

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: *ICC-01/14-01/18*

Date: **1 March 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. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

**Confidential, *EX PARTE*, only available to the Prosecution and the NGAISSONA
Defence**

**Defence Observations Pursuant to the "Third Decision Pursuant to Regulation 101
of the Regulations of the Court" (ICC-01/14-02/18-27-Conf-Exp-Red) and
Application for an Extension of a Time Limit Pursuant to Regulation 35(2) of the
Regulations of the Court**

Source: Defence of Patrice-Edouard Ngaïssona

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

The Office of the Prosecutor
Ms Fatou Bensouda
Mr James Stewart

Counsel for the Defence of Mr Ngaïssona
Mr Geert-Jan Alexander Knoops

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Defence hereby submits an application pursuant to Regulation 35(2) of the Regulations of the Court ("the Regulations"), seeking authorization from Pre-Trial Chamber II ("the Chamber") to present observations as ordered by the Chamber in the "Third Decision pursuant to Regulation 101 of the Regulations of the Court" ("the Third Decision"),¹ after expiration of the deadline set in the Third Decision.

II. Confidentiality

2. These submissions are filed "confidential, EX PARTE, only available to the Prosecution and the Ngaïssona Defence" as they concern decisions of the same classification, as well as information which, if divulged, may defeat the purpose of the submissions. The Defence will file a confidential redacted version as soon as practicable.

III. Procedural history

3. On 23 January 2019, Mr Ngaïssona was transferred to the ICC Detention Centre where he is currently held.
4. On 23 January 2019, the Single Judge of Pre-Trial Chamber II issued the First Decision in which the Registry was, *inter alia*, directed to put in place several measures that restrict Mr Ngaïssona's contact with the outside world through written correspondence, non-privileged telephone calls and family visits.² The

¹ Pre-Trial Chamber II, "Redacted Version of Third Decision pursuant to Regulation 101 of the Regulations of the Court", 6 February 2019, ICC-01/14-02/18-27-Conf-Exp-Red.

² Single Judge, "Decision pursuant to Regulation 101 of the Regulations of the Court", 23 January 2019, ICC-01/14-02/18-11-Conf-Exp.

Defence did not have access to this Decision until 1 March 2019, at 14:21.³

5. On 6 February 2019, the Registry submitted its "Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge".⁴ In this report, the Registry reported no incidents during the monitoring of Mr Ngaïssona's contact with the outside world.
6. On 6 February 2019, the Chamber issued its Third Decision in which it ordered the Registry to prepare a report on the implementation of the restrictions on contact as ordered in the First Decision "setting out any relevant information relating to Ngaïssona's behaviour on 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".⁵
7. On 15 February 2019, Geert-Jan Alexander Knoops was appointed Lead Counsel of the Defence of Mr Ngaïssona.⁶ On 20 February 2019, three members of the Defence team for Mr Ngaïssona were appointed.
8. On 25 February 2019, the Registry issued its "Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by the Single Judge" ("the Second Report").⁷ In this report, the Registry reported no incidents during the monitoring of Mr Ngaïssona's contact with the outside world.

9. On 27 February 2019, the Prosecution filed its observations on the Second

³ See para. 14.

⁴ Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge",

6 February 2019, ICC-01/14-02/18-28-Conf-Exp.

⁵ ICC-01/14-02/18-27-Conf-Exp-Red, para. 12.

⁶ Corrected version of "Notification of the Appointment of Mr Geert-Jan Knoops as Counsel for Mr Patrice Edouard Ngaïssona", 15 February 2019, ICC-01/14-02/18-33-Corr.

⁷ ICC-01/14-01/18-125-Conf-Exp.

Report.⁸

IV. Applicable Law

10. Pursuant to Regulation 35(2) of the Regulations:

"The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control."

V. Submissions

1. The Application pursuant to Regulation 35 of the Regulations

11. Regulation 35 of the Regulations enables the Chamber to grant an extension of time if the participants seeking this extension can demonstrate that they were unable to file the application within the time limit for reasons outside of their control.

12. In the present case, the Defence acknowledges that it failed to comply with the Chamber's order contained in the Third Decision to present observations on the restrictions on contact of Mr Ngaïssona, which the Defence deeply and sincerely regrets. However, taking into account that Mr Ngaïssona's Defence team has been appointed as recently as on 20 February 2019, the Defence respectfully requests the Chamber to be granted leave to present the said observations after the expiration of the initial deadline of 27 February 2019.

13. The appointment of a Defence team is a process that may take several days, in order to obtain all the necessary access to the case record, with the assistance

⁸ ICC-01/14-01/18-131-Conf-Exp.

of the Registry. Restrictions on contact are a very concrete issue in the life of a detained person, which necessitates discussions between the detained person and his or her Counsel. In order to properly address the restrictions and their impact on Mr Ngaïssona's private and family life, the Defence needed to hold discussions with him, to fully inform Mr Ngaïssona on the restrictions and their purpose and to receive his views and experience on them, in order to take these views and experience into account in the Defence's observations.

14. Moreover, on 1 March 2019, the Defence received confirmation from the Court Management Section ("CMS") that, to date, it did not have access to the Single Judge's Decision of 23 January 2019,⁹ as only Mr Plouvier, former Counsel for Mr Ngaïssona, had access to the said Decision. By e-mail, CMS confirmed that access for the new Defence team has been established as of 1 March 2019.¹⁰

15. The Defence also notes that, regarding the Third Decision, it only has access to a confidential *ex parte* redacted version, whereas in order to properly address Mr Ngaïssona's interests and personal contacts, the Defence should have access to the unredacted Third Decision.

16. Therefore, the recent appointment of the Defence team for Mr Ngaïssona, the necessity of a dialogue between Mr Ngaïssona and his Defence team and the missing access to the Single Judge's Decision of 23 January 2019¹¹ have rendered impossible for the Defence to comply with the deadline set by the Chamber in the Third Decision and to apply for an extension of time earlier than today. The Defence deeply regrets this situation and apologizes to the Chamber for the inconvenience of the situation.

⁹ ICC-01/14-02/18-11-Conf-Exp.

¹⁰ Email sent on 1 March 2019, at 14:21.

¹¹ ICC-01/14-02/18-11-Conf-Exp.

17. However, the Defence also submits that the present observations, submitted only two days after the expiration of the initial deadline, do not prejudice the assessment of the restrictions by the Chamber and the proceedings as a whole.

18. Besides, the Defence will address the following observations without taking into account the observations presented by the Prosecution on 27 February 2019¹² as the Defence, subject to the same deadline, should have made these observations without knowing the content of the Prosecution's observations.

2. Defence observations with respect to the Third Decision

19. The Defence is prevented from making full and meaningful submissions with respect to the Third Decision, given that it did not have access to the Single Judge's Decision of 23 January 2019 until 1 March 2019¹³ and that it still does not have access to the Prosecution's application requesting restrictions on Mr Ngaïssona's contacts as well as the materials which may have underlined this application. For this reason, the Defence is also deprived of the means to challenge the Chamber's findings 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".¹⁴

20. Moreover, in the Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge¹⁵ of 6 February 2019 and in the Second Report, the Registry informed the Chamber that no incident had been reported with respect to Mr Ngaïssona's contact to the outside world. The Defence submits that this repeated absence of incident should be taken into

¹² ICC-01/14-01/18-131-Conf-Exp.

¹³ See para. 14.

¹⁴ Third Decision, para 11.

¹⁵ ICC-01/14-02/18-28-Conf-Exp.

account by the Chamber to lift the restrictions imposed or, in the alternative, to modify and reduce them.

21. The Defence reserves its rights to present further observations with respect to the restrictions imposed on Mr Ngaïssona once the factual foundation for the Prosecution's *ex parte* application is disclosed to the Defence.

RELIEF SOUGHT

22. The Defence respectfully requests the Chamber to:

- **GRANT** the Defence Application pursuant to Regulation 35(2) of the Regulations, and
- **LIFT** the contact restrictions imposed on Patrice-Edouard Ngaïssona by the Single Judge's Decision of 23 January 2019 and extended by the Third Decision.

23. In the alternative, the Defence respectfully requests the Chamber to:

- **GRANT** the Defence Application pursuant to Regulation 35(2) of the Regulations, and
- **MODIFY** and **REDUCE** the contact restrictions imposed on Patrice-Edouard Ngaïssona by the Single Judge's Decision of 23 January 2019 and extended by the Third Decision, which modification and reduction is to be determined by the Chamber in good justice.

Respectfully submitted,



Mr. Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 1 March 2019,
At The Hague, the Netherlands.