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**International
Criminal
Court**

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TRIAL CHAMBER V

Before: Judge Bertrand 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**

PUBLIC

**Public Redacted Version of “Registry Observations on Mr Ngaïssona’s Request
related to Detention Matters (ICC-01/14-01/18-541-Conf)”**

**With
Confidential *EX PARTE*
Annex only available to the Defence for Mr Ngaïssona and the Registry**

Source: Registry

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 the email instruction given by Trial Chamber V (“Chamber”) on 3 June 2020 (“Order”),¹ the Registry submits in accordance with regulation 24 *bis* of the Regulations of the Court (“RoC”), its observations on the matters raised in the “Request to Redress the Violations of Mr Ngaïssona’s Rights in Detention” filed by the defence for Mr Patrice-Edouard Ngaïssona (“Request”, “Defence” and “Mr Ngaïssona”, respectively).²
2. The Registry submits that the Request ought to be rejected as it raises issues that have been addressed in the Registrar’s administrative decisions, *inter alia*, in the context of the complaints procedure on detention matters pursuant to section 5, Chapter V of the RoR. These decisions are either final as they have never been further appealed by the Defence before the Presidency or addressed issues that are pending for resolution. In any event, the Registry submits that the Defence arguments with regard to Mr Ngaïssona’s violations of his rights in detention are not justified.

II. Classification

3. In accordance with regulation 23 *bis*(2) of the RoC, the present observations and related annex are classified *ex parte* confidential only available to the Defence and the Registry, to follow the same level of classification of the annexes to the Request and since they relate to personal and confidential information pertaining to administrative confidential individual complaints related to detention and medical matters. The Registry also submits that the chosen level of classification of the present observations is justified as they refer to [REDACTED] in relation to sensitive detention matters.

¹ Email from Trial Chamber V to the Registry, 3 June 2020 at 10.03.

² Defence, Request, ICC-01/14-01/18-541-Conf, 2 June 2020.

4. In the context of the judicial proceedings and to substantiate its argument that administrative Registrar's decisions impact Mr Ngaïssona's preparation for trial, the Registry notes that the Defence has elected to reveal to other parties and participants said personal and confidential information. The Registry also notes the Chamber's decision to maintain in the Request in the public domain in redacted form.³ This notwithstanding, since the present observations relate to the contents of the *ex parte* annexes, the Registry draws the Chamber's attention to the fact that preparing a confidential or public version of said observations will necessarily entail applying numerous redactions. However, should the Chamber decide so, the Registry stands ready to file such a confidential and/or public redacted version(s) in the record of the case.

III. Applicable law

5. The following provisions are of particular relevance to the present submissions: article 43 of the Rome Statute, regulations 23 *bis*, 24 *bis*, 33, 34(b), 90, 91, 96, 99, 103, 106 of the RoC, regulations 155, 163, 199 and section 5, Chapter V of the Regulations of the Registry ("RoR") and the Detention Agreement.

IV. Submissions

6. The Registry first submits that the Request re-litigates issues brought before, and decided upon the Registrar under section 5 of Chapter V of the RoR. This is particularly so when the Defence alleges that Mr Ngaïssona's detention conditions are in violation of the RoR and the RoC. The Registry observes that the Defence assertions in this respect are not justified (A). Second, the Registry will make further observations on, *inter alia*, the Defence's arguments according to which "the complaints procedure pursuant to section V of the RoR has proved to be unsuitable to rectify the violation of his rights" and "his detention conditions affect his fair trial rights" (B).

³ Email from Trial Chamber V to parties and participants, 12 June 2020 at 11.30.

A – The alleged violations of the RoR and RoC are not justified

7. To support its submission that the Defence assertions relating to alleged violations of the RoR and RoC are not justified, the Registry deems it necessary to recall first the specific issues at stake and second, to provide its analysis thereof.

Summary of the Registrar's decisions on food issues

8. As explained in the confidential *ex parte* Annex 1 of the Request, the Registrar has taken four decisions on food issues.
9. The first Registrar's decision of 20 September 2019 was prompted by a confidential complaint, which raised two issues ("First Decision"),⁴ namely (1) the access to food that meets Mr Ngaïssona's [REDACTED] and cultural requirements in accordance with regulation 199 of the Regulations of the Registry ("RoR") and (2) the purchase and price of food as per [REDACTED].⁵
10. Considering that there were [REDACTED] with regard to the provision of food in detention,⁶ [REDACTED], the Registrar decided to:
 - a. [REDACTED]
 - b. [REDACTED]
 - c. [REDACTED]
 - d. [REDACTED].⁷
11. Following [REDACTED], the second Registrar's decision dated 18 November 2019 ("Second Decision"), was not prompted by any complaint. [REDACTED].
The Second Decision explained the following in relevant parts:
 "[REDACTED]"⁸

⁴ Registrar, Decision on Mr Ngaïssona's Complaint to the Registrar received 9 September 2019 ("First Decision"), 20 September 2019 and Annex 1 of the Request.

⁵ [REDACTED]

⁶ Registrar, First Decision, para. 25.

⁷ Registrar, First Decision, operative part.

⁸ Registrar, Second Decision on Mr Ngaïssona's Complaint to the Registrar received 9 September 2019, 18 November 2019, paras. 8 -13 and Annex 1 of the Request.

12. The third Registrar's decision dated 31 December 2019 ("Third Decision") was prompted by a Defence request to take provisional measures. It was denied as, *inter alia*,

"[REDACTED]"⁹

13. Further, the Third Decision mentioned [REDACTED]. It also dealt for the first time with Defence submissions on "[REDACTED] harm" and rejected said argument as further detailed below.¹⁰

14. The fourth Registrar's decision, dated 2 April 2020, was taken in the context of the Covid-19 pandemic ("Pandemic") and was prompted by a request for reconsideration of the Third Decision as opposed to a complaint *per se* ("Request for Reconsideration" and "Fourth Decision", respectively).¹¹ The Request for Reconsideration was based on [REDACTED]".¹² The Registrar considered that [REDACTED].¹³ The Registrar thus decided:

1. [REDACTED]
2. [REDACTED].¹⁴

15. On 12 May 2020, the Registrar received [REDACTED]

1. [REDACTED]
2. [REDACTED]
3. [REDACTED].¹⁵

Summary of the decision on the complaint on lock-up time issues

16. On 16 March 2020, the Defence filed on behalf of Mr Ngaïssona a request to review a decision by the Chief Custody Officer ("CCO") not to amend the

⁹ Registrar, Decision on Mr Ngaïssona's Complaint to the Registrar received 20 December 2019, 31 December 2019 ("Third Decision"), paras. 14 and 15 and Annex 1 of the Request.

¹⁰ Registrar, Third Decision, para. 19.

¹¹ Registrar, Decision on Mr Ngaïssona's Complaint to the Registrar received 18 March 2019 ("Fourth Decision"), 2 April 2020 and Annex 1 of the Request.

¹² Registrar, Fourth Decision, para. 17.

¹³ Registrar, Fourth Decision, paras. 21-29.

¹⁴ Registrar, Fourth Decision, operative part.

¹⁵ See Annex to the present observations.

schedule of Mr Ngaïssona's lock-up times in detention.¹⁶ This complaint was partly linked to the issues raised in the food complaints as it is alleged that, due to the extensive lock-up times, Mr Ngaïssona either would not have sufficient time to prepare his food in detention.¹⁷ The Registrar issued on 30 March 2020, a decision rejecting the Defence request for review as it was filed out of time ("30 March 2020 Decision").¹⁸

Registry's analysis

17. When asserting that Mr Ngaïssona's detention conditions are in violation of the RoC and the RoR, the Defence re-litigates before the Chamber issues that have already been decided upon by the Registrar.

18. *Firstly*, none of the Registrar's decisions mentioned above were appealed before the Presidency as per regulation 220(1) of the RoR. Therefore, Mr Ngaïssona chose not to pursue these matters in an expeditious manner and according to the appropriate administrative recourses available to him.

19. The Registry recalls that complaints on detention matters sent to the CCO pursuant to section 5, Chapter V of the RoR and the ensuing requests for review addressed before the Registrar are administrative in nature. He now appears to use a judicial legal avenue before the Chamber to remedy this situation. In this respect, the Defence relies on rules 132 *bis*(5)(f) and 192(3) of the Rules of Procedure and Evidence as the legal basis for his Request. However, whilst the Chamber may always be seized on matters regarding the conditions of his detention, this does not necessarily mean that the Chamber is the right forum to address these exact same matters when they have been

¹⁶ Defence, Detained Person's Request for Review addressed to the Registrar, 16 March 2020 and Annex 2 of the Request.

¹⁷ Defence Request, para. 15.

¹⁸ Defence Request, para. 16; Registrar, Decision on Mr Ngaïssona's Request for Review addressed to the Registrar received 16 March 2020, 30 March 2020 ("30 March 2020 Decision") and Annex 2 of the Defence Request.

already subject to a final determination by the Registrar. Allowing so - as a systematic approach - would render meaningless the provisions on the complaints procedure on detention matters under the RoR. It would also blur the delineation between administrative and judicial aspects of detention matters and bring confusion between the respective roles of, on the one hand, the Presidency deciding on administrative detention matters on appeal, and on the other hand, the Chamber.

20. *Secondly*, notwithstanding the above, the Registry observes in details below that the alleged violations with regard to Mr Ngaïssona's detention conditions are unjustified. To support its request for provisional measures, the Defence mainly refers to violations of the RoR and RoC in the context of two specific types of administrative complaints namely, the one on food issues and the one on lock-up times issues (as summarised above).

1 - Food issues

21. The Defence re-litigates matters already addressed by the Registry when it generally submits that Mr Ngaïssona faces "undue and detrimental hardship over the past 16 months, which has materially affected his mental and physical well-being, resulting in his inability to fully engage with the Defence for the preparation of trial".¹⁹

22. Indeed, in the Third Decision, the Registrar stated as follows as to a contention by the Defence that Mr Ngaïssona would have suffered [REDACTED] harm:

"[REDACTED]"²⁰

23. The Defence further submits that "the Registrar failed to strike an appropriate balance between the interests at play when determining that the recognition of

¹⁹ Defence, Request, para. 10.

²⁰ Registrar, Third Decision, para. 19.

Mr Ngaïssona's rights under regulation 199 of the RoR should be dependent upon [REDACTED]."²¹

24. Notwithstanding that this contention should have been addressed first before the Presidency, the Registry submits that (1) the rights of Mr Ngaïssona's under said regulations are not violated as the food available to him remains culturally and [REDACTED] adapted and (2) [REDACTED]. As a result, no provisional measures are warranted.

25. On point (1) above, the Registry reiterates that the food remains culturally adapted in the meaning that, in addition to their meals provided free of charge [REDACTED], all detained persons have access to two shopping lists at the detention centre, both containing some African products. Orders can be made [REDACTED]. More precisely, one shopping list contains more Dutch products but also includes African items ("Dutch List") and the other shopping list is only with African products ("African Shopping List"). Items on these lists are purchased by detained persons. [REDACTED]. He then mainly purchases items from the Dutch or the African Shopping List, which has a cost.

26. [REDACTED]

27. [REDACTED],²² [REDACTED].²³

28. To give some context to another matter regarding food provision to Mr Ngaïssona (i.e. [REDACTED]), the Registry [REDACTED]. These incidents were all solved by the CCO [REDACTED]. For the sake of completeness and noting that this information may have little connection with the preparation of

²¹ Defence, Request, para. 13.

²² [REDACTED]

²³ [REDACTED]

trial, Mr Ngaïssona usually orders from the African Shopping List some [REDACTED] and is receiving [REDACTED]:

1. [REDACTED];²⁴
2. [REDACTED];
3. [REDACTED].

29. In view of the above, using this example to evidence a “recurring problem”²⁵ or a “pattern of disregard of Mr Ngaïssona’s recognized rights under the RoR and the RoC”²⁶ appears misplaced and ill-founded.

30. On point (2) above, [REDACTED], the Registry makes the following submissions.

31. As stated above, the Registrar has concluded that the food issue relate to [REDACTED] specific aspects of the detention centre (as opposed to the overall management as the Defence seems to conclude when proposing an independent oversight mechanism).²⁷ The Registrar has taken measures to address these issues, which are being implemented. [REDACTED].²⁸

32. As explained in the Fourth Decision, [REDACTED].²⁹ This delayed, albeit for reasons beyond the Registry’s control, the implementation of said solutions.

33. [REDACTED]

2 - Lock-up times issues

34. First, the Registry informs the Chamber that [REDACTED].

²⁴ [REDACTED]

²⁵ Defence, Request, para. 27.

²⁶ Defence, Request, para. 30.

²⁷ Defence, Request, para. 25.

²⁸ [REDACTED]

²⁹ Registrar, Fourth Decision, 30-34.

35. Second, the Defence seems to ultimately complain against the Registrar's decision to [REDACTED]. Accordingly, the Defence re-litigates issues already decided upon. Indeed, the 30 March 2020 Decision specified that

"[REDACTED]".³⁰

36. Further, notwithstanding that the Request for Review relating to lock-up times was irreceivable, the Registrar explained that he had already decided and independently of the complaint on lock-up times:

"[REDACTED]".³¹

37. [REDACTED].

38. In light of the above, the Registry fails to see any violations of the RoR and RoC. As to the provisional measures sought, once again, [REDACTED] will lead to improvements of the two identified [REDACTED] issues in detention (i.e. food and lock-up times). The resolution of these issues is ongoing and any provisional measures are not warranted at this stage.

B - Other arguments raised and violations alleged by Mr Ngaïssona

39. *Firstly*, the Defence argues that "the complaints procedure pursuant to section V, Chapter 5 of the RoR has proved to be unsuitable to rectify the violation of his rights".³² To this end, it appears to submit, *inter alia*, that the complaints procedure is only designed to resolve individual grievances and, as a result, according to the Defence, cannot address systematic issues.

40. However, the Defence does not legally substantiate such a narrow interpretation of said procedure. Nothing in the legal framework prevents the Registrar from making decisions under regulation 90 of the RoC on the overall management of the detention centre when dealing with an individual

³⁰ Registrar, 30 March 2020 Decision, para. 11.

³¹ Registrar, 30 March 2020 Decision, para. 12.

³² Defence, Request, point III (b).

complaint and when exercising his review power under regulation 219 of the RoR. To the contrary, it is the Registrar's duty to take such policy decisions as to improve the functioning of the detention centre. Accordingly, the Registrar may, if required, decide for example to draft, amend or annul a policy applicable in detention [REDACTED].

41. Ultimately, the Defence again takes issue with this approach and reproaches to the Registry the resulting lack of expeditiousness in solving the food and lock-up times issues. To support its argument, the Defence refers in particular to the temporary measure allowing for the doubling of time-limits for complaints procedure on detention matters.³³ The Registry notes that the Defence appears to take issue with this doubling measure although it avails himself of said measure when seeking review of a CCO's decision [REDACTED].³⁴

42. *Secondly* and more importantly, the Defence argues that Mr Ngaïssona's detention conditions affect his fair trial rights.³⁵ In this respect, the Defence refers to Mr Ngaïssona's deterioration of physical and mental well-being to an extent that it would prevent him from fully engaging with the Defence team.³⁶

43. To the extent that this would concern his detention conditions with regard to food provision and lock-up times issues, the Registry has fully considered the seriousness of this complaint, [REDACTED]. In accordance with the Registrar's obligations under regulation 103 of the RoC, [REDACTED].³⁷ [REDACTED]³⁸ [REDACTED].

³³ Defence, Request, para. 22.

³⁴ [REDACTED]

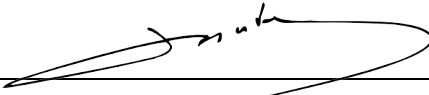
³⁵ Defence, Request, point III (d).

³⁶ Defence, Request, paras 32 and 34.

³⁷ See para. 15 above.

³⁸ [REDACTED]

44. Finally, to the extent that the alleged deterioration of his [REDACTED] would be caused by [REDACTED],³⁹ [REDACTED].



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 29 June 2020

At The Hague, the Netherlands

³⁹ Defence, Request, para. 32.