



Original: **English**

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

Date: **16 March 2020**

PRE-TRIAL CHAMBER II

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Marc Perrin de Brichambaut, Second Vice-President

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Confidential, *EX PARTE*

**Only available to the Prosecution, Ngaissona Defence, the Registrar, and the
Detention Section**

**Prosecution's Observations on the "*Ninth Registry report on the Implementation of
the Restrictions on Contact of Mr Ngaissona Ordered by Pre-Trial Chamber II*"
(ICC-01/14-01/18-444-Conf-Exp)**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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. The Office of the Prosecutor ("Prosecution") submits its observations on the Ninth Registry Report on the implementation of contact restrictions concerning Patrice-Edouard NGAISSONA ("NGAISSONA"),¹ as intended by Pre-Trial Chamber II ("Chamber").²

2. The current restrictions on NGAISSONA's contacts in detention³ should be maintained, as directed by the Chamber ("Order").⁴ Doing so will minimise the risk to the integrity of the proceedings and to witnesses whose identities are known to the Accused, and whose security in this case remains precarious. Moreover, these measures are at least necessary and justified given NGAISSONA's previous violations of the conditions of his detention. As such, the Presidency should continue the Chamber's Order.

3. These Observations are submitted to the Presidency per the express direction of Pre-Trial Chamber II, having duly transmitted the record of the proceedings pursuant to rule 129 of the Rules of Procedure and Evidence ("Rules"), and in advance of the assignment the case to a Trial Chamber.⁵

II. CONFIDENTIALITY

4. In accordance with regulation 23 *bis* (1) of the Regulations of the Court, these Observations are filed as "Confidential, *EX PARTE*, only available to the Prosecution,

¹ ICC-01/14-01/18-444-Conf-Exp ("Report").

² ICC-01/14-01/18-176-Conf-Red.

³ ICC-01/14-01/18-357-Conf-Exp-Red and ICC-01/14-01/18-374-Conf-Exp-Red.

⁴ ICC-01/14-01/18-413-Conf-Exp-Red; ICC-01/14-01/18-374-Conf-Exp-Red, para. 41.

⁵ See Pre-Trial Chamber email communication of 11 March 2020 at 13:26, (noting that the Chamber "directs 'the parties to submit any response or observations to filings currently pending before the Chamber to the Trial Chamber to be constituted or, pending its constitution, to the Presidency for it to include them in the case record'. The Chamber considers that it is appropriate to follow the same approach as regards forthcoming observations due on the 'Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II' dated 6 March 2020 (ICC-01/14-01/18-444-Conf-Exp) (the 'Ninth Report').

Ngaissona Defence, the Registrar, and the Detention Section" as they respond to filings and decisions of the same classification.

III. SUBMISSIONS

5. *First*, as the Prosecution has previously observed⁶ and recently reiterated,⁷ there are no changed circumstances concerning NGAISSONA's detention warranting any modification to his existing contract restrictions and the Chamber's Order.

6. *Second*, given that the Chamber expressly found that NGAISSONA violated the contact restrictions it imposed for the duration of the pre-trial phase to "achieve the objective of ensuring the integrity of the proceedings" and further, that "there is a high risk that Ngaissona may engage in further attempts to circumvent the restrictive measures in place",⁸ any reduction in their level, whether qualitative or in terms of their duration would be imprudent. Indeed, it would only serve to augment the risk of damage to the integrity of the prospective proceedings, including undermining the Court's responsibilities embodied in articles 68 and 70.

7. The Presidency should take full account of the nature and extent of NGAISSONA's prior violations in considering the Registry's current Report. In this respect, the Chamber notably found that "on multiple occasions, Ngaissona has engaged in conduct intended to circumvent the imposed [contact] restrictions"⁹ by communicating with non-authorised individuals and using coded language.¹⁰ It also found that "Ngaissona was attempting to circumvent the Detention Centre's verification process."¹¹ The Registry itself related that "the course of conduct of Mr Ngaissona and his interlocutors has been one which sought to allow undisclosed, and

⁶ See ICC-01/14-01/18-432-Conf-Exp, para.7.

⁷ See ICC-01/14-01/18-446-Conf-Exp.

⁸ ICC-01/14-01/18-413-Conf-Exp-Red, paras. 85, 86.

⁹ ICC-01/14-01/18-413-Conf-Exp-Red, para. 82.

¹⁰ ICC-01/14-01/18-413-Conf-Exp-Red, para. 82.

¹¹ ICC-01/14-01/18-413-Conf-Exp-Red, para. 83.

non-vetted people who were not approved by the [Detention Section] to partake in his telephone conversations which took place even though their role was silent".¹²

8. Although the current Report indicates that "[n]o incidents were reported"¹³ during the relevant bi-monthly period, it is clear that the risks attendant to NGAISSONA's continued detention cannot be underestimated.

9. At best, the absence of reported incidents suggests NGAISSONA's awareness of the potential consequences of continuing to violate the contact restrictions. It also shows that they are doing what they should proportionately and effectively. However, NGAISSONA's *compliance* should not be conflated with his predisposition or intentions. The latter goes to the issue of the continued necessity of the restrictions — which, they obviously are given the nature of his prior violations.

10. The Prosecution urges the Presidency's vigilance and concern regarding the risks attendant to modifying the existing contact restrictions in NGAISSONA's favour, in view not only of the vulnerability of the ICC Detention Centre, but of the Accused's apparent resourcefulness and intention to circumvent the measures as ordered by the Chamber.

¹² ICC-01/14-01/18-413-Conf-Exp-Red, para. 73.

¹³ ICC-01/14-01/18-444-Conf-Exp, para. 14.

IV. CONCLUSION

11. For the above reasons, the Presidency should, at a minimum, continue the existing contact restrictions concerning NGAISSONA, as intended by the Chamber.



Fatou Bensouda, Prosecutor

Dated this 16th day of March 2020
At The Hague, The Netherlands