

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: **27 February 2020**

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 ROMBHOT YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

**Confidential, EX PARTE, only available to the Defence of Patrice-Edouard Ngaïssona,
the Registry and the Detention Section**

**Defence response to the “Registry Report Following the ‘Decision Pursuant to
Regulation 101 of the Regulations of the Court’, ICC-01/14-01/18-424-Conf-Exp”**

Source: Defence of Patrice-Edouard Ngaïssona

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 of Mr Ngaïssona

Mr Geert-Jan Alexander Knoops

Ms Chiara Giudici

Counsel for the Defence of Mr Yekatom

Legal Representatives of the Victims

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 Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Paddy Craig

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. Pursuant to Regulation 24 of the Regulations of the Court, the Defence of Patrice-Edouard Ngaïssona ("Defence") hereby submits its response to the "Registry Report Following the 'Decision Pursuant to Regulation 101 of the Regulations of the Court', ICC-01/14-01/18-424-Conf-Exp" ("Registry Report").¹

II. Procedural history

2. On 23 January 2019, Mr Patrice-Edouard Ngaïssona was transferred to the ICC Detention Centre where he is currently held in pre-trial detention. On the same day, the Single Judge of Pre-Trial Chamber II issued the "Decision pursuant to Regulation 101 of the Regulations of the Court", directing the Registry to put in place several measures to restrict Mr Ngaïssona's contact with the outside world.²
3. Following a series of subsequent Decisions and Registry Reports,³ the Registry

¹ ICC-01/14-01/18-429-Conf-Exp.

² ICC-01/14-01/18-98-Conf-Exp, para. 12.

³ "Second Decision Pursuant to Regulation 101 of the Regulations of the Court", 29 January 2019, ICC-01/14-01/18-106-Conf-Exp; "Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge", 06 February 2019, ICC-01/14-01/18-115-Conf-Exp; "Third Decision Pursuant to Regulation 101 of the Regulations of the Court", 6 February 2019, ICC-01/14-01/18-114-Conf-Exp; "Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by the Single Judge", 25 February 2019, ICC-01/14-01/18-125-Conf-Exp; "Decision Pursuant to Regulation 101 of the Regulations of the Court", 1 March 2019, ICC-01/14-01/18-137-Conf-Exp, paras. 19-20; "Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by Pre-Trial Chamber II", 08 April 2019, ICC-01/14-01/18-166-Conf-Exp; "Decision Pursuant to Regulation 101 of the Regulations of the Court", 15 April 2019, ICC-01/14-01/18-176-Conf-Exp; "Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II", 17 June 2019, ICC-01/14-01/18-225-Conf-Exp; "Decision Pursuant to Regulation 101 of the Regulations of the Court", 9 July 2019, ICC-01/14-01/18-240-Conf-Exp, para.30; "Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II", 15 August 2019, ICC-01/14-01/18-276-Conf-Exp; "Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II", 13 September 2019, ICC-01/14-01/18-337-Conf-Exp; "Decision Pursuant to regulation 101 of the Regulations of the Court", 18 September 2019, ICC-01/14-01/18-357-Conf-Exp; "Decision on the Registry's Request for an Extension and the Contact Restrictions in place for Ngaïssona", 3 October 2019, ICC-01/14-01/18-374-Conf-Exp; "Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II", 4 November 2019, ICC-

filed its “Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II”⁴ on 6 January 2020. The Registry informed the Chamber that there had been no incidents in relation to Mr Ngaïssona’s contacts.⁵

4. On 20 January 2020, the Defence submitted its “Defence Observations Pursuant to the ‘Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II’ (ICC-01/14-01/18-416-Conf-Exp)”.⁶ On the following day, the Defence submitted its “Addendum to Defence Observations Pursuant to the ‘Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II’ (ICC-01/14-01/18-416-Conf-Exp), ICC-01/14-01/18-420-Conf-Exp.”⁷ The Defence argued, *inter alia*, that the current restrictions regime should be lifted as it has serious consequences on Mr Ngaïssona’s well-being.
5. On 3 February 2020, the Chamber issued its “Decision Pursuant to Regulation 101 of the Regulations of the Court”,⁸ in which it decided to maintain the existing restrictions on Mr Ngaïssona’s contacts for the remainder of the pre-trial proceedings.⁹ However, the Chamber directed the Registry to “seek the advice of medical professionals in regard to [Mr] Ngaïssona’s well-being, and to report back to the Chamber promptly following such consultations.”¹⁰
6. On 17 February 2020, the Registry issued its “Registry Report Following the ‘Decision Pursuant to Regulation 101 of the Regulations of the Court’, ICC-

01/14-01/18-390-Conf-Exp; “Decision Pursuant to Regulation 101 of the Regulations of the Court”, 23 December 2019, ICC-01/14-01/18-413-Conf-Exp.

⁴ ICC-01/14-01/18-416-Conf-Exp.

⁵ ICC-01/14-01/18-416-Conf-Exp, paras 11-12.

⁶ ICC-01/14-01/18-420-Conf-Exp.

⁷ ICC-01/14-01/18-421-Conf-Exp.

⁸ ICC-01/14-01/18-424-Conf-Exp.

⁹ ICC-01/14-01/18-424-Conf-Exp, para 30.

¹⁰ ICC-01/14-01/18-424-Conf-Exp, para 24.

01/14-01/18-424-Conf-Exp.”¹¹

III. Applicable Law

7. Pursuant to regulation 24(1) of the Regulations of the Court:

The Prosecutor and the defence may file a response to any document filed by any participant in the case in accordance with the Statute, Rules, these Regulations and any order of the Chamber.

8. Pursuant to regulation 155(3) of the Regulations of the Registry:

The medical officer shall inform the Chief Custody Officer in writing whenever he or she considers that the physical or mental health of a detained person has been or will be adversely affected by any condition of or treatment in detention.
(...)

IV. Submissions

9. In its Report, the Registry states that Mr Ngaïssona was visited by the Detention Centre’s Medical Officer and Deputy Medical Officer pursuant to the Chamber’s orders.¹² The Registry notes that Mr Ngaïssona did not consent to sharing personal medical information with the Chamber at this point.¹³ However, the Registry informs the Chamber that “the Medical Officer informed the CCO that he does not have anything to report at this moment under regulation 155.”¹⁴

¹¹ ICC-01/14-01/18-429-Conf-Exp.

¹² ICC-01/14-01/18-429-Conf-Exp, para 10.

¹³ ICC-01/14-01/18-429-Conf-Exp, para 11.

¹⁴ ICC-01/14-01/18-429-Conf-Exp, para 12.

10. The Defence submits that no conclusions on Mr Ngaïssona's well-being should be drawn from the Registry Report. The simple statement that "the Medical Officer informed the CCO that he does not have anything to report at this moment under regulation 155" should not dispel concerns about Mr Ngaïssona's well-being, as the decision not to report anything to the CCO under regulation 155 was made on a discretionary basis by the Medical Officer.
11. The Defence submits that, unlike what is stated in the Registry Report¹⁵, Mr Ngaïssona was only visited by the Detention Centre's Medical Officer. The Medical Officer who visited Mr Ngaïssona is a general practitioner, without relevant experience in psychology¹⁶, and who does not speak French. In order for his visit to Mr Ngaïssona to take place, a member of the Detention Centre's staff had to be present, acting as a translator. In spite of the discomfort caused by the presence of a member of the Detention Centre's staff during the visit, Mr Ngaïssona did voice concerns about his well-being to the Medical Officer on this occasion. However, it appears that the Medical Officer did not see fit to communicate those concerns to the CCO.
12. The Defence submits that the Medical Officer's decision not to communicate anything to the CCO pursuant to regulation 155 should not dispel concerns about Mr Ngaïssona's well-being. This conclusion is only reinforced by the Registry's acknowledgement that "[o]n a general note, the Medical Services did inform the CCO that they were in agreement on the importance of

¹⁵ ICC-01/14-01/18-429-Conf-Exp, para 10.

¹⁶ As far as the Defence is aware, Dr Falke has no relevant experience in psychology. This is also reflected in the information listed on Dr Falke's Likedin profile: <https://www.linkedin.com/in/paulus-falke-72643565/> (retrieved on 26 February 2020).

maintaining family contact for the sake of the psycho-social well-being of the detained persons.”¹⁷

V. Conclusion

13. The Defence respectfully submits that, insofar as it states that nothing was communicated to the CCO under regulation 155, the Registry Report should not dispel concerns about Mr Ngaïssona’s well-being.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 27 February 2020,
At The Hague, the Netherlands

¹⁷ ICC-01/14-01/18-429-Conf-Exp, para 13.