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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’, 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 23 January 2019 Decision, as modified by 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.

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' (the '9 July 2019 Decision'), 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' visits to Ngaïssona; and (iii) rejecting the Ngaïssona Defence's request to terminate the restrictions on Ngaïssona's contacts.²⁴

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](#).

²⁴ ICC-01/14-01/18-240-Conf-Exp.

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 26 August 2019, the Chamber received the ‘Prosecution’s Observations Pursuant to the “Decision Pursuant to Regulation 101 of the Regulations of the Court”, ICC-01/14-01/18-176-Conf-Exp (the ‘Prosecutor’s Observations on the Fifth Registry Report’).²⁶

16. On 29 August 2019, the Chamber received the ‘Defence Observations Pursuant to the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (ICC-01/14-01/18-176-Conf-Red)’ (the ‘Defence Observations on the Fifth Registry Report’).²⁷

17. 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’).²⁸

18. On 18 September 2019, the Chamber received the ‘Defence Response to the “Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II”’ (the ‘Defence Observations on the Sixth Registry Report’).²⁹

19. On 18 September 2019, the Chamber received the ‘Observations de l’Accusation sous le “Six [sic] Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II”, 13 septembre 2019, ICC-01/14-01/18-337-Conf-Exp’ (the ‘Prosecutor’s Observations on the Sixth Registry Report’).³⁰

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-01/14-01/18-289-Conf-Exp.

²⁷ ICC-01/14-01/18-300-Conf-Exp.

²⁸ 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.

²⁹ ICC-01/14-01/18-355-Conf-Exp.

³⁰ ICC-01/14-01/18-356-Conf-Exp.

II. Submissions

A. The Registry

1. *The Fifth Registry Report*

20. The Registry indicates that an incident occurred during a conversation between Ngaïssona and [REDACTED], in which ‘the [REDACTED] put her telephone on speaker phone and the interpreter heard the female voice of an unknown third person speaking to Mr Ngaïssona’.

21. The Registry points out that it ‘has thoroughly analysed this phone call and informs the Chamber that the third person was not on Mr Ngaïssona’s non-privileged call list’. Furthermore, the CCO ‘considers that the content of the conversation with the third person was in obscure or coded speech’. The Registry also indicates that, based on this incident, the CCO ‘decided on 14 August 2019 to temporarily suspend [REDACTED] from his non-privileged telephone contact list’ and is ‘currently undertaking a retrospective analysis of previous conversations with [REDACTED]’.

22. The Registry reports that it ‘extended the time available for Mr Ngaïssona to make phone calls from 45 minutes to one hour’, and actively monitored the scheduled telephone calls made by Ngaïssona at random. The Registry further points out that it increased the random monitoring of Ngaïssona’s contacts with the individuals referred to in the 9 July 2019 Decision and that no incidents occurred during these conversations. However, the Registry considers that ‘[t]he operational reality of a live monitoring environment is that it is impossible to predict which individuals a detained person will call at any moment, thereby constraining the Registry’s ability to substantially increase the random active monitoring only for the specific contacts concerned’. In this regard, the Registry indicates that it is ‘internally addressing these challenges, but [it also] informs the Chamber that in the future it may wish to seek the Chamber’s guidance on the matter’.

23. The Registry also reports that it has implemented the Chamber’s instructions to actively monitor at random as frequently as possible Mr Ngaïssona’s non-privileged visits, with the exception of family visits from his wife and children, and to substantially increase the frequency of random monitoring of Mr Ngaïssona’s visits with the individuals referred to in the 9 July 2019 Decision. No incidents have occurred during such visits. Finally, the Registry indicates that it has no incidents or

concerns to report with regard to any written correspondence or packages that were sent or received by Ngaïssona.

2. *The Sixth Registry Report*

24. The Registry reports that the third party in the speaker phone incident described above was referred to as the '[REDACTED]'. In this call, Ngaïssona asked the woman [REDACTED]. Ngaïssona then told the third party that she [REDACTED].

25. The CCO indicates that he has thus far undertaken an analysis into seven phone calls that took place between Ngaïssona and [REDACTED] on or around [REDACTED]. A number of these calls involve discussion of the '[REDACTED]' or '[REDACTED]', and '[REDACTED]'. '[REDACTED]' is understood by the Registry to refer to the [REDACTED]. In these calls, Ngaïssona and [REDACTED] discuss the '[REDACTED]' and [REDACTED].

26. The CCO further reports that, in a [REDACTED] conversation between Ngaïssona and [REDACTED], while the content was unclear, the dialogue 'indicates that Mr Ngaïssona is attempting to breach the Chamber's restrictions on contacts'.

27. The CCO informs the Chamber that several of these conversations involve discussions regarding [REDACTED]. On [REDACTED], there was a discussion about [REDACTED], [REDACTED] told Ngaïssona that [REDACTED]. To this, Ngaïssona responded [REDACTED]. On [REDACTED], [REDACTED] informed Ngaïssona that [REDACTED]. [REDACTED] explained to Ngaïssona that [REDACTED].

28. There are additional conversations between Ngaïssona and [REDACTED] that are still to be translated and analysed. Considering the calls that have already been reviewed as a whole, the CCO is 'concerned that the pattern may suggest a disregard for the Chamber's orders and the use of obscure or coded speech that raises a concern. The CCO is also concerned by the number of conversations regarding '[REDACTED]'.

29. As a result of the above, the CCO suspended [REDACTED] from his call list on 14 August 2019. The Registry has received a visit request from [REDACTED]. In light of the call suspension, and considering the information from the conversations analysed to date, the CCO denied the visit request and will inform Ngaïssona of this accordingly.

30. The CCO notes that ‘as Mr Ngaïssona’s wife and children are not actively monitored during their visits’ it is not possible to ensure that the Chamber’s restrictions are complied with during these visits.

31. Should the Chamber decide to increase the monitoring of Ngaïssona’s visits or telephone calls, the CCO recommends that the visits be time limited, according to the resources of the Detention Centre and the Registry.

B. The Prosecutor

1. The Prosecutor’s Observations on the Fifth Registry Report

32. The Prosecutor submits that she is ‘concerned about NGAÏSSONA’s violation of the Chamber’s decision on contact restrictions and requests the Chamber to order active monitoring of all of the Suspect’s non-privileged telephone calls’. In the alternative, the Prosecutor ‘requests that current restrictions on NGAÏSSONA’s contacts in detention are, at a minimum, maintained and fully implemented through the conclusion of the confirmation proceedings’.

33. The Prosecutor argues that the incident referred to by the Registry ‘demonstrates NGAÏSSONA’s willingness to violate the Chamber’s decision and validates the necessity of reverting to active monitoring of all of the Suspect’s non-privileged telephone calls’, and that without such restrictions, Ngaïssona ‘poses a concrete risk to the security of witnesses and the investigation, especially following the Prosecution’s disclosure of sensitive material related to over 140 of its witnesses’.

34. The Prosecutor further requests that the Chamber direct the Registry to determine and disclose to her the identities and contacts of the individuals who spoke to Ngaïssona during the incident, in order to allow the Prosecutor to better determine the risks posed to witnesses and to take action as necessary.

35. In addition, the Prosecutor submits that she ‘remains concerned about the proper and full implementation’ of the 9 July 2019 Decision which permitted the addition to Ngaïssona’s non-privileged contact list of individuals [REDACTED]. In regard to the logistical concerns raised in the Fifth Registry Report, the Prosecutor submits that the ‘logistical impediment of not knowing whom NGAÏSSONA intends to contact beforehand can be managed by simply requiring such information reasonably in advance of any given day on which he is permitted to make non-privileged telephone calls’.

2. *The Prosecutor's Observations on the Sixth Registry Report*

36. The Prosecutor shares the concerns expressed in the Sixth Registry Report regarding Ngaïssona's use of coded language and the fact that he spoke to an unauthorised individual. To ensure the integrity of the proceedings and to avoid potential interference with witnesses, the Prosecutor requests that the Chamber order any additional restrictive measures it deems appropriate and necessary, including limiting the non-privileged contact list of Ngaïssona.

37. In addition, the Prosecutor requests the continued translation and analysis of Ngaïssona's communications, and that the Registry provide the findings of this investigation to the Prosecutor. The Prosecutor further suggests that Ngaïssona's family visits be subject to monitoring.

C. **The Defence**

1. *The Defence Observations on the Fifth Registry Report*

38. The Defence submits that the 'single incident mentioned in the Fifth Report' does not warrant maintaining strict contact restrictions on Ngaïssona. The Defence submits that the transcript of the call in question indicates that Ngaïssona: initially refused to be put on speakerphone; ultimately agreed '[a]t the insistence of [REDACTED]'; only exchanged 'a few words' with the third party; did not use obscure or coded language; only spoke about family members; and 'encouraged his interlocutor to "slow down and to speak slowly" as to "avoid any problems here"'. On this basis, the Defence argues that the transcript of the call 'does not sustain the conclusion that Mr Ngaïssona intended to violate the Chamber's First Decision'.

39. In addition, the Defence submits that Ngaïssona 'sincerely was not aware' that this would be a violation. The Defence requests that [REDACTED] be reinstated to his non-privileged telephone list of contacts, and that the restrictions on contacts be lifted. In the alternative, the Defence requests that the Chamber significantly reduce the contact restrictions currently imposed. In support of this request, the Defence argues that the Prosecutor has failed to 'raise concrete grounds to substantiate' maintaining the restrictions, the restrictions regime does not meet the requirements of necessity and proportionality, and that 'family contacts are a vital means of moral support in times of hardship relating to prolonged pre-trial detention'. The Defence further submits that, due to the redactions applied by the Prosecutor in her previous

observations, which are incorporated by reference in the Prosecutor's Observations, the Defence is prevented from 'making concrete, specific and up-to-date observations on the Prosecution's Request'.

2. *The Defence Observations on the Sixth Registry Report*

40. The Defence avers that it has 'been put in a position to provide its observations in less than 24 hours from being notified of the deadline being shortened' and informs the Chamber that it 'has not been able to meaningfully consult with Mr Ngaïssona regarding the [Sixth Registry] Report'. Accordingly, the Defence is of the view that it 'is not able to provide the Chamber with full and detailed submissions'.

41. The Defence asserts that it 'has not been provided with the transcripts of the conversations mentioned in the [Sixth Registry] Report, and therefore it is only limited to the Registry's selection of information and is not able to place the conversations had between Mr Ngaïssona and [REDACTED] in their proper context'.

42. Furthermore, the Defence takes the view that 'Mr Ngaïssona in this exchange makes it clear that he is trying to comply with the Regulation 101 restrictions by reminding his interlocutor that he is under the restrictions regime and that he wishes that it be respected when he states "[REDACTED]"'.

43. The Defence also contends that 'nothing in the extracts of the conversations that were provided to the Defence suggests that there is coded or obscure language employed by Mr Ngaïssona in the little cited information that has been provided by the Registry'. In this regard, the Defence submits that 'referring to individuals by general names such as "[REDACTED]" or "[REDACTED]" is indicative of Mr Ngaïssona's speech patterns' and '[u]sing precise names every time Mr Ngaïssona engages with someone on the phone is unreasonable'. Furthermore, according to the Defence, 'in the Central African context often individuals are identified by kinship terms'. Lastly, the Defence argues that, '[w]ith respect to the word "[REDACTED]" being used, the Registry has not shown how this could not relate to [REDACTED] given that Mr Ngaïssona is speaking to [REDACTED]'.

44. In addition, the Defence 'recalls its submissions regarding the importance of Mr Ngaïssona having meaningful contacts [REDACTED]'. The Defence adds that, '[REDACTED]'.

III. Determination by the Chamber

45. 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.

46. The Chamber recalls that a detained person is entitled to, *inter alia*, communicate by letter or telephone with his or her family and other persons and to receive visits, but that these entitlements are subject to any restrictions necessary in the interests of the administration of justice or for the maintenance of the security and good order of the Detention Centre.

47. The Chamber notes that the requirement that detained persons only speak to those individuals who have been added to the list of non-privileged contacts ensures that communications between detainees and those outside the Detention Centre are subject to a form of oversight. The Chamber further recalls that in the first decision on Ngaïssona's contacts, it specifically prohibited Ngaïssona from using 'obscure or coded language' in any telephone calls.³¹

48. The Chamber finds that, by engaging in a call over speaker phone with an unauthorised third party, Ngaïssona has violated the policy of the Detention Centre and the terms of the Chamber's restrictions. While the Defence argues that Ngaïssona initially opposed the use of speaker phone, Ngaïssona nevertheless agreed to speak to the third party, and proceeded to do so using coded language.

49. Furthermore, the CCO's investigation into past calls has revealed that Ngaïssona has repeatedly communicated with [REDACTED] using coded language, referring to '[REDACTED]' and the '[REDACTED]'. The Chamber considers the Defence's argument that this language is simply reflective of Ngaïssona's speech pattern or that it reflects the CAR style of referring to individuals by kinship, to be unpersuasive, considering the frequency of the coded language and the manner in which it is used. The Chamber finds that Ngaïssona's repeated use of coded language in calls with [REDACTED] constitutes a further violation of the restrictions in place,

³¹ ICC-01/14-01/18-98-Conf-Exp, para. 8.

and considers that this coded language was intended to circumvent the restrictions imposed. The Chamber considers this to be a serious matter.

50. The Chamber notes the Defence's submission that it requires the transcripts of the calls and additional time to make full submissions on the Sixth Registry Report. In light of the seriousness of this matter, the Chamber finds that it is necessary to render a decision on an urgent basis, and notes that the Defence will have an opportunity to present further submissions following the issuance of the Seventh Registry Report.

51. Considering that Ngaïssona has engaged in a pattern of coded conversations with [REDACTED], the Chamber finds that active monitoring alone is not sufficient to protect the integrity of the proceedings. The Chamber considers that there is a high likelihood that Ngaïssona may engage in further attempts to circumvent the restrictive measures in place. In particular, the Chamber shares the concerns of the CCO regarding the multiple references to '[REDACTED]' in the coded conversations.

52. In light of the above, the Chamber finds that further measures are warranted in order to protect the integrity of the proceedings. At the same time, the Chamber remains mindful of Ngaïssona's right to privacy and family life, and considers that any restrictions must be necessary and proportionate. With this in mind, the Chamber determines the following:

- Ngaïssona's non-privileged telephone calls and non-family, non-privileged visits shall be suspended on an interim basis;
- All forms of communication between Ngaïssona and [REDACTED] with whom he has engaged in coded conversation, shall be suspended on an interim basis;
- Visits with Ngaïssona's wife and family shall be subject to active monitoring on an interim basis; discussions during family visits shall be of a strictly personal nature, and all coded or obscure language shall be avoided;
- Considering the resources required to implement active monitoring, the Registry is permitted to set time limits as necessary to allow for the effective monitoring of the visits, and is instructed to take all measures necessary to ensure that the effectiveness of the restrictions imposed are not compromised by these visits;
- The Registry shall provide both the confidential, *ex parte* and confidential redacted versions of the Seventh Registry Report, containing its findings from its investigation into Ngaïssona's calls, by no later than 16:00 on 30 September 2019;
- The parties shall provide all versions of any observations on the Seventh Registry Report by no later than 16:00 on 2 October 2019; and
- The above restrictive measures shall remain in place until 3 October 2019, inclusive, at which time the Chamber will reassess the restrictive measures in place.

53. The Chamber considers the above outlined measures to be the least restrictive measures available. The proportionality of these measures and their impact on Ngaïssona's family and private life, including on his wife and children, have been assessed in light of the above outlined circumstances. The Chamber notes that Ngaïssona may continue to have actively monitored visits with his wife and family members, [REDACTED]. Considering that these are interim restrictions that will be subject to further review at the time of the upcoming Seventh Registry Report, the Chamber considers them to be proportionate.

54. The Chamber further orders the Registry, to the extent possible, to investigate the identity of the third party who communicated via speaker phone during the incident and report back, on an *ex parte* basis, to the Chamber and Defence for Ngaïssona, in the Seventh Registry Report. Accordingly, the Prosecutor's request for disclosure of the identity and contact information of the individual who spoke to Ngaïssona during this incident is rejected. Following the Registry's report on this matter, the Chamber will consider whether it is warranted to inform the VWU and/or the Prosecutor.

55. In addition, the Chamber instructs the Registry to expand the investigation into Ngaïssona's calls to include a review of all non-privileged calls that Ngaïssona has had from the time of the 'Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II' (the 'Fourth Registry Report')³² to present. The Registry shall provide an update on the results of this investigation in the Seventh Registry Report.

56. The Chamber also directs the Registry to report any breaches of the communications regime to the Chamber on an *ex parte*, Chamber and Ngaïssona Defence only, basis. Following the reporting of any such breaches, the Chamber will consider whether it is warranted to inform the VWU and/or the Prosecutor.

57. Lastly, the Chamber considers that, in light of the present decision, the Prosecutor's request that Ngaïssona be ordered to indicate, in advance of any allocated call sessions, whom he intends to call, is moot.

³² ICC-01/14-01/18-225-Conf-Exp. A confidential redacted version is also available, see ICC-01/14-01/18-225-Conf-Exp-Red.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **SUSPENDS** all of Ngaïssona's non-privileged telephone calls and non-family, non-privileged visits on an interim basis;
- b) **SUSPENDS** all forms of communication between Ngaïssona and [REDACTED] with whom he has engaged in coded conversation on an interim basis;
- c) **ORDERS** the active monitoring of Ngaïssona's family visits and **INSTRUCTS** Ngaïssona and his visitors to limit discussions to matters of a strictly personal nature, and to avoid all coded or obscure language;
- d) **AUTHORISES** the Detention Centre and the Registry to set such time limits as necessary on Ngaïssona's family visits, so as to allow for the effective monitoring of the visits;
- e) **REJECTS** the Defence request to reinstate [REDACTED] to his list of telephone contacts and the Defence request to lift the contact restrictions on Ngaïssona;
- f) **ORDERS** the Registry, to the extent possible, to investigate to determine the identity of the third party from the call incident and report back in the Seventh Registry Report, as specified in the present decision;
- g) **REJECTS** the Prosecutor's request for disclosure of the identity and contact of the individual who spoke to Ngaïssona during the incident;
- h) **ORDERS** the Registry to provide all versions of the Seventh Registry Report by no later than 16:00 on 30 September 2019;
- i) **ORDERS** the parties to provide all versions of any observations on the Seventh Registry Report by no later than 16.00 on 2 October 2019;
- j) **ORDERS** that the above restrictive measures shall remain in place until 3 October 2019, inclusive, at which point the Chamber will reassess the restrictive measures in place;
- k) **ORDERS** the Registry to conduct an expanded investigation into all of Ngaïssona's non-privileged phone calls from the Fourth Registry Report to

present, and to report back to the Chamber in the Seventh Registry Report, as specified in the present decision;

l) **DIRECTS** the Registry to report any breaches of the communications regime, as specified in the present decision; and

m) **FINDS** that the Prosecutor's request that Ngaïssona be ordered to indicate, in advance of any allocated call sessions, whom he intends to call, is moot.

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