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Court**



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Date: **02 March 2021**

TRIAL CHAMBER V

Before: Judge 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
NGAÏSSONA***

Public

Public Redacted Version of "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, 19 March 2020

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. Pursuant to the Pre-Trial Chamber II's order for the parties to "submit any response or observations to filings currently pending before the Chamber to the Trial Chamber to be constituted (...)",¹ the Defence of Mr Patrice-Edouard Ngaïssona ("Defence") hereby presents its observations in relation to the Registry's "Ninth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II"² ("Ninth Registry Report") to the newly-constituted Trial Chamber V ("Chamber").
2. The current restrictions imposed on Mr Ngaïssona's contacts with the outside world are bereft of any legal and factual basis. Given that the restrictions ordered by Pre-Trial Chamber II were to be extended "for the remainder of the pre-trial proceedings",³ the debate has been rendered moot with the transmission of the case record to the Presidency and to the Chamber on 13 and 16 March respectively.⁴ The Defence therefore requests the Chamber to order the Detention Centre to immediately cease the enforcement of the restrictions, as they are no longer legally valid.
3. In the alternative, should the Chamber find that the restrictions imposed by Pre-Trial Chamber II continue to apply to Mr Ngaïssona, the Defence requests the Chamber to urgently examine the matter *de novo*.⁵ Furthermore, as will be shown, the restrictions on Mr Ngaïssona's contacts fail to meet the principles of proportionality and necessity and amount to a violation of Mr Ngaïssona's basic human rights as protected by the Rome Statute ("Statute").

¹ ICC-01/14-01/18-447, page 14.

² ICC-01/14-01/18-444-Conf-Exp ("Ninth Registry Report")

³ ICC-01/14-01/18-176-Conf-Red, page 14. *See also* ICC-01/14-01/18-413-Conf-Exp, page 23.

⁴ ICC-01/14-01/18-449; ICC-01/14-01/18-451, page 4.

II. Confidentiality

4. In accordance with regulation 23bis(1) of the Regulations of the Court (“Regulations”), these submissions are filed “confidential, EX PARTE, only available to the Registrar, the Prosecution, the Detention Centre, and the Defence for Mr Ngaïssona” as they concern information regarding Mr Ngaïssona’s private life and detention-related matters, and also respond to documents of the same classification.

III. Procedural history

5. Since his transfer to the Court on 23 January 2019 and at the Prosecution’s request,⁶ Mr Ngaïssona has been subjected to considerable limitations on his contacts with the outside world, including with his immediate family members.
6. On 15 April 2019, the Chamber ordered the Registry to submit bimonthly reports on the implementation of the restrictive measures concerning Mr Ngaïssona’s communications with the outside world.⁷
7. In its First,⁸ Second,⁹ Third,¹⁰ Fourth,¹¹ and Eighth¹² Registry Reports, the Registry did not report a single incident. In its Fifth, Sixth and Seventh Registry Reports, the Registry reported certain incidents, involving private matters, claiming that Mr Ngaïssona had used “obscure” or “coded” language and had communicated with unauthorized third parties.¹³ These incidents have led the Chief Custody Officer (“CCO”) to implement strict measures such as excluding

⁶ ICC-01/14-01/18-98-Conf-Exp, para. 1, referring to ICC-01/14-01/18-2-US-Exp.

⁷ ICC-01/14-01/18-176-Conf-Red, page 14.

⁸ ICC-01/14-02/18-28-Conf-Exp (“First Registry Report”), para. 1.

⁹ ICC-01/14-01/18-125-Conf-Exp (“Second Registry Report”), para. 1.

¹⁰ ICC-01/14-01/18-166-Conf-Exp (“Third Registry Report”), para. 1.

¹¹ ICC-01/14-01/18-225-Conf-Exp (“Fourth Registry Report”), para. 1.

¹² ICC-01/14-01/18-416-Conf-Exp, para 1.

¹³ Fifth Registry Report, paras 15-17; Sixth Registry Report, paras 13-16; Seventh Registry Report, paras 13-31.

core family members from Mr Ngaïssona's list of non-privileged contacts indefinitely, and have led Pre-Trial Chamber II to apply stricter restrictions on Mr Ngaïssona's contacts with the outside world.¹⁴ Each reported incident has been vigorously contested by the Defence. The Defence incorporates by reference its previous submissions, including on the perceived arbitrary nature of certain reported incidents by the Registry, and pertaining to the previous lack of diligence with respect to the provision of transcripts of telephone conversations identified by the Registry.¹⁵ Never once in the pre-trial phase of this case did Pre-Trial Chamber II find that Mr Ngaïssona's behaviour gave rise to the suspicion that he may interfere with the Prosecution investigations or affect the outcome of the proceedings.¹⁶

8. In the Registry's Ninth Registry Report, dated 6 March 2020, the Registry reported no incident of the restrictions on contacts regime, covering the last monitoring period.¹⁷
9. On 13 March 2020, Pre-Trial Chamber II transmitted the case record to the Presidency, marking the end of pre-trial proceedings.¹⁸ On 16 March 2020, the case record was transmitted to the Chamber, pursuant to rule 130 of the Rules of Procedure and Evidence ("Rules").¹⁹

¹⁴ ICC-01/14-01/18-374-Conf-Exp.

¹⁵ See ICC-01/14-01/18-300-Conf-Exp, paras 17-28; ICC-01/14-01/18-355-Conf-Exp, paras 7-9; ICC-01/14-01/18-373-Conf-Exp, paras 27-40; ICC-01/14-01/18-397-Conf-Exp, paras 27-36; ICC-01/14-01/18-408-Conf-Exp, paras 21-27.

¹⁶ This was also recently confirmed by Pre-Trial Chamber II its decision transmitted to the parties by email dated 11 March 2019, in which it rejected the Prosecution's request to obtain the audio recordings of Mr Ngaïssona's telephone conversations and concluded: "As to the Prosecutor's Request, the Chamber recalls its findings (in the 'Decision Pursuant to Regulation 101 of the Regulations of the Court', ICC-01/14-01/18-413-Conf-Exp, and its redacted version, ICC-01/14-01/18-413-Conf-Exp-Red, dated 23 December 2019), to the effect that the information provided to the Prosecutor in the confidential redacted version of the Decision and the confidential redacted versions of the relevant Registry Reports was sufficient, while at the same time protecting Mr Ngaïssona's right to privacy", *see also* ICC-01/14-01/18-446-Conf-Exp.

¹⁷ Ninth Registry Report, para. 1.

¹⁸ ICC-01/14-01/18-449, para. 10.

¹⁹ ICC-01/14-01/18-451.

10. On 16 March 2020, the Prosecution filed its *ex parte* observations to the Ninth Registry Report.²⁰

11. Currently, Mr Ngaïssona is in a situation of effective isolation from the outside world, by virtue of the restrictions regime. Mr Ngaïssona's isolation has recently only been exacerbated by the closure of the Detention Centre to visitors, including legal teams, in response to the Covid-19 pandemic.²¹ The Detention Centre has also closed its doors to any import of items including documents and privileged materials from defence teams, books, DVDs, and news articles, which could have represented a social lifeline for Mr Ngaïssona during these uncertain times.²² The restrictions on Mr Ngaïssona's contacts weigh heavily on Mr Ngaïssona's mental and physical well-being, and to such an extent that he is currently unable to effectively participate in his Defence.

IV. Submissions

A. The restrictions on Mr Ngaïssona's contacts have been rendered moot by the conclusion of pre-trial proceedings

12. On 15 April 2019, Pre-Trial Chamber II ordered the extension of the restrictions on Mr Ngaïssona's contacts with the outside world "for the remainder of the pre-trial proceedings", while enjoining the Registry to submit bi-monthly reports and inviting the parties to submit their observations thereto.²³

13. In its decision dated 11 March 2020 rejecting the Prosecution's request for reconsideration/appeal of the confirmation of charges decision, Pre-Trial

²⁰ ICC-01/14-01/18-453-Conf-Exp.

²¹ Email from [REDACTED] to All Defence Counsel, dated 13 March 2020 (16:36), informing that from 8:30 on Monday 16 March 2020 onwards, "all visits by defence counsel, team members and visitors in general will no longer be authorised, with the exception to on-going visits and visits required on medical grounds". On 16 March 2020, the Defence was informed orally by the detention centre staff and the CCO that the import of books, documents, or any item was no longer possible, as a response to the covid-19 pandemic.

²² Ibid.

²³ ICC-01/14-01/18-176-Conf-Red, page 14. See also ICC-01/14-01/18-413-Conf-Exp, page 23.

Chamber II ordered that the case record be transmitted to the Presidency, officially marking the end of pre-trial proceedings.²⁴ A few days later, on 16 March 2020, the Chamber was formally constituted, and the following day, Judge Schmitt was elected Presiding Judge and Single Judge.²⁵

14. Pursuant to regulation 101(2) of the Regulations of the Court, the Prosecution “may request the Chamber *seized* of the case to prohibit, regulate or set conditions for contact between a detained person and any other person (...)”. As such, any request to set conditions on a detained person’s contacts must be presented to the Chamber “seized of the case”, which is in this case, the Chamber.

15. To the Defence’s knowledge, the Prosecution has not filed such a request to the Chamber, as required by regulation 101(2) of the Regulations. Nor has the Prosecution presented any meaningful argument to justify the need for such measures to apply at this stage of the proceedings, as further developed below. There is simply no factual or legal basis to justify such restrictive measures to be imposed on Mr Ngaïssona’s contacts with the outside world.

16. Recently, in the *Al Hassan* case, Trial Chamber X rejected the Prosecution’s sweeping request for restrictions to be maintained for the duration of trial.²⁶ *First*, in that case, the Prosecution sought an interim decision for restrictions to be maintained “to ensure there is no gap in continuity” of the pre-trial restrictions²⁷ – tacitly acknowledging that pre-trial restrictions cease to apply once pre-trial proceedings are terminated. *Second*, the Trial Chamber partly rejected the Prosecution’s blanket request, noting “[i]n order for the Chamber to be able to take a fully informed decision on the measures restricting Mr Al

²⁴ ICC-01/14-01/18-447, para. 35.

²⁵ ICC-01/14-01/18-454.

²⁶ ICC-01/12-01/18-557-Red3, para. 14.

²⁷ ICC-01/12-01/18-505-Conf-Exp-Red, para. 2, referred to in ICC-01/12-01/18-557-Red3, para. 2.

Hassan's contacts while in detention [...], the Registry shall submit [...] a report on the measures, including potential alternatives to the regime currently in place, and any other relevant information."²⁸ The Trial Chamber further recalled that "the restrictions imposed must be the least restrictive possible to the rights of the detained person" and that "such restrictions, because they interfere with the rights of the detained person, must be based on the existence of an objectively justifiable risk".²⁹

17. As such, should the Chamber consider the merits of the Prosecution's observations to the Ninth Registry Report, the Defence submits that the matter should be carefully examined by the Chamber and be entirely re-litigated *de novo*. Such an examination should be based on a new Prosecution request.³⁰ Pursuant to regulation 101(3) of the Regulations, the "detained person shall be informed of the Prosecutor's request and shall be given the opportunity to be heard or to submit his or her views".

B. The Prosecution fails to provide up to date, concrete and detailed information which would warrant the maintaining of the restrictions

18. In the alternative, should the Chamber examine the merits of the Prosecution's submissions to the Ninth Registry Report to extend conditions set by Pre-Trial Chamber II, which the Defence strongly contests, the Prosecution's request must fail as it lacks cogent reasoning and is patently unfounded.

19. *First*, in its observations to the Ninth Registry Report, the Prosecution fails to present up-to-date, concrete and detailed information on Mr Ngaïssona's behaviour that may "give rise to suspicion that he interferes with the

²⁸ ICC-01/12-01/18-557-Red3, para. 11.

²⁹ ICC-01/12-01/18-557-Red3, para. 10.

³⁰ In its observations to the Ninth Registry report addressed to the Presidency, the Prosecution merely indicates that the restrictions on Mr Ngaïssona's contacts, as imposed by Pre-Trial Chamber II should be maintained, and that the Presidency "should continue the Chamber's Order", ICC-01/14-01/18-453-Conf-Exp, para. 2.

Prosecutor’s investigation” or that he “engages in activities that may affect the outcome of the proceedings”.³¹ This runs contrary to the Court’s consistent jurisprudence that “*restrictions on contacts and communications under the Court’s statutory framework must be (re-) assessed in light of concrete, specific and up-to-date information*”.³² Rather, the Prosecution merely reiterates general affirmations, raising its concerns regarding Mr Ngaïssona’s potential future violations based on prior violations all of which related to private matters and were unrelated to the Prosecution’s investigations;³³ its submissions are speculative, vague and clearly unsupported by any factual basis.³⁴

20. *Second*, the Prosecution argues that “[a]t best, the absence of reported incidents suggests [Mr] NGAISSONA’s awareness of the potential consequences of continuing to violate the contact restrictions”. This argument not only defies logic but also stands in clear contradiction to the plain meaning of regulation 101(2) of the Regulations, which provides there must be “reasonable grounds” underlying a request for contact restrictions.³⁵

21. *Third*, in its observations on the Ninth Registry Report, the Prosecution argues that the reduction of the restrictions on Mr Ngaïssona’s contacts “would only serve to augment the risk of damage to the integrity of the prospective proceedings.”³⁶ However, the risk ventilated by the Prosecutor is entirely presumptive, as there has been no indication that Mr Ngaïssona would try to interfere with the current proceedings. Similarly, the Prosecutor’s submissions

³¹ ICC-01/14-01/18-114-Conf-Exp-Red, para. 12.

³² ICC-01/14-01/18-176-Conf-Red, para. 29. See also, ICC-01/12-01/18-557-Red3, para. 10.

³³ See the Prosecutor’s request to the Chamber to “direct the Registry to release the Recorded Conversations to the Prosecution where their possible relevance to a breach of articles 68 or 70 cannot be excluded”, ICC-01/14-01/18-446-Conf-Exp, para 10. The Chamber refused the Prosecutor’s request. See Pre-Trial Chamber II’s e-mail to Counsel of 11 March 2020, at 11:59 am.

³⁴ ICC-01/14-01/18-453-Conf-Exp, paras 2, 6, 9-10.

³⁵ See also ICC-01/04-01/07-1243-tENG-Red, para. 25.

³⁶ *Ibid.*, para. 6.

on Mr Ngaïssona's alleged "predisposition and intentions"³⁷ find no factual basis. The Defence fails to see how the Prosecutor could interpret any "predisposition" into Mr Ngaïssona's behaviour, who, as of today, has not made use of the phone to call non-privileged contacts for four months.³⁸ Further, the Prosecution's distinction between "compliance" and "predisposition" is perplexing and artificial.³⁹

22. *Fourth*, the Prosecutor argues that "there are no changed circumstances concerning [Mr] NGAÏSSONA's detention warranting any modification to his existing contract [*sic*]restrictions and the Chamber's Order."⁴⁰ The absence of any reported incident for the past eight months is, to the contrary, a circumstance that warrants the modification of the restrictions regime. Further, another change of circumstance is the confirmation of the case to trial. By considering, *inter alia*, the limited temporal scope of the pre-trial phase of the proceedings, Pre-Trial Chamber II found that the restrictions were proportionate.⁴¹ Now, that the case has been committed to trial, Mr Ngaïssona's detention could potentially span years. Thus, the potential unlimited duration of these restrictions also demonstrates a change of circumstance.

C. The restrictions on Mr Ngaïssona's contacts fail to meet the test of necessity and proportionality and amount to a breach of his internationally recognized human rights

³⁷ Ibid., para. 9.

³⁸ See *infra*, para 27.

³⁹ Ibid., para. 9.

⁴⁰ Ibid., para. 5.

⁴¹ For instance, in its Decision dated 3 October 2019, Pre-Trial Chamber II considered the temporal element in weighing the restrictions regime, namely its duration until the end of pre-trial proceedings. It held: "(...) taking into account the current stage of the proceedings, the Chamber finds that, in order to ensure the integrity of the proceedings, it is necessary to maintain the existing restrictions for [Mr] Ngaïssona until the end of the confirmation of charges hearing", ICC-01/14-01/18-374-Conf-Exp, para. 39.

23. As stated by this Court, “all people – including the incarcerated – have a right to family life”.⁴² The ECHR has held that it “is an essential part of a prisoner’s right to respect for family life that the prison authorities assist him in maintaining contact with his close family”.⁴³ The current restrictive regime is not necessary to the aim pursued, namely the protection of investigations or the outcome of the proceedings pursuant to regulation 101(2) of the Regulations of the Court.⁴⁴ Moreover, the current restrictive regime is largely disproportionate and considerably encroaches upon Mr Ngaïssona’s human rights.

24. The current restrictive regime significantly hampers Mr Ngaïssona’s right to private and family life and, as a consequence, his well-being. Following Pre-Trial Chamber II’s order to only grant non-privileged calls and visits from family, Mr Ngaïssona cannot communicate with any of his friends, in spite of an active monitoring order being in place.⁴⁵ In addition, several members of Mr Ngaïssona’s family are excluded from his list of contacts, due to their involvement in the alleged incidents, all of which related to private matters and

⁴² ICC-02/04-01/15-1444, para. 23, citing Art. 17 of the International Convention of Civil and Political Rights; art. 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; art. 11(2) of the Inter-American Convention on Human Rights. See also UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015, A/RES/70/175 (annex), rule 106 (‘Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.’).

⁴³ ICC-01/04-01/07-1709-tENG-Red, para. 22, relying inter alia on Messina v. Italy, no. 25498/94, 28 September 2000, paras. 61 to 63: “61. International Criminal Tribunal for Rwanda, The Prosecutor v. Ndindiliyimana, The President’s Decision on a Defence Motion to Reverse the Prosecutor’s Request for Prohibition of Contact Pursuant to Rule 64, Case No. ICTR- 2000- 56- T, 25 November 2002, para. 10; International Criminal Tribunal for the former Yugoslavia, The Prosecutor v. Krajisnik, Decision on the Defence’s Request for an Order Setting Aside, in Part, the Deputy Registrar’s Decision of 3 February 2004, 14 May 2004, Case No. IT- 00- 39- T, para. 9.

⁴⁴ ICC-01/04-01/07-322, 13 March 2008, p. 9; ICC-02/04-01/15-1444, para. 24, citing article 8(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (‘There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society [...]’); art. 11(2) of the Inter-American Convention on Human Rights (prohibiting ‘arbitrary or abusive’ interference). See also European Court of Human Rights, Grand Chamber, Paradiso and Campanelli v. Italy, 24 January 2017, app. no. 25358/12, para. 181 (‘According to the Court’s established caselaw, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests’).

⁴⁵ ICC-01/14-01/18-374-Conf-Exp, para. 40.

not the Prosecution's investigation.⁴⁶ [REDACTED] was "temporarily" suspended from Mr Ngaïssona's contact list on 14 August 2019.⁴⁷ However, this person has never been reinstated among Mr Ngaïssona's contacts and to the Defence's knowledge, the status of this contact has never been reviewed by the Detention Centre. This family member's letters and visits requests to Mr Ngaïssona have, moreover, been rejected.⁴⁸ Similarly, other immediate family members were removed from Mr Ngaïssona's list of contacts on 4 November 2019 and have never been reviewed or reinstated.⁴⁹ Temporary measures have, in reality, become permanent, without the possibility for review.

25. With respect to visits, Mr Ngaïssona could, until this week's measures in response to the covid-19 pandemic, only receive visits by family members as a result of the restrictions regime.⁵⁰ [REDACTED].⁵¹ Moreover, visits can only be accommodated for a maximum of two hours per visit, and cannot be accommodated during the weekend, despite several requests by the Defence for such accommodation. Members of Mr Ngaïssona's family who work or attend school are thus unable to visit him, which further deprives Mr Ngaïssona of meaningful human contact.

26. The above-described regime lacks not only necessity and proportionality, but also significantly hampers Mr Ngaïssona's right to private and family life while in detention.

⁴⁶ The Pre-Trial Chamber namely rejected the Prosecution's request to the Chamber to "direct the Registry to release the Recorded Conversations to the Prosecution where their possible relevance to a breach of articles 68 or 70 cannot be excluded", ICC-01/14-01/18-446-Conf-Exp, para 10. See Pre-Trial Chamber II's e-mail to Counsel of 11 March 2020, at 11:59 am.

⁴⁷ ICC-01/14-01/18-276-Conf-Exp.

⁴⁸ ICC-01/14-01/18-390-Conf-Exp, para. 33.

⁴⁹ ICC-01/14-01/18-390-Conf-Exp, para. 29.

⁵⁰ ICC-01/14-01/18-357-Conf-Exp, para. 52, ICC-01/14-01/18-374-Conf-Exp, para. 40.

⁵¹ Ibid.

27. Moreover, as averred by the Registry in its Eighth Report, Mr Ngaïssona has brought to a halt all contact with the outside world for more than two months, with the exception of a close few family visits.⁵² Since July 2019, no incident has taken place with respect to Mr Ngaïssona's contacts with the outside world. Despite this, Mr Ngaïssona has been under strict restrictions, based on information reported by the Registry in various reports, which all, however, relate to the same reporting period spanning from 24 June to 25 July 2019.⁵³ Mr Ngaïssona's decision to stop phone calls, which was not made lightly, stems from a lack of trust in the decision-making process with respect to restrictions of communications, at times due to a lack of diligence on the Registry's part⁵⁴ or the Defence's submissions being simply discarded or not taken into consideration by Registry and Pre-Trial Chamber II.⁵⁵ Mr Ngaïssona deemed this measure necessary in order to avoid any further accusation of impropriety on his part by the Registry, as he observed that his private conversations were often taken entirely out of context and led to further isolation.⁵⁶

28. The Defence provides but one example to illustrate this point, for the sole purpose of demonstrating the lack of necessity and proportionality of the restrictions, which also reinforces the need for an examination *de novo* by the Chamber. In its Seventh Registry Report, the Registry informed Pre-Trial Chamber II that Mr Ngaïssona had told a close family member [REDACTED],

⁵² ICC-01/14-01/18-416-Conf-Exp, para. 9.

⁵³ See ICC-01/14-01/18-413-Conf-Exp, paras 82-83.

⁵⁴ For instance, the content of the 18 July 2019 conversation was incorrectly reported by the Registry, which provided the Chamber with an incomplete transcript that sparked unnecessary suspicion ICC-01/04-01/18-408-Conf-Exp, paras 22-27, in spite of the 18 July 2019 phone call having been the object of extensive submissions and litigation, the complete transcript was not provided to the Chamber until 13 December 2019, once the Defence discovered a discrepancy in a Registry's filing, ICC-01/14-01/18-404-Conf-Exp; ICC-01/04-01/18-408-Conf-Exp-AnxI.

⁵⁵ See ICC-01/14-01/18-413-Conf-Exp, para. 82; ICC-01/14-01/18-357-Conf-Exp, para. 49. In relation to the alleged 24 June 2019 incident, for example, neither the Pre-Trial Chamber nor the Registry engaged with the Defence's observation that Mr Ngaïssona would have no interest in circumventing the Detention Centre's vetting process by stating that [REDACTED], See ICC-01/14-01/18-397, paras 27-30.

⁵⁶ See ICC-01/14-01/18-397-Conf-Exp, paras 32-36.

therefore implying that Mr Ngaïssona was [REDACTED].⁵⁷ However, by placing this sentence in its proper context, based on the full transcript, it is evident that Mr Ngaïssona meant exactly the opposite, that he was merely [REDACTED].⁵⁸ Such an example further reinforces the need for the restrictions regime to be examined *de novo* by the Trial Chamber.

29. Moreover, these measures are in place despite there being no indication that Mr Ngaïssona would attempt to interfere with the proceedings or investigations. Pursuant to the Chamber's order of 18 September 2019 to conduct an expanded investigation into all of Mr Ngaïssona's non-privileged calls since the Fourth Registry Report,⁵⁹ the Registry reviewed 197 of Mr Ngaïssona's conversations with 15 different individuals.⁶⁰ Nothing in these conversations gave rise to the suspicion that Mr Ngaïssona had ever tried to interfere with the current proceedings and with the Prosecutor's investigation.⁶¹ Moreover, all of the "incidents" reported involved private matters and not matters remotely addressing the case against Mr Ngaïssona.

30. Mr Ngaïssona's isolation has only been increased by the current covid-19 outbreak, which has led the Detention Centre to cancel all visits, including from legal team members. The Defence was informed that it could no longer import any books, documents, and press articles, meant to provide Mr Ngaïssona with a social lifeline during his near-total isolation. This week, the first case of covid-19 was registered in the Central African Republic. This news has gravely

⁵⁷ ICC-01/14-01/18-390-Conf-Exp, para. 21.

⁵⁸ ICC-01/14-01/18-397-Conf-Exp-AnxI. For more examples, the Defence respectfully directs the Chamber to Defence filing ICC-01/14-01/18-397-Conf-Exp and its annexes in order to be appraised of several examples where the Registry reported irrelevant information to the Chamber and mischaracterized certain conversations.

⁵⁹ ICC-01/14-01/18-225-Conf-Exp. Reporting period from 8 April, at para. 1; ICC-01/14-01/18-357-Conf-Exp, para. 55.

⁶⁰ ICC-01/14-01/18-400-Conf-Exp, para. 15.

⁶¹ This conclusion is only reinforced by the Chamber's decision to reject the Prosecutor's request to 'direct the Registry to release the Recorded Conversations to the Prosecution where their possible relevance to a breach of articles 68 or 70 cannot be affirmatively excluded, See the Prosecutor's request: ICC-01/14-01/18-446-Conf-Exp. For the Chamber's order See Chamber's email to Counsel of 11 March 2020.

affected Mr Ngaïssona, who is concerned about his family's well-being. The restrictions regime have only exacerbated his concerns. In turn, these concerns affect Mr Ngaïssona's ability to assist the Defence in the preparation of the case against him, at a stage where he should be fully engaging with his Defence team in order to effectively prepare for trial, pursuant to article 67(1)(b) of the Statute.

31. In sum, the restrictive measures simply cannot be maintained, as they are unnecessary and disproportionate. According to the jurisprudence of the Court, the disproportionality of existing restrictive measures is heightened with the passage of time.⁶² Mr Ngaïssona has now been subject to restrictions of communications for fourteen months,⁶³ in spite of the absence of any indication that he could interfere with the current proceedings.

V. Conclusion

32. In conclusion, the Defence requests the Chamber to put an end to the Mr Ngaïssona's effective isolation from the outside world by ordering the Detention Centre to immediately lift, in practice, all restrictions in place. The restrictions have been rendered moot by the conclusion of pre-trial proceedings, they are bereft of any factual or legal basis, and are disproportionate and unnecessary to the aims pursued. Finally, the restrictions amount to a significant violation of Mr Ngaïssona's fundamental human rights.

RELIEF SOUGHT

33. The Defence respectfully requests the Chamber to:

⁶² ICC-01/04-02/06-1817-Red, para. 72.

⁶³ ICC-01/14-01/18-98-Conf-Exp, para. 12.

– **ORDER** the Detention Centre to immediately lift, in practice, the current restrictions on Mr Ngaïssona's contacts.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 02 March 2021,

At The Hague, the Netherlands.