

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER V

Before: Judge Beti Hohler , Presiding Judge
Judge Joanna Korner
Judge Keebong Paek

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

**With Confidential EX PARTE Annex A
available only to the Detention Centre and the Ngaïssona Defence**

**Public Redacted Version of Ngaïssona Defence Request to Amend Mr
Ngaïssona's Restrictions on Contacts and Communications in Detention, ICC-
01/14-01/18-1802-Conf-Exp, 17 March 2023**

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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☒ Counsel for the Defence

D30

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V44

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☐ 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

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☐ Counsel Support Section

☐ Victims and Witnesses Unit

☒ Detention Section

☐ Victims Participation and
Reparations Section

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I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona (“Defence”) hereby requests Trial Chamber V (“Chamber”) to reassess and ease the current restrictions on contacts and communications placed upon Mr Ngaïssona in Detention given the change in circumstances stemming from the stage of the proceedings, which includes the number and nature of the remaining Prosecution Witnesses left to testify.
2. More specifically, the Defence respectfully requests that the Chamber permits (i) the Registry to reinstate two family members onto Mr Ngaïssona’s list of non-privileged contacts (“List of Contacts”) under the active monitoring regime and that (ii) non-privileged calls with the remaining individuals on the List of Contacts be subject to random active monitoring. Additionally, the Defence seeks the Chamber’s leave to (iii) allow Mr Ngaïssona to benefit from family visits with his wife under the standard supervision regime.

II. CONFIDENTIALITY

3. In accordance with Regulation 23*bis*(1) of the Regulations of the Court (“RoC”), the present request is filed “confidential, EX PARTE, only available to the Detention Centre, the Office of the Prosecutor, and the Ngaïssona Defence” as it covers information regarding Mr Ngaïssona’s private life and touches upon detention-related matters. The Defence will file a corresponding confidential redacted version of the present request in due time.

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

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

suspended for well over three years whereas the family communications have been subject to active monitoring, which includes active monitoring of the closest of kin, including Mr Ngaïssona's wife.²

5. Additionally, on 18 September 2019 and 3 October 2019, Pre-Trial Chamber II ordered the suspension of all communications with one of Mr Ngaïssona's [REDACTED] and that she be removed from Mr Ngaïssona's List of Contacts.
6. Similarly, on 4 November 2019, the Registry reported that the Chief Custody Officer ("CCO") notified Mr Ngaïssona of the removal of his [REDACTED] from the List of Contacts.³ On 23 December 2019, Pre-Trial Chamber II found that such removal was appropriate.⁴
7. On 17 April 2020, the Chamber decided to maintain the active monitoring of family visits, family calls, as well as the exclusion of Mr Ngaïssona's [REDACTED] and [REDACTED] from the List of Contacts (altogether the "Current Restrictions"). In the same ruling, the Chamber ordered the Registry to report on the implementation of the Current Restrictions and any violations thereof.⁵
8. Thereafter, the Registry submitted seven (7) "Report[s] on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V".⁶
9. Upon review of the Registry's reports, the Chamber maintained the Current Restrictions in all its subsequent "Decision[s] on Mr Ngaïssona's Restrictions on

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.

³ ICC-01/14-01/18-390-Conf-Exp, para. 29.

⁴ ICC-01/14-01/18-413-Conf-Exp, para. 83.

⁵ ICC-01/14-01/18-484-Conf-Exp.

⁶ ICC-01/14-01/18-546-Conf-Exp; ICC-01/14-01/18-645-Conf; ICC-01/14-01/18-901-Conf-Exp; ICC-01/14-01/18-1105; ICC-01/14-01/18-1307-Conf; ICC-01/14-01/18-1536-Conf-Exp; ICC-01/14-01/18-1741-Conf.

Contacts and Communications in Detention”.⁷ Specifically, the Chamber rejected the Defence’s Request to reinstate Mr Ngaïssona’s [REDACTED] and [REDACTED] onto the List of Contacts.⁸

10. On 3 March 2023, the Defence contacted the Prosecution seeking its position on reinstating Mr Ngaïssona’s [REDACTED] and [REDACTED] onto the List of Contacts (the “Proposal”).⁹

11. On 6 March 2023, the Prosecution agreed to the Proposal under two conditions, namely that the two individuals be reinstated onto the List of Contacts for a 90-day trial period – extendable upon review – and under the active monitoring regime (the “Agreed Proposal”).¹⁰

IV. APPLICABLE LAW

12. The accused’s right to privacy and family is implicitly recognised under the Court’s statutory framework¹¹ and should guide the Chamber in its interpretation of the Court’s legal framework by virtue au Article 21(3) of the Rome Statute (the “Statute”).¹²

13. Pursuant to Regulations 99(1)(i) of the RoC, a detained person shall be entitled to communicate by telephone with his or her family.¹³ Both Regulation 100 of the RoC and Regulation 180(1) of the Regulations of the Registry (“RoR”) provide for the right of detained persons to receive family visits.¹⁴

14. Although these rights are not absolute and may be subject to restrictions “in the interests of the administration of justice or for the maintenance of the security

⁷ 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.

⁸ ICC-01/14-01/18-672-Conf, rejecting ICC-01/14-01/18-662-Conf-Red.

⁹ Email dated 3 March 2023, at 11:17.

¹⁰ Email dated 6 March 2023, at 13:40.

¹¹ See e.g., Regulation 99(1)(i) of the Regulations; Regulations 179(1) and 186(2)(h) of the Regulations of the Registry.

¹² See e.g., ICC-01/14-01/18-484-Conf-Exp, para. 16.

¹³ Regulation 99(1)(i) of the Regulations of the Court.

¹⁴ Regulation 100(1) of the Regulations of the Court; Regulation 180(1) of the Regulations of the Registry.

and good order of the detention centre”,¹⁵ such restrictions should be necessary and proportionate. Indeed, restrictions on contacts and communications set out in Regulation 101(2) of the RoC and Regulation 180(1) of the RoR may only be imposed when, *inter alia*, there are reasonable grounds to believe that family visits or non-privileged calls:

- i. “[...] could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation”;¹⁶ or
- ii. “[are] a threat to the protection of the rights and freedom of any person”;¹⁷ or
- iii. could “interfere with or intimidate a witness”.¹⁸

15. The Appeals Chamber has previously ruled that “the passage of time is a factor that could become more significant as more time elapses” and that 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”.¹⁹

16. Therefore, the stage of the proceedings and whether the restrictions have been eased over time since their implementation are also factors to be taken into consideration when assessing the proportionality of the restrictions in place.²⁰

17. As such, the proportionality of restrictions on contacts and communications under the Court’s statutory framework must be (re-)assessed in light of concrete,

¹⁵ Regulation 100(3) of the Regulations of the Court; Regulation 180(1)(a)(iii) of the Regulations of the Registry; Regulation 180(1)(a)(iv) of the Regulations of the Registry.

¹⁶ Regulation 101(2)(b) of the Regulations of the Court.

¹⁷ Regulation 101(2)(f) of the Regulations of the Court; Regulation 180(1)(b) of the Regulations of the Registry.

¹⁸ Regulation 180(1)(a)(ii) of the Regulations of the Registry.

¹⁹ *Ntaganda Appeals Chamber Judgment*, ICC-01/04-02/06-1817-Red, para. 72. *See also* paras 44, 102. *See further* PTC II, 23 December 2019 Decision, ICC-01/14-01/18-413-Conf-Exp-Red, para. 78.

²⁰ *The Prosecutor v. Bosco Ntaganda*, “Decision on the present restrictions on Mr Ntaganda’s contacts”, ICC-01/04-02/06-2236-Red, para. 26.

specific and up-to-date information.²¹

V. SUBMISSIONS

A. The current stage of the proceedings at trial amounts to a change in circumstances that warrants a reassessment of the Current Restrictions

18. The Chamber's rationale for maintaining the Current Restrictions to date was largely linked to the preservation of the Prosecution's ongoing investigations and the fact that a significant number of Prosecution Witnesses were still scheduled to testify.²²

19. Given the stage of the proceedings, the risks the Chamber previously found to exist in relation to witness interference and investigation tampering are now significantly reduced, and the Defence submits that the Current Restrictions are no longer necessary in full, nor proportionate to achieve the aims.

1. The Prosecution has completed its investigations in the present case

20. The Chamber has recalled the well-established jurisprudence that investigations should largely be completed at the stage of the confirmation of charges hearing.²³ The present case has been in the trial phase for over two years, and the Prosecution will soon conclude the presentation of its evidence. Given the advanced stage of trial, the Chamber placed its trust in the Prosecution to have "fully completed its investigation" in the present case²⁴ and to refrain from "contacting further individuals with the purpose of testifying in the present case".²⁵

²¹ ICC-01/14-01/18-137, para. 18; ICC-01/14-01/18-86-Conf-Exp, para. 14.

²² ICC-01/14-01/18-484-Conf-Exp, paras. 21 and 23; ICC-01/14-01/18-582-Conf, para. 11; ICC-01/14-01/18-672-Conf, para. 16; CC-01/14-01/18-965-Conf-Exp, para. 12; ICC-01/14-01/18-1136-Conf, paras. 6 and 7; ICC-01/14-01/18-1575-Conf, paras. 26 and 27.

²³ ICC-01/14-01/18-T-012-ENG, p. 12, l. 17-19; ICC-01/14-01/18-648-Conf-Red, para. 16.

²⁴ ICC-01/14-01/18-1270-Conf, para. 25; ICC-01/14-01/18-1597-Conf, para. 23.

²⁵ ICC-01/14-01/18-1681, para. 11.

21. Additionally, on 16 December 2022, the Prosecution announced the conclusion of the investigation phase in the Situation in the Central African Republic, thus drastically reducing any alleged risk of influencing on or tampering with any “new lines of inquiry into the alleged criminal responsibility of other persons or for other conduct within the Situation [...]”.²⁶
22. Finally, based on the information made available to the Defence, the investigations conducted pursuant to Article 70 of the Statute in the present case only relate to two Prosecution Witnesses, namely [REDACTED] and [REDACTED]. Nearly two years after the start of this investigation, no evidence of interference with the administration of justice by Mr Ngaïssona has been disclosed to the Defence. In any event, this investigation relates to two witnesses who have already testified, lowering the alleged risk of interference to a minimum and the alleged influence over the outcome of the proceedings to nil.
23. Therefore, the requested modifications to the Current Restrictions would not prejudice or otherwise affect the outcome of the present proceedings, rendering the Current Restrictions unnecessary and disproportionate.

2. All relevant “insider” and “political” witnesses have already testified or are out of Mr Ngaïssona’s alleged reach

24. The overwhelming majority of “insider” witnesses claiming to have information on the alleged coordination of the Anti-Balaka ahead of the 5 December attacks on Bangui and Bossangoa have either already testified before the Chamber²⁷ or were withdrawn by the Prosecution.²⁸

²⁶ “The Prosecutor of the International Criminal Court, Karim A.A. Khan KC, announces conclusion of the investigation phase in the Situation in the Central African Republic”, International Criminal Court, 16 December 2022, < <https://www.icc-cpi.int/news/prosecutor-international-criminal-court-karim-aa-khan-kc-announces-conclusion-investigation-0> >

²⁷ See e.g., P-1847, P-2841, P-2027, P-2673, P-0801, P-2251, P-2328, P-0291, P-0884, P-0965, P-0306, P-0808, P-2232, P-1521, P-0876, P-0992, P-0446, P-0889, P-0888, P-0966, P-1193, P-1962, P-1719, P-2556, P-1077, P-1042, P-0954, P-1858, P-2625, P-0487.

²⁸ See e.g., P-0975, P-0627, P-0458, P-1951, P-2270.

25. Further, and in light of the Prosecution's most recent "Revised list of remaining Prosecution witnesses"²⁹ and the Chamber's Order pursuant to Article 64(6)(d) of the Statute,³⁰ the remainder of relevant "insider" or "political" witnesses who are expected to provide similar information are out of Mr Ngaïssona's alleged reach. Indeed, they include:

- a former Head of State who, as noted by the Chamber, [REDACTED] (P-0952);³¹
- [REDACTED] (P-1074);
- a former FACA officer who has reportedly been unreachable so far, even by the Prosecution,³² and whose testimony, as far as the Defence is aware, remains uncertain to date (P-2269); and
- a former Presidential Guard who has demonstrated to be unreachable, even by the Prosecution,³³ and who in any event does not have any information on Mr Ngaïssona's alleged involvement in coordinating and financing the Anti-Balaka (P-2602).³⁴

26. Given the above, the alleged risk of witness interference or intimidation has greatly diminished and the restrictions should be eased to restore the balance between the interests the Chamber sought to ensure by placing Mr Ngaïssona under Regulation 101 restrictions, and Mr Ngaïssona's right to family and private life.

B. Requests to Ease the Current Restrictions

²⁹ ICC-01/14-01/18-1791-Conf-Anx.

³⁰ ICC-01/14-01/18-1739-Conf.

³¹ See VWU recommendation on *In-court protective measures for witness CAR-OTP-P-952*, email dated 08 June 2021, at 18:04 and Trial Chamber V's email Decision, dated 09 June 2021, at 16:42.

³² ICC-01/14-01/18-1701-Conf-Red2.

³³ ICC-01/14-01/18-1690-Conf-Red, para. 16.

³⁴ CAR-OTP-2118-9764-R01, pp. 9770-9776; CAR-OTP-2118-9785-R01, pp. 9787-9792.

1. *Request to add two individuals to Mr Ngaïssona's List of Contacts under the active monitoring regime*

27. The Defence respectfully requests the Chamber to allow contacts between Mr Ngaïssona and his [REDACTED], [REDACTED], and [REDACTED], [REDACTED], who have been removed from the List of Contacts following alleged incidents which took place three and half years ago. What was first a temporary measure³⁵ has now effectively deprived Mr Ngaïssona of any form of relationship with his closest of kin – his [REDACTED] and [REDACTED] – for a significant amount of time.³⁶
28. The Defence submits that the length of time for which Mr Ngaïssona has had zero contact with his [REDACTED] and [REDACTED] exceeded the limited time period stipulated in the United Nations' Standard Minimum Rules for the Treatment of Prisoners,³⁷ and that those years of severed contacts with his closest of relatives are no longer compatible with the fundamental and internationally recognised human right to family life.
29. In light of the above, the Defence engaged in *inter partes* discussions with the Prosecution.³⁸ The Prosecution agreed to the Proposal under the condition that the individuals be reinstated onto the List of Contacts under the active monitoring regime, which is the strictest form of monitoring at the Detention Centre, for a trial period of 90 days.³⁹

³⁵ Décision sur le non-respect des mesures restrictives relatives à vos communications téléphoniques non couvertes par le secret professionnel", [REDACTED].

³⁶ See ICC-01/14-01/18-276-Conf-Exp and ICC-01/14-01/18-390-Conf-Exp.

³⁷ See Rule 43(3), United Nations Standard Minimum Rules for the Treatment of Prisoners, Resolution adopted by the General Assembly on 17 December 2015, ("*Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order*"). < https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf >

³⁸ Email dated 3 March 2023, at 11:17.

³⁹ Email dated 6 March 2023, at 13:40.

30. Therefore, and in accordance with the Agreed Proposal, the Defence requests that [REDACTED] and [REDACTED] be reinstated onto the List of Contacts under the active monitoring regime for a trial period of 90 days, extendable upon review. The request is entirely proportional given that *all* telephone calls with both individuals would be actively monitored, meaning that any interaction will be immediately terminated by the Detention Centre upon suspicion of any breach of the rules or the restrictions regime.

2. *Request for non-privileged calls with family members to be subject to random active monitoring*

31. Since the Chamber's instruction to the Registry to report on the implementation of the Current Restrictions,⁴⁰ there is no concrete indication that Mr Ngaïssona intends or could be in a position to "prejudice or otherwise affect the outcome of the proceedings against [him], or any other investigation"⁴¹ at this stage of the proceedings.

32. Therefore, the active monitoring of *all* telephone calls between Mr Ngaïssona and his family, pursuant to Regulation 175(2) of the RoR,⁴² is no longer justified in light of the explanation provided in sub-section A and the passage of time.

33. Accordingly, the Defence requests that telephone calls with family members who are on the List of Contacts, save from the two above-mentioned individuals, be actively monitored *at random*, pursuant to Regulation 175(1) of the RoR.⁴³ The random active monitoring regime would still preserve the intended attention to

⁴⁰ ICC-01/14-01/18-484-Conf-Exp.

⁴¹ Regulation 101(2)(b), Regulations of the Court.

⁴² Regulation 175(2) of the Regulations of the Registry ("*The Registrar alone may order that all telephone calls from the detained person [...] be monitored for a period considered necessary by the Registrar*").

⁴³ Regulation 175(1) of the Regulations of the Registry, ("*The Chief Custody Officer may monitor telephone calls at random*").

the safety and well-being of witnesses⁴⁴ while reducing the impact these restrictions have on Mr Ngaïssona's private life in detention.

3. *Request for standard supervision of family visits with Ms [REDACTED] Ngaïssona and for private visits*

34. Since September 2019, Mr Ngaïssona's family visits have been actively monitored.⁴⁵ The Defence requests the Chamber to ease the Current Restrictions in this regard by allowing family visits between Mr Ngaïssona and his wife, Ms [REDACTED] Ngaïssona, to be no longer subject to active monitoring but conducted under the rules of standard supervision set out in Regulation 183 of the RoR.⁴⁶

35. The active monitoring of Ms [REDACTED] Ngaïssona's visits for the past three and a half years has a detrimental effect on Mr Ngaïssona's physical and psychological well-being, as well as that of his wife. While family visits aim at maintaining the family ties of the detained person,⁴⁷ the restrictions are greatly deteriorating their spousal relationship by limiting the privacy of their communications and prohibiting any form of intimacy. Hence, allowing the passive monitoring of Ms [REDACTED] Ngaïssona's visits would in turn allow Mr Ngaïssona to not only benefit from more privacy during visits, but also from the possibility to request private visits pursuant to Regulation 185 of the RoR.⁴⁸

36. Additionally, as Mr Ngaïssona's main visitor, Ms [REDACTED] Ngaïssona has been visiting her husband in detention regularly over the past three years.

⁴⁴ ICC-01/14-01/18-137, para. 19 (*"In light of this and remaining attentive to the safety and well-being of witnesses and victims, the Chamber decides that Yekatom's and Ngaïssona's non-privileged telephone conversations and visits (apart from private family visits) shall henceforth be actively monitored at random."*).

⁴⁵ ICC-01/14-01/18-357-Conf-Exp; ICC-01/14-01/18-374-Conf-Exp.

⁴⁶ Regulation 183 of the Regulations of the Registry, (*"Visits shall be conducted within the sight and hearing of the staff of the detention centre and shall be monitored by video surveillance"*).

⁴⁷ *The Prosecutor v. Bosco Ntaganda*, Public redacted version of "Decision on Defence 'Request for review of the Registrar's decision of 21 June 2019' dated 5 July 2019 (ICC-RoR220-01/19-1-Conf-Exp)", 17 September 2019, ICC-RoR220-01/19-2-Conf-Exp" 10 December 2019, para. 19.

⁴⁸ Regulation 185 of the Regulations of the Registry.

During this time, no incident involving Ms [REDACTED] Ngaïssona has been reported. Given the stage and scope of the proceedings as described in subsection A, the time that has elapsed and the absence of any incident involving Ms [REDACTED] Ngaïssona regarding the rules and regulations in place at the Detention Centre and the restrictions regime,⁴⁹ the active monitoring of family visits with Ms [REDACTED] Ngaïssona now appears to be unnecessary, and excessively restrictive.

37. [REDACTED]. The Defence respectfully submits that the operational capacity of the Detention Centre should be taken into account when rebalancing Mr Ngaïssona's rights against the interests of justice before ruling over the present request. Indeed, the logistics, facilities and human personnel required to actively monitor visits entail the use of extensive resources, such that the Detention Centre only allows Mr Ngaïssona to have a visit of not more than [REDACTED]. Additionally, actively monitored detainees can never benefit from [REDACTED]. As such, [REDACTED],⁵⁰ is effectively and disproportionately affecting Mr Ngaïssona's right to private and family life at this stage of the proceedings. Therefore, the standard supervision of family visits with Ms [REDACTED] Ngaïssona would also free some resources available at the Detention Centre to better guarantee that Mr Ngaïssona fully enjoys his rights to private and family life, within the limitations imposed by the interests of justice.

VI. RELIEF SOUGHT

38. The Defence respectfully requests the Chamber to **EASE** the Current Restrictions on Mr Ngaïssona's contacts by:

⁴⁹ ICC-01/14-01/18-484-Conf-Exp.

⁵⁰ [REDACTED].

- i. **LIFTING** the suspension of [REDACTED] from Mr Ngaïssona's List of Contacts and reinstating her under the active monitoring regime, as set out in paragraph 30;
- ii. **LIFTING** the suspension of [REDACTED] from Mr Ngaïssona's List of Contacts and reinstating him under the active monitoring regime in the conditions set out in paragraph 30;
- iii. **ORDERING** the random active monitoring of Mr Ngaïssona's non-privileged calls, except those with [REDACTED] and [REDACTED];
- iv. **LIFTING** of restrictions for family visits with Ms [REDACTED] Ngaïssona.

Respectfully submitted,



G.J. Alexander Knoop
on behalf of
Patrice-Edouard Ngaïssona

Dated this 15 December 2025

At The Hague, Netherlands