

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: **24 February 2021**

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 ROMBHOT YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA*

Public

With Public Redacted Annex I

Public Redacted Version of “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)”, ICC-01/14-01/18-391-Conf, 8 November 2019

Source: Defence of Patrice-Edouard Ngaïssona

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

Court to:

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I. Introduction

1. The Defence respectfully requests the Chamber to order the Registry to provide the transcripts of all the conversations which are mentioned in the “Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II” (“Seventh Report”).¹
2. The present submissions are presented on an urgent basis given that the Defence requires access to the relevant transcripts underlying the Registry’s Seventh Report in order to present its full Observations to the Seventh Report, within ten days² of its notification.

II. Confidentiality

3. Pursuant to Regulation 23*bis*(1) of the Regulations of the Court, the present request is filed on a confidential, ex parte, basis only available to the Defence, the Registrar and the Detention Section, as it concerns information regarding Ngaïssona’s private life and detention-related matters. Moreover, the present request concerns a filing with the same classification.

III. Procedural history

4. 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” (“First Decision”)³, directing the Registry to put in place several measures to restrict Mr Ngaïssona’s contact with the outside world.

¹ ICC-01/14-01/18-390-Conf-Exp.

² ICC-01/14-01/18-176-Conf-Red, para. 32.

³ ICC-01/14-01/18-98-Conf-Exp.

5. On 6 February 2019, the Registry submitted its “Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge” (“First Report”).⁴ In this report, the Registry reported no incidents during the monitoring of Mr Ngaïssona’s contact with the outside world.
6. On 25 February 2019, the Registry issued its “Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by the Single Judge” (“Second Report”).⁵ In this report, the Registry reported no incidents during the monitoring of Mr Ngaïssona’s contact with the outside world.
7. On 8 April 2019, the Registry issued the “Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by Pre-Trial Chamber II” (“Third Report”),⁶ in which it reported no incidents during the monitoring of Mr Ngaïssona’s contact with the outside world.
8. On 17 June 2019, the Registry issued its “Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by Pre-Trial Chamber II” (“Fourth Report”),⁷ informing the Chamber that no incident during the monitoring of Mr Ngaïssona’s contact with the outside world had been reported.
9. On 15 August 2019, the Registry filed the “Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by

⁴ ICC-01/14-01/18-115-Conf-Exp.

⁵ ICC-01/14-01/18-125-Conf-Exp.

⁶ ICC-01/14-01/18-166-Conf-Exp.

⁷ ICC-01/14-01/18-225-Conf-Exp.

the Pre-Trial Chamber II" ("Fifth Report")⁸, in which it reported a single incident relating to a telephone call made from Mr Ngaïssona's non-privileged telephone list. The Registry willingly provided the transcript of the relevant phone call as an Annex to the Fifth Report.⁹

10. On 13 September 2019, the Registry filed its ex parte "Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" ("Sixth Report"),¹⁰ in which it provided the Chamber with findings from the investigation it conducted following the alleged violation which had been reported in the Fifth Report. In this Report, the Registry quoted other phone calls made by Mr Ngaïssona, but did not provide the relevant transcripts.

11. On 3 October 2019, the Chamber rendered its "Decision on the Registry's Request for an Extension and the Contact Restrictions in place for Ngaïssona" in which it ordered the Registry to provide complete transcripts of the calls referred to in the Fifth and Sixth Reports to the Defence by 4 November 2019.¹¹

12. On 17 October 2019, the Registry provided the transcripts of the calls referenced in the Fifth and Sixth Report to the Defence *via* e-mail.¹²

13. On 4 November 2019, the Registry filed its Seventh Report¹³ in which it provided the Chamber with its findings from an investigation it conducted into all of Mr Ngaïssona's non-privileged phone calls from the Fourth Registry Report to 18 September 2019. In this Report, the Registry listed

⁸ ICC-01/14-01/18-276-Conf-Exp.

⁹ ICC-01/14-01/18-276-Conf-Exp-Anx.

¹⁰ ICC-01/14-01/18-337-Conf-Exp.

¹¹ ICC-01/14-01/18-374-Conf-Exp, para. 36.

¹² E-mail of [REDACTED] of 17 October 2019, at 17:44.

¹³ ICC-01/14-01/18-390-Conf-Exp.

several new excerpts and quotes from Mr Ngaïssona's phone calls, but did not provide the Defence with the relevant transcripts.

14. On 6 November 2019, the Defence requested the Registry, *via* e-mail, to provide it with the relevant transcripts.¹⁴

15. On 7 November 2019, the Registry refused to comply with the Defence's request, noting it would "await instructions from the Chamber regarding whether further transcripts can be disclosed to a party."¹⁵

IV. Submissions

16. The Defence notes that the Seventh Report mentions new phone calls between Mr Ngaïssona and members of his non-privileged list of contacts. The Defence incorporates by reference its past submissions on the importance of being provided with the full transcripts of conversations rather than excerpts and quotes of those conversations.¹⁶ The Defence will not be able to make full submissions on the Seventh Report until it is provided with the full transcripts of all the phone calls that are mentioned in the Report and upon which the Registry relies to make allegations of impropriety on Mr Ngaïssona's part. In its last decision on contact restrictions, the Chamber agreed with the Defence's arguments in this regard and ordered the Registry to provide complete transcripts of all the calls referenced in the Registry's report.¹⁷

¹⁴ E-mail of [REDACTED] of 6 November, 2019, at 15:20. *See* Annex I.

¹⁵ E-mail of [REDACTED] of 7 November, 2019, at 12:07.

¹⁶ ICC-01/14-01/18-373-Conf-Exp, para. 25.

¹⁷ ICC-01/14-01/18-374-Conf-Exp, para. 36.

17. Given that the deadline for the Defence to present its Observations is 15 November 2019, the Defence respectfully requests the Chamber to order the Registry to provide the transcripts at the latest by 13 November 2019. This will allow the Defence to incorporate an analysis of the transcripts in its Observations on the Seventh Report. The Defence respectfully submits that any further delay should be avoided, given the seriousness of the restrictions imposed on Mr Ngaïssona's contact with the outside world.

V. Conclusion

18. The Defence respectfully requests the Chamber to order the Registry to provide the Defence with full transcripts of the phone calls mentioned in the Seventh Report, at the latest by November 13, 2019.

Respectfully submitted on 24 February 2021,



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona