

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

**No. ICC-01/14-02/18
Date: 6 February 2019**

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. PATRICE-EDOUARD NGAÏSSONA***

**Confidential, *ex parte*, only available to the Prosecutor and
the Defence for Patrice-Edouard Ngaïssona**

Redacted Version of Third 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 the Defence
Eric Plouvier

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

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”) issues this third decision pursuant to regulation 101 of the regulations of the court (the “Regulations”).

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.¹ In that application, the Prosecutor 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”.² 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 since such contact increases both the risk of collusion between [Ngaïssona and Yekatom] and the risk of tampering with witnesses”.³

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” filed on the same day,⁴ the Chamber issued a warrant of arrest for Ngaïssona for his alleged criminal responsibility pursuant to article 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 2014.⁵

¹ ICC-01/14-01/18-1-US-Exp, together with 11 under seal, *ex parte* annexes.

² ICC-01/14-01/18-1-US-Exp, para. 357.

³ ICC-01/14-01/18-1-US-Exp, para. 357.

⁴ ICC-01/14-02/18-4-US-Exp.

⁵ ICC-01/14-02/18-2-Conf-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.⁶

4. On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.⁷

5. On 23 January 2019, the Single Judge issued the "Decision pursuant to Regulation 101 of the Regulations of the Court" (the "23 January 2019 Decision").⁸ In that decision, the Single Judge provisionally prohibited any exchange or contact between Ngaïssona and Yekatom and, to that end, ordered the Registrar to provisionally place them in separate wings of the Detention Centre until 29 January 2019 (inclusive).⁹ Furthermore, the Single Judge restricted Ngaïssona's communications and visits for a two-week period upon his arrival at the Court's Detention Centre, prohibited him from using obscure or coded language, and ordered the active monitoring of telephone calls and any correspondence received or to be sent.¹⁰

6. On 29 January 2019, following the "Prosecution's Request to Continue the Separation of NGAISSONA and YEKATOM at the ICC Detention Centre" of 28 January 2019,¹¹ the Chamber rescinded the separation of Ngaïssona and Yekatom in the Detention Centre (the 29 January 2019 Decision).¹²

7. On 4 February 2019, the Chamber received the "Prosecution's Request that the Chamber Extend the Contact Restrictions Imposed in the 'Decision pursuant to Regulation 101 of the Regulations of the Court' (ICC-01/14-02/18-11-Conf-Exp)",

⁶ 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.

⁷ Registry, *The Prosecutor v. Patrice-Edouard Ngaïssona*, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, 25 January 2019, ICC-01/14-02/18-14-US-Exp, paras 5-14.

⁸ ICC-01/14-02/18-11-Conf-Exp.

⁹ ICC-01/14-02/18-11-Conf-Exp, para. 6.

¹⁰ ICC-01/14-02/18-11-Conf-Exp, paras 8-11.

¹¹ ICC-01/14-02/18-17-Conf-Exp; a confidential redacted version is also available, see ICC-01/1402/18-17-Conf-Red.

¹² ICC-01/14-02/18-19-Conf-Exp; a confidential, *ex parte*, redacted version is also available, see ICC-01/14-02/18-19-Conf-Exp-Red.

which requests the Chamber to extend the contact restrictions imposed on Ngaïssona on 23 January 2019 through 15 March 2019 (the “Request”).¹³

8. In the Request, the Prosecutor argues that an Anti-Balaka communiqué of 13 December 2018, which refers to the arrests of Ngaïssona and Yekatom as a “witch-hunt”, reflects that Ngaïssona “continues to be an influential and galvanising figure in CAR and among the Anti-Balaka”.¹⁴ Furthermore, the Prosecutor asserts that [REDACTED],¹⁵ which “would suggest NGAISSONA’s inclination to act in solidarity with the interests of these Anti-Balaka leaders (and his own) in doing whatever is necessary to derail the proceedings before this Court”.¹⁶ Finally, in the view of the Prosecutor, considering that the Single Judge rescinded the separation between Ngaïssona and Yekatom in the Detention Centre, “YEKATOM would be provided with a means of circumventing the Chamber’s orders [on his own contact restrictions] through NGAISSONA”.¹⁷ In this regard, the Prosecutor refers to the “the association between YEKATOM and NGAISSONA; the substantive alignment of their interests; the seriousness of the charges that they face; [REDACTED]; the circulation in CAR of the Suspects’ supporters and the availability of networks capable of influencing or endangering vulnerable and other witnesses and, by extension, the ongoing investigation”.¹⁸

9. The Chamber notes that regulation 101(3) of the Regulations provides that, if an order restricting the contacts of a detained person is made prior to the detained person being informed of a request to this effect by the Prosecutor, the detained person “shall, as soon as practicable, be informed and be given the opportunity to be heard or to submit his or her views”. The Chamber accordingly ordered that the 23 January 2019 Decision be communicated to Ngaïssona with a view to allowing him to be heard or submit his views.¹⁹ The Defence for Ngaïssona received this decision on 25 January 2019. However, the Defence for Ngaïssona has not submitted views on the need to maintain or rescind the contact restrictions imposed on

¹³ ICC-01/14-02/18-25-Conf-Exp; a confidential redacted version is also available, see ICC-01/14-02/18-25-Conf-Red.

¹⁴ ICC-01/14-02/18-25-Conf-Exp, para. 7.

¹⁵ [REDACTED].

¹⁶ ICC-01/14-02/18-25-Conf-Exp, para. 9.

¹⁷ ICC-01/14-02/18-25-Conf-Exp, para. 14.

¹⁸ ICC-01/14-02/18-25-Conf-Exp, para. 16.

¹⁹ ICC-01/14-02/18-11-Conf-Exp, para. 12.

Ngaïssona. The Chamber considers that the Defence for Ngaïssona has been afforded the opportunity to submit its views on this matter and that it remains within its discretion to either do so or decline to do so.

10. The Chamber notes articles 21(1)(a) and (3) and 57(3)(a) of the Statute, regulations 23*bis*, 97, 98, 99(1)(i), 100 and 101 of the Regulations and regulation 174(1) of the Regulations of the Registry.

11. The Chamber recalls that restrictions on contacts and communications under the Court's statutory framework must be (re-)assessed in the light of concrete, specific and up-to-date information. Having carefully reviewed the material and arguments presented by the Prosecutor and mindful of Ngaïssona's rights enshrined in the Court's legal texts, the Chamber is persuaded, for the time being, that there remain reasonable grounds to believe that contact between Ngaïssona and his associates could affect the investigation and the outcome of the proceedings against him. The Chamber recalls the relevant findings it adopted when issuing the warrant of arrest for Ngaïssona,²⁰ which formed, in part, the basis for the 23 January 2019 Decision.²¹ The Chamber is of the view that the circumstances justifying restrictions of Ngaïssona's contacts have not changed and, therefore, still require, for the moment, the temporary continuation of those restrictions. Therefore, the Chamber considers that the measures and conditions, as adopted in the 23 January 2019 Decision and as modified by the 29 January 2019 Decision, shall provisionally stay in place until Friday, 1 March 2019 (inclusive), unless otherwise decided.

12. The Chamber is prepared to revisit this matter again, depending on the information that will be presented. To this end, the Registrar is ordered to prepare a report on the implementation of the Chamber's decision setting out any relevant information relating to Ngaïssona's behaviour or communications that may give rise to suspicion that he interferes with the Prosecutor's investigation (in particular that he poses a threat to potential witnesses and victims) or that he engages in activities that may affect the outcome of the proceedings.

²⁰ ICC-01/14-01/18-2-US-Exp, para. 22.

²¹ ICC-01/14-02/18-11-Conf-Exp, para. 7.

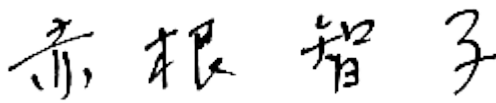
FOR THESE REASONS, THE CHAMBER HEREBY

- a) **GRANTS** provisionally the extension of the contact restrictions imposed on Patrice-Edouard Ngaïssona by way of the 23 January 2019 Decision and as modified by the 29 January 2019 Decision until Friday, 1 March 2019 (inclusive), unless otherwise decided;
- b) **ORDERS** the Registrar to submit to the Chamber a report, in accordance with paragraph 12 above, on the implementation of the contact restrictions imposed on Patrice-Edouard Ngaïssona by no later than Monday, 25 February 2019; and
- c) **ORDERS** the Prosecutor and the Defence to submit their observations, including on the Registry report, if any, by no later than Wednesday, 27 February 2019.

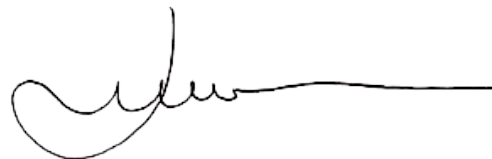
Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua,
Presiding Judge**



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Wednesday, 6 February 2019

At The Hague, Netherlands