

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-02/18**

Date: **4 February 2019**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. PATRICE-EDOUARD NGAISSONA***

Confidential Redacted Document

Confidential Redacted version of "Prosecution's Request that the Chamber Extend the Contact Restrictions Imposed in the "Decision pursuant to Regulation 101 of the Regulations of the Court" (ICC-01/14-02/18-11-Conf-Exp)", 4 February 2019, ICC-01/14-02/18-25-Conf-EXP

Source: Office of the Prosecutor

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

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Detention Section

**Victims Participation and Reparations
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I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests Pre-Trial Chamber II ("Chamber") to extend its provisional contact restrictions order regarding Patrice Edouard NGAISSONA's ("NGAISSONA")¹ through 15 March 2019, subject to the Chamber's review of the relevant circumstances at such time.

2. The Contact Restrictions — in place just over a week — remain justified to protect prospective victims, witnesses, and the ongoing investigation. To the extent that the Chamber has vacated its order separating NGAISSONA and Alfred YEKATOM ("YEKATOM"), the extension of the Contact Restrictions are further warranted.

II. CONFIDENTIALITY

3. This Request is filed "confidential, *EX PARTE*, only available to the Prosecution and Registry" as it concerns decisions and filings with the same classification, as well as information which, if divulged, may defeat the purpose of the Request. The Prosecution will file a confidential redacted version as soon as practicable.

III. SUBMISSIONS

A. The Contact Restrictions should be maintained

4. In the brief period since NGAISSONA's 23 January 2019 arrival at the ICC Detention Centre², none of the salient justifications for the Contact Restrictions have abated. As elaborated below, the prevailing circumstances continue to justify their extension.

¹ ICC-01/14-02/18-11-Conf-Exp, p. 7 ("Contact Restrictions" or "Provisional Order").

² [REDACTED].

a. *The Contact Restrictions are necessary to protect witnesses, victims, and the ongoing investigation*

5. In issuing the Provisional Order just over a week ago, the Single Judge found reasonable grounds to believe that “any contacts between Ngaïssona and his associates in the CAR could affect the investigation and outcome of the proceedings against him.”³ The Single Judge also recalled the Chamber’s earlier findings that NGAISSONA “remains a key Anti-Balaka figure, in addition to being a former minister, founder and President of a political party and successful businessman, which establishes, *inter alia*, that he could be in a position to reach, intimidate, or harm (potential) witnesses, their families or other individuals cooperating with the Court.”⁴

(i) There are no changed circumstances favourable to the Suspect

6. The circumstances previously found by the Chamber have not changed.

7. NGAISSONA continues to be an influential and galvanising figure in CAR and among the Anti-Balaka. This is reflected in the well-known *communiqué* issued by Maxime MOKOM on 13 December 2018 in the context of NGAISSONA’s arrest in France, which refers to his and YEKATOM’s arrest as a ‘witch-hunt’.⁵ Moreover, NGAISSONA’s own words in reaction to YEKATOM’s arrest further substantiate his position of influence and the likelihood that, given the chance, he will actively undermine the proceedings against him and any other Anti-Balaka leader.⁶ He has a powerful incentive to do so.

(ii) The risks justifying the Contact Restrictions remain clear and concrete

³ ICC-01/14-02/18-11-Conf-Exp, para. 7 (referencing the Central African Republic (“CAR”).

⁴ ICC-01/14-02/18-11-Conf-Exp, para. 7.

⁵ See Afrique News Info, [Centrafrique: Le mouvement Antibalaka aile Mokom exige le transfert de Ngaïssona et Yékatom à la CPS](#), 15 December 2018 [last accessed 4 February 2019].

⁶ CAR-OTP-2098-0200, row 502 (chat no. 56).

8. [REDACTED].⁷ [REDACTED]

9. Alone, this would suggest NGAISSONA's inclination to act in solidarity with the interests of these Anti-Balaka leaders (and his own) in doing whatever is necessary to derail the proceedings before this Court. The risk is there. [REDACTED]:

"[REDACTED]".⁸

10. While a risk is, by definition, neither automatic nor a certainty, the question before the Chamber is whether the prevailing circumstances are such that, absent the Contact Restrictions there is a chance that the resultant conduct "*could* be harmful"⁹ or "*could* prejudice or otherwise affect" the outcome of the proceedings.¹⁰ Lifting the Contact Restrictions at this early stage presents such a danger — unquestionably, and not just to the confirmation hearing, but to a potential trial and the whole of the Court's process.

11. [REDACTED] concretely establishes, not only NGAISSONA's abiding subscription to the objectives and goals of the Anti-Balaka at the time of the alleged events (which included the use of violent means to achieve them), but his present commitment to justifying the group's past acts and the defence of notorious leaders, including YEKATOM [REDACTED]. Allowing NGAISSONA unrestricted contact with others from detention, [REDACTED], whether directly or indirectly, endangers Prosecution witnesses, victims, and the ongoing investigation, as the Prosecution has previously noted and the Chamber has likewise found.

12. Lifting the Contact Restrictions now would work to undermine the ends of justice, and without much difficulty.

⁷ [REDACTED].

⁸ [REDACTED].

⁹ See Regulation 101(2)(c) of the Regulations of the Court ("RoC").

¹⁰ See Regulation 101(2)(b) of the RoC.

b. *The Chamber's termination of the order separating NGAISSONA and YEKATOM in detention further justifies the Contact Restrictions*

13. In its Fourth Decision Pursuant to Regulation 101 of the Regulations of the Court¹¹, the Chamber extended contact restrictions concerning YEKATOM. It found, *inter alia*, that "[REDACTED]."¹² NGAISSONA is such an '[REDACTED]' – and a particularly powerful and influential one.

14. As the Chamber has now terminated its provisional order separating NGAISSONA and YEKATOM at the ICC Detention Centre¹³ and allowed free communication among them without monitoring¹⁴ – [REDACTED]. This is a particular peril, as disclosure has now begun and sensitive information will be communicated to the Suspects.

15. As noted in the Prosecution's request for the extension of the Chamber's provisional separation order, "[a]llowing the Suspects the opportunity to freely share critical information in detention at this early stage merely augments a well-known and concrete *risk*."¹⁵ Given the history of security breaches within the ICC Detention Centre, this risk is both real and pressing. As the Registry can confirm, it has been realised in many, if not most, ICC cases. As such, there is at least a reasonably founded risk of occurrence in this instance.

16. Given the association between YEKATOM and NGAISSONA; the substantive alignment of their interests; the seriousness of the charges that they face; the [REDACTED]; the circulation in CAR of the Suspects' supporters and the availability of networks capable of influencing or endangering vulnerable and other witnesses and, by extension, the ongoing investigation; the Chamber should not run the risk of

¹¹ [REDACTED].

¹² [REDACTED].

¹³ ICC-01/14-01/18-73-Conf-Exp.

¹⁴ ICC-01/14-01/18-73-Conf-Exp, para. 21.

¹⁵ ICC-01/14-02/18-17-Conf-Exp, para. 9.

lifting NGAISSONA's Contact Restrictions.

17. The Chamber's overarching duty to ensure the integrity of the Court's processes, protect witnesses, and to search for the truth, precludes lifting the Contact Restrictions. Rather, maintaining them as requested fairly balances the compelling and competing interests here, which weigh heavily in favour of preserving (not risking) the evidence, the investigation, and the viability of the proceedings going forward.

c. The Chamber should assess the implementation and NGAISSONA's compliance with the Contact Restrictions

18. The Prosecution does not have information from the Registry detailing the manner in which the Chamber's Provisional Order has been implemented, or whether NGAISSONA is in full compliance.

19. As was noted in the Prosecution's Submission regarding the initial extension of YEKATOM's contact restrictions, any determination modifying a provisional no-contact order must consider, *inter alia*, the status of its implementation.¹⁶

20. At this point, it is unclear whether the Registry has reviewed NGAISSONA's actively or passively monitored communications to determine his compliance with, or any attempted circumvention of, the conditions of his detention.¹⁷ Reviewing a detainee's compliance with the terms of his detention is axiomatic in any Chamber's assessment, and this Chamber has prudently done so previously.¹⁸

21. Regardless, what is clear, as set out above, is that in the brief period that the Contact Restrictions have been in effect, their justification continues.

¹⁶ [REDACTED].

¹⁷ See ICC-01/14-02/18-11-Conf-Exp, para. 8 (setting out the specific conditions).

¹⁸ [REDACTED].

IV. RELIEF SOUGHT

22. For the above reasons, the Prosecution requests that the Chamber extend the Contact Restrictions imposed on NGAISSONA through 15 March 2019, subject to the Chamber's review of the relevant circumstances at such time.



Fatou Bensouda, Prosecutor

Dated this 4th day of February 2019
At The Hague, The Netherlands