

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/14-01/18
Date: 4 November 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
THE PROSECUTOR *v.* ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA**

URGENT

**Confidential *EX PARTE* only available to the Prosecutor, the Defence for Mr
Ngaïssona, and the Registry**

**Confidential Redacted Version of "Seventh Registry Report on the
Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-
Trial Chamber II" filed on 4 November 2019**

Source: Registry

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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I. Introduction

1. Following the "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Seventh Decision")¹ issued by Pre-Trial Chamber II ("Chamber") on 18 September 2019, in which the Registry is ordered to *inter alia* investigate to determine the identity of the third party from a telephone incident, to the extent possible, and to conduct an expanded investigation into all of Patrice-Edouard Ngaïssona's ("Mr Ngaïssona") non-privileged phone calls from the Fourth Registry Report to 18 September 2019, the Registry hereby submits its report.

II. Procedural history

2. On 23 January 2019, the Single Judge of Pre-Trial Chamber II issued the "Decision pursuant to Regulation 101 of the Regulations of the Court" ("First Decision") in which, *inter alia*, the Registry was directed to put in place several measures to restrict Mr Ngaïssona's contacts.²
3. On 6 February 2019, the Chamber issued the "Third Decision pursuant to Regulation 101 of the Regulations of the Court"³ in which it ordered, *inter alia*, the Registry to prepare a report on the implementation of the restrictions on contact as ordered in the First Decision "setting out any relevant information relating to Ngaïssona's behaviour or communications that may give rise to suspicion that he interferes with the Prosecutor's investigation (in particular

¹ Pre-Trial Chamber II, "Decision Pursuant to Regulation 101 of the Regulations of the Court", 18 September 2019, ICC-01/14-01/18-357-Conf-Exp.

² Single Judge, "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("First Decision"), 23 January 2019, ICC-01/14-01/18-98-Conf-Exp, paras. 7-11.

³ Pre-Trial Chamber II, "Third Decision Pursuant to Regulation 101 of the Regulations of the Court", 6 February 2019, ICC-01/14-01/18-114-Conf-Exp.

that he poses a threat to potential witnesses and victims) or that he engages in activities that may affect the outcome of the proceedings".⁴

4. On 1 March 2019, the Chamber issued the "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Fourth Decision") in which it decided, *inter alia*, that "Ngaïssona's non-privileged telephone conversations and visits (apart from private family visits) shall henceforth be actively monitored *at random* [...] as frequently as possible".⁵
5. On 15 April 2019, the Chamber issued its "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Fifth Decision"),⁶ deciding, *inter alia*, to extend the restrictive measures for the remainder of the pre-trial proceeding.⁷ The Decision also requested the Registry ensure that time required to set up a telephone call does not affect the time allotted to speak on the phone, and to submit a report on implementation of the restrictive measures every two months.⁸
6. On 9 July 2019, the Chamber issued its "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Sixth Decision"), ordering, *inter alia*, the Registry to substantially increase the frequency of random monitoring of telephone calls and visits for specific contacts identified in the Registry's Fourth Report.⁹

⁴ *Ibid.*, para. 12.

⁵ Pre-Trial Chamber II, "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Fourth Decision"), 1 March 2019, ICC-01/14-01/18-137-Conf-Exp, paras. 19-20.

⁶ Pre-Trial Chamber II, "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Fifth Decision"), 15 April 2019, ICC-01/14-01/18-176-Conf-Red.

⁷ Fifth Decision, para. 32.

⁸ *Idem.*

⁹ Pre-Trial Chamber II, "Decision Pursuant to Regulation 101 of the Regulations of the Court", 9 July 2019, ICC-01/14-01/18-240-Conf-Exp, para. 30.

7. On 15 August 2019, the Registry submitted its "Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II" ("Fifth Report"), reporting one incident.¹⁰
8. On 13 September 2019, the Registry submitted its "Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II" ("Sixth Report"), reporting its further findings on the incident.¹¹
9. On 18 September 2019, the Chamber issued its "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Seventh Decision"), deciding, *inter alia*, on the basis of the Fifth and Sixth Reports, to suspend all of Mr Ngaïssona's non-privileged telephone calls and non-family, non-privileged visits on an interim basis and to suspend all forms of communication between Mr Ngaïssona and [REDACTED] with whom he has engaged in coded conversation on an interim basis; also, it and ordered the active monitoring of Mr Ngaïssona's visits of family members.¹² Further, the Decision orders the Registry to investigate to determine the identity of the third party from the call incident in question, and to conduct an expanded investigation into all of Mr Ngaïssona's non-privileged phone calls from the Fourth Registry Report to 18 September 2019.¹³
10. Following the Registry's request for an extension of time in filing the Seventh Registry Report,¹⁴ on 3 October 2019, the Chamber issued its "Decision on the Registry's Request for an Extension and the Contact Restrictions in place for

¹⁰ Registry, "Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II" ("Fifth Report"), 15 August 2019, ICC-01/14-01/18-276-Conf-Exp.

¹¹ Registry, "Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II" ("Sixth Report"), 13 September 2019, ICC-01/14-01/18-337-Conf-Exp.

¹² Seventh Decision, para. 52.

¹³ *Ibid.*, paras. 54-55.

¹⁴ Registry, "Request for an Extension of Time for the submission of the Seventh Report", 27 September 2019, ICC-01/14-01/18-362-Conf-Exp.

Ngaïssona" ("Eighth Decision"),¹⁵ granting the Registry's request and, *inter alia*, extending the current restrictions until 12 October 2019, at which time Mr Ngaïssona would thereafter be allowed one hour a week of actively monitored, non-privileged phone calls with his family, and actively monitored visits with family members only, ordering that these restrictions remain in place for the remainder of the pre-trial proceedings, and deciding that all forms of communication between Mr Ngaïssona and [REDACTED] with whom he engaged in coded conversation shall remain suspended until further notice.¹⁶

III. Classification

11. In accordance with regulation 23 *bis* (1) of the Regulations of the Court ("RoC"), the present report is classified as confidential *ex parte* only available to the Defence for Mr Ngaïssona, the Registrar, and the Detention Section, following the Chamber's order as such,¹⁷ and considering that it contains sensitive information regarding Mr Ngaïssona's private life and detention-related matters. A confidential redacted version is filed on the record, following the Chamber's instruction in the Seventh Decision.¹⁸

IV. Applicable law

12. For the purpose of the present submission, the Registry has considered regulations 99(1)(i) and 100 of the RoC, and regulations 173, 174, 175, 179, 180, 183 and 184 of the Regulations of the Registry ("RoR").

¹⁵ Pre-Trial Chamber II, "Decision on the Registry's Request for an Extension and the Contact Restrictions in place for Ngaïssona" ("Eighth Decision"), 3 October 2019, ICC-01/14-01/18-374-Conf-Exp.

¹⁶ Eighth Decision, paras. 39-42.

¹⁷ Seventh Report, para. 56.

¹⁸ Eighth Decision, para. 56.

V. Submissions

In relation to the unknown third person

13. As previously reported,¹⁹ during a telephone conversation between Mr Ngaïssona and [REDACTED] on 18 July 2019, [REDACTED] put her telephone on speaker phone and the interpreter heard [REDACTED] of an unknown third person speaking to Mr Ngaïssona. The third person was not on Mr Ngaïssona's non-privileged call list and was referred to as the [REDACTED].

14. Upon instruction from the Chamber,²⁰ the Registry has investigated the matter to determine the identity of the third person. As a result of reviewing further transcripts and conversations from around the time period of that conversation and until 18 September 2019, as so ordered, the Registry informs the Chamber that the identity of the third person remains unknown. As a result, the Registry is unable to provide any further information on the identity of the third person. The content of conversations reviewed continually refers to the individual in the same manner, vaguely as the [REDACTED]. Should further information arise the Registry will bring that information to the attention of the Chamber.

In relation to the expanded investigation

15. Following instruction from the Chamber,²¹ the Registry has expanded its investigation into breaches of the Chamber's restrictions on communications to encompass a review of all of Mr Ngaïssona's telephone calls from the Fourth Registry Report, dated on 17 June 2019, until 18 September 2019.

¹⁹ Fifth Report, paras. 15-17, and Sixth Report, paras. 11-16.

²⁰ Seventh Decision, para. 54.

²¹ Seventh Decision, para. 55.

16. As a result of the review, the Registry determined that, [REDACTED].²²

17. [REDACTED].

18. On 22 July 2019, during a conversation with [REDACTED], Mr Ngaïssona informed her that the phone should not be passed to other individuals otherwise he will have problems.

19. As a further result of the review of conversations, the Registry also informs the Chamber as follows.

20. [REDACTED].

21. [REDACTED].

22. [REDACTED].

23. [REDACTED].²³

24. [REDACTED].

25. [REDACTED].

26. [REDACTED].

27. [REDACTED].

28. [REDACTED].

29. [REDACTED].

²² [REDACTED].

²³ [REDACTED].

30. [REDACTED].

31. [REDACTED].

In relation to the active monitoring order

32. Pursuant to the Seventh and Eighth Decisions, all Mr Ngaïssona's non-privileged telephone calls and non-family, non-privileged visits were suspended from 18 September 2019 until 12 October 2019. On 11 October 2019, Mr Ngaïssona was informed of his new telephone call schedule, which came into effect on 12 October 2019. The new telephone call schedule takes into consideration the Chamber's Fifth Decision, ensuring extra time for set up and connecting of telephone calls.

33. The Registry has also implemented the Chamber's Decision to suspend all forms of communication Mr Ngaïssona's [REDACTED] who engaged in coded language.²⁴ In this regard, the Registry has confiscated one letter from this individual and refused one visit request for this individual to visit Mr Ngaïssona. Mr Ngaïssona was informed of both refusals accordingly.

34. Pursuant to the Seventh Decision,²⁵ and extended by the Eighth Decision,²⁶ Mr Ngaïssona's family visits shall be actively monitored and the discussions shall be limited to matters of a strictly personal nature, and all coded or obscure language are prohibited.

35. During the reporting period, the Registry implemented the Chamber's Seventh and Eighth Decisions by actively monitoring all of Mr Ngaïssona's non-privileged visits by family members, taking into consideration the reasonable demands of the daily schedule at the DC and the availability of

²⁴ Seventh Decision, para. 52; Eighth Decision, para. 40.

²⁵ Seventh Decision, para. 52.

²⁶ Eighth Decision, paras. 40-42.

interpreters. No incidents were reported relating to the communication restrictions during any of the visits.

36. Nevertheless, for the Chamber's information, prior to a non-privileged family visit on Friday 27 September 2019, the custodial officers ("CO") of the DC found Mr Ngaïssona's visitor, [REDACTED], in possession of a mobile telephone which was in the visitor's jacket. After reminding the visitor that mobile telephones are not allowed in the DC, the CO confiscated the mobile telephone and the visitor was allowed to enter the building. During the visit, no breach of the communication regime was reported. At the end of the visit, the CO gave the mobile telephone back to the visitor.

In relation to incoming and outgoing mail

37. Any written correspondence or packages that are sent or received, pursuant to regulations 168, 169 and 170 of the RoR, will be closely monitored in accordance with the relevant aforementioned Chambers decisions and regulations. Following the Seventh Decision, the Registry was instructed to disallow all communication between Mr Ngaïssona and [REDACTED].²⁷

38. On 13 September 2019, the DC received an incoming letter from [REDACTED]. The Registry implemented the Chamber's Seventh Decision by retaining the letter on 19 September 2019 and subsequently informed Mr Ngaïssona.

39. In the First Decision, the Chamber ordered that Mr Ngaïssona is prohibited to send written correspondence that contains obscure or coded language, or mentioning his case.²⁸ The Registry informs the Chamber that it has received and reviewed two incoming letters from non-family, non-privileged

²⁷ Seventh Decision, para. 52.

²⁸ First Decision, para. 9.

individuals for Mr Ngaïssona. The CCO does not have any concerns to report on the content of these two letters. Nevertheless they have not been given to Mr Ngaïssona, subject to further guidance from the Chamber, in light of the restrictions currently in place.

40. While restrictions on written communication were not specifically mentioned in the Seventh and Eight Decisions, the Registry considered that, in order to give effect to the Chamber's restrictions, as it concerns written correspondence, the Registry should retain any non-privileged written correspondence that is not from recognized family members, until further order or clarification from the Chamber. Therefore the Registry welcomes the guidance of the Chamber as regards written communication from non-privileged, non-family members.



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

Dated this 4 November 2019

At The Hague, The Netherlands