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Pénale
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**International
Criminal
Court**

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Date: 02 March 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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA

Public

**With Confidential, EX PARTE, Annexes I and II only available to the Registrar,
Detention Section, and Patrice-Edouard Ngaïssona Defence**

**Public Redacted Version of “Defence Urgent Request to Lift Restrictions on Mr
Ngaïssona’s Contact”, ICC-01/14-01/18-408-Conf-Exp, 18 December 2019**

Source: Defence of Patrice-Edouard Ngaïssona

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
Mr Kweku Vanderpuye

Counsel for the Defence of Mr Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamaï
Ms Marie-Hélène Proulx
Ms Chiara Giudici

Counsel for the Defence of Mr Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis

Legal Representatives of the Victims

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

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented
(Participation/Reparation)**

Applicants

The Office of Public Counsel for Victims

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Harry Tjonk

**Victims Participation and Reparations
Section Other**

I. Introduction

1. On 12 December 2019, Pre-Trial Chamber II (“the Chamber”) issued its “Decision on the Ngaïssona Request to Obtain Transcripts”,¹ in which it ordered the Registry to provide the full transcript of the conversation referred to in paragraph 20 of the “Registry Reply to Defence Observations” (“Registry Reply”).² The conversation at issue dates from 18 July 2019 and was held between Mr Ngaïssona and [REDACTED]. The Registry reported this conversation in the “Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II” (“Fifth Report”).³ As an Annex to the Fifth Report, the Registry provided the Chamber and the Defence of Mr Patrice-Edouard Ngaïssona (“the Defence”) with a transcript of that conversation.⁴
2. The Defence submits that the transcript of the aforementioned conversation provided as an Annex to the Fifth Report 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.⁵ The Registry avers that the two transcripts are based on the same conversation.⁶ The overwhelming discrepancies between the two transcripts which are allegedly a verbatim record of Mr Ngaïssona and his interlocutor’s exchange cast doubt as to their authenticity, and therefore their truthfulness. It was on the basis of Mr Ngaïssona’s quoted exchanges from the Registry’s transcripts that the Chamber determined to further restrict Mr Ngaïssona’s contact with the outside world. Given that the transcript that was provided is misleading, not only for the Defence but also for the Chamber, the Defence

¹ ICC-01/14-01/18-404-Conf-Exp

² ICC-01/14-01/18-400-Conf-Exp

³ ICC-01/14-01/18-276-Conf-Exp

⁴ ICC-01/14-01/18-276-Conf-Exp-Anx

⁵ Both transcripts are provided for the Chamber’s appreciation. See Annex 1

⁶ See email [REDACTED], 13 December 2019, at 14:31. Annex 2

submits that the appropriate remedy is that all restrictions on Mr Ngaïssona's contacts be lifted. Therefore, the Defence respectfully requests the Chamber to lift all restrictions on contact imposed on Mr Ngaïssona.

II. Urgency

3. The present request is filed on an urgent basis, given that the factual basis on which the Chamber made its decision to impose further restrictions was inaccurate, and therefore, this decision must be reviewed. The urgency of the request also stems from the daily interference with Mr Ngaïssona's right to have contact with his family members and friends that resulted from the Registry misleading the Chamber. [REDACTED]. The Defence respectfully requests the Chamber to make a determination on the matter before Mr Ngaïssona's family visit which is intended to take place on 23 December 2019. Currently, any such visit would be subject to active monitoring, and the use of Sango during the visit would be prohibited.⁷ The Defence regrets the timing of this request, which falls during the winter recess. However, it did not receive the original 18 July 2019 transcript until 13 December 2019, and worked with utmost diligence to file the present motion within five days of being apprised of the content of the transcript.

III. Confidentiality

⁷ The reality of active monitoring entails that no visits can be accommodated during the weekend. Moreover, visits are limited to two-hour time slots. Mr Ngaïssona's family intended to visit him on the 21, 22, 23 and 24 December, for as long as possible. However, due to the restrictions in place, the Detention Centre has only allowed two visits, on the 23 and 24 December, for two hours each. Moreover, in order to implement the Chamber's Order to actively monitor Mr Ngaïssona's non-privileged family calls and visits, the CCO has decided to limit the language of exchange between Mr Ngaïssona and his family to French. Litigation in respect to this additional limitation is ongoing. Following a complaint against the CCO's decision, the CCO allowed two members of Mr Ngaïssona's family to speak Sango, as they don't speak any French. However, all the other members of Mr Ngaïssona's family are only allowed to speak French during phone calls and visits. The Defence is currently seeking review of this decision with the Registrar.

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, Detention Centre, and the Ngaïssona Defence” as they concern information regarding Mr Ngaïssona’s private life and detention-related matters, and also respond to documents of the same classification. The Defence will file a confidential redacted version of these submissions.

IV. Procedural history

5. On 23 January 2019, Mr Patrice-Edouard Ngaïssona was transferred to the ICC Detention Centre where he is currently held in pre-trial detention.
6. On the same day, the Single Judge of Pre-Trial Chamber II issued the “Decision pursuant to Regulation 101 of the Regulations of the Court”⁸ (“First Decision”), directing the Registry to put in place several measures to restrict Mr Ngaïssona’s contact with the outside world.⁹
7. 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”),¹⁰ where it reported no incidents during the monitoring of Mr Ngaïssona’s contact with the outside world.
8. On the same day, the Chamber ordered the Registry to prepare a report on the implementation of the restrictions on contact as ordered in the First Decision “*setting out any relevant information relating to Ngaïssona’s behaviour on communications that may give rise to suspicion that he interferes with the*

⁸ ICC-01/14-01/18-98-Conf-Exp

⁹ ICC-01/14-01/18-98-Conf-Exp, para. 12

¹⁰ ICC-01/14-01/18-115-Conf-Exp

Prosecutor's investigation (in particular that he poses a threat to potential witnesses and victims) or that he engages in activities that may affect the outcome of the proceedings".¹¹

9. 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").¹² In this report, the Registry reported no incident during the monitoring of Mr Ngaïssona's contact with the outside world.
10. 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"¹³ ("Third Report"), in which it reported no incidents during the monitoring of Mr Ngaïssona's contact with the outside world.
11. On 15 April 2019 the Chamber ordered the extension of restrictions on Mr Ngaïssona's contact for the remainder of the pre-trial proceedings and ordered the Registry to submit a report every two months.¹⁴
12. 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"¹⁵ ("Fourth Report"), reporting no incident during the monitoring of Mr Ngaïssona's contact with the outside world.
13. On 15 August 2019, the Registry filed the "Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by

¹¹ ICC-01/14-01/18-114-Conf-Exp-Red, para 12

¹² ICC-01/14-01/18-125-Conf-Exp

¹³ ICC-01/14-01/18-166-Conf-Exp

¹⁴ ICC-01/14-01/18-176-Conf-Red, pp. 14-5

¹⁵ ICC-01/14-01/18-225-Conf-Exp

the Pre-Trial Chamber II" ("Fifth Report").¹⁶ In its Fifth Report, the Registry noted that Mr Ngaïssona communicated with a third person who was not on his non-privileged contacts list, and that *"the Chief Custody Officer ("CCO") considers that the content of the conversation with the third person was in obscure or coded speech."*¹⁷ To support this assertion, the Registry provided the alleged transcript of this conversation to the Chamber and the Defence.¹⁸ The Registry further informed the Chamber that no incident was reported with respect to: 1) specific contacts identified on Mr Ngaïssona's non-privileged telephone list, 2) Mr Ngaïssona's non-privileged visits, and 3) his incoming and outgoing mail.¹⁹

14. On 13 September, 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"), which was only made available to the Defence by way of reclassification on 17 September 2019.²⁰

15. On 18 September 2019, the Chamber issued its "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Seventh Decision").²¹ In its Seventh Decision, the Chamber found that Mr Ngaïssona violated the restrictions regime by communicating to a third person who was not on his non-privileged list of contacts and by engaging in the use of coded language.²² The Chamber noted that, in particular, it shared the concerns of the CCO regarding the multiple references to 'missions' in the coded conversations.²³ As a consequence the Chamber ordered *inter alia*, that all of Mr Ngaïssona's non-privileged calls, and all non-privileged and non-family visits be

¹⁶ ICC-01/14-01/18-276-Conf-Exp

¹⁷ ICC-01/14-01/18-276-Conf-Exp, para 16

¹⁸ ICC-01/14-01/18-276-Conf-Exp-Anx

¹⁹ ICC-01/14-01/18-276-Conf-Exp, paras 18, 22, 24

²⁰ ICC-01/14-01/18-337-Conf-Exp, para 16

²¹ ICC-01/14-01/18-357-Conf-Exp

²² ICC-01/14-01/18-357-Conf-Exp, paras 48-49

²³ ICC-01/14-01/18-357-Conf-Exp, para 51

suspended on an interim basis.²⁴ The Chamber ordered that Mr Ngaïssona's family visits be subject to active monitoring on an interim basis.²⁵

16. On 3 October 2019, the Chamber granted the Registry's "Request for an Extension of Time for the submission of the Seventh Report,"²⁶ until 4 November 2019. The Chamber extended the interim contact restrictions for Mr Ngaïssona until 11 October 2019, and ordered that as of 12 October 2019, Mr Ngaïssona shall be granted one hour per week of actively monitored telephone calls with his family only and that Mr Ngaïssona's family visits shall remain subject to active monitoring.²⁷ In the same decision, the Chamber ordered the Registry to provide the Defence with "*complete transcripts of the calls referenced in the Fifth Registry Report and in the Sixth Registry Report.*"²⁸

17. On 4 November 2019, the Registry submitted its "Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" ("Seventh Report"), in which it communicated to the Chamber the outcome of its investigation into all of Mr Ngaïssona's non-privileged phone calls from the Fourth Report to 18 September 2019.²⁹

18. On 11 November 2019, the Chamber granted the Defence's "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",³⁰ and ordered the Registry to provide the relevant transcripts to the Defence.³¹

²⁴ ICC-01/14-01/18-357-Conf-Exp, para. 18.

²⁵ ICC-01/14-01/18-357-Conf-Exp, paras 48-9, 52.

²⁶ ICC-01/14-01/18-362-Conf-Exp, para. 14.

²⁷ ICC-01/14-01/18-374-Conf-Exp.

²⁸ ICC-01/14-01/18-374-Conf-Exp, para 36

²⁹ ICC-01/14-01/18-390-Conf-Exp

³⁰ ICC-01/14-01/18-391-Conf-Exp

³¹ ICC-01/14-01/18-393-Conf-Exp

19. On 15 November 2019, the 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.”³² On 22 November, the Chamber ordered the Registry to reply to the Defence Observations by 4 December 2019.³³

20. On 4 December 2019, the Registry filed its “Registry Reply to Defence Observations” (“Registry Reply”).³⁴ On 12 December 2019, the Chamber granted the “Defence Request to Obtain Transcript of Phone Call Mentioned in the “Registry Reply to Defence Observations.””³⁵ The Chamber directed the Registry to provide the relevant transcript by 13 December 2019.³⁶

V. Submissions

A. The Registry contravened the Chamber’s Order to provide full transcripts of Mr Ngaïssona’s phone calls

21. Since 18 September 2019, Mr Ngaïssona is subject to particularly strict restrictions on contact.³⁷ These restrictions were imposed by the Chamber following an incident, which took place during a telephone conversation between Mr Ngaïssona and [REDACTED] on 18 July 2019. This incident was

³² ICC-01/14-01/18-397-Conf-Exp

³³ Email by Carrie Bowker on behalf of Pre-Trial Chamber II to the Office of the Director of Judicial Services, 22 November 2019, at 16:33.

³⁴ ICC-01/14-01/18-400-Conf-Exp

³⁵ ICC-01/14-01/18-401-Conf-Exp

³⁶ ICC-01/14-01/18-404-Conf-Exp

³⁷ From 18 September 2019 to 11 October 2019, all of Mr Ngaïssona’s non-privileged calls were suspended. His non-privileged and non-family visits were also suspended, while his family visits were subject to active monitoring. From 12 October 2019 as of today, Mr Ngaïssona is granted one hour per week of actively monitored telephone calls with his family only. His family visits remain subject to active monitoring. As a consequence, they are time-limited (2-hour visits) and cannot be accommodated in the weekend or during holidays. Non-privileged, non-family visits and non-privileged, non-family calls remain suspended on an interim basis. Moreover, in order to implement the Chamber’s Order to actively monitor Mr Ngaïssona’s non-privileged family calls and visits, the CCO has decided to limit the language of exchange between Mr Ngaïssona and his family to French.

brought to the Chamber's attention by way of the Fifth Registry Report, which included a transcript of the 18 July 2019 conversation as an Annex.³⁸ Moreover, the same transcript was provided to the Defence again³⁹ in the context of implementing the Chamber's Order to *"provide complete transcripts of the calls referenced in the Fifth Registry Report and the Sixth Registry Report to the Ngaïssona Defence by 4 November 2019."*⁴⁰

22. It has come to the attention of the Defence that the transcript that was provided as an Annex to the Fifth Report ("the partial transcript") is not the correct transcript of Mr Ngaïssona's 18 July 2019 conversation. In fact, the partial transcript that was provided by the Registry is both incomplete and contains different content. The only sentences which mirror each other in the two transcripts are the first two lines. The Defence only came into possession of what it believes to be the original transcript of that conversation on 13 December 2019, following the Chamber's order to provide the transcript of the phone call mentioned at paragraph 20 of the 4 December 2019 Registry Reply.⁴¹ Both transcripts are included as an Annex to the present Request.⁴²

23. In the partial transcript, more than half of the telephone call's content is missing.⁴³ Entire phrases and parts of the conversation between Mr Ngaïssona and [REDACTED] have been erased. Moreover, and which is even more concerning, the Registry never informed the Chamber nor the Defence that it

³⁸ ICC-01/14-01/18-276-Conf-Exp-Anx

³⁹ E-mail of [REDACTED] of 17 October 2019, at 17:44.

⁴⁰ ICC-01/14-01/18-374-Conf-Exp, para 36

⁴¹ ICC-01/14-01/18-404-Conf-Exp

⁴² See Annex 1

⁴³ The partial transcript has 31 lines, while the transcript transmitted by the Registry on 13 December has 76 lines.

had engaged in this exercise, letting them believe that the document provided amounted to a verbatim record of Mr Ngaïssona's conversation.⁴⁴

24. Second, the content which was maintained was considerably rephrased by the Registry, which went as far as adding sentences that cannot be found in the original transcript. For example, in the partial transcript, Mr Ngaïssona appears to have instructed [REDACTED] to put the telephone on speakerphone, by saying [REDACTED].⁴⁵ However, this sentence never appears once in the original transcript.⁴⁶

25. Another serious modification of the original transcript was made with respect to references to "missions". In the partial transcript, it appears that Mr Ngaïssona is abruptly mentioning missions, by asking to the third party: [REDACTED].⁴⁷ However, an assessment of the original transcript shows that Mr Ngaïssona never asked to the third party [REDACTED]. He only asked [REDACTED]: [REDACTED].⁴⁸ The reason why Mr Ngaïssona enquired about [REDACTED] can be found a few lines earlier, where [REDACTED] informed Mr Ngaïssona that [REDACTED].⁴⁹ To which Mr Ngaïssona responded: [REDACTED].⁵⁰ However, this exchange has been removed from the partial transcript.

26. Moreover, the order of the different topics discussed during the conversation has also been modified by the Registry. In the partial transcript, the conversation touches upon the topics of: (1) [REDACTED], (2) [REDACTED],

⁴⁴ This is evidenced, for example, by the fact that the numbering of the lines has also been changed in order to reflect the Registry's version of the transcript. Nowhere is it signalled that parts of the conversation are missing.

⁴⁵ Partial transcript, line 18

⁴⁶ [REDACTED]. Original transcript, lines 35-40

⁴⁷ Partial transcript, line 20

⁴⁸ Original transcript, line 58. [REDACTED], see line 27

⁴⁹ Original transcript, line 21

⁵⁰ Original transcript, line 22

(3) [REDACTED] and (4) [REDACTED].⁵¹ However, this is not the order in which topics were addressed. In the original transcript [REDACTED].⁵²

27. The above only constitute examples of the Registry's alterations. In fact, almost the totality of the partial transcript has been modified and re-adjusted, to the point that the only coinciding lines between the original and the partial transcripts are the first two.⁵³

B. The alterations made by the Registry materially affected the Chamber's Decision(s) on restrictions

28. In addition to providing an inaccurate transcript to the Chamber and the Defence, the Registry went as far as directly quoting from it in its Sixth Report. For example, Mr Ngaïssona was quoted saying [REDACTED].⁵⁴ However, as pointed out at paragraph 24 above, the original transcript shows that Mr Ngaïssona never said that. Moreover, in its Sixth Report, the Registry noted that Mr Ngaïssona had asked the third party [REDACTED].⁵⁵ However, as noted above, this is erroneous. The Registry also noted that Mr Ngaïssona had instructed the third party to [REDACTED].⁵⁶ Once more, this is totally inaccurate, as Mr Ngaïssona never instructed the third party to [REDACTED]. Moreover, in the original transcript, when mentioning [REDACTED] Mr Ngaïssona specified [REDACTED].⁵⁷ The Registry's failure to report this

⁵¹ Partial transcript, lines 20-27

⁵² Original transcript, lines 49-61

⁵³ A comparison of the two transcripts shows that the only coinciding lines are lines 1 and 2: [REDACTED]. In every other line, differences between the two versions can be encountered.

⁵⁴ ICC-01/14-01/18-337-Conf-Exp, para 13

⁵⁵ ICC-01/14-01/18-337-Conf-Exp, para 13

⁵⁶ ICC-01/14-01/18-337-Conf-Exp, para 13

⁵⁷ [REDACTED], Original transcript, line 58

sentence accurately led to creating the erroneous impression that the word [REDACTED] was part of a pattern of coded language.

29. In its 18 September 2019 “Decision Pursuant to Regulation 101 of the Regulations of the Court”, the Chamber found that, on 18 July 2019, Mr Ngaïssona engaged in the use of coded language, which was intended to circumvent the restrictions in place.⁵⁸ Moreover, the Chamber noted that it shared the CCO’s concerns regarding the multiple references to “missions”.⁵⁹ However, the Chamber based its assessment on an inaccurate depiction of Mr Ngaïssona’s conversation with [REDACTED]. Had the Registry put the Chamber in the position to assess the original transcript, the reference to a “mission” in this particular telephone call would have been immediately clarified.

30. Moreover, in the same decision, the Chamber noted that *“the CCO’s investigation into past calls has revealed that [Mr] Ngaïssona has repeatedly communicated with [REDACTED] using coded language, referring to ‘missions’ and [REDACTED].”*⁶⁰ This assessment was based on the Registry’s selection of quotes that were included in the Sixth Report.⁶¹ However, those quotes were not only taken entirely out of their context, but may not even be accurate. In light of the serious and grave alterations which were made to the transcript of the 18 July conversation, the Defence submits that 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. Indeed, the Registry has shown that it does not have the plain meaning interpretation of the word “transcript,” and thus the authenticity of any direct quotes from Mr

⁵⁸ ICC-01/14-01/18-357-Conf-Exp, para 49

⁵⁹ ICC-01/14-01/18-357-Conf-Exp, para 51

⁶⁰ ICC-01/14-01/18-357-Conf-Exp, para 49

⁶¹ ICC-01/14-01/18-337-Conf-Exp, para 12-13, 16

Ngaïssona's conversations should be called into question. The two versions of the 18 July transcript constitute evidence of how, by cutting and rephrasing sentences, the content of a telephone call may become obscure, casting doubt on whether the interlocutors are engaging in the use of coded language.

31. The Defence also notes that, pursuant to the Chamber's orders,⁶² the Registry provided it with the transcripts of the telephone calls underlying the Fifth, Sixth and Seventh Reports.⁶³ However, the Defence has reasons to doubt these transcripts' accuracy. In particular, the length of the transcripts appears to be too short when compared to the duration of the calls.⁶⁴ If these transcripts are not accurate, then the Chamber may have based its decisions on potentially false information and therefore its decisions should be reviewed. Additionally, the Defence has been denied the possibility to put the content of Mr Ngaïssona's phone calls into context. With fully reliable transcripts, the Defence would have had the opportunity to provide satisfactory explanations to the Chamber about the use of certain terms, if they indeed were said by the interlocutors in question. Therefore, the Registry's inaccuracy in the provision of transcripts casts doubt on the entire decision-making process with respect to the restrictions on Mr Ngaïssona's contact.

C. The original transcript confirms the Defence's past submissions

⁶² ICC-01/14-01/18-374-Conf-Exp, para 36 ; ICC-01/14-01/18-393-Conf-Exp.

⁶³ For the Fifth and Sixth Reports: E-mail of [REDACTED] of 17 October 2019, at 17:44. For the Seventh Report: E-mail of [REDACTED] of 12 November 2019, at 10:36.

⁶⁴ The 18 July 2019 conversation lasted 5 minutes and 37 seconds, and the transcript has 76 lines (while the partial version only showed 31). In order to tentatively assess whether content has been removed from other transcripts, the Defence has been observing the length of the transcript (number of lines) in relation to the duration of the call. What follows is an assessment of the phone calls mentioned at paragraph 13 of the Sixth Registry Report, listing the phone calls which led the CCO to believe that there was a "pattern of coded conversations" concerning "missions": 1 July 2019 call, 4 minutes and 11 seconds, 43 lines; 11 July 2019 call, 4 minutes and 36 seconds, 35 lines; 15 July 2019 call, 4 minutes 25 seconds, 25 lines; 8 August 2019 call, 5 minutes 12 seconds, 34 lines.

32. The provision of the original transcript of the 18 July 2019 conversation largely corroborates the Defence's past – rejected – submissions with respect to this incident. In the original transcript it is clear that, as already submitted by the Defence,⁶⁵ Mr Ngaïssona did not want to speak to the third party and opposed to it several times. He eventually accepted to exchange some words with [REDACTED] because of [REDACTED]'s insistence. The Defence submits that, if Mr Ngaïssona had wanted to circumvent the restrictions in place, he would not have protested for so long against speaking to the third party.

33. Moreover, the original transcript confirms the Defence submissions that Mr Ngaïssona did not use coded or obscure language when speaking to the third party on 18 July 2019.⁶⁶ In fact, the original transcript provides context to several of the sentences that, in the partial transcript, might have appeared to be obscure, such as the reference to a mission and the reference to [REDACTED]. Lastly, while the partial transcript gave the impression of a disconnected conversation, the original transcript allows an objective reader to follow the conversation easily and does not pose particular interpretative challenges.

34. The Defence considers the Registry's provision of a partial and inaccurate transcript to be a serious issue, which amounts not only a violation of the Chamber's order to provide full transcripts, but also to a grave violation of the Registry's impartial mandate. This incident confirms the Registry's and Detention Centre's lack of impartiality with regard to Mr Ngaïssona's restrictions on contact. The Defence respectfully reiterates its request to the

⁶⁵ ICC-01/14-01/18-300-Conf-Exp

⁶⁶ ICC-01/14-01/18-373-Conf-Exp, para 27

Chamber that an independent investigation be launched into the Detention Centre's monitoring of Mr Ngaïssona's telephone calls.⁶⁷ In particular, this investigation should include an inquiry into the reasons why an erroneous transcript or summary thereof was prepared.

35. Moreover, the Defence respectfully requests the Chamber to urgently lift all restrictions on Mr Ngaïssona's contact, due to the fact that they have been imposed on the grounds of inaccurate and partial information provided by the Registry. As recalled by the Chamber, *"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."*⁶⁸ The Defence submits that, in light of the new circumstances presented above, a revision of the current restrictions on Mr Ngaïssona's contact is warranted.

36. Lastly, the Defence respectfully requests the Chamber to direct the Registry to provide the *original* Sango and French transcripts of all the telephone conversations mentioned in the Fifth, Sixth and Seventh Report. Moreover, the Defence would appreciate if the Chamber could direct the Registry to *always* provide the original transcripts supporting each allegation of impropriety on Mr Ngaïssona's part in regard to restrictions. Such a measure would ensure that the Defence does not have to engage in the time-consuming process of requesting the Chamber to order the Registry to provide transcripts, every time a Report on the implementation of contact restrictions is issued.

RELIEF SOUGHT

⁶⁷ ICC-01/14-01/18-397-Conf-Exp, para 48

⁶⁸ ICC-01/14-01/18-176-Conf-Red, para. 29; ICC-01/14-01/18-137-Conf-Exp, para. 18

37. The Defence respectfully requests the Chamber to:

- Urgently **LIFT** the current restrictions on Mr Ngaïssona's contact;
- In the alternative, **CONSIDERABLY ALLEVIATE** the current restrictions on Mr Ngaïssona's contact;
- **ORDER** the Registry to provide all the original transcripts underlying allegations of impropriety on Mr Ngaïssona's part with respect to his contact restrictions;
- **ORDER** an investigation into the Detention Centre's monitoring of Mr Ngaïssona's telephone calls and into the reasons why an erroneous transcript or summary thereof was prepared.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 02 March 2021,
At The Hague, the Netherlands.