

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/14-01/18
Date: 12 December 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 NGAÏSSONA***

**Confidential, *Ex Parte*, only available to the Defence for Patrice-Edouard
Ngaïssona, the Registrar, and the Detention Section**

Decision on the Ngaïssona Defence Request to Obtain Transcripts

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

The Office of the Prosecutor

Counsel for Alfred Yekatom

Counsel for Patrice-Edouard Ngaïssona
Geert-Jan Alexander Knoops

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

Counsel Support Section

Victims and Witnesses Unit

Detention Section
Paddy Craig

**Victims Participation
and Reparations Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this Decision on the Ngaïssona Defence Request to Obtain Transcripts.

I. Procedural History

1. On 30 October 2018, the Prosecutor submitted under seal, *ex parte*, an application for the issuance of warrants of arrest for Patrice-Edouard Ngaïssona and Alfred Yekatom.¹ The Prosecutor further requested, *inter alia*, that their contacts be restricted upon arrival at the ICC Detention Centre, submitting that there were reasonable grounds to believe that contact between Ngaïssona, Yekatom and their associates would prejudice the outcome of the investigation within the meaning of regulation 101(2)(b) of the Regulations of the Court (the 'Regulations').²
2. On 11 November 2018, the Chamber issued the 'Warrant of Arrest for Alfred Yekatom'.³
3. On 17 November 2018, Yekatom was surrendered to the Court by the authorities of the Central African Republic.⁴ On the same day, the Single Judge, acting on behalf of the Chamber,⁵ issued the 'Decision pursuant to Regulation 101 of the Regulations of the Court', thereby restricting Yekatom's communications upon his arrival at the ICC Detention Centre for a period of two weeks.⁶
4. On 7 December 2018, the Chamber issued the 'Warrant of Arrest for Patrice-Edouard Ngaïssona'.⁷
5. On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.⁸ On the same day, the Single Judge, acting on behalf of the

¹ ICC-01/14-01/18-2-US-Exp, together with 11 under seal, *ex parte* annexes.

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

³ ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant of arrest is also available; see [ICC-01/14-01/18-1-Red](#).

⁴ Registry, Rapport du Greffe sur l'Arrestation et la Remise de M. Alfred Yekatom, ICC-01/14-01/18-17-US-Exp, paras 19-24.

⁵ Pre-Trial Chamber II, Decision designating a Single Judge, 9 November 2018, ICC-01/14-01/18-10.

⁶ ICC-01/14-01/18-11-Conf-Exp.

⁷ ICC-01/14-01/18-89-Conf-Exp. A public redacted version of the warrant of arrest is also available; see [ICC-01/14-01/18-89-Red](#).

⁸ Registry, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, ICC-01/14-01/18-101-US-Exp, paras 5-14.

Chamber,⁹ issued the ‘Decision pursuant to Regulation 101 of the Regulations of the Court’ (the ‘23 January 2019 Decision’), thereby restricting Ngaïssona’s contacts and communications upon his arrival at the ICC Detention Centre.¹⁰

6. Between 29 January 2019 and 9 July 2019, the Chamber issued five decisions regarding the contact restrictions in place for Ngaïssona.¹¹

7. On 20 February 2019, the Chamber issued the ‘Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters’, thereby joining the cases against Yekatom and Ngaïssona.¹²

8. On 15 May 2019, the Chamber issued the ‘Decision on the “Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines”’, thereby deciding that the confirmation hearing in the case against Yekatom and Ngaïssona shall commence on 19 September 2019.¹³

9. On 15 August 2019 and 13 September 2019, respectively, the Registry submitted the ‘Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II’ (the ‘Fifth Registry Report’)¹⁴ and the ‘Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II’ (the ‘Sixth Registry Report’).¹⁵

10. On 18 September 2019, the Chamber issued its ‘Decision Pursuant to Regulation 101 of the Regulations of the Court’, in which it, *inter alia*, ordered that

⁹ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-90.

¹⁰ ICC-01/14-01/18-98-Conf-Exp.

¹¹ ‘Second Decision pursuant to Regulation 101 of the Regulations of the Court’, ICC-01/14-01/18-106-Conf-Exp. A confidential *ex parte*, redacted version is also available; see ICC-01/14-01/18-106-Conf-Exp-Red; ‘Third Decision pursuant to Regulation 101 of the Regulations of the Court’, ICC-01/14-01/18-114-Conf-Exp. A confidential *ex parte*, redacted version is also available; see ICC-01/14-01/18-114-Conf-Exp-Red; Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-137-Conf-Exp; ‘Decision Pursuant to Regulation 101 of the Regulations of the Court’, ICC-01/14-01/18-176-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-176-Conf-Red; Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-240-Conf-Exp.

¹² [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-121](#).

¹³ [ICC-01/14-01/18-199](#).

¹⁴ ICC-01/14-01/18-276-Conf-Exp, together with a confidential, *ex parte* annex. A confidential *ex parte*, redacted version is also available; see ICC-01/14-01/18-276-Conf-Exp-Red.

¹⁵ ICC-01/14-01/18-337-Conf-Exp. A confidential redacted version is also available, see ICC-01/14-01/18-337-Conf-Exp-Red.

the Registry conduct an expanded investigation into Ngaïssona's non-privileged phone calls and report back to the Chamber in the Seventh Registry Report by 30 September 2019.¹⁶

11. On 27 September 2019, the Registry submitted its 'Request for an Extension for the submission of the Seventh Report'.¹⁷

12. On 2 October 2019, the Ngaïssona Defence submitted the '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 Submissions of the Seventh Report" (ICC-01/14-01/18-362-Conf-Exp), in which the Defence, *inter alia*, requested that the Registry be ordered to provide the full transcripts of the conversations referred to in the Fifth Registry Report and the Sixth Registry Report.¹⁸

13. On 3 October 2019, the Chamber issued its 'Decision on the Registry's Request for an Extension and the Contact Restrictions in place for Ngaïssona', in which it, *inter alia*, granted the Registry's Request for an extension until 4 November 2019 to submit the Seventh Registry Report and the results of its investigation into Ngaïssona's non-privileged phone calls, and directed the Registry to provide the Ngaïssona Defence with the complete transcripts of the conversations referred to in the Fifth Registry Report and the Sixth Registry Report by 4 November 2019 (the '3 October 2019 Decision').¹⁹

14. On 4 November 2019, the Registry filed the 'Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II'.²⁰

¹⁶ ICC-01/14-01/18-357-Conf-Exp. A confidential redacted version is also available, see ICC-01/14-01/18-362-Conf-Exp-Red.

¹⁷ ICC-01/14-01/18-362-Conf-Exp. A confidential redacted version is also available, see ICC-01/14-01/18-362-Conf-Exp-Red.

¹⁸ ICC-01/14-01/18-373-Conf-Exp.

¹⁹ Decision on the Registry's Request for an Extension and the Contact Restrictions in place for Ngaïssona, 3 October 2019, ICC-01/14-01/18-374-Conf-Exp. A confidential redacted version is also available, see ICC-01/14-01/18-374-Conf-Exp.Red.

²⁰ ICC-01/14-01/18-226-Conf-Exp.

15. On 8 November 2019, the Ngaïssona Defence filed the '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) (the '8 November 2019 Request').

16. On 11 November 2019, the Chamber issued the 'Decision on the Ngaïssona Defence Request to Obtain Transcripts'²¹ (the '11 November 2019 Decision'), granting the 8 November 2019 Request.

17. On 15 November 2019, the Ngaïssona Defence filed its 'Defence Observations Pursuant to the "Decision Pursuant to Regulation 101 of the Regulations of the Court" and the Registry's Seventh Report' (the 'Defence Observations').²²

18. On 22 November 2019, the Chamber directed the Registry to provide a Reply to the Defence Observations by 4 December 2019.²³

19. On 4 December 2019, the Registry filed the 'Registry Reply to Defence Observations' (the 'Registry Reply').²⁴

20. On 5 December 2019, the Ngaïssona Defence submitted the 'Defence Request to Obtain Transcript of Phone Call Mentioned in the "Registry Reply to Defence Observations (ICC-01/14-01/18-397-Conf-Exp)", (ICC-01/14-01/18-400-Conf-Exp)' (the 'Request').²⁵

II. Determination by the Chamber

21. In the Request, the Defence notes that the Registry Reply appears to refer to a conversation of which the Defence does not have the transcript. The Defence 'incorporates by reference its past submissions on the importance of being provided with the full and accurate transcripts of conversations rather than excerpts and quotes of those conversations'. Accordingly, the Defence requests that the Chamber order the

²¹ ICC-01/14-01/18-393-Conf-Exp.

²² ICC-01/14-01/18-397-Conf-Exp.

²³ Email from Pre-Trial Chamber II to the Office of the Director DJSS, sent on 22 November 2019, at 16:33.

²⁴ ICC-01/14-01/18-400-Conf-Exp.

²⁵ ICC-01/14-01/18-401-Conf-Exp.

Registry to provide the Defence with the transcript of the phone call mentioned at paragraph 20 of the Registry Reply.

22. In line with the Chamber's determination in the 3 October 2019 Decision and the 11 November 2019 Decision, the Chamber finds it appropriate that the Ngaïssona Defence have access to the full transcripts of calls referred to in the reports of the Registry which concern the contact restrictions in place for Ngaïssona. As such, the Chamber directs the Registry to provide to the Ngaïssona Defence the full transcript of the conversation referred to in paragraph 20 of the Registry Reply by no later than 16.00 on 13 December 2019.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request; and

DIRECTS the Registry to provide to the Ngaïssona Defence the full transcript of the conversation referred to in paragraph 20 of the Registry Reply by no later than 16:00 on 13 December 2019.

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

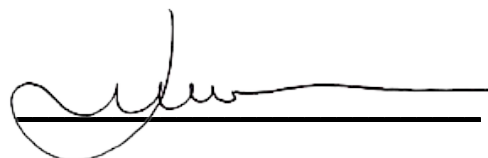


Judge Antoine Kesia-Mbe Mindua

Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Thursday, 12 December 2019

At The Hague, The Netherlands