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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***

Public redacted version of

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:

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PRE-TRIAL CHAMBER II of the International Criminal Court issues this Decision Pursuant to Regulation 101 of the Regulations of the Court.

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 (the ‘CAR’).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’ (the ‘17 November 2018 Decision’), thereby restricting Yekatom’s communications upon his arrival at the ICC Detention Centre for a period of two weeks.⁶ The Single Judge limited the number of individuals Yekatom could make telephone calls to and receive visits from, ordered the active monitoring of his telephone calls and visits, and limited the duration of his telephone calls to 60 minutes per week as well as the languages of communication to French and Sango.⁷ On 18 November 2018, Yekatom arrived at the ICC Detention Centre.⁸

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-01/14-01/18-11-Conf-Exp, paras 6-9.

⁸ ICC-01/14-01/18-17-US-Exp, para. 25.

4. Between 4 December 2018 and 15 February 2019, upon requests by the Prosecutor,⁹ the Chamber issued four decisions pursuant to regulation 101 of the Regulations,¹⁰ thereby each time extending the restrictions on Yekatom's contacts, with one modification: Yekatom was granted the right to have private family visits on 10 January 2019 (the '10 January 2019 Decision').¹¹

5. On 7 December 2018, the Chamber issued the 'Warrant of Arrest for Patrice-Edouard Ngaïssona'.¹²

6. On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.¹³ On the same day, the Single Judge, acting on behalf of the Chamber,¹⁴ 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.¹⁵ The Single Judge prohibited any exchange of contact between Ngaïssona and Yekatom, limited for a period of two weeks the number of individuals Ngaïssona could make telephone calls to and receive visits from, ordered the active monitoring of his telephone calls and visits, and limited the duration of his telephone calls to 60 minutes per week as well as the languages of communication to French and Sango.¹⁶

7. On 29 January 2019, the Chamber issued the 'Second Decision pursuant to Regulation 101 of the Regulations of the Court', thereby rescinding the separation of Ngaïssona and Yekatom (the '29 January 2019 Decision').¹⁷

⁹ ICC-01/14-01/18-24-Conf-Red; ICC-01/14-01/18-44-Conf-Exp; ICC-01/14-01/18-69-Conf-Exp; ICC-01/14-01/18-83-Conf.

¹⁰ ICC-01/14-01/18-25-Conf-Exp; ICC-01/14-01/18-52-Conf-Exp; ICC-01/14-01/18-75-Conf-Exp; ICC-01/14-01/18-86-Conf-Exp.

¹¹ ICC-01/14-01/18-52-Conf-Exp.

¹² 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](#).

¹³ Registry, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, ICC-01/14-01/18-101-US-Exp, paras 5-14.

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

¹⁵ ICC-01/14-01/18-98-Conf-Exp.

¹⁶ ICC-01/14-01/18-98-Conf-Exp, paras 8-11.

¹⁷ 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.

8. On 6 February 2019, upon request by the Prosecutor,¹⁸ the Chamber issued the ‘Third Decision pursuant to Regulation 101 of the Regulations of the Court’, thereby provisionally extending the restrictions on Ngaïssona’s contacts until 1 March 2019.¹⁹

9. 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.²⁰

10. On 1 March 2019, the Chamber issued the ‘Decision Pursuant to Regulation 101 of the Regulations of the Court’, thereby provisionally extending, until 15 April 2019 (inclusive), the restrictive measures concerning Yekatom’s and Ngaïssona’s communications and contacts put in place by way of the 17 November 2018 Decision and the 23 January 2019 Decision respectively, as modified by the 10 January 2019 Decision and the 29 January 2019 Decision respectively, with the following modifications: (i) non-privileged telephone conversations by Yekatom and Ngaïssona and visits to them (apart from private family visits) are to be actively monitored at random; (ii) Ngaïssona may receive private family visits – from his wife and children only – without any monitoring or the use of ‘sensitive listening devices’; and (iii) in conducting the verification procedure concerning individuals whom the suspects wish to add to their non-privileged contact lists and/or whom they wish to receive visits from, the Chief Custody Officer may request the support of the Victims and Witnesses Unit (the ‘VWU’ and the ‘1 March 2019 Decision’).²¹

11. On 15 April 2019, the Chamber issued the ‘Decision Pursuant to Regulation 101 of the Regulations of the Court’ (the ‘15 April 2019 Decision’), thereby: (i) rejecting the Prosecutor’s request to reinstate the original contact restrictions initially imposed on Yekatom and Ngaïssona as well as the Prosecutor’s related requests; (ii) deciding to extend the regime of restrictions on contacts – put in place by way of the 17 November 2018 Decision, as modified by the 10 January 2019 Decision and the 1 March 2019 Decision for Yekatom and put in place by way of the

¹⁸ ICC-01/14-01/18-112-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-112-Conf-Red.

¹⁹ ICC-01/14-01/18-114-Conf-Exp, para. 11, p. 7. A confidential *ex parte*, redacted version is also available; see ICC-01/14-01/18-114-Conf-Exp-Red.

²⁰ [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-121](#).

²¹ ICC-01/14-01/18-137-Conf-Exp.

23 January 2019 Decision, as modified by the 29 January 2019 Decision and the 1 March 2019 Decision for Ngaïssona – and to maintain it for the remainder of the pre-trial proceedings; (iii) ordering the Registrar to submit to the Chamber separate reports on the implementation of the restrictive measures concerning Yekatom’s and Ngaïssona’s communications and contacts every two months and to inform the Chamber immediately of any violation of the applicable regime; (iv) ordering the Prosecutor to submit observations on the Registry reports, if any, within five days of the notification of the Registry reports, and ordering the Yekatom Defence and the Ngaïssona Defence to submit observations on the Registry reports and the Prosecutor’s observations, if any, within 10 days of notification of the Registry reports; (v) instructing the Registry to ensure that any time required to set up a telephone call does not affect the time allotted to Yekatom and Ngaïssona to speak on the telephone; (vi) rejecting any other requests to vary the restrictive measures concerning Ngaïssona’s communications and contacts; and (vii) granting the request by the Ngaïssona Defence to include its case manager in the list of persons entitled to privileged visits with Ngaïssona.²²

12. 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 2019.²³

13. On 9 July 2019, the Chamber issued the ‘Decision Pursuant to Regulation 101 of the Regulations of the Court’, thereby: (i) rejecting the Prosecutor’s request to impose the ‘most stringent’ conditions on Ngaïssona’s contacts and her requests regarding the decision of the ICC Detention Centre Chief Custody Officer (the ‘CCO’) [REDACTED]; (ii) ordering the Registry to substantially increase the random monitoring of Ngaïssona’s telephone calls with [REDACTED] as well as such persons’

²² ICC-01/14-01/18-176-Conf-Exp. A confidential redacted version is also available; see ICC-01/14-01/18-176-Conf-Red.

²³ [ICC-01/14-01/18-199](#).

visits to Ngaïssona; and (iii) rejecting the Ngaïssona Defence's request to terminate the restrictions on Ngaïssona's contacts.²⁴

14. On 15 August 2019, the Chamber received 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').²⁵

15. On 13 September 2019, the Registry submitted 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').²⁶

16. On 18 September 2019, the Chamber issued its 'Decision Pursuant to Regulation 101 of the Regulations of the Court' (the '18 September 2019 Decision'), in which it *inter alia* (i) ordered that 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; (ii) suspended Ngaïssona's non-privileged phone calls and non-family, non-privileged visits on an interim basis; (iii) ordered the active monitoring of Ngaïssona's family visits; and (iv) suspended all forms of communication between Ngaïssona and [REDACTED] with whom he engaged in coded conversation, on an interim basis.²⁷

17. On 27 September 2019, the Registry submitted its 'Request for an Extension for the submission of the Seventh Report' (the 'Registry's Request').²⁸

18. On 27 September 2019, the Chamber determined that the deadline for the Seventh Registry Report would be provisionally extended, until further notice, to allow time for the parties to provide any observations on the request for an extension, and regarding

²⁴ ICC-01/14-01/18-240-Conf-Exp.

²⁵ 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.

²⁶ 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.

²⁷ ICC-01/14-01/18-357-Conf-Exp. A confidential redacted version is also available, see ICC-01/14-01/18-357-Conf-Exp-Red.

²⁸ 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.

the contact restrictions in place for Ngaïssona.²⁹ Any such observations were to be provided by 16:00 on 2 October 2019.³⁰

19. 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 Submission of the Seventh Report” (ICC-01/14-01/18-362-Conf-Exp)’.³¹

20. 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’).³²

21. 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’ (the ‘Seventh Registry Report’).³³

22. 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’).³⁴

23. On 11 November 2019, the Chamber issued the ‘Decision on the Ngaïssona Defence Request to Obtain Transcripts’³⁵ (the ‘11 November 2019 Decision’), granting

²⁹ Email sent from Pre-Trial Chamber II to the Registry at 13:27 on 27 September 2019.

³⁰ Email sent from Pre-Trial Chamber II to the Ngaïssona Defence, the Prosecutor, the Detention Centre, and the VWU at 12:57 on 27 September 2019.

³¹ ICC-01/14-01/18-373-Conf-Exp.

³² 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.

³³ ICC-01/14-01/18-390-Conf-Exp.

³⁴ ICC-01/14-01/18-391-Conf-Exp.

³⁵ ICC-01/14-01/18-393-Conf-Exp.

the 8 November 2019 Request. On the same day, the Prosecutor submitted the ‘Observations de l’Accusation sur le “*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-Red)’ (the ‘Prosecutor’s Observations on the Seventh Registry Report’).³⁶

24. 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 on the Seventh Registry Report’).³⁷

25. On 22 November 2019, the Chamber directed the Registry to provide a reply to the Defence Observations on the Seventh Registry Report by 4 December 2019.³⁸

26. On 4 December 2019, the Registry filed the ‘Registry Reply to Defence Observations’ (the ‘Registry Reply’).³⁹

27. 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)’.⁴⁰

28. On 12 December 2019, the Chamber issued the ‘Decision on the Ngaïssona Defence Request to Obtain Transcripts’, directing the Registry to provide the Defence with the requested transcript (the ‘12 December 2019 Decision’).⁴¹

29. On 18 December 2019, the Ngaïssona Defence submitted the ‘Defence Urgent Request to Lift Restrictions on Mr Ngaïssona’s Contact’ (the ‘Urgent Request’).⁴²

³⁶ ICC-01/14-01/18-392-Conf-Exp.

³⁷ ICC-01/14-01/18-397-Conf-Exp.

³⁸ Email from Pre-Trial Chamber II to the Office of the Director DJSS, sent on 22 November 2019, at 16:33.

³⁹ ICC-01/14-01/18-400-Conf-Exp.

⁴⁰ ICC-01/14-01/18-401-Conf-Exp.

⁴¹ ICC-01/14-01/18-404-Conf-Exp.

⁴² ICC-01/14-91/18-408-Conf-Exp.

II. Submissions

A. The Registry

1. *The Findings of the Registry's Investigation*

30. In the Seventh Registry Report, the Registry indicates that it has investigated to determine the identity of the third party, referred to as the '[REDACTED]', with whom Ngaïssona communicated via speaker phone on [REDACTED]. The Registry informs the Chamber that the identity of this third party remains unknown, and that it is unable to provide any further information in this regard.

31. The Registry also conducted a review of all of Ngaïssona's calls for the period of 17 June 2019 to 18 September 2019. As a result of this review, the Registry determined that on [REDACTED], another incident occurred involving the same [REDACTED] as in the [REDACTED] call. In the [REDACTED] conversation, Ngaïssona asked [REDACTED] to put the call on speaker phone, at which point Ngaïssona communicated with a third party referred to as '[REDACTED]'.

32. While the Registry was not able to determine the identity of the third party, it considers that this is not the same person as the '[REDACTED]'. The Registry indicates that the call did not appear to contain prohibited language, but involved the discussion of private issues with Ngaïssona's [REDACTED].

33. In regard to the remainder of the review of conversations, the Registry indicates that on [REDACTED], Ngaïssona reported to [REDACTED] that if [REDACTED]. The Chief Custody Officer (the 'CCO') 'notes [REDACTED]'.

34. On [REDACTED], Ngaïssona informed [REDACTED].

35. Several conversations took place between Ngaïssona and a friend, who was identified as being [REDACTED]. The CCO considers that 'conversations with this friend may contain breaches of the Chamber's restrictions on contact, and has therefore decided to remove this individual from Mr Ngaïssona's telephone contact list'. The Registry notes, however, that as of the 18 September 2019 Decision, this individual is no longer on Ngaïssona's contact list, due to the decision to limit the list of non-privileged telephone contacts to family members only. In particular, the Registry notes that on [REDACTED], this friend informed Ngaïssona that [REDACTED], and that the CCO considers this to be a breach of the Chamber's restrictions on communication.

36. Following its investigation into Ngaïssona's phone calls, the CCO considers that an arrangement was made between Ngaïssona and [REDACTED] to 'intentionally mislead the Registry in the conduct of the verification procedure'. Specifically, the CCO considers that in a call with [REDACTED] on [REDACTED], Ngaïssona indicated that he had requested to add someone to his telephone contact list and referred to that individual as his '[REDACTED]', noting that 'they' would call to verify this information. Ngaïssona's [REDACTED] responded '*je vais lui dire*'. Subsequently, on 7 May 2019, Ngaïssona submitted a telephone request form to add his '[REDACTED]' to the telephone list. The request was verified, and the individual was added to Ngaïssona's contact list on 31 July 2019.

37. On 6 June 2019, Ngaïssona requested to add a second individual, also described as his '[REDACTED]'. After conducting the verification procedure, the CCO decided not to add this person to Ngaïssona's list of non-privileged phone contacts, since the restrictions in place limited phone calls to family members, and the Registry could not sufficiently establish that this person was in fact Ngaïssona's [REDACTED].

38. As a result of the above, the CCO decided to remove Ngaïssona's [REDACTED] from his non-privileged phone contact list, as well as the '[REDACTED]' who had been added to the contact list on 31 July 2019. Ngaïssona has been notified of this decision.

39. On [REDACTED], Ngaïssona's [REDACTED] informed him that '[REDACTED]'. In the same conversation, Ngaïssona asked [REDACTED].

40. On [REDACTED], during a conversation between Ngaïssona and a friend, the friend informed Ngaïssona that a person referred to as '[REDACTED]' was listening to the conversation. The friend is no longer on the list of phone contacts, pursuant to the 18 September 2019 Decision.

2. *The Registry's Implementation of the Chamber's orders*

41. Pursuant to the 18 September 2019 and the 3 October 2019 Decisions, Ngaïssona's non-privileged, non-family visits were suspended from 18 September 2019 to 12 October 2019. The new telephone call schedule, which ensures extra time for setting up and connecting phone calls, was implemented on 12 October 2019, pursuant to the Chamber's 15 April 2019 Decision.

42. The Registry has also suspended all forms of communication between Ngaïssona and [REDACTED] with whom he engaged in coded language, pursuant to the Chamber's instructions. In this regard, the Registry has confiscated a letter from this [REDACTED], and rejected one visit request from this same individual to see Ngaïssona.

43. Pursuant to the 18 September 2019 and the 3 October 2019 Decisions, the Registry actively monitored all of Ngaïssona's non-privileged visits by family members, taking into consideration the reasonable demands of the daily schedule at the Detention Centre and the availability of interpreters. No incidents were reported during any of the visits.

44. For the Chamber's information, the Registry indicates that prior to a non-privileged family visit on [REDACTED], the custodial officers of the Detention Centre found a visitor, [REDACTED], in possession of a cell phone [REDACTED]. After reminding the visitor that phones are not allowed in the Detention Centre, the phone was confiscated and the visitor was allowed to enter the building, with the phone being returned after the visit.

45. In addition to the confiscated letter from [REDACTED], referenced above, the Registry indicates that it has received and reviewed two incoming letters from non-family, non-privileged individuals for Ngaïssona. The CCO does not have any concerns regarding the content of these letters, but notes that they have not been given to Ngaïssona due to the existing restrictions. The Registry 'welcomes the guidance of the Chamber as regards written communication from non-privileged, non-family members'.

B. The Prosecutor

46. In the Prosecutor's Observations on the Seventh Registry Report, the Prosecutor submits that the restriction regime should remain in place until the end of the Pre-Trial proceedings, at a minimum, and that there is no information to justify lessening the restrictions. Furthermore, the Prosecutor reserves the right to request additional restrictive measures in the event that the Registry's analysis of Ngaïssona's conversations reveals any further violations.

47. Due to the high level of redactions in the Seventh Registry Report, the Prosecutor submits that it is not possible to determine whether any new violations may have taken place. The Prosecutor requests that the Chamber notify the Office of the Prosecutor as soon as possible in the event that any new violations have been identified, in order that the Prosecutor may take any measures necessary, including for the protection of witnesses and the preservation of evidence.

C. The Defence

i. Defence Observations

48. In the Defence Observations on the Seventh Registry Report, the Defence submits that Ngaïssona's detention conditions 'have become untenable', and requests that (i) the Chamber lift or significantly reduce the current restrictions, and (ii) the Chamber order an independent investigation into the Detention Centre's monitoring of Ngaïssona's telephone calls.

49. In the view of the Defence, the Fifth, Sixth, and Seventh Registry Reports contain allegations 'which are wholly unsupported by the facts and serve to paint a negative portrait of Mr Ngaïssona'. The Defence urges the Chamber to 'order an independent investigation into Mr Ngaïssona's detention conditions and into the Registry's ongoing investigations' into Ngaïssona's telephone communications, 'on the basis of the lack of impartiality exhibited by the Detention Centre'.

50. The Defence indicates that Ngaïssona has determined that 'he had no choice but to halt all his communications with the exception of [those with] his legal team, and to suspend his participation in the activities at the Detention Centre [...] in order to avoid any further unfounded accusations by the Registry'. Further, the Defence states that '[u]ntil a proper and independent investigation is conducted into the Registry's allegations against Mr Ngaïssona, this is for Mr Ngaïssona the only viable solution for the time being'.

51. The Defence submits that a review of the transcripts demonstrates that Ngaïssona has fully complied with the Chamber's orders, and that the Detention Centre's removal of his family members and friends from his list of contacts is 'completely unfounded'.

52. In regard to the identity of the '[REDACTED]', the Defence recalls that it provided the Registry with this individual's phone number, yet the Seventh Registry Report 'makes no mention of this telephone number, nor does it mention any of the information communicated by the Defence to assist the Registry in its investigation'. As such, the Defence argues that the Registry 'has not engaged at all with potentially dispositive information that could have potentially ended its query', and it is unclear why the Registry has 'ignored the potential lines of inquiry proposed by the Defence'. The Defence recalls its past submissions where it indicated that the [REDACTED]. The Defence submits that Ngaïssona did not remember this individual's name as 'they were not very close'.

53. The Defence notes that 'it was the Detention Centre staff who advised Mr Ngaïssona to inform the people he wished to add to his list of contacts that the ICC would contact them to conduct a verification procedure'. Thus, the Defence submits that by informing his [REDACTED] that someone would call to identify '[REDACTED]', Ngaïssona was complying with instructions. Further, while [REDACTED] is not Ngaïssona's [REDACTED] in the Western sense of the term, the Defence indicates that this individual is Ngaïssona's [REDACTED]. The Defence submits that in CAR, [REDACTED]. Furthermore, the Defence notes that the concept of family must be understood within its proper cultural context.

54. As to the [REDACTED] conversation, the Defence submits that while 'the Registry is suggesting that Mr Ngaïssona was [REDACTED] [...] reading this quote within its context reveals precisely the opposite, that Mr Ngaïssona [REDACTED]'. The Defence additionally submits that the inclusion of this conversation in the Seventh Registry Report constitutes 'an unnecessary intrusion into Mr Ngaïssona's intimate life'.

55. Regarding the conversations that took place between Ngaïssona and a friend, the Defence submits that it is normal that Ngaïssona and this friend, [REDACTED], would discuss [REDACTED], and that Ngaïssona 'never spoke a single sentence that could be considered to be "case-related"'. The Defence argues that to the contrary, Ngaïssona changed the subject on several occasions when this friend mentioned the current proceedings. The Defence submits that by including a particular footnote noting that

Ngaïssona and his friend laughed, the Registry was trying ‘to use it in order to convey a negative image of Mr Ngaïssona’s character to the Chamber’ and that this ‘constitutes a serious display of the Registry’s lack of impartiality and objectivity’.

56. The Defence notes that the friend from this phone call is the ‘only person with whom Mr Ngaïssona could discuss [REDACTED] and that removing this person from the contact list has ‘serious consequences on Mr Ngaïssona’s ability [REDACTED]’.

57. Finally, the Defence further submits that (i) the current restrictions ‘considerably aggravate Mr Ngaïssona’s pre-trial detention, both physically and mentally’; (ii) the restrictions ‘lack necessity and proportionality’; and (iii) Ngaïssona’s human rights outweigh maintaining the restrictions.

ii. Defence Urgent Request

58. The Defence submits that the full transcript of the [REDACTED] conversation referred to ‘differs significantly both in substance and form from the transcript of allegedly the same conversation that was provided on 13 December 2019 pursuant to the Chamber’s order’. In the view of the Defence, the ‘overwhelming discrepancies between the two transcripts’ are ‘misleading’ and ‘cast doubt as to their authenticity, and therefore their truthfulness’, and thus, the ‘appropriate remedy is that all restrictions on Mr Ngaïssona’s contacts be lifted’.

59. The Defence has submitted its request on an urgent basis, indicating that (i) ‘the factual basis on which the Chamber made its decision to impose further restrictions was inaccurate, and therefore, this decision must be reviewed’, and (ii) citing the ‘daily interference with Mr Ngaïssona’s right to have contact with his family members and friends that results from the Registry misleading the Chamber’. Furthermore, the Defence submits that [REDACTED].

60. In particular, the Defence submits that the transcript provided as an annex to the Fifth Registry Report is not the correct transcript of Ngaïssona’s [REDACTED], and that it is ‘incomplete and contains different content’. The Defence ‘only came into possession of what it believes to be the original transcript of that conversation on 13 December 2019’, following the 12 December 2019 Decision. The Defence indicates that in ‘the partial transcript, more than half of the telephone call’s content is missing’,

and that '[e]ntire phrases and parts of the conversation between Mr Ngaïssona and [REDACTED] have been erased'. In the view of the Defence, it is worrisome that the Registry allowed the Defence and Chamber to believe that the partial transcript 'amounted to a verbatim record' of Ngaïssona's conversation.

61. The Defence further argues that the content of the partial transcript was 'considerably rephrased by the Registry, which went as far as adding sentences that cannot be found in the original transcript'. As an example, in the partial transcript, it indicates that Ngaïssona instructed [REDACTED] to put the call on speaker phone, whereas in the original transcript, 'this sentence never appears'.

62. In regard to references to '[REDACTED]', the Defence submits that the full content of the conversation makes it clear that Ngaïssona enquired about [REDACTED]. Further, the Defence submits that the order of the topics discussed during in the conversation has been modified by the Registry, and that 'almost the totality of the partial transcript has been modified and re-adjusted', and that only the first two lines of the transcripts correspond to one another.

63. As regards the reference to '[REDACTED]', the Defence submits that the Registry's omissions of a sentence created 'the erroneous impression that the word "[REDACTED]" was part of a pattern of coded language'.

64. The Defence submits that the Chamber's assessment in the 18 September 2019 Decision was based on the Registry's selection of quotes in the Sixth Registry Report which were 'not only taken entirely out of their context, but may not even be accurate'. In the view of the Defence, it 'should not be excluded that other exchanges between Mr Ngaïssona and [REDACTED] may have been altered in order to fit the Registry's narrative', and that 'the authenticity of any direct quotes from Mr Ngaïssona's conversations should be called into question'.

65. Further, the Defence 'has reasons to doubt' the accuracy of the transcripts provided by the Registry in relation to the calls referenced in the Registry's Fifth, Sixth, and Seventh Reports as the 'length of the transcripts appears to be too short when compared to the duration of the calls'.

66. In the view of the Defence, the original transcript supports the Defence's previous submissions that Ngaïssona 'did not want to speak to the third party', that he opposed it several times, and 'eventually accepted [...] because of [REDACTED]'s insistence'. The Defence 'respectfully reiterates its request to the Chamber that an independent investigation be launched into the Detention Centre's monitoring of Mr Ngaïssona's telephone calls', and submits that this should include 'an inquiry into the reasons why an erroneous transcript or summary thereof was prepared'.

67. The Defence requests that the Chamber lift all restrictions on Ngaïssona's contact, 'due to the fact that they have been imposed on the grounds of inaccurate and partial information provided by the Registry'. In the alternative, the Defence asks that the Chamber 'considerably alleviated' the existing restrictions. In addition, the Defence asks that the Chamber direct the Registry to provide the original Sango and French transcripts of the calls referenced in the Fifth, Sixth, and Seventh Registry Reports.

D. The Registry's Reply

68. In regard to Ngaïssona's decision to halt all communications other than those with his legal team, the Registry submits that Ngaïssona has 'imposed these restrictions on himself', and notes that he 'still has multiple family members on his non-privileged telephone contact list'', and that the Registry 'remains ready to continue his non-privileged telephone conversations should he decide to avail himself of his telephone privileges'. However, in the view of the Registry, it 'should not be blamed for Mr Ngaïssona's decision and alleged isolation in this regard'.

69. Concerning the Defence's allegations regarding a lack of impartiality, the Registry indicates that it followed the Chamber's orders to report what it observes from monitored transcripts or conversations when it suspected a potential breach of the Chamber's order. In discharging its reporting obligation, the Registry 'cites transcripts *verbatim* for the Chamber's ultimate consideration'.

70. As regards the '[REDACTED]', the Registry states that on the one hand the Defence provides a phone number for this individual and submits that Ngaïssona did not remember her name, that they were not close, and that Ngaïssona does not have any particular interest in this person. On the other hand, following the Chamber's order to

review additional conversations, the Registry ‘maintains its conclusion that to date the identity of the third party remains unknown and points to the extracts of conversation previously highlighted for the Chamber’s consideration, in which Mr Ngaïssona himself inquires as to this third party’.

71. The Registry notes that the Seventh Registry Report was based on the review of 197 conversations, covering approximately 22 hours with 15 interlocutors. In regard to the methodology of its investigation, the Registry notes that it confined its inquiry into the identity of the third party to [REDACTED]. While the investigation did not identify the third party, the Registry indicates that ‘it did reveal information which may be considered for follow up enquiries and further investigation if the Chamber considers that desirable’. The telephone number provided by the Defence was of ‘little to no assistance to the Registry’s particular investigation’, as the verification procedure is only meaningful if a telephone number is provided along with an associated form, in which the detained person is to provide the name of the individual as well. ‘With only a phone number and no additional information the Registry could not deepen its investigation further than [REDACTED].’

72. While the Defence maintains that Ngaïssona does not have ‘any particular interest’ in the ‘[REDACTED]’, the Registry indicates that it has ‘observed at least six conversations’ in which Ngaïssona ‘proactively asked [REDACTED] whether “[REDACTED]” or “[REDACTED]” came or had news’. The Registry submits that ‘transcripts are provided by *verbatim* citations and are not subject to analysis that would jeopardize the Registry’s neutrality’.

73. The Registry indicates that it ‘is not convinced’ by the Defence’s submission that, as of the [REDACTED] call, Ngaïssona was unaware that putting a call on speaker phone was not allowed. In addition, a second review of the conversation and transcript by another interpreter suggests that the phone was also passed to the third party for the conversation to take place. On various dates prior to the 15 August 2019 issuance of a reminder to all detained persons at the Detention Centre, Ngaïssona urged his interlocutors to speak with a lower voice or not to speak at all on the call, but to listen. The Registry observes that ‘the course of conduct of Mr Ngaïssona and his interlocutors has been one which sought to allow undisclosed, and non-vetted people who were not

approved by the [Detention Section] to partake in his telephone conversations which took place even though their role was silent'. At this point, the Registry submits that Ngaïssona 'was already well aware that he had been placed under a regime of restrictive communications and he was already well aware of the process required to have someone added' to his non-privileged telephone list.

74. The Registry would like to clarify that 'respect for detained persons is a guiding principle within the [Detention Centre], including respect for cultural sensitivities', and further notes that 'the administration staff of the [Detention Section] are African nationals, aware of the African culture surrounding families, with a combined 22 years of direct hands on experience in the [Detention Centre] of managing telephone and family contacts with detained persons and their families'.

75. At issue in the Seventh Registry Report was whether 'Mr Ngaïssona misled the Registry or submitted misleading information on his telephone number form'. The Registry indicates that the requirement for information on the form for adding contacts to be accurate and verifiable applies to all detained persons equally. As such, the Registry states that '[REDACTED] cannot be introduced as a family member, which is limited to biological family ties'.

76. On a final note, the Registry considers that 'given its overriding obligation under the Rome Statute to protect victims and witnesses, the Registry should continue highlighting any conversation which gives cause for concern in respect of the safety of any individual'.

III. Determination by the Chamber

77. The Chamber notes articles 57(3)(a) and 68(1) of the Rome Statute, regulations 99(1)(i), 100 and 101 of the Regulations and regulations 173, 174, 175, 183 and 184 of the Regulations of the Registry.

78. The Chamber recalls that contact restrictions must be necessary, proportionate to the legitimate aim pursued, and balanced against a suspect's right to private and family life. In addition, careful consideration must be given to the passage of time and severity of the measures imposed.

79. The Chamber notes that the current restrictions have been imposed since 12 October 2019, and are as follows: (i) Ngaïssona is granted one hour of non-privileged phone calls per week with a number of family members, subject to active monitoring; (ii) [REDACTED] with whom he engaged in coded conversations is excluded from Ngaïssona's list of contacts until further notice; and (iii) Ngaïssona's family visits are subject to active monitoring.

80. As regards the Urgent Request, in light of its nature and timing, the Chamber finds that it is in a position to make a determination on the matter without awaiting the reply of the Registry. The Chamber notes the concerns of the Defence as regards the differences between the original transcript of the [REDACTED] conversation and the updated version. After a careful review of the transcripts, the Chamber finds that, while there are differences between the two, their content is substantially the same. Those variances make it appropriate to provide the Registry with an opportunity to clarify the matter, including by way of providing the Ngaïssona Defence with updated, complete transcripts of the calls referred to in the Fifth, Sixth, and Seventh Registry Reports as soon as possible and to the extent that this has not yet been done. However, the differences are not of such magnitude or nature so as to disturb the Chamber's conclusions as detailed in this decision.

81. For example, while the Defence submits that Ngaïssona only agreed to speak to the third party at [REDACTED]'s insistence, the updated transcript indicates that: (i) Ngaïssona asked [REDACTED] whether the call was already on speaker phone, (ii) [REDACTED] [REDACTED], (iii) [REDACTED]; and (iv) [REDACTED] [REDACTED]. The Chamber considers that this instruction to the third party indicates that Ngaïssona was aware that speaking to this unauthorised individual was in contravention of the contact restrictions.

82. Turning to the results of the Registry's investigation contained in the Seventh Registry Report, the Chamber notes that on [REDACTED], Ngaïssona communicated with two separate individuals, via speaker phone by having the phone passed to a third party. Notably, during the [REDACTED] call, it was Ngaïssona himself who asked [REDACTED] to place the call on speaker phone to talk to someone referred to as '[REDACTED]'. Further, on [REDACTED], a third party referred to as '[REDACTED]' was said to be listening to the call. The Chamber notes that on at least

six occasions Ngaïssona referred to the '[REDACTED]' or the '[REDACTED]', asking [REDACTED] whether she came or had any news. Noting that Ngaïssona also spoke to this individual in the [REDACTED] conversation, the Chamber finds it implausible that Ngaïssona does not know this person's name, and considers that Ngaïssona chose to use coded language when referring to this individual. The Chamber considers that by communicating in this fashion with non-authorised individuals on multiple occasions, Ngaïssona has engaged in conduct intended to circumvent the imposed restrictions.

83. In regard to the call on [REDACTED] between Ngaïssona and [REDACTED], the Defence submits that Ngaïssona was only following the instructions of the Detention Centre. However, the Chamber considers that by providing instructions as to how the individual should present her relationship to Ngaïssona, Ngaïssona was attempting to circumvent the Detention Centre's verification process. Indeed, to provide such information to prospective contacts would defeat the very purpose of the verification process. The Chamber expresses its serious concerns regarding the above violations.

84. The Chamber recalls that the verification procedure of the Detention Centre serves to provide a degree of oversight to communications and contacts between detainees and those outside the Detention Centre. The Chamber considers it appropriate that, following the above-listed attempt to circumvent the verification process, [REDACTED] and the individual listed as his '[REDACTED]' were removed from Ngaïssona's list of contacts. As the Detention Centre has not been able to verify that the second individual listed as a '[REDACTED]' is in fact a relative of Ngaïssona's, the Chamber finds it appropriate that this individual was not added to Ngaïssona's list of contacts.

85. Considering that Ngaïssona has engaged in a pattern of conduct designed to circumvent the rules and the restrictions imposed, the Chamber finds that there is a high risk that Ngaïssona may engage in further attempts to circumvent the restrictive measures in place.

86. In light of this, the Chamber finds that maintaining the current restrictions is the least restrictive means available to achieve the objective of ensuring the integrity of the proceedings. As regards the proportionality of the restrictions, the Chamber notes that Ngaïssona may continue to have contact with a number of family members through

actively monitored telephone conversations and visits. As a result, the Chamber considers that, at this time, Ngaïssona's right to privacy and family life is being appropriately balanced with the objective of ensuring the integrity of the proceedings. The Chamber considers it appropriate to maintain the existing restrictions for the remainder of the pre-trial proceedings, noting that the restrictions are subject to review should compelling reasons arise.

87. The Chamber will now address the Defence's request for an independent investigation into Ngaïssona's detention conditions and the Registry's ongoing investigations into Ngaïssona's telephone communications.

88. At the outset, the Chamber notes that the further investigation into Ngaïssona's calls was ordered by the Chamber, and that by reporting on any calls of potential concern, the Registry was in fact following the instructions of the Chamber. The Chamber does not consider that reporting on the call between Ngaïssona and [REDACTED] constituted an unjustified intrusion into Ngaïssona's privacy. In this regard, the Chamber notes that the reports of the Registry concerning Ngaïssona's communication restrictions are filed on a confidential, *ex parte* basis, precisely to protect the privacy of Ngaïssona as much as possible. Further, the Chamber observes that the Registry report contains neutral language and relies on quotations from the calls referenced. The Chamber finds no evidence that the Registry has shown any bias towards Ngaïssona, and accordingly, rejects the Defence request for an independent investigation.

89. As regards Ngaïssona's communications via mail, the Chamber considers that in keeping with the existing restrictions, non-privileged mail communications should be restricted to those individuals on Ngaïssona's non-privileged contact list.

90. Finally, in regard to the Prosecutor's request to be notified of any additional violations of the contact restrictions, at this time, the Chamber considers that the information provided in the confidential redacted version of this filing provides the Prosecutor with sufficient information, while at the same time protecting Ngaïssona's right to privacy.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **REJECTS** the Defence request to remove or lessen the contact restrictions in place for Ngaïssona;
- b) **REJECTS** the Defence request for an independent investigation into Ngaïssona's detention conditions and the Registry's ongoing investigations into Ngaïssona's telephone communications;
- c) **DIRECTS** the Registry, to the extent it has not already done so, to provide to the Ngaïssona Defence complete transcripts of all conversations referred to in the Fifth, Sixth and Seventh Registry Reports; and
- d) **EXTENDS** the existing contact restrictions for the remainder of the pre-trial proceedings.

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

/Signed/

Judge Antoine Kesia-Mbe Mindua

Presiding Judge

/Signed/

Judge Tomoko Akane

/Signed/

Judge Rosario Salvatore Aitala

Dated 16 February 2021

At The Hague, The Netherlands