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**Cour
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**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 13 February 2025

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***

Confidential redacted version of

**Eleventh Decision on Mr Ngaïssona's Restrictions on Contacts and
Communications in Detention**

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

Ngaïssona Defence

Yekatom Defence

☒ **Legal Representatives of the Victims**Common Legal Representative of the Former
Child SoldiersCommon Legal Representatives of Victims of
Other Crimes☐ **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**☐ **States' Representatives**☐ **Amicus Curiae****REGISTRY**

Registrar

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**☒ **Victims and Witnesses Unit**☒ **Detention Section**☐ **Victims Participation and Reparations
Section**☐ **Other**

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2) and 68(1) of the Rome Statute, Regulations 99-101 of the Regulations of the Court, and Regulations 167-170, 173-175, 177-180, 182-185 and 187 of the Regulations of the Registry, issues this ‘Eleventh Decision on Mr Ngaïssona’s Restrictions on Contacts and Communications in Detention’.

I. Procedural history

1. The Chamber recalls the procedural history set out in its latest decision on Mr Ngaïssona’s restrictions on contacts and communications in detention, where it decided to maintain the restrictions previously imposed on Mr Ngaïssona (the ‘Tenth Restrictions Decision’ and the ‘Current Restrictions’).¹
2. On 3 January 2025, the Registry brought to the Chamber’s attention an incident of potential concern which occurred during a non-privileged telephone call (the ‘Call’) between Mr Ngaïssona and an individual on his non-privileged contact list (the ‘Interlocutor’) on 10 December 2024. Furthermore, it noted that some information discussed in the Call notably, [REDACTED] could be relevant to [REDACTED] and thus requested the Chamber’s guidance as to whether it could share the relevant transcript with [REDACTED].²
3. On 10 January 2025, pursuant to the Chamber’s instruction,³ the Registry filed its twelfth report on the implementation of the restrictions on Mr Ngaïssona’s contacts and communications in detention, in which it states that during the Call (i) Mr Ngaïssona appeared to comment on a document presented to him – allegedly containing ‘*des factures des armes*’ (the ‘First Incident’); and (ii) part of the conversation appeared to be related to the Interlocutor’s potential appearance as a witness before the Court and was conducted in obscure language

¹ Tenth Decision on Mr Ngaïssona’s Restrictions on Contacts and Communications in Detention, 29 November 2024, ICC-01/14-01/18-2741-Conf, paras 1, 7, p. 5.

² Email from the Registry, 3 January 2025, at 14:52.

³ The Single Judge noted that ‘in light of the request’s potential bearing on Mr Ngaïssona’s rights, the Single Judge considers it prudent that the request and relevant transcript be filed on the case record to give the Ngaïssona Defence the opportunity to make observations as soon as possible’. Accordingly, it directed the Registry to ‘advance and file its next report on 10 January 2025’ and thereafter ‘follow the usual intervals for filing its regular reports’; see email from the Chamber, 7 January 2025, at 12:24.

(the 'Second Incident' and the 'Twelfth Registry Report'). The Registry characterised both discussions as appearing to be case-related.⁴

4. On 17 January 2025, the Office of the Prosecutor (the 'Prosecution') provided its observations on the Twelfth Registry Report, submitting that the Chamber should (i) grant it access to the unredacted version of the Twelfth Registry Report and its Annex containing the transcript of the Call (the 'Transcript') through their reclassification (the 'Reclassification Request'); (ii) maintain the Current Restrictions; and (iii) in the event the Chamber assesses the reported incidents as serious violations, temporarily reinforce the monitoring of Mr Ngaïssona's contacts and communications through active surveillance, until the Prosecution can seize the Chamber with a detailed request (the 'Reinforcement Request' and the 'Prosecution Observations', respectively).⁵
5. On 23 January 2025, the Ngaïssona Defence responded to the Prosecution Observations, seeking that the Chamber (i) reject the Reclassification Request or (ii) in the alternative, allow the Prosecution to access only the relevant portion of the Transcript; and (iii) reject the Reinforcement Request (the 'Ngaïssona Defence Response').⁶

II. Analysis

6. The Chamber recalls the standard and the criteria of assessment as previously set out.⁷ The Chamber further recalls that under the Current Restrictions, pursuant to

⁴ Twelfth Registry Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona Ordered by Trial Chamber V, ICC-01/14-01/18-2752-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (with confidential *ex parte* Annex, only available to the Ngaïssona Defence and the Registry, ICC-01/14-01/18-2752-Conf-Exp-Anx) (confidential redacted version notified the same day, ICC-01/14-01/18-2752-Conf-Red), paras 7-8.

⁵ Observations de l'Accusation sur la version confidentielle expurgée du "Twelfth Registry Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona Ordered by Trial Chamber V" (ICC-01/14-01/18-2752-Conf-Red), ICC-01/14-01/18-2753-Conf, para. 15.

⁶ Ngaïssona Defence consolidated Observations on the "Twelfth Registry Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona Ordered by Trial Chamber V" and "Observations de l'Accusation sur la version confidentielle expurgée du 'Twelfth Registry Report on the Implementation of the Restrictions on Contacts of Mr Ngaïssona Ordered by Trial Chamber V'", ICC-01/14-01/18-2754-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-2754-Conf-Red), para. 30.

⁷ See Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-484-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-484-Conf-Red,

Regulation 101 of the Regulations of the Court, Mr Ngaïssona is prohibited from using obscure or coded language and holding discussions related to his case during his non-privileged communications.⁸

7. Turning to the First Incident, and having reviewed the Transcript of the Call, the Chamber considers that Mr Ngaïssona discussed case-related issues with the Interlocutor.⁹ Therefore, the Chamber finds that Mr Ngaïssona breached the Current Restrictions.
8. However, the Chamber notes that the document on which Mr Ngaïssona commented was presented in open court during the Prosecution's closing statement¹⁰ and is thus publicly known. In light of this, and further noting the limited nature of Mr Ngaïssona's comments, the Chamber cannot discern any risk for victims, witnesses or other individuals.
9. As to the Second Incident, the Chamber first notes that the Interlocutor is not a witness in the present case. Having reviewed the Transcript and noting the Ngaïssona Defence's submissions in this regard,¹¹ the Chamber considers that the Interlocutor's discussion with Mr Ngaïssona was not related to the present case, nor was obscure or coded language used at any point by Mr Ngaïssona. Therefore, the Chamber does not consider the Second Incident to constitute a breach of the Current Restrictions.
10. In light of the above, and further noting that there has been no material change in circumstances since the Tenth Restrictions Decision,¹² the Chamber does not consider any modifications necessary at this stage. Accordingly, the Chamber

and public redacted version notified on 16 February 2021, ICC-01/14-01/18-484-Red) (the 'First Restrictions Decision'), paras 16-18, 21.

⁸ First Restrictions Decision, ICC-01/14-01/18-484-Red, para 15(ii)(d); Twelfth Registry Report, ICC-01/14-01/18-2752-Conf-Red, para. 3 *and the references therein*; Tenth Restrictions Decision, ICC-01/14-01/18-2741-Conf, para. 1.

⁹ See Annex to the Twelfth Registry Report, ICC-01/14-01/18-2752-Conf-Exp-Anx, p.2, lines 21-36; *see further* p. 3, lines 50-56; p. 4, lines 89-90; p. 5, lines 98-101.

¹⁰ See Ngaïssona Defence Response, ICC-01/14-01/18-2754-Conf-Exp, paras 12-15 *and the references therein*.

¹¹ Ngaïssona Defence Response, ICC-01/14-01/18-2754-Conf-Exp, paras 16-19.

¹² Tenth Restrictions Decision, ICC-01/14-01/18-2741-Conf, paras. 6-8 *see also* Eighth Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, 31 October 2023, ICC-01/14-01/18-2177-Conf, para. 34.

rejects the Reinforcement Request. Nonetheless, the Chamber trusts that in the future Mr Ngaïssona will fully comply with the Current Restrictions by refraining from engaging in *any* case-related discussion during his non-privileged communications.

11. As to the Reclassification Request, the Chamber does not consider it necessary or proportionate for the Prosecution to be provided with the entire Transcript, given that it contains information on Mr Ngaïssona's private and family matters.¹³ Nonetheless, in light of its finding at paragraph 7, and noting that the Ngaïssona Defence does not object,¹⁴ it finds it prudent for the Prosecution to receive the portion of the Transcript relating to the Prosecution's closing submissions. Accordingly, the Chamber partially grants the Reclassification Request and instructs the Registry to make available to the Prosecution a redacted version of the Transcript in which the redactions to lines 21 to 36 are removed;¹⁵ and an updated redacted version of the Twelfth Registry Report reflecting the same.
12. Finally, the Chamber recalls that the Interlocutor indicated during the call that:
[REDACTED]¹⁶
13. The Chamber further notes that in the Registry's view these comments might pertain to the [REDACTED].¹⁷ Mindful of the [REDACTED], the Chamber is considering sharing this information with [REDACTED]. The Ngaïssona Defence and the Registry are thus instructed to provide their views, if any, in this respect by 19 February 2025.

¹³ See Ngaïssona Defence Response, ICC-01/14-01/18-2754-Conf-Exp, para. 24.

¹⁴ Ngaïssona Defence Response, ICC-01/14-01/18-2754-Conf-Exp, paras 24, 30.

¹⁵ Annex to the Twelfth Registry Report, ICC-01/14-01/18-2752-Conf-Exp-Anx, p.2, lines 21-36.

¹⁶ Annex to the Twelfth Registry Report, ICC-01/14-01/18-2752-Conf-Exp-Anx, pp. 3-4, lines 68-76.

¹⁷ See paragraph 2 above. See also Ngaïssona Defence Response, ICC-01/14-01/18-2754-Conf-Exp, paras 17-19.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES to maintain the Current Restrictions;

REJECTS the Reinforcement Request;

PARTIALLY GRANTS the Reclassification Request and instructs the Registry to proceed in accordance with its instructions in paragraph 11 above;

INSTRUCTS the Ngaïssona Defence and the Registry to provide their views, if any, in accordance with its instructions in paragraph 13 above;

ORDERS the Registry, the Prosecution and the Ngaïssona Defence to file public redacted versions of the Twelfth Registry Report, ICC-01/14-01/18-2752-Conf-Exp; the Prosecution Observations, ICC-01/14-01/18-2753-Conf; and the Ngaïssona Defence Response, ICC-01/14-01/18-2754-Conf-Exp, within one week of notification of this decision.

Done in both English and French, the English version being authoritative.



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 13 February 2025

At The Hague, The Netherlands