

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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**

PUBLIC

Public Redacted Version of “Registry Reply to Defence Observations (ICC-01/14-01/18-397-Conf-Exp)” (ICC-01/14-01/18-400-Conf-Exp), dated 4 December 2019

Source: Registry

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REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☒ Detention Section

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I. Introduction

1. Following the email instruction by Pre-Trial Chamber II (“Chamber”) on 22 November to provide a reply to “Defence Observations Pursuant to the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (ICC-01/14-01/18-357-Conf-Exp) and the Registry’s Seventh Report (ICC-01/14-01/18-390-Conf-Exp)” (“Defence Observations”), the Registry hereby submits its reply to the Defence Observations. The aim of the present reply is, *inter alia*, to address some of the assertions by Mr Patrice-Edouard Ngaïssona and his defence team (“Mr Ngaïssona” and “Defence”, respectively) referring to the alleged lack of neutrality of the Registry. In doing so, the Registry clarifies certain procedures in place at the Detention Centre (“DC”) that are applicable to all detained persons, in particular when a Chamber has decided to monitor their calls and visits.

II. Procedural history

2. Following several Chamber’s decisions on the monitoring regime and related Registry’s reports,¹ the Chamber issued the “Decision Pursuant to Regulation

¹ Single Judge, “Decision Pursuant to Regulation 101 of the Regulations of the Court”, 23 January 2019, ICC-01/14-01/18-98-Conf-Exp, paras. 7-11 ; Pre-Trial Chamber II, “Second Decision Pursuant to Regulation 101 of the Regulations of the Court”, 29 January 2019, ICC-01/14-01/18-106-Conf-Exp ; Registry, “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 ; 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 ; Registry, “Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by the Single Judge”, 25 February 2019, ICC-01/14-01/18-125-Conf-Exp ; Pre-Trial Chamber II, “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 ; Registry, “Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by Pre-Trial Chamber II”, 08 April 2019, ICC-01/14-01/18-166-Conf-Exp ; Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court”, 15 April 2019, ICC-01/14-01/18-176-Conf-Red ; Registry, “Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II” (“Fourth Registry Report”), 17 June 2019, ICC-01/14-01/18-225-Conf-Exp ; 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 ; Registry, “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 ; Registry, “Sixth Registry Report on the

101 of the Regulations of the Court” (“Seventh Decision”), deciding, *inter alia*, 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 ordered the active monitoring of Mr Ngaïssona’s visits of family members.² Further, the Decision ordered 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 telephone calls from the Fourth Registry Report to 18 September 2019.³

3. On 3 October 2019, the Chamber decided, *inter alia*, that from 12 October 2019 Mr Ngaïssona would be allowed (1) one hour a week of actively monitored, non-privileged phone calls with his family only, and actively monitored visits with family members only, (2) to maintain these restrictions for the remainder of the pre-trial proceedings, and (3) to suspend until further notice all forms of communication between Mr Ngaïssona and [REDACTED] with whom he engaged in coded conversation.⁴
4. On 4 November 2019, the Registry submitted its “Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II” (“Seventh Report”), reporting its findings on the investigation on the identity of the third party from a telephone incident, to

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.

² Seventh Decision, para. 52.

³ *Ibid.*, paras. 54-55.

⁴ 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., paras. 39-42.

the extent possible, and on the investigation into all of Mr Ngaïssona's non-privileged phone calls from the Fourth Report to 18 September 2019.⁵

5. On 11 November 2019, upon Defence's request,⁶ the Chamber issued its "Decision on the Ngaïssona Defence Request to Obtain Transcripts".⁷
6. On 22 November 2019, following the Defence Observations⁸, the Chamber instructed the Registry, by way of email, to file a reply thereto.

III. Classification

7. 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 and the Registry upon Chamber's order to do so,⁹ and because it contains sensitive information regarding Mr Ngaïssona's private life and detention-related matters.

IV. Applicable law

8. For the purpose of the present submissions, the Registry has considered article 43 of the Rome Statute, 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").

⁵ Registry, "Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II" ("Seventh Report"), 4 November 2019, ICC-01/14-01/18-390-Conf-Exp.

⁶ Defence, "Defence Request to Obtain Transcripts of Phone Calls Mentioned in the "Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II", (ICC-01/14-01/18-390-Conf-Exp)", 8 November 2019, ICC-01/14-01/18-391-Conf-Exp.

⁷ Pre-Trial Chamber II, "Decision on the Ngaïssona Defence Request to Obtain Transcripts", 11 November 2019, ICC-01/14-01/18-393-Conf-Exp.

⁸ Defence, "Defence Observations Pursuant to the "Decision Pursuant to Regulation 101 of the Regulations of the Court" (ICC-01/14-01/18-357-Conf-Exp) and the Registry's Seventh Report (ICC-01/14-01/18-390-Conf-Exp)", 15 November 2019, ICC-01/14-01/18-397-Conf-Exp.

⁹ Seventh Report, para. 5.

V. Submissions

Preliminary observations

9. The Registry maintains its previous findings, as mentioned in the Fifth, Sixth and Seventh Reports. The Registry notes the Defence's different perception of the content of Mr Ngaïssona's telephone calls; a matter which is before the Chamber for adjudication. Accordingly, this reply aims at (1) responding to the Defence's allegations regarding the Registry's lack of neutrality in dealing with its reporting obligations to the Chamber of potential incidents that occurred during the monitoring of phone conversations of Mr Ngaïssona and (2) clarifying certain facts or procedures that need to be respected in the Detention Centre by all detained persons.

Alleged Registry's general lack of neutrality in dealing with Mr Ngaïssona's monitoring regime

10. The Defence Observations contain general allegations on the alleged lack of the Registry's neutrality. The Registry observes that these allegations appear to relate to the Defence's assertion that "Mr Ngaïssona deemed that he had no choice but to halt all his communications with the exception of his legal team",¹⁰ and that he "deems it necessary in order to avoid any further unfounded accusations by the Registry".¹¹ To the Defence Observations, the Registry observes that Mr Ngaïssona has imposed these restrictions on himself. Mr Ngaïssona still has multiple family members on his non-privileged telephone contact list and the Registry remains ready to continue

¹⁰ Defence Observations, para. 22.

¹¹ *Ibid.*, para. 22.

his non-privileged telephone conversations should he decide to avail himself of his telephone privileges. However, the Registry should not be blamed for Mr Ngaïssona's decisions and alleged isolation in this regard.

11. The Defence also generally argues that there is a "lack of impartiality exhibited by the Detention Centre with regard to Mr Ngaïssona's restrictions on contact".¹² In this respect, the Registry would like to highlight that it follows the Chamber's orders to, *inter alia*, duly report on what is observed from monitored transcripts or conversations when it is suspected that a potential breach of a Chamber's order may have occurred. The Registry is guided by the Chamber's instructions to review the transcripts and the existing legal framework relating to potential breaches. Accordingly, the Registry is tasked with intercepting calls when information exchanged with an interlocutor may be case-related. The Registry also relies on its past experience in dealing with numerous detained persons who have been under monitoring regime. In discharging its reporting obligation, the Registry cites transcripts *verbatim* for the Chamber's ultimate consideration.

Allegations made in relation to the Registry's reporting obligation concerning the unknown third party

12. The Defence observes that the Registry's Seventh Report consists of "mere suggestions of impropriety reported by the Registry, which has regrettably shown partiality and a lack of due diligence in its investigation ordered by the Chamber".¹³ At issue here appears to be the opposing views between the Registry and the Defence on the issue of who this individual is and whether Mr Ngaïssona knows "[REDACTED]".

¹² *Ibid.*, para.3.

¹³ *Ibid.*, para.21.

13. On the one hand, the Defence provides a phone number for this individual and submits in its Observations that: “[REDACTED]”¹⁵, and that “(...) [REDACTED]”.¹⁶

14. On the other hand, following the Chambers-ordered review of the conversations and transcripts of Mr Ngaïssona from 18 July 2019 until 18 September 2019, the Registry maintains its conclusion that to date the identity of the third party remains unknown and points to the extracts of conversation previously highlighted for the Chamber’s consideration, in which Mr Ngaïssona himself inquires as to this third party.

1 - Alleged Registry’s lack of due diligence in the course of its investigation

15. To further specify its previous report and for the purpose of the present reply, the Registry would like to highlight that the Seventh Report was based on the review of a total of 197 conversations, covering approximatively 22 hours of conversations,¹⁷ with 15 interlocutors.

16. This process has been resource consuming for both the Language Services Section of the Registry (“LSS”) and the Detention Section (“DS”). Thus, the Registry took the necessary time for LSS to interpret the telephone conversations and give transcriptions, and the DS to conduct the analysis, as required.

¹⁴ Defence Observations, para. 25.

¹⁵ *Ibid.*, para. 25.

¹⁶ *Ibid.*, para. 30.

¹⁷ 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, para. 14.

17. Moreover, to reply to the Defence's allegation questioning the Registry's methodology, the Registry recalls that the Chamber ordered it to conduct an investigation into the identity of the third party, "to the extent possible".¹⁸
18. As a result of its mandate, the Registry, in particular DS, confined its inquiry into the identity of the third party, namely "[REDACTED]", to a review of the transcripts and conversations, in order to check whether this information could determine the identity of the third party, or detect any breaches to the communication regime.¹⁹ Whilst the investigation did not identify the third party, it did reveal information which may be considered for follow up enquiries and further investigation if the Chamber considers that desirable. It would go beyond the Registry's mandate to pursue such an investigation.
19. Additionally, the telephone number of the "unknown" third party given by the Defence was of little to no assistance to the Registry's particular investigation. In this respect, the Registry verifies identities of individuals detained persons wish to contact. In accordance with the internal procedures in the DC, the DS staff verify external numbers through the DC's vetting procedure on verification of telephone contacts. However this verification procedure is meaningful only if a telephone number is provided together with a telephone number form, which requires the detained person to supply mandatory information such as a name. This form and information enable DS staff to conduct the verification of the identity of the contact and the information provided in the form. With only a phone number and no additional information the Registry could not deepen its investigation further than a review of the telephone transcripts.

¹⁸ Seventh Decision, para.54.

¹⁹ *Ibid.*, paras 54, 56.

2 - Alleged Registry's lack of neutrality in relation to the unknown third party

20. The Defence finds the Registry's report biased when reporting on the potential breach concerning the third party, as the Defence maintain that "[REDACTED]".²⁰ However, the Registry has observed at least six conversations whereby Mr Ngaïssona proactively asked [REDACTED] whether "[REDACTED]" or "[REDACTED]" came or had news. These conversations cover the period from 17 June 2019 to 8 August 2019:

- 1 July 2019: "[REDACTED]?"
- 8 July 2019: "[REDACTED]?"
- 11 July 2019: "[REDACTED]?"
- 15 July 2019: "[REDACTED]?"
- 8 August 2019: "[REDACTED]?"
- The 18 July 2019 conversation:

[REDACTED]

21. As per the Registry's practice, transcripts are provided by *verbatim* citations and are not subject to analysis that would jeopardize the Registry's neutrality.

In relation to the expanded investigation

22. The Chamber ordered the Registry to conduct an expanded investigation into the telephone calls and provide an update on the results of this investigation. The Registry was also ordered to report any breach of communications. The results of this analysis were reported in the Seventh Report, and challenged by the Defence in its observations.²¹

²⁰ Defence, "Consolidated Defence Observations Pursuant to the "Decision Pursuant to Regulation 101 of the Regulations of the Court" (ICC-01/14-01/18-357-Conf-Exp) and the Registry's "Request for an Extension of time for the Submission of the Seventh Report"', 02 October 2019, ICC-01/14-01/18-373- Conf-Exp, para. 30.

²¹ See e.g., Defence Observations, paras. 32-36

23. Regarding the use of the speakerphone, the Registry is not convinced that during the conversation dated on 18 July 2019, as stated by the Defence Observations, Mr Ngaïssona was not aware of that putting the phone on speakerphone was not allowed. However, notwithstanding, a second review of the conversation and transcript by another interpreter suggests that the actual phone was also passed to the “[REDACTED]” for the conversation to take place.

24. By way of clarification, the memorandum issued on 15 August 2019 served as a reminder to all the detained persons of the ICC DC. As previously reported, the analysis of the transcripts revealed that on various dates prior to the issuance of the internal notification, Mr Ngaïssona urged his interlocutors to “[REDACTED]” on 18 July 2019,²² “[REDACTED]” on 22 July 2019.²³ At several times, Mr Ngaïssona told his interlocutors to speak with a lower voice or not to speak at all but listen.

25. The memorandum served to continually remind all detained persons that they are only allowed to speak to individuals on the approved telephone contact list. Detained persons are well aware that they are only allowed to speak to individuals on their approved telephone contact lists, this awareness being through various internal DC procedures, telephone forms, provision of updated telephone contact lists, internal notifications, not to mention the Chamber’s own decisions restricting contact to duly identified individuals.

²² Sixth Report, para.13.

²³ *Ibid.*, para.14.

26. The Registry also recalls that on 1 July 2019 in a conversation with [REDACTED] the interpreters reported hearing a third unknown persons, gender undetermined make a greeting to Mr Ngaïssona to which Mr Ngaïssona responded. On 25 July 2019 during another conversation with a [REDACTED], the [REDACTED] informed Mr Ngaïssona that a person referred to as '[REDACTED]' is listening to the conversation. So the Registry observes that the course of conduct of Mr Ngaïssona and his interlocutors has been one which sought to allow undisclosed, and non-vetted people who were not approved by the DS to partake in his telephone conversations which took place even though their role was silent. Mr Ngaïssona was already well aware that he had been placed under a regime of restrictive communications and he was already well aware of the process required to have someone added to his list non-privileged telephone list.

Alleged lack of culturally sensitive approach in detention

27. The Defence observes concerning [REDACTED], that “the Detention Centre has a duty to adopt culturally-sensitive approaches in its interactions with the detainees, including the vetting process”.²⁴

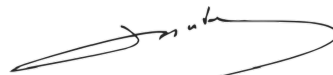
28. The Registry would like to clarify that respect for detained persons is a guiding principle within the DC, including respect for cultural sensitivities. Furthermore, the administration staff of the DS are [REDACTED], aware of the African culture surrounding families, with a combined 22 years of direct hands on experience in the DC of managing telephone and family contacts with detained persons and their families.

²⁴ *Ibid.*, para. 29.

29. At issue for the Registry in the Seventh Report was whether Mr Ngaïssona misled the Registry or submitted misleading information on his telephone number form. Information provided to the Registry on the standard telephone number contact form must be accurate and verifiable by Registry staff. These standards apply to all detained persons equally. Thus, a long-time acquaintance cannot be introduced as a family member, which is limited to biological family ties.

30. Irrespective, the Chamber has ordered that Mr Ngaïssona's non-privileged telephone contacts are restricted to only family members.²⁵ The Registry, and specifically the DS, is tasked with rendering effective the Chamber's restrictions on contact, and as such, non-family members and extended family members have been removed from his non-privileged telephone contact list.

31. As a final note, the Registry considers that, given its overriding obligation under the Rome Statute to protect victims and witnesses, the Registry should continue highlighting any conversation which gives cause for concern in respect of the safety of any individual.



Marc Dubuisson, Director of the Division of Judicial Services
on behalf of
Osvaldo Zavala Giler, Registrar

Dated this 16 February 2026

At The Hague, the Netherlands

²⁵ Eighth Decision, paras. 39-42.