⁵ Regulations of the Office of the Prosecutor. ICC-BD/05-01-19, Regulation 17.

¹⁶ Code of Conduct for the Office of the Prosecutor ("CoCOP"), paras 8(b), 20(c), 26(c)(e).

¹⁷ See ICC-01/14-01/18-2670-Conf., para. 49.

14. The Defence respectfully requests the Chamber to:

- **DIMISS** the arguments put forward by the Prosecution on its observations to the Eleventh Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona; and
- **ORDER** the Prosecution to refrain from making further reference to the conduct of its former Defence team members at stake since it has not been found to have had any influence in the current proceedings and are otherwise outside their scope.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 13 December 2024

At The Hague, the Netherlands.