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Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: **3 June 2020**

**TRIAL CHAMBER V**

**Before:** Judge Bertram 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**

**With Confidential Annexes 1,2,3,4 and 5, EX PARTE, only available to the Registry  
and the Ngaißsona Defence**

**Public Redacted Version of "Defence Request to Redress the Violations of Mr  
Ngaißsona's Rights in Detention"**

**Source:** Defence of Patrice-Edouard Ngaißsona

**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 Kweku Vanderpuye

**Counsel for the Defence of Mr Ngaïssona**

Mr Geert-Jan Alexander Knoops  
Ms Antonina Dyk  
Ms Chiara Giudici

**Counsel for the Defence of Mr Yekatom**

Ms Mylène Dimitri  
Mr Peter Robinson

**Legal Representatives of the Victims**

Mr Dmytro Suprun  
Mr Abdou Dangabo Moussa  
Ms Elisabeth Rabesandratana  
Mr Yaré Fall  
Ms Marie-Edith Douzima-Lawson  
Ms Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for the Victims**

**The Office of Public Counsel for the Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Mr Paddy Craig

**Victims Participation and Reparations Section Other**

## I. Introduction

1. For the past 16 months, Patrice-Edouard Ngaïssona ("Mr Ngaïssona") has been detained at the Detention Centre of the International Criminal Court ("the ICC detention centre" or "the detention centre").<sup>1</sup> Over this time period, the Defence for Mr Ngaïssona ("the Defence") has observed the significant deterioration of Mr Ngaïssona's physical and mental well-being as a result of his detention conditions, which do not comply with the Regulations of the Court ("the RoC") and the Regulations of the Registry ("the RoR"). The COVID-19 pandemic has only exacerbated Mr Ngaïssona's suffering, by prompting further limitations to his detention rights, including the suspension of counsel and family visits.
  
2. Pursuant to Rule 132*bis* of the Rules of Procedure and Evidence ("the Rules"), the Defence respectfully requests the Trial Chamber ("the Chamber") to order that Mr Ngaïssona's detention conditions comply with the minimum standards provided by the RoR and the RoC, in order to ensure Mr Ngaïssona's fair trial rights. Specifically, the Defence respectfully requests the Chamber to order that Mr Ngaïssona receives adequate and affordable food. Further, the Defence respectfully requests the Chamber to put an end to the excessive length of time Mr Ngaïssona spends locked up in his cell. The Defence respectfully submits that an involvement of the Chamber at this stage is necessary, in order to ensure Mr Ngaïssona's right to participate in his defence and in light of the inadequacy of the complaint procedure pursuant to Section V of the RoR to timely resolve these issues, as demonstrated in these submissions.

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<sup>1</sup>The French authorities transferred Mr Ngaïssona to the Seat of the Court on 23 January 2019. ICC-01/14-01/18-99, para. 4.

## I. Confidentiality

3. The Defence files the present submissions confidentially pursuant Regulation 23bis(2) of the Regulations of the Court since they refer to Mr Ngaïssona's private life and the content of certain exchanges with the Registry regarding Mr Ngaïssona's detention conditions. The Defence will file a public redacted version simultaneously. In general, the detention conditions of the detention centre are a matter of public interest, and thus should not be kept from the public.

## II. Applicable Law

4. Pursuant to Article 67(1) of the Rome Statute, *"the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality: (...) (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence."*
5. Pursuant to Rule 132bis of the Rules, *"a Trial Chamber may designate one or more of its members for the purposes of ensuring the preparation of the trial"*, and *"the Judge shall take all necessary measures in order to facilitate the fair and expeditious conduct of the trial proceedings, in consultation with the Trial Chamber."* The judge may *"refer specific issues to the Trial Chamber for its decision"*, either *proprio motu*, or at the request of a party. The functions of the judge may be performed in relation to preparatory issues, which include, pursuant to Rule 132bis(5)(f), *"dealing with the conditions of detention and related matters."* Moreover, Rule 192(3) of the Rules allows a detained person at the Detention Centre to have *"the right to raise matters regarding the conditions of his or her detention with the relevant Chamber."*

6. Pursuant to regulation 90 of the RoC, the Registrar has overall responsibility for all aspects of management of the detention centre, and the day-to-day fulfillment of these functions is delegated to the Chief Custody Officer. Pursuant to regulation 91(1) of the RoC, *"[a]ll detained persons shall be treated with humanity and with respect for the inherent dignity of the human person."* Regulation 106(1) of the RoC vests a detained person with the right to file a complaint against *"any administrative decision or order or with regard to any other matter concerning his or her detention."* The complaints procedure is regulated by regulations 218, 219, 220, 221 and 222 of the RoR.
  
7. Pursuant to regulation 162 bis (1) of the RoR, *"[t]he physical and mental health of detained persons is the concern of all staff engaged in the custodial and medical care of detained persons."*
  
8. Pursuant to regulation 187(1) of the RoR, *"[t]he Chief Custody Officer shall be responsible for the secure custody of all detained persons, for their safe and humane treatment, for the safeguarding of their rights as determined by the Court and for the maintenance of discipline and good order within the detention centre."*
  
9. Pursuant to regulation 199(1) of the RoR, *"[e]ach detained person shall be provided with food which is suitably prepared and presented and satisfies, in quality and quantity, the standards of dietetics and modern hygiene. The age, health, religion and cultural requirements of the detained person shall be taken into account in the preparation and in the distribution of food."*

### **III. Submissions**

**a. Mr Ngaïssona's detention conditions are in violation of the RoR and the RoC**

10. Since 23 January 2019, Mr Ngaïssona has been held in pre-trial detention at the ICC detention centre. The sole reason for which Mr Ngaïssona is detained is to meet the strictly circumscribed prerogatives of pre-trial detention provided for in Article 58 (1)(b) of the Rome Statute ("the Statute"), which cannot be construed to constitute punitive aims. Under no circumstances, should these prerogatives be used to cause undue hardship to a man who is presumed innocent under Article 66 of the Statute, and who contests the charges leveled against him. Therefore, Mr Ngaïssona should not be subject to any hardship or constraint other than what is strictly necessary to ensure Article 58(1)(b) of the Statute is respected,<sup>2</sup> and he should be placed in the best conditions possible to prepare his defence. This has not been the case. Rather, Mr Ngaïssona has faced undue and detrimental hardship for the past 16 months, which has materially affected his mental and physical well-being, resulting in his inability to fully engage with the Defence for the preparation of trial.

11. Pursuant to regulation 199 of the RoR, the detention centre has a positive obligation to provide detainees with *"food which is suitably prepared and presented and satisfies, in quality and quantity, the standards of dietetics and modern hygiene. The age, health, religion and cultural requirements of the detained person shall be taken into account in the preparation and in the*

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<sup>2</sup> Pursuant to Rule 3 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, or "Mandela Rules", "[i]mprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation."

*distribution of food.*"<sup>3</sup> For the past 16 months and counting, Mr Ngaïssona has been struggling to eat nutritious, affordable and culturally appropriate food. The food provided free of charge at the ICC detention centre being of poor quality and not culturally appropriate, Mr Ngaïssona is forced to buy his own food from the detention centre's "Africa Shopping List", at a price which is often two or even three times higher than the market price in the Netherlands.<sup>4</sup> As a consequence, his family and friends have significantly [REDACTED] to ensure, at least in part, his ability to eat food which is suitable to [REDACTED] and cultural requirements. This has resulted in [REDACTED] for Mr Ngaïssona and his family.

12. In order to remedy this harm, Mr Ngaïssona filed a complaint to the Chief Custody Officer of the detention centre ("the CCO") on 16 August 2019, arguing that the detention centre failed to discharge its obligation under regulation 199 of the RoR to provide detainees with affordable, culturally appropriate food, and asking for reimbursement of these expenses.<sup>5</sup> Moreover, Mr Ngaïssona requested to be provided with receipts from his purchases from the "Africa Shopping List", as he had observed a lack of transparency in this regard, having only been provided with receipts that showed the total amount spent, but not a breakdown of the costs of each individual item ordered.<sup>6</sup> [REDACTED].<sup>7</sup> The CCO [REDACTED].<sup>8</sup>

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<sup>3</sup> This provision echoes Rule 20 of the Mandela Rules: "(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served." Rule 87, which is specific to untried prisoners, provides that "[w]ithin the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food." In *S. v. United Kingdom*, the European Commission found that a State's obligation to provide nutrition to prisoners required "the taking into account of the special dietary requirements of prisoners" and, further, that the food provided should be one "which prisoners are able to consume having regard to the existence of any impediment on religious or other grounds." See European Commission, *S. v. United Kingdom*, application no. 13669/88, 07 March 1990.

<sup>4</sup> Detained Person's Complaint to the CCO of 16 August 2019, n. 19-005, Para 5. See Annex 1, page 3.

<sup>5</sup> Detained Person's Complaint to the CCO of 16 August 2019, n. 19-005. See Annex 1, page 1-6.

<sup>6</sup> Detained Person's Complaint to the CCO of 16 August 2019, n. 19-005, paras 10, 12. See Annex 1, page 6.

<sup>7</sup> [REDACTED].

Following a request for review of the CCO's decision to the Registrar, [REDACTED].<sup>9</sup> [REDACTED]<sup>10</sup>, [REDACTED].<sup>11</sup> More than 6 months later, [REDACTED], and Mr Ngaïssona has not been provided with his requested relief.

13. On two occasions, the Defence asked the Registrar to put in place provisional measures in order to ensure Mr Ngaïssona's rights under regulation 199, [REDACTED].<sup>12</sup> [REDACTED].<sup>13</sup> As of today, Mr Ngaïssona has not been provided with culturally appropriate and affordable food. Moreover, Mr Ngaïssona is often not being provided with food which is suitable to [REDACTED] on a consistent basis, as further expounded upon at para 27 below.<sup>14</sup> This situation has been the cause of considerable stress and concern for Mr Ngaïssona and his family and has forced them to sustain excessive expenses in order to avail Mr Ngaïssona of his right to continue consuming food of a sufficient quality and which is culturally appropriate. Had the Registrar taken the necessary interim measures to ensure Mr Ngaïssona's rights under regulation 199 of the RoR, such unnecessary stress and concern would have been avoided. The Defence respectfully submits that the Registrar failed to strike an appropriate balance between the interests at play when determining that the recognition of Mr Ngaïssona's rights under regulation 199 of the RoR should be dependent upon [REDACTED], which is against the spirit and

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<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

<sup>14</sup> [REDACTED].



the letter of Section V of the complaints procedure which is intended to resolve any issues arising out of detention swiftly.<sup>15</sup>

14. Mr Ngaïssona's daily life at the detention centre is equally impacted by the considerable amount of time he spends locked up in his cell. Detainees ought to be locked up in their cell overnight and for two additional hours during the day, while the guards have their meals.<sup>16</sup> However, the amount of time Mr Ngaïssona spends locked up in his cell greatly exceeds this estimate, since he is also locked up in his cell when: 1) he decides not to engage in "fresh air" or sport activities along with other detainees of his designated wing; and 2) detainees from the other wing decide to participate in sports or fresh air activities. This can result in an additional 4 hours of lockup per day,<sup>17</sup> which affects Mr Ngaïssona's daily schedule by hampering his ability to prepare meals and [REDACTED], and to engage in recreational activities in the communal area.

15. On 19 February 2020, the Defence lodged a complaint to the CCO on this matter.<sup>18</sup> The Defence argued that the additional lock-up times that Mr Ngaïssona can face, depending on other detainees' willingness to engage in outdoor activities, violate his rights to engage in recreational activities pursuant to regulation 164(1) of the RoR, to prepare food that meets his

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<sup>15</sup> Regulation 218(5) provides that the CCO must provide a decision on a complaint within 14 days. Regulation 219(3) stipulates that the Registrar's Decision on Review must be made within 14 days. Regulation 220(5), while not giving a strict deadline, states that the Presidency must render its decision with respect to any review "promptly".

<sup>16</sup> Detained Person's Complaint to the Chief Custody Officer, 19 February 2020, para 14. See Annex 2, page 3. The RoR and RoC do not mention the possibility of additional lock-up times being imposed. Mr Ngaïssona appears to have access to regulations which confirm this statement. However, regrettably, the Defence does not have access to internal directives that regulate Mr Ngaïssona's detention. An open source article which directly quotes the CCO refers, similarly, that detainees are locked up "overnight from 20.30 and two hours per day while the staff are eating." See "10 things you didn't know about the ICC's Detention Centre", Justice Hub, available at : [https://medium.com/@justice\\_hub/10-things-you-didnt-know-about-the-icc-s-detention-centre-a16ca6e6aae1](https://medium.com/@justice_hub/10-things-you-didnt-know-about-the-icc-s-detention-centre-a16ca6e6aae1), retrieved on 27 May 2020.

<sup>17</sup> Detained Person's Complaint to the Chief Custody Officer, 19 February 2020, para 16. See Annex 2, page 3.

<sup>18</sup> Detained Person's Complaint to the Chief Custody Officer, 19 February 2020. See Annex 2, pages 1-10.

cultural requirements pursuant to regulation 199 of the RoR, and to have his health and safety safeguarded pursuant to regulation 103(1) of the RoC. Moreover, the Defence argued that the existence of additional lock-up times was a *de facto* violation of regulation 211 of the RoR, which contemplates that confinement to a cell is a disciplinary measure that ought to be imposed only following the disciplinary procedure under regulations 208 and 209 of the RoR.

16. On 6 March 2020, the CCO found that [REDACTED].<sup>19</sup> The Defence thus directed a further complaint to the Registrar, [REDACTED] the CCO's decision, thereby allowing Mr Ngaïssona to spend more time [REDACTED].<sup>20</sup> While the Registrar found that the Defence's request was out of time, he acknowledged that [REDACTED].<sup>21</sup>

17. Moreover, in the same decision, the Registrar affirmed that, [REDACTED].<sup>22</sup> Due to the COVID-19 pandemic, however, [REDACTED]<sup>23</sup> and [REDACTED]. Once more, the recognition of Mr Ngaïssona's rights under the RoR and RoC was made conditional upon [REDACTED].

18. The Defence respectfully submits that [REDACTED] cannot detract from the overall duty of the Registrar to ensure Mr Ngaïssona's well-being and humane treatment, as required by the Court's statutory framework.<sup>24</sup> The Defence reiterates that Mr Ngaïssona has not been placed in detention as a

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<sup>19</sup> [REDACTED].

<sup>20</sup> [REDACTED].

<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> [REDACTED].

<sup>24</sup> Pursuant to regulation 90 of the RoC, "*the Registrar shall have overall responsibility for all aspects of management of the detention centre, including security and order, and shall make all decisions relating thereto.*" Pursuant to regulation 91(1) of the RoC, "*all detained persons shall be treated with humanity and with respect for the inherent dignity of the human person.*"

form of punishment, but only to ensure Article 58's prerogatives namely, his presence at trial and to avoid potential interference with the Prosecutor's investigations. Therefore, it is incumbent upon the authorities involved in his detention to minimize the effects of his deprivation of liberty,<sup>25</sup> and to provide him with the best environment which is conducive to the preparation of his defence.

**b. The complaints procedure pursuant to section V of the RoR has proved to be unsuitable to rectify the violation of Mr Ngaïssona's rights**

19. The Defence avers that, pursuant to Section V of the RoR, complaints against detention-related matters should be addressed to the CCO or the Registrar, while judicial review of their decisions may be pursued with the Presidency. However, the Defence respectfully submits that the complaints procedure has proved to not be an adequate avenue through which to redress the violations Mr Ngaïssona's rights. The examples outlined in section a of these submissions clearly outline the unsuitability of the complaint procedure under Section V of the RoR to redress systemic issues at the detention centre. The complaints procedure as envisaged by Regulation 106 of the RoC and Section V of the RoR is intended to redress discrete violations in a detention regime that is well-functioning and is not suffering from systemic management issues.

20. Such a conclusion is easily drawn when considering that regulation 106(1) of the RoC mentions very specific circumstances which could give rise to a

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<sup>25</sup> See rule 5 of the Mandela Rules: *"The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings."*

complaint, such as an administrative decision, order or directive.<sup>26</sup> Even in the catch all provision, which allows a detainee to address “any other matter” through the complaints procedure, the use of the singular implies that it concerns a discrete issue. Moreover, the complaints form only allows for one complaint per form, which further bolsters this conclusion.

21. The complaints procedure is not meant therefore to redress such a systematic and dysfunctional detention regime since in order to be effective, it assumes that the management of the detention centre is functional. However, when recourse to the complaint procedure becomes a matter of course, then it no longer serves its intended purpose, that is redressing discrete violations of detainees’ rights. Rather, it becomes part of a cumbersome, lengthy adjudicatory process that does not provide a remedy for the cumulative impact of arbitrary detention measures on a detainee’s mental and physical well-being. Annexes 1 and 2 to the present submissions attest to this situation.

22. Moreover, the Defence respectfully submits that an essential feature of the complaint procedure pursuant to Section V of the RoR is its expeditiousness.<sup>27</sup> Expediency in these matters is of the utmost importance, due to the particular position of detained individuals, who depend entirely on the detaining authority in order to enjoy their rights.<sup>28</sup>

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<sup>26</sup> Regulation 106(1) of the RoC: “A detained person shall have the right to file a complaint against any administrative decision or order or with regard to any other matter concerning his or her detention.”

<sup>27</sup> See Regulation 217(4) RoR: “A complaint (...) shall be transmitted to the CCO, the Registrar or the Presidency, as appropriate, without delay”; Regulation 218(3): “The CCO or the Registrar, as the case may be, shall promptly acknowledge receipt of the complaint (...)”; Regulation 220(5): “Applications for judicial review before the Presidency pursuant to this regulation shall be considered promptly.” (Emphasis added). Similarly, Rule 57(1) of the Mandela Rules notes that: “Every request or complaint shall be promptly dealt with and replied to without undue delay (...)”.

<sup>28</sup> “Given this unique relationship and interaction of subordination between an inmate and the State, the latter must undertake a number of special responsibilities and initiatives to ensure that persons deprived of their liberty have the conditions necessary to live with dignity and to enable them to enjoy those rights that may not

However, the complaints raised by Mr Ngaïssona were not solved swiftly, [REDACTED]. With respect to the lack of expediency of the procedure pursuant to Section V of the RoR, the Defence's concerns were only increased by the recent decision to [REDACTED].<sup>29</sup> [REDACTED]. The Defence respectfully submits that [REDACTED] during the COVID-19 pandemic deprived Mr Ngaïssona of his ability to see the violations of his rights timely redressed, at a time when he should have been afforded increased guarantees.

23. The Defence respectfully submits that the fact that the matters mentioned in section a of these submissions are pending before the Registrar should not lead to the conclusion that this remedy should be exhausted before the Defence can seize the Chamber. While the Registrar may [REDACTED] and put in place long-lasting solutions, interim measures should be immediately ordered by the Chamber to ensure the protection of Mr Ngaïssona's rights under the RoR and RoC. Pursuant to Principle 33(4) of the United Nation's Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, *"every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. [emphasis added]"*<sup>30</sup>

24. Moreover, a parallel can be drawn here between the Chamber's powers to examine matters related to detention conditions and the powers of the

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*be restricted under any circumstances or those whose restriction is not a necessary consequence of their deprivation of liberty and is, therefore, impermissible. Otherwise, deprivation of liberty would effectively strip the inmate of all his rights, which is unacceptable."* Case of the "Juvenile Reeducation Institute" v. Paraguay, Inter-American Court of Human Rights, Judgment of 2 September 2004, para 153.

<sup>29</sup> [REDACTED].

<sup>30</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly Resolution 43/173 of 9 December 1988, Principle 33(4).

European Court of Human Rights (“ECHR”) to redress violations of the European Convention on Human Rights. The express language of Article 35 does not allow for the ECHR to intervene unless “all domestic remedies have been exhausted....” However, the ECHR has emphasized that this requirement should be applied with a degree of flexibility and without excessive formalism.<sup>31</sup> Therefore, the rule of exhaustion is not absolute. The existence of remedies must be sufficiently certain not only in theory, but also in practice.<sup>32</sup> The ECHR determinations with regard to whether a particular remedy meets the criteria of availability and effectiveness are made on a case by case basis.<sup>33</sup> A remedy is considered effective when it is: 1) accessible, 2) capable of providing redress in respect of the applicant’s complaints, and 3) offers a reasonable prospects of success.<sup>34</sup> In the case at hand, while the complaints procedure is available, it cannot be considered effective since it is clearly not capable of providing redress in respect to Mr Ngaïssona’s detention situation, and it does not offer a reasonable prospect of success. The intervention of the Trial Chamber is therefore essential at this stage.

**c. Advocating for Mr Ngaïssona's rights to be respected while in detention strains the limited resources of the Defence**

25. As a result of the undue hardship caused by Mr Ngaïssona’s detention conditions, the Defence is constantly diverting its limited resources from the preparation of trial to trying to remedy the harm caused by Mr

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<sup>31</sup> Ringeisen v. Austria, ECHR, application n. 2614/65, Judgment, 16/07/1971, para 89; Lehtinen v Finland, ECHR, application n. 39076/97, Judgment, 14/10/1999; Kozacıoğlu v. Turkey, ECHR, application n. 2334/03, Grand Chamber Judgment, 19/02/2009, paras 39-40.

<sup>32</sup> Sejdivic v Italy, ECHR, application n. 56581/00, Judgment (Grand Chamber), 01/03/2006, para 46; Kozacıoğlu v. Turkey, ECHR, application n. 2334/03, Grand Chamber Judgment, 19/02/2009, paras 39-40.

<sup>33</sup> "Practical Guide on Admissibility Criteria", page 25, available at: [https://www.echr.coe.int/Documents/Admissibility\\_guide\\_ENG.pdf](https://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf)

<sup>34</sup> Kozacıoğlu v. Turkey, ECHR, application n. 2334/03, Grand Chamber Judgment, 19/02/2009, paras 39-40.

Ngaïssona's detention conditions.<sup>35</sup> The Defence respectfully submits that this situation is no longer tenable, as it is not conducive to a productive preparation of trial and directly affects Mr Ngaïssona's fair trial rights. Since April 2019 as of today, the Defence has drafted 16 filings in order to attempt to redress the violation of Mr Ngaïssona's rights in detention.<sup>36</sup> Certain members of Mr Ngaïssona's Defence team who also served on the Defence for Mr Charles Blé Goudé even wrote a request to the Registry to implement an independent oversight mechanism, such as a Detention Ombudsmen that would ensure the detainees rights were respected.<sup>37</sup> The Defence submitted the request on 27 February 2020; it is yet to receive an answer. The Defence also presented its suggestion that an independent oversight mechanism be put in place to the Independent Experts, Cluster 2- Judiciary of the *Independent Expert Review on the ICC* in a presentation on 3 March 2020 and a subsequent letter of 11 March 2020.

26. In addition to filing formal letters and complaints, the Defence has dedicated considerable time and resources to informally consult with the CCO and the Registrar in order to rectify violations of Mr Ngaïssona's rights.<sup>38</sup> However, such informal consultations often proved fruitless, forcing the Defence to ultimately have recourse to the complaints procedure, which is a procedure which is to be used sparingly given that it involves litigation. The Defence respectfully submits that whenever a detention-related issue is raised, the detention centre's staff should initiate dialogue and consult directly with detainees, rather than putting defence teams in a position where formal complaints under Section V of the RoR

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<sup>35</sup> Defence Submissions pursuant to Trial Chamber V's "Order Scheduling First Status Conference" (ICC-01/14-01/18-459), 8 April 2020, ICC-01/14-01/18-473-Conf, para 40.

<sup>36</sup> For an overview of the Defence's filings in this respect, see Annex 3.

<sup>37</sup> [REDACTED].

<sup>38</sup> The various consultations undertaken by the Defence are listed in Annex 5.

become the only avenue through which changes can be made. This procedure should only become necessary where consultation and mediation, which are methods of conflict resolution that should be favoured at the detention centre, are no longer feasible, in order to ensure the rights of detainees.

27. Recently, the Defence had a lengthy and cumbersome exchange with the CCO and the Registrar concerning Mr Ngaïssona's right to receive food that [REDACTED].<sup>39</sup> On 13 May 2020, Mr Ngaïssona informed the Defence that he had not received [REDACTED], which he should receive every day pursuant to [REDACTED]. This has been a recurring problem. He also was not able to order *chikwangue*, which is a fundamental and irreplaceable item of his diet. When the Defence enquired with the CCO about these two matters,<sup>40</sup> the Deputy CCO simply responded by [REDACTED],<sup>41</sup> [REDACTED]. [REDACTED].

28. The explanation provided by the Deputy CCO did not even address the lack of *chikwangue*, requiring the Defence to follow up again with the Deputy CCO on this specific issue.<sup>42</sup> Four days after having done so, the Deputy CCO informed the Defence that [REDACTED]. Moreover, the Deputy CCO complained that [REDACTED].<sup>43</sup> In spite of [REDACTED], this product was still unavailable to Mr Ngaïssona on that date. This prompted the Defence to order the *chikwangue*, and request that it be delivered to Mr Ngaïssona at the detention centre. However, [REDACTED].<sup>44</sup> Finally, on 28 May, following several e-mails and follow-

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<sup>39</sup> See Annex 5, pages 25-36.

<sup>40</sup> See Annex 5, pages 25-26.

<sup>41</sup> [REDACTED].

<sup>42</sup> See Annex 5, page 32.

<sup>43</sup> [REDACTED].

<sup>44</sup> [REDACTED].



ups by the Defence, Mr Ngaïssona received this fundamental item of his Central African diet.<sup>45</sup>

29. Moreover, on 15 May, a letter addressing some broader issues such as the recurring nature of the non-delivery of food items and lack of information provided was sent by the Defence, which, however remained unanswered. Upon a request for an update on this letter, the detention centre simply [REDACTED].<sup>46</sup> To date, however, the letter of 15 May was never adequately responded to despite the urgency of the matters raised therein.

30. The above only constitutes one example of the lengthy consultations the Defence is often forced to undertake in order to ensure that Mr Ngaïssona's rights, which is the detention centre management's duty and responsibility to uphold, are recognized. Further examples are outlined in annexes 4 and 5 to this request. The Defence respectfully submits that the material in the annexes clearly demonstrates a pattern of disregard of Mr Ngaïssona's recognized rights under the RoR and RoC and even at times the Chamber's orders. Moreover, the Defence wishes to provide this material so that the Chamber is informed of the constant and continuous miscommunication issues that the Defence is confronted with in its dealings with the detention centre. In this regard, the Defence regrets not being consistently provided with all directives and rules issued to Mr Ngaïssona by the detention centre's staff. By not being apprised of internal procedures at the detention centre, the Defence often has to engage in lengthy and difficult exchanges with the detention centre's staff and Mr Ngaïssona in order to receive this basic information.<sup>47</sup>

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<sup>45</sup> See Annex 5, page 30.

<sup>46</sup> [REDACTED].

<sup>47</sup> See for example pages 8-12 and 17-21 of Annex 5.

31. In order to provide mental support to Mr Ngaïssona and address his conditions of detention, the Lead Counsel spends an average of one hour per day, seven days a week, on the phone with Mr Ngaïssona. Assistants to Counsel collectively spend anywhere from 1 hour to 5 hours a week calling Mr Ngaïssona to also address these issues. Moreover, litigation through the complaints procedure as well as informal communications involves the time of all defence team members, including interns, who spend countless hours on drafting and strategizing for the resolution of Mr Ngaïssona's detention issues. This time could be productively employed to discuss and implement the Defence's strategy, but instead, it is sadly employed to address Mr Ngaïssona's conditions of detention. The Defence respectfully submits that this situation is not conducive to an effective preparation of trial.

**d. Mr Ngaïssona's detention conditions affect his fair trial rights**

32. Mr Ngaïssona is in pre-trial detention, and thus he benefits fully from the presumption of innocence. His detention conditions should allow him to focus all his efforts on the charges against him, rather than being the cause of constant stress and anxiety. As a result of the detention centre's failure to effectively manage Mr Ngaïssona's detention conditions, which is demonstrated by the aforementioned submissions, Mr Ngaïssona's physical and mental well-being has seriously deteriorated during the 16 months he has spent in detention. [REDACTED]. Moreover, due to administrative shortcomings, he faces constant struggles in order to avail himself of appropriate food and has to spend at times several hours a day locked up in his cell. The coupled effect of these elements has resulted in diminishing his hope, his lucidity and his ability to engage with the

Defence, at a moment when all his efforts should be focused on the preparation of his defence. If these conditions persist, there is the serious risk that Mr Ngaïssona will not be afforded a fair trial before this Court.

33. Article 67(1)(b) of the Statute lists among the fundamental *minimum guarantees* of a fair trial that an accused be afforded enough time and facilities to prepare his defence. Pursuant to article 21(3) of the Statute, this guarantee should be interpreted in a manner consistent with internationally recognized human rights. The ECHR found that the right of an accused to have enough time and facilities to prepare his defence implies the *"opportunity to organise [one's] defence in an appropriate way and without restriction as to the ability to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings."*<sup>48</sup> Moreover, the ECHR held that *"to ensure the accused's right to mount a defence in criminal proceedings includes an obligation to organise the proceedings in such a way as not to prejudice the accused's power to concentrate and apply mental dexterity in defending his position"*<sup>49</sup> and that *"[w]here the defendants are detained, the conditions of their detention, transport, catering and other similar arrangements are relevant factors to consider in this respect. [emphasis added]"*<sup>50</sup> An accused person's "lowered physical and mental resistance" has been found by the ECHR to hamper the equality of arms and the accused's ability to engage with his counsel.<sup>51</sup>

<sup>48</sup> Gregacevic v Croatia, ECHR, Application no. 58331/09, 10 July 2012, para 51.

<sup>49</sup> Razvozhayev v Russia and Ukraine and Udaltsov v. Russia, Applications nos. 75734/12, 19 November 2019, para 252.

<sup>50</sup> Ibid.

<sup>51</sup> In Barbera, Messegue and Jabardo v Spain, the ECHR found that a state of "lowered physical and mental resistance" undoubtedly weakens a defendant's ability to consult effectively with counsel. See Barbera, Messegue and Jabardo v Spain, Application no. 10590/83, 6 december 1988, para 70. Similarly, see Faikailo (Safoka) et autres c. France, Requête no. 2871/11, 2 octobre 2014, para 50: *"La Cour rappelle également qu'elle a déjà estimé qu'un état de fatigue excessif peut placer des accusés dans un état de moindre résistance physique et morale à un moment où ils ont besoin de tous leurs moyens pour se défendre, lors de l'ouverture d'une audience, et ne pas répondre aux exigences d'un procès équitable."*

34. The Defence respectfully submits that Mr Ngaïssona's current conditions of detention affect his mental and physical well-being, thereby reducing his ability to fully engage with the current proceedings and instruct counsel for his defence.<sup>52</sup> This situation is no longer tenable, and will continue to worsen over time if the violations of Mr Ngaïssona's rights are not rectified. Not having been able to obtain redress of the said violations through the Registry, the Defence turns to the Trial Chamber, respectfully requesting it to ensure that Mr Ngaïssona's detention conditions comply with the RoR, the RoC and internationally recognized human rights.

## RELIEF SOUGHT

The Defence respectfully requests the Trial Chamber to:

- **ORDER** that Mr Ngaïssona be provided daily with affordable, culturally appropriate food [REDACTED];
- **ORDER** that Mr Ngaïssona receives appropriate receipts which detail the price of each item purchased at the prison shops;
- **REDUCE** Mr Ngaïssona's lock-up times to what is strictly necessary, i.e. opening and closing hours of cells and mealtimes for guards;
- **ORDER** the implementing of a strict oversight mechanism to ensure that detainees' rights as enshrined in the RoC and RoR are being respected;
- **ORDER** the detention centre to provide the Defence with all internal directives and rules that govern Mr Ngaïssona's detention conditions;

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<sup>52</sup> Case of S.C. v The United Kingdom, ECHR, application n. 609587/00, 15 June 2004, para 28, referring to Stanford v The United Kingdom, ECHR, application n. 16757/90, 11 April 1994.

- **ORDER** any other measures to ensure that the rights of Mr Ngaïssona under the RoC and RoR are ensured.

Respectfully submitted on 3 June 2020,



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Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona  
At The Hague, the Netherlands.