

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 20 February 2026

TRIAL CHAMBER V

Before: Judge Bertrand 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**

PUBLIC

Public Redacted Version of “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” (ICC-01/14-01/18-557-Conf-Exp), dated 17 June 2020

Source: Registry

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**

D30

D29

☒ **Legal Representatives of the Victims**

Legal Representatives of the Applicants

V44

V45

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of the Public Counsel for Victims

The Office of the Public Counsel for the Defence

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REGISTRY

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Counsel Support Section

M. Zavala Giler, Osvaldo

Victims and Witnesses Unit

☒ **Detention Section**

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. Pursuant to the email instruction given by Trial Chamber V (“Chamber”),¹ the Registry submits in accordance with regulation 24 *bis* of the Regulations of the Court (“RoC”), its observations on the matters raised in the “Defence Request to Grant Privileged Status to Medical Expert and to Allow In-Person Visits” filed by the defence for Mr Patrice-Edouard Ngaïssona (“Request”, “Defence” and “Mr Ngaïssona”, respectively).²
2. The Registry mainly observes that because of the temporary suspension due to the Covid-19 pandemic (“Pandemic”) of in-persons visits in the International Criminal Court Detention Centre (“ICC”, “Court” and “DC”, respectively), a viable alternative exists *via* telephone and video conferencing to allow for the defence medical expert’s assessment, should the Request be granted by the Chamber. The Registry recommends that, for the time being, the [REDACTED] evaluation by the expert be conducted via these alternative means.

II. Classification

3. In accordance with regulation 23 *bis*(2) of the RoC, the present report is classified confidential *ex parte* only available to the Defence for Mr Ngaïssona, and the Registry, as it refers to documents and decisions with the same classification, and because it contains information relating to Mr Ngaïssona’s privacy and internal detention-related matters.

¹ Email from Trial Chamber V to the Registry, “Submissions on ICC-01/14-01/18-544-Conf-Exp”, 8 June 2020 at 11:38.

² Defence Request, ICC-01/14-01/18-544-Conf-Exp, 5 June 2020.

III. Applicable law

4. For the purpose of the present submission, the Registry has considered regulation 103 (4) RoC, and regulations 155, and 157 of the Regulations of the Registry ("RoR").

IV. Procedural history

5. On 19 March 2020, the Chief Custody Office ("CCO") communicated his "URGENT New Detention Centre Temporary Measures Regarding COVID-19" ("Urgent Measures") to all detained persons and their respective counsels.³ The Urgent Measures were taken to "protect the health, safety and lives of the detained persons" by "minimizing the number of contact to detained persons, and thus the risk of contamination".⁴ Due to the ongoing nature of the Pandemic, these measures⁵ have been extended until the 29 June 2020 (included) with the approval of the Presidency, as explained below.⁶
6. On 26 May 2020, the Defence of Mr Ngaïssona addressed an email to the CCO to "[...] inquire whether it would be possible to allow [REDACTED] to visit Mr Ngaïssona on the 8th of June, or on a date shortly thereafter".⁷

³ Email from the CCO to all Defence teams, "Urgent - New DC temporary measures regarding COVID-19", 19 March 2020 at 15:16.

⁴ CCO Memo, "URGENT New Detention Centre Temporary Measures Regarding COVID-19", DS/2020/023/PC/mc, 19 March 2020.

⁵ See para. 15 below.

⁶ CCO Memo, "Extension of Detention Centre Temporary Measures Regarding COVID-19", DS/2020/043/PC/mc, 9 April 2020; CCO Memo, "Notice of Extension of Detention Centre COVID-19 Temporary Measures and Presidency Approval of the Suspension of Relevant Regulations", DS/2020/046/PC/mc, 24 April 2020; CCO Memo, "Notice of Extension of Detention Centre COVID-19 Temporary Measures and Presidency Approval of the Suspension of Relevant Regulations until 1 June 2020", DS/2020/057/HT/mc, 22 May 2020; CCO Memo, "Notice of Extension of Detention Centre COVID-19 Temporary Measures and Presidency Approval of the Suspension of Relevant Regulations until 8 June 2020", DS/2020/058/PC/mc, 1 June 2020; CCO Memo, "Notice of Extension of Detention Centre COVID-19 Temporary Measures until 15 June 2020 and Re-applicability of the Time Limits for Complaints", DS/2020/060/PC/mc, 10 June 2020; CCO Memo, "Notice of Extension of Detention Centre COVID-19 Temporary Measures until 29 June 2020", DS/2020/061/PC/mc, 16 June 2020.

⁷ Email from Mr Ngaïssona Defence team to the CCO, "[REDACTED] evaluation of Mr Ngaïssona", 26 May 2020 at 11:03.

7. On 27 May 2020, the CCO informed the Defence that “At this point in time and in line with the advice of the ICC Medical Officer and the national position of the Host State it is not possible to facilitate a physical visit to the DC”.⁸ The CCO also communicated to the Defence that the Registry is working towards developing a video conference system at the DC that may be used by counsel and any other authorised persons within their respective teams.
8. On 5 June 2020, the Defence submitted the Request,⁹ asking the Chamber 1) to grant [REDACTED] privileged communications with Mr Ngaïssona and access to confidential information, and 2) to order the CCO to allow [REDACTED] to conduct in-person visits to Mr Ngaïssona at the Detention Centre, accompanied by an interpreter, for the duration of [REDACTED] evaluation.¹⁰
9. On 15 June 2020, the Registry requested the Chamber to consider granting the Registry an extension of time-limit until 17 June 2020, for the submission its observations on the Request.¹¹ On the same day, the Chamber granted said request for extension.¹²

V. Submissions

1) *Granting [REDACTED] privileged communications and visits*

⁸ Email from the CCO to Mr Ngaïssona Defence team, “RE: [REDACTED] evaluation of Mr Ngaïssona”, 27 May 2020 at 14:56.

⁹ Defence Request, ICC-01/14-01/18-544-Conf-Exp, 5 June 2020.

¹⁰ Email from Trial Chamber V to the Registry, “Submissions on ICC-01/14-01/18-544-Conf-Exp”, 8 June 2020 at 11:38.

¹¹ Email from the Registry to Trial Chamber V, “Submissions on ICC-01/14-01/18-544-Conf-Exp”, 15 June 2020 at 12:50.

¹² Email from Trial Chamber V to the Registry, “RE: Submissions on ICC-01/14-01/18-544-Conf-Exp”, 15 June 2020 at 15:35.

10. On 27 March 2020, the Registry appointed as part of Mr Ngaïssona's Defence team, [REDACTED]. Considering that Mr Ngaïssona's communications are currently subject to a judicially ordered active monitoring regime and thus under restrictions of contacts,¹³ the Registry invited the Defence to request authorization from the Chamber in order to add [REDACTED] to Mr Ngaïssona's privileged contact list. Therefore, the Registry requests guidance from the Chamber to assess whether granting privileged communications to [REDACTED] would be compatible with Mr Ngaïssona's current active monitoring regime.¹⁴

2) *Access to confidential information*

11. In the Request, the Defence requests the Chamber "[...] to grant [REDACTED] [...] limited access to confidential information required in the conduct of his evaluation".¹⁵ The Registry understands that the Defence may be referring to access to confidential "medical" information that is contained in Mr Ngaïssona medical records. The Registry notes that the medical records of detained persons are governed by regulation 156 (4) RoR. Mr Ngaïssona is aware of the procedure through medical services and the MO of the DC for requesting access for third parties to his medical records. He is therefore invited to consult directly with the MO in providing the appropriate consent forms for granting access to his medical record.

12. Secondly, as [REDACTED] will be conducting an external medical evaluation under regulation 157 RoR, the Registry considers that the provisions of

¹³ Trial Chamber V, "Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention", 17 April 2020, ICC-01/14-01/18-484-Conf-Exp-Red

¹⁴ A similar situation arised in the case of *The Prosecutor v. Al Hassan Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*. See "Decision on the scope of privileged visits and phone calls to Mr Al Hassan by medical experts and members of the Defence team", 22 January 2020, ICC-01/12-01/18-560, p. 5, paras. 8-9.

¹⁵ Request, para. 9.

regulation 157 (7) to (10) RoR apply, and [REDACTED] will be in contact directly with the MO for any relevant information in this respect.

- 3) *Allowing [REDACTED] to conduct in-person visits at the DC for the duration of Mr Ngaïssona's evaluation*

13. It is the Registry's understanding that [REDACTED] would be in contact with Mr Ngaïssona as a member of the Defence team. The Registry makes the following observations on the defence's request for an in-person [REDACTED] visit of the defence medical expert.

14. First, the Registry recalls that the Medical Services offers [REDACTED] services to all detained persons, [REDACTED]. This is the case at hand.¹⁶

15. Despite the suspension of non-acute appointments as explained below, all essential medical appointments and diagnostic care remain in place, including [REDACTED] services. Accordingly, the MO closely follows the medical condition of Mr Ngaïssona and all detained persons during this period.¹⁷

16. Second, notwithstanding the availability of above-mentioned [REDACTED] services, and should the Chamber consider granting the Request, the Registry draws the Chamber's attention to the following. As a result of the Pandemic

¹⁶ Registry, "Registry Report Following the "Decision Pursuant to Regulation 101 of the Regulations of the Court", ICC-01/14-01/18-424-Conf-Exp", ICC-01/14-01/18-429-Conf-Exp, 17 February 2020, paras. 12 and 14; Pre-Trial Chamber II, "Decision on the Ngaïssona Defence Request for Leave to Appeal the 3 February 2020 Decision Pursuant to Regulation 101", ICC-01/14-01/18-431-Conf-Exp, 21 February 2020, para. 20 footnote 15.

¹⁷ With regard to regulations concerning medical services, the Presidency acknowledged that no suspension of said regulations has taken place as, indeed, essential medical appointments, remain in place.

in The Netherlands and the world, on 19 March 2020, the CCO notified a memo to all detained persons informing them of

- a. temporary suspension of all visits to the DC, including legal visits, which can still be conducted *via* telephone communication;
- b. temporary suspension of non-acute in-person medical appointment, including appointments with dietitians, dentist, physical therapy etc.,¹⁸

As mentioned above, the Urgent Measures are approved by the Presidency and currently remain in place until 29 June 2020, depending on the evolution of several factors.

17. Indeed, by way of background and for the sake of completeness, all measures put in place at the DC were, *inter alia*, following the recommendation of the Medical Officer ("MO"), pursuant to regulation 155(2) of the RoR. The renewed Presidency's approvals to suspend the application of certain regulations in accordance with regulation 96(2) of the RoC are equally based on the MO's advice to maintain restrictions measures to address the Pandemic.

18. Furthermore and as previously submitted before this Chamber,¹⁹ the approved measures were undertaken following consultation and agreement between [REDACTED], as part of the joint duty of care to all detained persons housed together during the Pandemic.²⁰

¹⁸ CCO Memo, "URGENT New Detention Centre Temporary Measures Regarding COVID-19", DS/2020/023/PC/mc, 19 March 2020.

¹⁹ Registry, "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, paras. 26-34; Trial Chamber V, "Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention", 17 April 2020, ICC-01/14-01/18-484-Conf-Exp-Red, para. 28.

²⁰ *Ibid.*, para. 28.

19. In light of the above, due to the temporary suspension of all visits in detention, the Registry is currently unable to facilitate a physical visit by [REDACTED]. The Defence shared in the Request that [REDACTED] “[...] would be available to meet with Mr Ngaïssona for a first part of the evaluation on Monday 22 June 2020 from 14:00 until 17:00”.²¹ Since the Urgent Measures have been extended until 29 June 2020 inclusive, no physical visit to Mr. Ngaïssona can take place before this date.

20. The Registry recommends that the in-person visit of [REDACTED] at the DC be postponed until as soon as physical visits will resume.

4) *Alternatives to the in-person visits of [REDACTED] for [REDACTED] evaluation of Mr Ngaïssona*

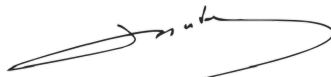
21. Since the beginning of the Pandemic, [REDACTED] consultations remain available to all detained persons over the phone from the DC. Moreover, throughout The Netherlands, the current practice is that [REDACTED] consultations take place *via* phone or video conference. The Registry notes that in many GP practices and [REDACTED] policlinics in the Netherlands over the last few months during the Corona crisis video conference has been and is still being used as an acceptable alternative to vis-a-vis contact between patient and [REDACTED].

22. The Registry has been working towards developing and rolling out a system of facilitating video conferencing between the defence teams and detained persons. After having faced and overcome a number of legal, technical and security issues, the Privileged Video Conference (“PVC”) is now established at the DC with final quality assurance testing having taken place. Guidance

²¹ Request, para. 21.

on its use and the booking of PVC slots by counsel for privileged meetings will be sent to all Lead Counsel within two days.

23. The PVC has been implemented as a temporary alternative to physical visits in response to the temporary suspension of Defence team visits at the DC during the COVID-19 crisis. This temporary solution will remain in place as long as the Urgent Measures will remain in force. Since the PVC system allows privileged communications between detained persons at the DC and their Defence team through video conference, [REDACTED] may also avail himself of this system to conduct his [REDACTED] evaluation of Mr Ngaïssona.



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

Dated this 20 February 2026

At The Hague, the Netherlands