

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 5 October 2020

TRIAL CHAMBER V

Before: Judge Bertram 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
NGAISSONA***

Confidential

**Third Decision on Mr Ngaïssona's Restrictions on Contacts and
Communications in Detention**

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Kweku Vanderpuye

Counsel for the Alfred Yekatom

Mylène Dimitri

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Paddy Craig

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 57, 61(11), 64 and 68(1) of the Rome Statute (the 'Statute'), Regulations 96 and 99-101 of the Regulations of the Court (the 'Regulations') and Regulations 167-170, 173-175, 177-180, 182-185 and 187 of the Regulations of the Registry, issues this 'Third Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention'.

I. Procedural history and submissions

1. On 19 March 2020, the Detention Centre imposed temporary measures in light of the Coronavirus Pandemic, following the recommendations by the medical officer of the Detention Centre (the 'Temporary Measures').¹ These Temporary Measures, most of which have been extended until 16 October 2020 (the 'Updated Temporary Measures'),² include the suspension of all visits to the detained persons.³

¹ Memorandum DS/2020/023/PC/mc, Annex to the Registry Observations on "Defence Request to Grant Privileged Status to Medical Expert and to Allow In-Person Visits", ICC-01/14-01/18-544-Conf-Exp, 17 June 2020, ICC-01/14-01/18-557-Conf-Anx (the 'Annex to the Registry Observations'), pp. 2-4. *See also* Registry Observations on "Defence Request to Grant Privileged Status to Medical Expert and to Allow In-Person Visits", ICC-01/14-01/18-544-Conf-Exp, 17 June 2020, ICC-01/14-01/18-557-Conf, para. 17; Registry Observations on "Defence Observations to the "Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" (ICC-01/14-01/18-444-Conf-Exp)", ICC-01/14-01/18-460-Conf-Exp, 6 April 2020, ICC-01/14-01/18-469-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (confidential *ex parte* redacted version, only available to the Ngaïssona Defence, the Prosecution and the Registry, notified the same day), paras 18, 26-27.

² Memorandum DS/2020/078/PC/mb, Annex to the Fourth Registry Update on Detention Centre COVID-19 Measures, 23 September 2020, ICC-01/14-01/18-665-Conf-Anx (the 'Annex to the Fourth Registry Update'). *See also* Fourth Registry Update on Detention Centre COVID-19 Measures, 23 September 2020, ICC-01/14-01/18-665-Conf, paras 4-5, wherein the Registry informed the Chamber that the Presidency had approved an extension of 'certain' Temporary Measures until 16 October 2020 (that is, *all Temporary Measures except for those affecting the import of items into the Detention Centre under Regulations 181(4) and 182 of the Regulations of the Registry, which are 'no longer temporarily suspended'*).

³ Memorandum DS/2020/023/PC/mc, 19 March 2020; Memorandum DS/2020/046/HT/mc, 24 April 2020; Memorandum DS/2020/061/PC/mc, 16 June 2020; Memorandum DS/2020/065/PC/mc, 30 June 2020; Memorandum DS/2020/068/PC/mc, 14 July 2020; Memorandum DS/2020/071/PC/mc, 18 August 2020; Memorandum DS/2020/078/PC/mb, 18 September 2020. *See* Annex to the Registry Observations, ICC-01/14-01/18-557-Conf-Anx, pp. 2, 12, 16; Annex I to the Registry Update on Detention Centre COVID-19 Measures, ICC-01/14-01/18-578-Conf-AnxI, p. 2; Annex to the Registry Second Update on Detention Centre COVID-19 Measures, ICC-01/14-01/18-597-Conf-Anx, pp. 1-2; Annex to the Registry Third Update on Detention Centre COVID-19 Measures, ICC-01/14-01/18-632-Conf-Anx, p. 2; Annex to the Fourth Registry Update, ICC-01/14-01/18-665-Conf-Anx, p. 2.

2. On 17 April 2020, the Chamber rendered its first decision on restrictions on Mr Ngaïssona's contacts and communications in detention (the 'First Restrictions Decision').⁴ It decided, *inter alia*, (i) to maintain the restrictions on his contacts and communications during detention (the 'Current Restrictions')⁵ and (ii) to adopt the reporting procedure put in place by Pre-Trial Chamber II (the 'PTC II') with the modification that the Registry was ordered to henceforth submit its reports every three months (the 'Reporting Procedure').⁶
3. On 8 July 2020, the Chamber rendered its second decision on restrictions on Mr Ngaïssona's contacts and communications in detention (the 'Second Restrictions Decision'), whereby it decided, *inter alia*, to maintain the Current Restrictions.⁷
4. On 31 August 2020, and upon the Chamber's order,⁸ the Office of the Prosecutor (the 'Prosecution') filed its Provisional Witness List, wherein it provides information about the witnesses it intends to call to testify at trial, including brief summaries of their anticipated testimonies.⁹
5. On 8 September 2020, the Registry filed its second report on the implementation of the Current Restrictions (the 'Second Registry Report').¹⁰ The Registry informed the Chamber that, during the reporting period, no incidents had taken place¹¹ and Mr Ngaïssona had not made any non-privileged telephone calls (the 'Calls') nor received any physical visits or written

⁴ Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, ICC-01/14-01/18-484-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (confidential *ex parte* redacted version, only available to the Ngaïssona Defence, the Prosecution and the Registry, notified the same day, ICC-01/14-01/18-484-Conf-Exp-Red).

⁵ First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp, paras 15, 25, p. 17.

⁶ First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 29, p. 17.

⁷ Second Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, ICC-01/14-01/18-582-Conf, para. 17, p. 11.

⁸ See Decision Setting the Commencement Date of the Trial, 16 July 2020, ICC-01/14-01/18-589, para. 6, p. 10.

⁹ See Notification of the Provisional List of Prosecution Witnesses with a Summary of their Anticipated Testimony, ICC-01/14-01/18-642-Conf (the 'Provisional Witness List Notification') (with Annex A, ICC-01/14-01/18-642-Conf-AnxA).

¹⁰ Second Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V, ICC-01/14-01/18-645-Conf.

¹¹ Second Registry Report, ICC-01/14-01/18-645-Conf, para. 1.

correspondence.¹² The Registry also submitted that, should Mr Ngaïssona decide to resume his Calls, it 'stands ready to offer to Mr Ngaïssona the opportunity to make [...] [such] calls to his family twice a week'.¹³

6. On 14 September 2020, the Prosecution filed its observations on the Second Registry Report, requesting the Chamber to maintain the Current Restrictions through the next scheduled review period.¹⁴ It submits, *inter alia*, that: (i) Mr Ngaïssona has 'a history of willingness to violate the conditions of his detention';¹⁵ (ii) his decision to not resume Calls does not undermine the propriety or necessity of the Current Restrictions, '[n]or does the absence of reported incidents [...] reduce the *risk* of damage to the integrity of the proceedings';¹⁶ (iii) there has been no change in circumstances warranting the reconsideration of the Current Restrictions;¹⁷ (iv) the fact that the case is moving forward and that Mr Ngaïssona might face a significant sentence in case of a conviction 'incentivises him to undertake actions to undermine the proceedings';¹⁸ and (v) due to the filing of the Provisional Witness List, Mr Ngaïssona has an increased knowledge of the Prosecution witnesses and of their relative importance to the case against him, which enhances the risk of witness tampering.¹⁹
7. On 21 September 2020, the Ngaïssona Defence (the 'Defence') filed its observations, requesting the Chamber to lift the Current Restrictions (the 'Request').²⁰ The Defence argues, *inter alia*, that: (i) the Prosecution fails

¹² Second Registry Report, ICC-01/14-01/18-645-Conf, paras 9, 11-12.

¹³ Second Registry Report, ICC-01/14-01/18-645-Conf, para. 9.

¹⁴ Prosecution's Observations on the "Second Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V" (ICC-01/14-01/18-645-Conf), ICC-01/14-01/18-651-Conf (the 'Prosecution Observations'), paras 2, 12.

¹⁵ Prosecution Observations, ICC-01/14-01/18-651-Conf, para. 4.

¹⁶ Prosecution Observations, ICC-01/14-01/18-651-Conf, para. 5.

¹⁷ Prosecution Observations, ICC-01/14-01/18-651-Conf, para. 6. *See also* para. 7, where the Prosecution details the risks warranting the extension of the Current Restrictions that continue to prevail.

¹⁸ Prosecution Observations, ICC-01/14-01/18-651-Conf, para. 8.

¹⁹ Prosecution Observations, ICC-01/14-01/18-651-Conf, paras 9-10.

²⁰ Defence Observations on the "Second Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V" (ICC-01/14-01/18-645-Conf), ICC-01/14-01/18-662-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (confidential redacted version notified the same day, ICC-01/14-01/18-662-Conf-Red) (the 'Defence Observations'), paras 1, 16.

to demonstrate the existence of reasonable grounds that justify maintaining the Current Restrictions;²¹ (ii) the filing of the Provisional Witness List has not increased the risk for Prosecution witnesses, whose identities and statements Mr Ngaïssona already knew to a large extent;²² and (iii) Mr Ngaïssona's alleged 'willingness to violate the conditions of his detention' is speculative and stands in contrast to his behaviour over the past 14 months, notably that 'no incident has taken place during Mr Ngaïssona's contacts with the outside world'.²³

8. Alternatively to the Request, the Defence requests the Chamber to modify the Current Restrictions (the 'Alternative Request')²⁴ so that (i) Mr Ngaïssona's time allocation for Calls is increased from a maximum of 60 to 180 minutes per week,²⁵ and (ii) certain 'immediate family members' are reinstated in his list of non-privileged contacts (the 'List').²⁶ The Defence argues that these modifications, while 'minimal' and unsuitable to give rise to any heightened risk to the integrity of the proceedings, would largely contribute to mitigating the effect of the Current Restrictions on Mr Ngaïssona's private and family life and the 'additional isolation' caused by the prohibition of visits at the Detention Centre.²⁷

II. Analysis

9. The Chamber recalls the standard and the criteria of assessment set out in its First Restrictions Decision, also incorporated by reference in its Second Restrictions Decision.²⁸ Notably, the Chamber recalls that it will regularly review the restrictions in place, where circumstances change.²⁹ The Chamber continues to be guided by its obligation to review the restrictions in place and to

²¹ Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 8.

²² Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 8.

²³ Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 9.

²⁴ Defence Observations, ICC-01/14-01/18-662-Conf-Red, paras 1, 11.

²⁵ Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 12.

²⁶ Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 13.

²⁷ Defence Observations, ICC-01/14-01/18-662-Conf-Red, paras 14-15.

²⁸ See First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, paras 16-18, 21. See also Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 10.

²⁹ See First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 26. See also Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 10.

‘carefully balance the need for and proportionality of the restrictions against the important right accorded to detained persons to have contact’.³⁰

10. At the outset, the Chamber recalls the circumstances underlying the First Restrictions Decision and the Second Restrictions Decision, and the subsequent findings therein. In particular, in the Second Restrictions Decision, the Chamber considered that there had been no change in circumstances since its latest assessment in the First Restrictions Decision, and thus found that there were reasonable grounds to believe that the lifting of the Current Restrictions could prejudice the outcome of the proceedings.³¹
11. These circumstances can be summarised as follows: (i) Mr Ngaïssona’s multiple violations of restrictions during the pre-trial phase, which demonstrated his willingness to ‘disregard the restrictions and to conceal conversations from the Registry and ultimately the Chamber’;³² (ii) the fact that, according to the Prosecution, Mr Ngaïssona was aware of the identity of several Prosecution witnesses; (iii) Mr Ngaïssona’s important roles in the Anti-Balaka and the Central African Republic (the ‘CAR’), which could enable him to reach, intimidate or harm victims and witnesses, their families or other individuals cooperating with the Court; and (iv) the fact that he continues to have the means to reach out to witnesses in this case, who largely reside in the CAR.³³ Further, the Chamber considered that, while Mr Ngaïssona had not made any calls since 7 November 2019 and that no violations of the restrictions had been reported, the mere absence of incidents could not lead to the conclusion that restrictions were no longer necessary.³⁴

³⁰ See First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 18, *referring to* Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on Mr Bosco Ntaganda’s appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 March 2017, ICC-01/04-02/06-1817-Conf (public redacted version notified the same day, ICC-01/04-02/06-1817-Red), paras 72, 44, 102. See also Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 10.

³¹ See Second Restrictions Decision, ICC-01/14-01/18-582-Conf, paras 11-12, 15.

³² Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 11, *referring to* First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 22.

³³ Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 11, *referring to* First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 23.

³⁴ Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 11, *referring to* First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 24.

12. Furthermore, the Chamber considered new circumstances which had arisen since the First Restrictions Decision, namely: (i) the filing of the Prosecution's Preliminary Witness List and Mr Ngaïssona's awareness of this list; (ii) the fact that protective measures had not yet been put in place in respect of certain witnesses due, *inter alia*, to the impact of the Coronavirus Pandemic; and (iii) the Prosecution's submission that the Preliminary Witness List was subject, *inter alia*, to 'witness availability, [and] security', thereby making reference to security concerns in respect of certain witnesses that may affect their ability to testify before the Chamber.³⁵
13. In the Chamber's view, the circumstances described in paragraphs 11 and 12 above have not changed. Therefore, in assessing whether or not the Current Restrictions remain warranted, the Chamber will assess the circumstances that have changed since the Second Restrictions Decision. However, before turning to this assessment, the Chamber rejects the Defence's arguments attempting to re-litigate the Chamber's conclusions as to Mr Ngaïssona's violations of restrictions during the pre-trial stage of the proceedings,³⁶ which the Chamber has rejected on previous occasions.³⁷
14. Regarding the Defence's submissions that Mr Ngaïssona has not attempted to interfere with the Prosecution's investigations and that no incidents have taken place in his contacts with the outside world for the past 14 months,³⁸ the Chamber notes that, indeed, no incident of interference has been reported since the First Restrictions Decision.³⁹ However, as emphasised in its two previous decisions on the matter, the Chamber finds the observance of the restrictions to

³⁵ Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 14.

³⁶ See Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 9.

³⁷ See Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 12. *See further* Decision on the Ngaïssona Defence Request for Leave to Appeal the Decision on Restrictions on Contacts and Communications, 22 May 2020, ICC-01/14-01/18-525-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence, the Yekatom Defence, the Prosecution and the Registry, paras 27-28.

³⁸ See Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 9.

³⁹ See Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 13, *referring to* First Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Trial Chamber V, 8 June 2020, ICC-01/14-01/18-546-Conf (the 'First Registry Report'), paras 1, 11, 14, 16.

be the norm and thereby, insufficient in itself to justify the lifting of such restrictions.⁴⁰

15. The Chamber notes that since the Second Restrictions Decision, the Prosecution has filed its Provisional Witness List, providing details about the 145 witnesses it intends to call to testify at trial, and including brief summaries of their anticipated testimonies.⁴¹ The Chamber considers Mr Ngaïssona's awareness of this list relevant to its present assessment, particularly in light of the fact that protective measures have not yet been put in place in respect of certain witnesses.⁴²
16. The Chamber will now review the necessity and proportionality of the Current Restrictions. The Chamber remains persuaded that, given the seriousness of Mr Ngaïssona's violations of restrictions during the pre-trial phase, there are reasonable grounds to believe that the lifting of the Current Restrictions could prejudice the outcome of the proceedings, namely by negatively impacting on the Prosecution's ongoing investigations and the protection of victims and witnesses in this case. This is especially the case in light of the challenges faced by the Court in complying with its obligation to take appropriate protective measures for victims and witnesses under Article 68(1) of the Statute due to the Coronavirus Pandemic, as noted above. Consequently, the Chamber considers that the Current Restrictions remain necessary. It will now turn to its proportionality assessment.
17. In its Alternative Request, the Defence firstly requests an increase of the time allocated to Mr Ngaïssona's Calls, from 60 to 180 minutes per week.⁴³ The Defence submits that, due to the Temporary Measures, Mr Ngaïssona has not been able to see his family for over six months and that, while he decided not to

⁴⁰ See Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 13; First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 24.

⁴¹ See Provisional Witness List Notification, ICC-01/14-01/18-642-Conf, paras 1, 3; Annex A to the Provisional Witness List Notification, ICC-01/14-01/18-642-Conf-AnxA.

⁴² See Prosecution Observations, ICC-01/14-01/18-651-Conf, para. 7. See also Victims and Witnesses Unit's First Report regarding the Progress on the Implementation of Protective Measures for P-2582 and P-2620, 21 September 2020, ICC-01/14-01/18-661-Conf-Exp, confidential *ex parte*, only available to the Registry and the Prosecution (confidential redacted version notified the same day, ICC-01/14-01/18-661-Conf-Red), paras 1, 7.

⁴³ Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 12.

call them in the past ten months, the further extension of these measures and the isolation he is experiencing has prompted his decision to resume calls.⁴⁴

18. At the outset, the Chamber welcomes Mr Ngaïssona's decision to resume the Calls with his family, thereby electing to exercise his right to family life. The Chamber recalls its previous finding that Temporary Measures (now, Updated Temporary Measures) should not feature in its assessment.⁴⁵ Nonetheless, it recognises Mr Ngaïssona's grievances over these measures and the impact they may have on his well-being, particularly taking note of the fact that he has not received any in-person visits since 19 March 2020.⁴⁶ The Chamber also notes that the Updated Temporary Measures have been extended until 16 October 2020 and that further extensions are to be expected.⁴⁷
19. Furthermore, the Chamber is cognisant of the fact that Mr Yekatom may call his family in 90 minute periods, two days a week (*i.e.* 180 minutes per week),⁴⁸ and that another accused in a different case has been granted additional privileges until the Updated Temporary Measures are lifted, in order to relieve the impact of such measures.⁴⁹ Lastly, the Chamber notes that the Registry has repeatedly expressed that, should Mr Ngaïssona decide to resume the Calls, it stands ready to offer him the opportunity to make such calls twice a week.⁵⁰
20. The Chamber considers that the above factors warrant an increase in the weekly time allocated for Mr Ngaïssona's Calls. The Chamber considers that this

⁴⁴ Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 12.

⁴⁵ See Second Restrictions Decision, ICC-01/14-01/18-582-Conf, para. 16; First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp-Red, para. 28.

⁴⁶ See above paragraph 1.

⁴⁷ In this regard, see Decision on the Defence Request for In-Person Visit to Mr Ngaïssona to Prepare for First Status Conference, 29 June 2020, ICC-01/14-01/18-575-Conf, para. 28, where the Single Judge noted 'the Medical Officer's forecast that a "return to normal" will only be possible once a vaccine is available for the detainees'. See also above paragraph 1.

⁴⁸ See Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 17 April 2020, ICC-01/14-01/18-485-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence and the Registry, para. 13(ii)(f), p. 16; Second Decision on Mr Yekatom's Restrictions on Contacts and Communications in Detention, 21 August 2020, ICC-01/14-01/18-627-Conf, p. 12.

⁴⁹ See e.g. Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, 5 May 2020, ICC-01/12-01/18-786-Conf (public redacted version notified on 29 May 2020, ICC-01/12-01/18-786-Red), paras 38-39.

⁵⁰ See Second Registry Report, ICC-01/14-01/18-645-Conf, para. 9. See also First Registry Report, ICC-01/14-01/18-546-Conf, para. 11.

additional time will enable Mr Ngaïssona to effectively resume the communication with his family, which shall continue to be subject to active monitoring.

21. Accordingly, the Chamber grants the Defence's request to increase the time allocated for Mr Ngaïssona's Calls from 60 to 180 minutes, to be distributed in 90 minutes periods, two times a week, and subject to active monitoring.
22. In the second part of the Alternative Request, the Defence requests the Chamber to reinstate in Mr Ngaïssona's List a number of family members whom PTC II removed due to their involvement in the violation of restrictions by Mr Ngaïssona. The Chamber is not convinced by the Defence's argument that this specific restriction appears unnecessary 'in light of the existence of an active monitoring order'.⁵¹ Noting the repeated nature and character of these violations, in which these family members were involved,⁵² and the fact that Mr Ngaïssona has decided to resume his Calls, the Chamber is of the view that there are reasonable grounds to believe that the lifting of this restriction could prejudice the outcome of the proceedings, namely by negatively impacting on the Prosecution's ongoing investigations and the protection of victims and witnesses in this case. Hence, these individuals' continued exclusion from the List remains warranted at this point.
23. Accordingly, the Chamber rejects the Defence's request to reinstate the concerned family members in Mr Ngaïssona's List. Nonetheless, the Chamber recalls its obligation to regularly review the restrictions in place and will do so where circumstances change.⁵³
24. In reviewing the necessity and proportionality of the Current Restrictions, with the modification indicated above in paragraph 21, the Chamber has assessed Mr Ngaïssona's rights to preserve his family life, in light of the passage of time, against his violations during the pre-trial phase of the proceedings, his knowledge about the Prosecution witnesses, the impact of the Coronavirus

⁵¹ Defence Observations, ICC-01/14-01/18-662-Conf-Red, para. 13.

⁵² See First Restrictions Decision, ICC-01/14-01/18-484-Conf-Exp, para. 22.

⁵³ See *above* paragraph 9.

Pandemic on the implementation of protective measures for victims and witnesses and, *notably*, the current stage of the proceedings. Having regard to these considerations and the Court's obligations under Articles 68(1) and 64(2) of the Statute, the Chamber finds that these restrictions are the least restrictive available in the circumstances and proportional to ensure a fair trial and protect the integrity of the proceedings.

III. Amendments to the Reporting Procedure

25. Finally, the Chamber notes that the Reporting Procedure has led to numerous filings requesting modifications to the Current Restrictions, while circumstances have barely changed. The Chamber therefore decides to modify the Reporting Procedure for both accused in this case. First, the Chamber orders the Registry to submit its reports only every six months.⁵⁴ The Chamber considers this time frame sufficient to allow it to monitor the implementation of the imposed restrictions, while ensuring the efficiency of the proceedings. The parties may respond to the reports pursuant to the time limits prescribed in the Regulations.
26. Second, the Chamber clarifies that these reports are intended mainly for the benefit of the Chamber. Accordingly, while it is the parties' right to respond to these reports or make requests regarding restrictions at any time, the Chamber strongly encourages the parties to only do so to the extent that there is a change of circumstances warranting a modification.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request;

PARTLY GRANTS the Alternative Request, as set out above in paragraph 21;

DECIDES to maintain the Current Restrictions with the modification set out above in paragraph 21;

⁵⁴ The Chamber notes that the next Registry report for Mr Yekatom is expected this month and should be filed as scheduled. The following report shall be filed six months thereafter.

INSTRUCTS the Registry to facilitate the Calls to Mr Ngaïssona as set out above in paragraph 21;

AMENDS the Reporting Procedure, as set out above in paragraphs 25 and 26; and

ORDERS the Registry to submit reports on the implementation of the Current Restrictions and any violations thereof, together with confidential redacted versions of said reports, every six months, as set out above in paragraph 25.

Done in both English and French, the English version being authoritative.



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 5 October 2020

At The Hague, The Netherlands