

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 8 June 2020

TRIAL CHAMBER V

Before:

**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***

**Confidential *EX PARTE* only available to the Defence for Mr Ngaïssona, the
Prosecution, and the Registry**

**First Registry Report on the Implementation of the Restrictions on Contact of Mr
Ngaïssona Ordered by Trial Chamber V**

Source: Registry

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 Mr Ngaïssona

Mr Geert-Jan Alexander Knoops

Legal Representatives of the Applicants

Legal Representatives of the Victims

Unrepresented Applicants

(Participation/Reparation)

Unrepresented Victims

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

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Paddy Craig

**Victims Participation and Reparations
Section**

I. Introduction

1. Following the "Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention" ("17 April 2020 Decision")¹ issued by Trial Chamber V ("Chamber") on 17 April 2020, in which the Registry is ordered to report on the implementation of the restrictions on contact for Patrice-Edouard Ngaïssona ("Mr Ngaïssona") every three months, the Registry hereby submits its report on the monitoring of Mr Ngaïssona's non-privileged telephone calls, visits and incoming and outgoing mail since 6 March 2020. In this submission, the Registry informs the Chamber that no incident has been reported.

II. Procedural history

2. On 23 January 2019, the Single Judge of Pre-Trial Chamber II issued the "Decision pursuant to Regulation 101 of the Regulations of the Court", in which, *inter alia*, the Registry was directed to put in place several measures to restrict Mr Ngaïssona's contacts.²
3. Following a series of subsequent Decisions and Registry Reports,³ on 3 October 2019, the Pre-Trial Chamber II issued the "Decision on the Registry's

¹ Trial Chamber V, "Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention" ("17 April 2020 Decision"), 17 April 2020, ICC-01/14-01/18-484-Conf-Exp.

² Single Judge, "Decision Pursuant to Regulation 101 of the Regulations of the Court", 23 January 2019, ICC-01/14-01/18-98-Conf-Exp, paras. 7-11.

³ Pre-Trial Chamber II, "Second Decision Pursuant to Regulation 101 of the Regulations of the Court", 29 January 2019, ICC-01/14-01/18-106-Conf-Exp; Registry, "Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge", 06 February 2019, ICC-01/14-01/18-115-Conf-Exp; Pre-Trial Chamber II, "Third Decision Pursuant to Regulation 101 of the Regulations of the Court", 6 February 2019, ICC-01/14-01/18-114-Conf-Exp; Registry, "Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by the Single Judge", 25 February 2019, ICC-01/14-01/18-125-Conf-Exp; Pre-Trial Chamber II, "Decision Pursuant to Regulation 101 of the Regulations of the Court", 1 March 2019, ICC-01/14-01/18-137-Conf-Exp, paras. 19-20; Registry, "Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by Pre-Trial Chamber II", 08 April 2019, ICC-01/14-01/18-166-Conf-Exp; Pre-Trial Chamber II, "Decision Pursuant to Regulation 101 of the

Request for an Extension and the Contact Restrictions in place for Ngaïssona” (“Eighth Decision”),⁴ deciding that from 12 October 2019 Mr Ngaïssona would be allowed (1) one hour a week of actively monitored, non-privileged phone calls with his family only, and actively monitored visits with family members only, (2) to maintain these restrictions for the remainder of the pre-trial proceedings, and (3) to suspend until further notice all forms of communication between Mr Ngaïssona and the individual with whom he engaged in coded conversation.⁵

4. On 23 December 2019, the Pre-Trial Chamber II issued its “Decision pursuant to Regulation 101 of the Regulations of the Court” (“Ninth Decision”),⁶ deciding, *inter alia*, to extend the existing contact restrictions for the remainder of the pre-trial proceedings.⁷
5. On 3 February 2020, the Pre-Trial Chamber II issued its “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Tenth Decision”),⁸ deciding, *inter alia*, to “maintain the existing restrictions for the remainder of the pre-trial proceedings”.⁹

Regulations of the Court”, 15 April 2019, ICC-01/14-01/18-176-Conf-Red; Registry, “Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II”, 17 June 2019, ICC-01/14-01/18-225-Conf-Exp ; Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court”, 9 July 2019, ICC-01/14-01/18-240-Conf-Exp, para. 30; Registry, “Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II”, 15 August 2019, ICC-01/14-01/18-276-Conf-Exp; Registry, “Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II”, 13 September 2019, ICC-01/14-01/18-337-Conf-Exp.

⁴ Pre-Trial Chamber II, “Decision on the Registry’s Request for an Extension and the Contact Restrictions in place for Ngaïssona” (“Eighth Decision”), 3 October 2019, ICC-01/14-01/18-374-Conf-Exp.

⁵ *Ibid.*, paras. 39-42.

⁶ Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Ninth Decision”), 23 December 2019, ICC-01/14-01/18-413-Conf-Exp.

⁷ *Ibid.*, paras. 80 and 89.

⁸ Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Tenth Decision”), 3 February 2020, ICC-01/14-01/18-424-Conf-Exp.

⁹ *Ibid.*, para. 30.

6. On 16 March 2020, the Presidency constituted Trial Chamber V ("Chamber") and referred the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* to that Chamber.¹⁰
7. On 17 April 2020, the Chamber issued its 17 April 2020 Decision,¹¹ deciding to maintain the Current Restrictions in place,¹² and to adopt the Reporting Procedure put in place by Pre-Trial Chamber II, with the modification that the Registry is now ordered to submit its reports every three months.¹³
8. On 1 June 2020, the Chamber issued its "Decision Recalling the Reporting Procedure for the Review of Restrictions",¹⁴ recalling that the Registry shall file Registry Reports on the implementation of the restrictive measures for Mr Yekatom and Mr Ngaïssona, respectively, together with confidential redacted versions of said reports, every three months, and inform the Chamber of any violation of the applicable restrictions or other significant developments immediately.¹⁵

III. Classification

9. In accordance with regulation 23 *bis* (1) of the Regulations of the Court ("RoC"), the present report is classified as confidential *ex parte* only available to the Defence for Mr Ngaïssona, the Prosecution and the Registry, as it refers to filings and decisions of the same classification. The Registry does not object to it being reclassified as confidential should the Chamber so decide.

¹⁰ Presidency, "Decision constituting Trial Chamber V and referring to it the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*", 16 March 2020, ICC-01/14-01/18-451.

¹¹ Trial Chamber V, "Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention", 17 April 2020, ICC-01/14-01/18-484-Conf-Exp-Red.

¹² *Ibid.*, para. 15.

¹³ *Ibid.*, para. 29.

¹⁴ Trial Chamber V, "Decision Recalling the Reporting Procedure for the Review of Restrictions", 1 June 2020, ICC-01/14-01/18-540-Conf.

¹⁵ *Ibid.*, para. 13.

IV. Applicable law

10. For the purpose of the present submission, the Registry has considered regulations 99(1)(i), and 100 of the RoC, and regulations 168, 169, 170, 173, 174, 175, 177, 179, 180, 183 and 184 of the Regulations of the Registry ("RoR").

V. Submissions

In relation to the active monitoring order

11. Mr Ngaïssona's telephone schedule has been in effect since 12 October 2019, and includes extra time for setting up and connecting any telephone calls.¹⁶ Mr Ngaïssona chose not make any non-privileged telephone calls during the reporting period. However, the Registry continues to offer to Mr Ngaïssona the opportunity to make telephone calls to his family twice a week.

12. Pursuant to the 17 April 2020 Decision, Mr Ngaïssona's family visits shall be actively monitored, and discussions shall be limited to French and Sango, and all coded or obscure language are prohibited.¹⁷

13. Since 13 March 2020 the Chief Custody Officer ("CCO") put in place temporary measures suspending physical visits to detained persons as a precaution due to the global pandemic of COVID-19.¹⁸ Following these CCO measures, the Registry, after consultation and approval by the Presidency, has temporarily suspended certain provisions pertaining to non-privileged visits

¹⁶ See Fifth Decision, para. 33.

¹⁷ 17 April 2020 Decision, para. 15.

¹⁸ CCO Memo, "URGENT New Detention Centre Temporary Measures Regarding COVID19", DS/2020/023/PC/mc, 19 March 2020.

(regulation 100 of the RoC, and regulations 177, 179 and 180 RoR).¹⁹ These measures were put in place to protect the health, safety and lives of the detained persons at the Detention Centre. The Registry informed the Chamber of the Temporary Detention Centre Measures on 6 April 2020.²⁰ The measures were recently extended on 1 June 2020.²¹

14. Therefore, during the reporting period Mr Ngaïssona did not receive any physical visits so no incidents are reported.

15. When physical visits do resume at the Detention Centre, the Registry will fully implement the Chamber's Decision by actively monitoring all of Mr Ngaïssona's non-privileged visits by family members.²²

16. Any written correspondence or packages that are sent or received, pursuant to regulations 168, 169 and 170 of the RoR, will be closely monitored in accordance with the relevant regulations and Chambers decisions. As with non-privileged physical visits, regulations 169 and 179 of the RoR are also temporarily suspended as above.²³ Nevertheless, Mr Ngaïssona has not received any written correspondence.

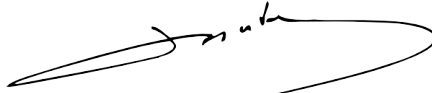
¹⁹ CCO Memo, "Notice of Extension of Detention Centre COVID-19 Temporary Measures and Presidency Approval of the Suspension of Relevant Regulations", DS/2020/046/HT/mc, 24 April 2020.

²⁰ Registry, "Registry Observations on "Defence Observations to the "Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" (ICC-01/14-01/18-444-Conf-Exp)", ICC-01/14-01/18-460-Conf-Exp", 6 April 2020, ICC-01/14-01/18-469-Conf-Exp, paras. 18 and 26-34.

²¹ CCO Memo, "Extension of DC temporary measures of COVID-19", DS/2020/058/PC/mc, 1 June 2020. The Registry wishes to highlight to the Chamber its intention to file a separate filing updating the Chamber on the COVID-19 measures.

²² 17 April 2020 Decision, para. 15.

²³ CCO Memo, "Notice of Extension of Detention Centre COVID-19 Temporary Measures and Presidency Approval of the Suspension of Relevant Regulations", DS/2020/046/HT/mc, 24 April 2020.



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 8 June 2020

At The Hague, The Netherlands