

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No. ICC-01/14-02/18

Date: 23 January 2019

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

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

**Confidential, *EX PARTE*, only available to the Prosecutor and
the Defence for Patrice-Edouard Ngaïssona and Alfred Yekatom**

Decision pursuant to Regulation 101 of the Regulations of the Court

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for Patrice-Edouard Ngaïssona

Counsel for Alfred Yekatom

Stéphane Bourgon

Legal Representatives of Victims

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, Registrar

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Paddy Craig

**Victims Participation and Reparations
Section**

Other

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ issues this decision pursuant to regulation 101 of the Regulations of the Court.

I. PROCEDURAL HISTORY

1. On 30 October 2018, the Prosecutor submitted under seal, *ex parte*, an application for the issuance of a warrant of arrest for Patrice-Edouard Ngaïssona (“Ngaïssona”) for crimes against humanity and war crimes committed in the western Central African Republic (the “CAR”) between December 2013 and December 2014 by militias, collectively known as the Anti-Balaka.² In that application, the Prosecutor also requested the Chamber to order the Registry to: (i) “prohibit any exchange or contact between” Ngaïssona and Alfred Yekatom (“Yekatom”); and (ii) “prohibit [Ngaïssona’s] telephone privileges [upon his arrival at the Court’s Detention Centre] except with regard to Counsel and direct family members until [his] initial appearance before the Chamber, subject to extension upon the Chamber’s review” (the “Request”).³ The Prosecutor submitted that there are reasonable grounds to believe that “contact between [Ngaïssona and Yekatom] and with other associates would prejudice the outcome of the investigation under regulation 101(2)(b) of the Regulations [of the Court] since such contact increases both the risk of collusion between [Ngaïssona and Yekatom] and the risk of tampering with witnesses”.⁴

2. On 7 December 2018, following the “Prosecution’s Request for Expedited Consideration of its Application for Warrant of Arrest (ICC-01/14-18-US-Exp) in respect of Patrice Edouard NGAISSONA” of 7 December 2018,⁵ the Chamber issued a warrant of arrest for Ngaïssona for his alleged criminal responsibility pursuant to articles 25(3)(a) and (c) of the Rome Statute (the “Statute”) for crimes against humanity and war crimes committed in various locations in the CAR, between at least 5 December 2013 and at least December 2014.⁶

¹ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-27.

² ICC-01/14-01/18-2-US-Exp, together with 11 under seal, *ex parte* annexes.

³ ICC-01/14-01/18-2-US-Exp, para. 357.

⁴ ICC-01/14-01/18-2-US-Exp, para. 357.

⁵ ICC-01/14-31-US-Exp.

⁶ ICC-01/14-33-US-Exp.

3. On 12 December 2018, Ngaïssona was arrested by the authorities of the French Republic pursuant to the Court's request for cooperation seeking his arrest and surrender.⁷

4. On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.

II. ANALYSIS

5. The Single Judge notes articles 21(1)(a) and (3) and 57(3)(a) of the Statute, regulations 97, 98, 99(1)(i) and 101 of the Regulations of the Court and regulation 174(1) of the Regulations of the Registry. Article 57(3)(a) of the Statute permits the Chamber to issue, at the Prosecutor's request, such orders as may be required for the purpose of an investigation. In that regard, regulation 101 of the Regulations of the Court provides, in the relevant part, that:

2. The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact [...] (b) [c]ould prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation; (c) [c]ould be harmful to a detained person or any other person; [...] or (f) [i]s a threat to the protection of the rights and freedom of any person.

3. The detained person shall be informed of the Prosecutor's request and shall be given the opportunity to be heard or to submit his or her views. In exceptional circumstances such as in an emergency, an order may be made prior to the detained person being informed of the request. In such a case, the detained person shall, as soon as practicable, be informed and shall be given the opportunity to be heard or to submit his or her views.

6. In so far as the Prosecutor's Request concerns the prohibition of any exchange or contact between Ngaïssona and Yekatom, the Single Judge considers it appropriate, in order to evaluate the Request, to preliminarily order the Registrar to submit a report on the feasibility and the direct and indirect costs of separating Ngaïssona and Yekatom within the Detention Centre, as well as on the effects that such a measure would entail on the personal lives and rights of Ngaïssona and Yekatom, no later than 25 January 2019. Pending the submission of this report, the Single Judge, with a view to not defeating the purpose of any measure which might appear necessary,

⁷ Registry, *The Prosecutor v. Patrice-Edouard Ngaïssona*, Rapport du Greffe sur l'arrestation de Patrice-Edouard Ngaïssona par les autorités françaises, 20 December 2018, ICC-01/14-02/18-9-US-Exp, paras 4, 6.

provisionally prohibits any exchange or contact between Ngaïssona and Yekatom and, to this end, orders the Registrar to provisionally place Ngaïssona and Yekatom in separate wings of the Detention Centre until 29 January 2019 (inclusive).

7. In so far as the Prosecutor's Request concerns the prohibition of Ngaïssona's telephone privileges, the Single Judge is persuaded, in the light of the submissions made by the Prosecutor, that there are reasonable grounds to believe that any contacts between Ngaïssona and his associates in the CAR could affect the investigation and the outcome of the proceedings against him. The Single Judge recalls the findings made by the Chamber when issuing the warrant of arrest for Ngaïssona that he "remains a key Anti-Balaka figure, in addition to being a former minister, founder and President of a political party and successful businessman", which establishes, *inter alia*, that he could be in a position to reach, intimidate, or harm (potential) witnesses, their families or other individuals cooperating with the Court".⁸ The Single Judge is also mindful of the fact that "nearly 80% of the territory of the CAR is still under the control of armed groups, including the Anti-Balaka".⁹

8. Accordingly, the Single Judge considers it warranted to restrict Ngaïssona's telephone calls for a period of two weeks as of his arrival to the Court's Detention Centre, with the exception of: (i) calls to or from the persons identified in regulations 97 and 98 of the Regulations of the Court and regulation 174(1) of the Regulations of the Registry; and (ii) calls to a limited number of individuals, such as family members, whose identities and contact details will have to be duly verified beforehand with the support of the Victims and Witnesses Unit. Any discussion related to the present case with the individuals referred to above under (ii) is prohibited. The use of obscure or coded language during such calls is also prohibited. In order to ensure that the above directives are followed, the Single Judge considers it appropriate to order the active monitoring of telephone calls. The Chief Custody Officer will thus be in a position to stop any call made in violation of these directives.

9. Similarly, Ngaïssona is prohibited from using obscure or coded language or mentioning the present case in written correspondence. The Chief Custody Officer is

⁸ ICC-01/14-33-US-Exp, para. 22.

⁹ ICC-01/14-33-US-Exp, para. 22.

required to intercept or confiscate any written correspondence in violation of this directive.

10. For the active monitoring of telephone calls and any correspondence received or sent to be effective, the Single Judge considers it appropriate to furthermore (i) limit the language of communication to French and Sango; and (ii) limit the duration of telephone calls to 60 minutes per week, provided that this does not interfere with the management of the Detention Centre. The Single Judge leaves the practical implementation of this directive to the Registry, depending on the availability of resources and languages. Ngaïssona is also prohibited from accessing the telephone facilities at the disposal of the other detainees of the Detention Centre.

11. Moreover, the Single Judge considers it warranted to restrict visits for Ngaïssona at the Detention Centre for a period of two weeks as of his arrival to the Court's Detention Centre with the exception of (i) visits from the persons identified in regulations 97 and 98 of the Regulations of the Court and regulation 174(1) of the Regulations of the Registry; and (ii) visits from a limited number of individuals, such as family members, whose identities and contact details will have to be duly verified beforehand with the support of the Victims and Witnesses Unit. Any discussion related to the case is prohibited during visits referred to above under (ii). In order to ensure that this directive is followed, the Single Judge considers it appropriate to (i) limit the language of communication to French and Sango; and (ii) order the audio recording and active monitoring of such visits by a Court staff member fluent in French or Sango, as the case may be.

12. Finally, the Single Judge notes that, pursuant to regulation 101(3) of the Regulations of the Court and as recalled above, "[t]he detained person shall be informed of the Prosecutor's request and shall be given the opportunity to be heard or to submit his or her views". Regulation 101(3) of the Regulations of the Court further allows the Chamber, "in exceptional circumstances such as in an emergency", to issue an order prohibiting, regulating or setting conditions for contact prior to the detained person being informed of the Prosecutor's request. The Single Judges notes that the Prosecutor is requesting that the restrictions on Ngaïssona's contact be imposed as soon as he arrives at the Court's Detention Centre. The Single Judge is persuaded by the Prosecutor's Request in this regard, as to do otherwise may already cause irreparable prejudice to the proceedings or the investigation, or could endanger the

safety and wellbeing of (potential) witnesses. The Single Judge considers therefore that “exceptional circumstances” exist within the meaning of regulations 101(3) of the Regulations of the Court – i.e. urgency – which warrant the issuance of the present decision before Ngaïssona is informed of the Request. Ngaïssona will however be notified of the present decision and will have the opportunity to be heard or submit his views thereafter.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request, within the limits set forth above;

DIRECTS the Registrar to submit a report on the feasibility and the direct and indirect costs of separating Ngaïssona and Yekatom within the Detention Centre, as well as on the effects that such a measure would entail on the personal lives and the rights of Ngaïssona and Yekatom, no later than 25 January 2019;

DIRECTS the Registrar to provisionally put in place the measure stated in paragraph 6 of the present decision until 29 January 2019 (inclusive);

DIRECTS the Prosecutor, if she wishes to maintain Patrice-Edouard Ngaïssona and Alfred Yekatom in separate wings of the Detention Centre after 29 January 2019, to submit a request to this effect to the Chamber no later than 28 January 2019;

DIRECTS the Registrar to put in place the measures stated in paragraphs 7-11 of the present decision for a period of two weeks as of the arrival of Patrice-Edouard Ngaïssona to the Court's Detention Centre;

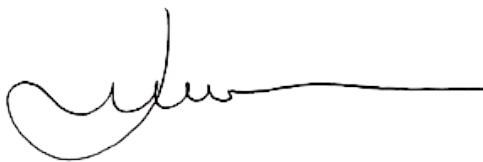
ORDERS the Registrar to notify the present decision to counsel for Patrice-Edouard Ngaïssona as soon as he or she is appointed;

DIRECTS the Registrar to submit to the Chamber a report on the implementation of the restrictions on contact ordered in paragraphs 7-11 of the present decision no later than two weeks after the arrival of Patrice-Edouard Ngaïssona to the Court's Detention Centre;

DIRECTS the Prosecutor, if she wishes to request restrictions on contact for Patrice-Edouard Ngaïssona beyond the two-week period mentioned above, to submit such a request to the Chamber no later than 10 days after the arrival of Patrice-Edouard Ngaïssona to the Court's Detention Centre; and

ORDERS the Registrar to also file the present decision in the record of the case of the Prosecutor v. Alfred Yekatom with the same level of classification.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

**Judge Rosario Salvatore Aitala,
Single Judge**

Dated this Wednesday, 23 January 2019

At The Hague, Netherlands