

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No. ICC-01/14-01/18
Date of original: 3 February 2020
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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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**Unrepresented Applicants for
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Other

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 7 December 2018, the Chamber issued the ‘Warrant of Arrest for Patrice-Edouard Ngaïssona’.¹
2. On 23 January 2019, Ngaïssona was surrendered to the Court by the authorities of the French Republic.² On the same day, the Single Judge, acting on behalf of the Chamber,³ and pursuant to the request of the Prosecutor,⁴ issued the ‘Decision pursuant to Regulation 101 of the Regulations of the Court’, thereby restricting Ngaïssona’s contacts and communications upon his arrival at the ICC Detention Centre.⁵
3. The Chamber subsequently issued a number of decisions pursuant to regulation 101 of the Regulations of the Court (the ‘Regulations’), thereby extending the restrictions on Ngaïssona’s contacts with certain modifications. In this regard, the Chamber recalls the procedural history set out in its previous decisions.⁶
4. On 6 January 2020, the Registry submitted the ‘Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II’ (the ‘Eighth Registry Report’).⁷
5. On 10 January 2020, the Registry submitted the ‘Registry Report on the Provision of Transcripts’ (the ‘Report on Provision of Transcripts’).⁸
6. On 13 January 2020, the Prosecutor submitted the ‘Prosecution’s Observations on the “Eighth Registry report on the Implementation of the Restrictions on Contact of

¹ 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](#).

² Registry, Rapport du Greffe sur la Remise de Patrice-Edouard Ngaïssona, ICC-01/14-01/18-101-US-Exp, paras 5-14.

³ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-90.

⁴ ICC-01/14-01/18-2-US-Exp, para. 357.

⁵ ICC-01/14-01/18-98-Conf-Exp.

⁶ For the complete procedural history, see Decision Pursuant to Regulation 101 of the Regulations of the Court, 23 December 2019, ICC-01/14-01/18-413-Conf-Exp, paras 1-29.

⁷ ICC-01/14-01/18-416-Conf-Exp. A confidential redacted version is also available, see ICC-01/14-01/18-416-Conf-Exp-Red.

⁸ ICC-01/14-01/18-417-Conf-Exp.

Mr Ngaïssona Ordered by Pre-Trial Chamber II” (ICC-01/14-01/18-416-Conf-Exp-Red)’.⁹

7. On 20 January 2020, the Ngaïssona Defence filed the ‘Defence Observations Pursuant to the “Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II” (ICC-01/14-01/18-416-Conf-Exp)’ (the ‘Defence Observations’).¹⁰

8. On 21 January 2020, the Ngaïssona Defence submitted its ‘Addendum to Defence Observations Pursuant to the “Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II” (ICC-01/14-01/18-416-Conf-Exp), ICC-01/14-01-18-420-Conf-Exp’ (the ‘Addendum’).¹¹

II. Submissions

i. The Report on Provision of Transcripts

9. On 10 January 2020, the Registry submitted the Report on Provision of Transcripts, in which it indicates that, pursuant to the Chamber’s direction,¹² it has completed a review of conversations reported in the Fifth, Sixth, and Seventh Registry Reports, and has transferred to the Ngaïssona Defence transcripts of 5 conversations reported on in the Sixth Registry Report. While these transcripts were not used in the Sixth Registry Report, they are ‘nonetheless more complete and detailed transcripts of the same conversations’.

10. In regard to the two transcripts of the [REDACTED] conversation, which were the subject of a previous Defence filing¹³ and the 23 December 2019 Decision,¹⁴ the Registry clarifies that the first version of the conversation was produced by a Language Services Section (‘LSS’) Sango interpreter who works with the Detention Section for the sole purpose of the current active monitoring order. In contrast, the second version of the conversation ‘was produced by contracted LSS Sango field interpreters’.

⁹ ICC-01/14-01/18-418-Conf-Exp.

¹⁰ ICC-01/14-01/18-420-Conf-Exp.

¹¹ ICC-01/14-01/18-421-Conf-Exp.

¹² Decision Pursuant to Regulation 101 of the Regulations of the Court, 23 December 2019, ICC-01/14-01/18-413-Conf-Exp.

¹³ Defence Urgent Request to Lift Restrictions on Mr Ngaïssona’s Contact, ICC-01/14-01/18-408-Conf-Exp, 18 December 2019.

¹⁴ Decision Pursuant to Regulation 101 of the Regulations of the Court, ICC-01/14-01/18-413-Conf-Exp.

11. The Registry notes that the first version of the conversation was a partial translation following the detection of a suspected breach. It was intended to provide the relevant parts of the conversation to the Chief Custody Officer and the Chamber on an urgent basis, and was produced quickly without including the entire phone call. Upon instructions from the Chamber, the Registry later expanded its investigation into Ngaïssona's phone calls, and external LSS Sango field interpreters re-listened to and transcribed conversations from the relevant time period.

12. The Registry appreciates the Defence noticing the discrepancy in regard to the [REDACTED] conversation, and indicates that the updated full transcript was not provided as the result of an oversight.

ii. The Eighth Registry Report

13. The Registry reports that since 7 November 2019 no phone calls have taken place, but that the Registry 'continues to offer the possibility of monitored phone calls to Mr Ngaïssona twice a week'. The Registry has continued to actively monitor Ngaïssona's non-privileged visits by family members, and reports that no incidents occurred during these visits. Similarly, there are no incidents to report in relation to any written correspondence or packages sent or received by Ngaïssona.

iii. The Prosecutor's Observations

14. The Prosecutor submits that 'there has been no change in circumstances warranting the Chamber's lifting or modification of the existing restrictions', and that the Seventh Registry Report 'revealed a number of violations' committed by Ngaïssona. The Prosecutor 'has serious concerns regarding the alleged violations' which 'present a genuine risk to Prosecution Witnesses and the integrity of the proceedings'. To ensure the protection of both, in the view of the Prosecutor, requires that the conditions imposed to date remain in place.

15. Further, the Prosecutor submits that the risk to the integrity of the proceedings and to the security of witnesses 'continues to be exacerbated by the prevailing security situation in the Central African Republic', noting that the 'already fragile security situation in CAR has been further destabilised by Francois BOZIZE's recent return to Bangui, where he continues to enjoy wide political support'. Due to Bozize's 'direct link to NGAÏSSONA, including in respect of the pending charges', the Prosecutor

argues that the Chamber must observe ‘the risks attendant to this developing situation’. In addition, the Prosecutor submits that, given the fact that (i) a number of charges have been confirmed against Ngaïssona; (ii) the Accused is ‘charged with serious crimes and could face a lengthy term of imprisonment’ (iii) the Accused ‘has a clear understanding’ of the ‘specific evidence’ which supports the charges against him, including ‘the statements of Prosecution Witnesses whose identities, with few exceptions, have been fully disclosed’, these circumstances ‘further augment the risk posed to witnesses whether directly or indirectly’.

iv. *The Defence Observations*

16. The Defence submits that Ngaïssona’s detention conditions ‘have become untenable’, and requests that the Chamber lift or significantly reduce his current restrictions ‘in order to put an end to his effective isolation from the outside world’.

17. In the view of the Defence, neither of the incidents referred to in the 23 December 2019 Decision¹⁵ ‘give rise to the suspicion that Mr Ngaïssona is trying to interfere with the Prosecutor’s investigation’, nor can they be said to pose any genuine risk to the integrity of the proceedings. Further, the Defence submits that ‘in the absence of any concrete indication that Mr Ngaïssona poses a threat to Prosecution witnesses, the arguments put forward by the Prosecution are too vague to justify the continuation of the current restrictions’. If the Chamber were to accept such arguments, the Defence submits that this ‘would amount to stating that once an accused is aware of the case against him and the security situation of his country is volatile [...] his contacts with the outside world should automatically be restricted’.

18. The Defence indicates that Ngaïssona ‘has brought to a halt all contact with the outside world for more than two months, with the exception of a few family visits’, and that Ngaïssona ‘deemed this measure necessary in order to avoid other accusations of impropriety on his part by the Registry’. Ngaïssona’s decision to cease all phone calls until further notice has ‘had a serious effect on his mental well-being’. While this decision was self-imposed, the Defence submits that it was brought about by ‘the lack

¹⁵ Decision pursuant to Regulation 101 of the Regulations of the Court, 23 December 2019, ICC-01/14-01/18-413-Conf-Exp. A confidential *ex parte* redacted version is also available, see ICC-01/14-01/18-413-Conf-Exp-Red.

of objectivity exerted by the Registry in its monitoring’ of Ngaïssona’s calls. To attest to the isolation that Ngaïssona is experiencing, an annex has been attached to the Defence Observations, [REDACTED].

19. The Defence submits that ‘the current restrictions disproportionately affect Mr Ngaïssona’s right to private and family life’ and considerably aggravate the effects of Ngaïssona’s pre-trial detention. In addition, the restrictions have ‘hampered [Ngaïssona’s] ability to assist his Defence team in the preparation of the case against him’. The Defence submits that it has been ‘mainly occupied with addressing Mr Ngaïssona’s detention conditions’ and that it has diverted considerable resources to addressing the restrictions regime, and trying ‘to keep Mr Ngaïssona from the edge of despair, since his Defence team constitutes his only contact with the outside world’. The Defence expresses concern that if the restrictions continue, it will affect the preparation of the Defence case and thus Ngaïssona’s fair trial rights. The Defence indicates that the ‘disproportionality of these measures is heightened with the passage of time’, and notes that restrictions ‘have been in place for almost one year’.

v. *The Defence Addendum*

20. In the Defence Addendum, the Defence has attached [REDACTED] as an annex, [REDACTED]. The Defence submits that [REDACTED] ‘does not add, change, or detract from any of the arguments the Defence made’ in the Defence Observations, [REDACTED] Therefore, the Defence requests that the Chamber accept the addendum as part of the Defence Observations.

III. Determination by the Chamber

21. 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.

i. *The Defence Addendum*

22. As a preliminary issue, the Chamber notes that the Defence Addendum was submitted one day after the submission of the Defence Observations. The Chamber further notes the Defence submission that [REDACTED] was received by the Defence at 15:30 on 20 January 2020; that the Defence did not have time to file [REDACTED]

as an annex to the Defence Observations; and that [REDACTED] does not add, change, or detract from the arguments made in the Defence Observations. Noting these circumstances, the Chamber will consider the Addendum for the purpose of the present decision.

ii. Ngaïssona's cessation of telephone calls and well-being

23. The Chamber notes that while Ngaïssona has had family visits within the most recent reporting period, the Accused has decided to cease all telephone calls until further notice. While this decision was self-imposed, the Defence submits that Ngaïssona made this decision as he has 'lost trust in the Registry's objectivity when it comes to monitoring'.

24. The Chamber notes the concerns expressed [REDACTED] by the Defence regarding the Accused's mental well-being. The Chamber takes these concerns seriously, and directs the Registry to seek the advice of medical professionals in regard to Ngaïssona's well-being, and to report back to the Chamber promptly following such consultations.

25. While it is for Ngaïssona to decide whether and how to make use of the time available to him for telephone calls and visits, as previously noted by the Chamber, there is no evidence to support the allegation that the Registry has shown any bias towards Ngaïssona.¹⁶ Furthermore, while the Defence notes that this decision is also intended to 'demonstrate to the Chamber that [Ngaïssona] does not intend to interfere in the proceedings against him', the Chamber considers that such measures are unnecessary. The Chamber stresses that Ngaïssona should not be dissuaded from making use of the time available to him for telephone calls and visits. Recognising the importance of maintaining a family life, the Chamber encourages Ngaïssona, to the extent that he wishes to do so, to make use of the time available to him for telephone calls and visits, keeping in mind the need to abide by the contact restrictions and the rules of the Detention Centre.

iii. Determination on Contact Restrictions

¹⁶ See Decision Pursuant to Regulation 101 of the Regulations of the Court, 23 December 2019, ICC-01/14-01/18-413-Conf-Exp-Red, paras 87-88.

26. Turning to the Eighth Registry Report, the Chamber notes that no incidents of concern took place during the relevant reporting period. However, the Chamber recalls its finding that Ngaïssona has previously violated the imposed restrictions by communicating with unauthorised individuals and engaging in a pattern of using coded language, and attempted to circumvent the verification procedure of the Detention Centre.¹⁷ The Chamber has already expressed that it considers these violations to be a serious matter, and recalls its determination that the existing contact restrictions shall remain in place for the duration of the pre-trial proceedings, subject to change should compelling reasons arise.

27. The Chamber considers that there has been no change in circumstances that would warrant modifying the current restrictions. The Chamber notes that the Defence refers to two of the incidents as ‘private matters’ and argues that they cannot be said to pose a risk. However, the Chamber notes that it has already considered this matter and the observations of the Defence, and determined these violations to be of serious concern.¹⁸

28. Furthermore, the Chamber is not persuaded by the Defence’s argument that the absence of any misconduct within the last reporting periods means that restrictions are no longer warranted. Refraining from prohibited conduct should be the norm. The fact that, under the existing contact restrictions, there have been no other incidents of concern does not necessarily lead to the conclusion that the restrictions are no longer necessary. Considering that multiple violations have taken place, the Chamber considers that there is a high risk that, absent the existing contact restrictions, Ngaïssona may engage in further attempts to circumvent the restrictions in place.

29. In light of the above, 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 telephone contact and visits with a number of family members. The Chamber considers that Ngaïssona’s right to privacy and family

¹⁷ See Decision Pursuant to Regulation 101 of the Regulations of the Court, 18 September 2019, ICC-01/14-01/18-357-Conf-Exp-Red and Decision Pursuant to Regulation 101 of the Regulations of the Court, 23 December 2019, ICC-01/14-01/18-413-Conf-Exp-Red.

¹⁸ See Decision Pursuant to Regulation 101 of the Regulations of the Court, 18 September 2019, ICC-01/14-01/18-357-Conf-Exp and Decision Pursuant to Regulation 101 of the Regulations of the Court, 23 December 2019, ICC-01/14-01/18-413-Conf-Exp-Red.

life is being appropriately balanced with the objectives of ensuring the integrity of the proceedings.

30. 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.

31. Finally, noting that the Defence has not yet filed a confidential, redacted version of the Defence Observations, the Chamber directs the Defence to do so by no later than 7 February 2020.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **ACCEPTS** the Defence Addendum;
- b) **REJECTS** the Defence request to remove or modify the contact restrictions in place for Ngaïssona;
- c) **MAINTAINS** the existing restrictions for the remainder of the pre-trial proceedings;
- d) **DIRECTS** the Registry to consult with medical experts in relation to Ngaïssona's well-being, and to report back to the Chamber promptly following consultations; and
- e) **DIRECTS** the Defence to file a confidential, redacted version of the Defence Observations (ICC-01/14-01/18-420-Conf-Exp), available to the Prosecutor, by no later than 7 February 2020.

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

/Signed/

Judge Antoine Kesia-Mbe Mindua

Presiding Judge

/Signed/

/Signed/

Judge Tomoko Akane

Judge Rosario Salvatore Aitala

Dated 17 March 2021

At The Hague, The Netherlands