

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 30 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
NGAÏSSONA**

PUBLIC

**Public Redacted Version of “Registry Report on the Provision of Transcripts”,
filed on 10 January 2020, ICC-01/14-01/18-417-Conf**

Source: Registry

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

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I. Introduction

1. Following the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Ninth Decision”)¹ issued by Pre-Trial Chamber II (“Chamber”) on 23 December 2019, the Registry hereby submits a report on the provision of transcripts to the Defence for Mr Patrice-Edouard Ngaïssona (“Mr Ngaïssona”).

II. Procedural history

2. On 23 January 2019, the Single Judge of Pre-Trial Chamber II issued the “Decision pursuant to Regulation 101 of the Regulations of the Court” (“First Decision”) in which, *inter alia*, the Registry was directed to put in place several measures to restrict Mr Ngaïssona’s contacts.²
3. Following a series of subsequent Decisions and Registry Reports,³ on 9 July 2019, the Chamber issued its “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Sixth Decision”), ordering, *inter alia*, the Registry to substantially increase the frequency of random monitoring of telephone calls [REDACTED] in the Registry’s Fourth Report.

¹ Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Ninth Decision”), 23 December 2019, ICC-01/14-01/18-413-Conf-Exp.

² Single Judge, “Decision Pursuant to Regulation 101 of the Regulations of the Court”, 23 January 2019, ICC-01/14-01/18-98-Conf-Exp, paras. 7-11.

³ Pre-Trial Chamber II, “Second Decision Pursuant to Regulation 101 of the Regulations of the Court”, 29 January 2019, ICC-01/14-01/18-106-Conf-Exp; Registry, “Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge”, 06 February 2019, ICC-01/14-01/18-115-Conf-Exp; Pre-Trial Chamber II, “Third Decision Pursuant to Regulation 101 of the Regulations of the Court”, 6 February 2019, ICC-01/14-01/18-114-Conf-Exp; Registry, “Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by the Single Judge”, 25 February 2019, ICC-01/14-01/18-125-Conf-Exp; Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court”, 1 March 2019, ICC-01/14-01/18-137-Conf-Exp, paras. 19-20; Registry, “Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by Pre-Trial Chamber II”, 08 April 2019, ICC-01/14-01/18-166-Conf-Exp; Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court”, 15 April 2019, ICC-01/14-01/18-176-Conf-Red; Registry, “Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II” (“Fourth Registry Report”), 17 June 2019, ICC-01/14-01/18-225-Conf-Exp.

4. On 15 August 2019, the Registry submitted its “Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II” (“Fifth Registry Report”),⁴ reporting one incident, and attaching the transcript of that telephone conversation in an annex. The Registry also indicated it would undertake a further review of conversations with this individual.⁵
5. On 13 September 2019, the Registry submitted its “Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II” (“Sixth Registry Report”),⁶ reporting its further findings on the incident in the Fifth Registry Report, and referring to a further six telephone conversations with the same individual.⁷
6. On 18 September 2019, the Chamber issued its “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Seventh Decision”), deciding, *inter alia*, on the basis of the Fifth and Sixth Registry Reports, to suspend on an interim basis all of Mr Ngaïssona’s non-privileged telephone calls and non-family, non-privileged visits and all forms of communication between Mr Ngaïssona and the individual with whom he engaged in coded conversation, and ordering the active monitoring of Mr Ngaïssona’s visits of family members.⁸ Further, the Decision ordered the Registry to investigate to determine the identity of the third party from [REDACTED] incident, and to conduct an expanded investigation into all of Mr Ngaïssona’s non-privileged phone calls from the Fourth Registry Report to 18 September 2019.

⁴ Registry, “Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II” (“Fifth Registry Report”), 15 August 2019, ICC-01/14-01/18-276-Conf-Exp.

⁵ *Ibid.*, para. 16.

⁶ Registry, “Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II”, 13 September 2019, ICC-01/14-01/18-337-Conf-Exp.

⁷ These conversations occurred on [REDACTED].

⁸ Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Seventh Decision”), 18 September 2019, ICC-01/14-01/18-357-Conf-Exp, para. 52.

7. On 27 September 2019, the Registry filed its “Request for an Extension of Time for the submission of the Seventh Report”,⁹ requesting an extension of time in order to file the report on the expanded investigation.
8. On 3 October 2019, the Chamber issued the “Decision on the Registry’s Request for an Extension and the Contact Restrictions in place for Ngaïssona” (“Eighth Decision”),¹⁰ deciding that from 12 October 2019 Mr Ngaïssona would be allowed (1) one hour a week of actively monitored, non-privileged phone calls with his family only, and actively monitored visits with family members only, (2) to maintain these restrictions for the remainder of the pre-trial proceedings, and (3) to suspend until further notice all forms of communication between Mr Ngaïssona and the individual with whom he engaged in coded conversation.¹¹
9. On 11 November 2019, upon the Defence’s request,¹² the Chamber issued its “Decision on the Ngaïssona Defence Request to Obtain Transcripts”, directing the Registry to provide to the Ngaïssona Defence full transcripts of all conversations referred to in the Sixth Registry Report.¹³
10. On 4 November 2019, the Registry submitted its “Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II” (“Seventh Registry Report”),¹⁴ reporting its findings on the investigation of the third party from [REDACTED] telephone incident

⁹ Registry, “Request for an Extension of Time for the submission of the Seventh Report”, 27 September 2019, ICC-01/14-01/18-362-Conf-Exp.

¹⁰ Pre-Trial Chamber II, “Decision on the Registry’s Request for an Extension and the Contact Restrictions in place for Ngaïssona” (“Eighth Decision”), 3 October 2019, ICC-01/14-01/18-374-Conf-Exp.

¹¹ *Ibid.*, paras. 39-42.

¹² Defence, “Defence Request to Obtain Transcripts of Phone Calls Mentioned in the “Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II”, (ICC-01/14-01/18-390-Conf-Exp)”, 8 November 2019, ICC-01/14-01/18-391-Conf-Exp.

¹³ Pre-Trial Chamber II, “Decision on the Ngaïssona Defence Request to Obtain Transcripts”, 11 November 2019, ICC-01/14-01/18-393-Conf-Exp.

¹⁴ Registry, “Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II” (“Seventh Registry Report”), 4 November 2019, ICC-01/14-01/18-390-Conf-Exp.

and the investigation into all of Mr Ngaïssona's non-privileged phone calls from the Fourth Report to 18 September 2019. The Seventh Registry Report referenced 11 telephone calls.

11. On 11 November 2019, upon the Defence's request,¹⁵ the Chamber issued its "Decision on the Ngaïssona Defence Request to Obtain Transcripts", directing the Registry to provide to the Ngaïssona Defence full transcripts of all conversations referred to in the Seventh Registry Report.¹⁶
12. On 12 November 2019, the Registry transferred 11 transcripts referred to in the Seventh Registry Report by email to the Defence.¹⁷
13. On 15 November 2019, the Defence filed its "Defence Observations Pursuant to the "Decision Pursuant to Regulation 101 of the Regulations of the Court" (ICC-01/14-01/18-357-Conf-Exp) and the Registry's Seventh Report (ICC-01/14-01/18-390-Conf-Exp)" providing observations on the Seventh Registry Report.¹⁸
14. On 4 December 2019, following an email instruction by Pre-Trial Chamber II on 22 November 2019,¹⁹ the Registry submitted its "Registry Reply to Defence Observations (ICC-01/14-01/18-397-Conf-Exp)" ("Registry Reply").²⁰

¹⁵ Defence, "Defence Request to Obtain Transcripts of Phone Calls Mentioned in the "Seventh Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II", (ICC-01/14-01/18-390-Conf-Exp)", 8 November 2019, ICC-01/14-01/18-391-Conf-Exp.

¹⁶ Pre-Trial Chamber II, "Decision on the Ngaïssona Defence Request to Obtain Transcripts", 11 November 2019, ICC-01/14-01/18-393-Conf-Exp., para. 18.

¹⁷ Email correspondence from the Associate Legal Officer of the Detention Section to the Defence for Mr Ngaïssona, 12 November 2019 at 10:36.

¹⁸ Defence, "Defence Observations Pursuant to the "Decision Pursuant to Regulation 101 of the Regulations of the Court" (ICC-01/14-01/18-357-Conf-Exp) and the Registry's Seventh Report (ICC-01/14-01/18-390-Conf-Exp)" ("Defence Observations"), 15 November 2019, ICC-01/14-01/18-397-Conf-Exp.

¹⁹ Email correspondence from a Legal Officer of Pre-Trial Chamber II to the Registry, 22 November 2019 at 16:33.

²⁰ Registry, "Registry Reply to Defence Observations (ICC-01/14-01/18-397-Conf-Exp)" ("Registry Reply"), 4 December 2019, ICC-01/14-01/18-400-Conf-Exp.

15. On 11 December 2019, following a request from the Defence,²¹ the Chamber issued its “Decision on the Ngaïssona Defence Request to Obtain Transcripts”, directing the Registry to provide the Ngaïssona Defence with the full transcript of the conversation referred to in paragraph 20 of the Registry Reply.²²
16. On 13 December 2019, the Registry transferred by email the transcript that was referred to in paragraph 20 of the Registry Reply, namely, an updated transcript of [REDACTED] telephone conversation.²³
17. On 23 December 2019, the Chamber issued its Ninth Decision,²⁴ *inter alia*, extending the existing contact restrictions for the remainder of the pre-trial proceedings and directing the Registry to provide to the Ngaïssona Defence with complete transcripts of all conversations referred to in the Fifth, Sixth, and Seventh Registry Reports.²⁵

III. Classification

18. In accordance with regulation 23 *bis* (1) of the Regulations of the Court (“RoC”), the present report is classified as confidential *ex parte* only available to the Defence for Mr Ngaïssona, the Registrar, and the Detention Section, as it refers to filings and decisions of the same classification, and considering that it contains sensitive information regarding Mr Ngaïssona’s private life and detention-related matters. The Registry is ready to provide a confidential redacted version if so ordered by the Chamber.

²¹ Defence, “Defence Urgent Request to Lift Restrictions on Mr Ngaïssona’s Contact” (“Defence Request”), 18 December 2019, ICC-01/14-01/18-408-Conf-Exp.

²² Pre-Trial Chamber II, “Decision on the Ngaïssona Defence Request to Obtain Transcripts”, 12 December 2019, ICC-01/14-01/18-404-Conf-Exp, para. 22.

²³ Email from the Associate Legal Officer of the Detention Section to the Defence for Mr Ngaïssona, 13 December 2019 at 14:31.

²⁴ Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Ninth Decision”), 23 December 2019, ICC-01/14-01/18-413-Conf-Exp.

²⁵ *Ibid.*, paras. 80 and 89.

IV. Applicable law

19. For the purpose of the present submission, the Registry has considered regulations 99(1)(i) of the RoC, and regulations 173, 174, 175, of the Regulations of the Registry (“RoR”).

V. Submissions

20. Following the Ninth Decision, Registry has completed a review of the conversations reported in the Fifth, Sixth and Seventh Registry reports compared to the transcripts of conversations already provided to the Defence. The Registry has thus transferred transcripts of 5 conversations to the Defence for Mr Ngaissona,²⁶ comprising of 5 conversations reported on in the Sixth Registry Report. These transcripts were not used in the Sixth Registry Report, but are nonetheless more complete and detailed transcripts of the same conversations, and were created as part of the review ordered by the Chamber in the Seventh Decision,²⁷ detailed below. For the reference of the Chamber and Defence, the Registry has attached an annex of the conversations referenced in its reports to this filing.²⁸

21. Regarding the two transcripts of [REDACTED] conversation, and following the invitation of the Chamber,²⁹ the Registry wishes to clarify for the record the difference between the two transcripts provided to the Defence.³⁰ The first version of the [REDACTED] conversation was produced by a Language Services Section (“LSS”) Sango interpreter who is working with the Detention Section for the discrete purpose of the current active monitoring order. The

²⁶ Email correspondence from the Associate Legal Officer of the Detention Section to the Defence for Mr Ngaissona on 10 January 2019, at 10:48 (“Email transfer of 10 January 2019”).

²⁷ Seventh Decision, para. 55.

²⁸ Annex.

²⁹ Ninth Decision, para. 80.

³⁰ Defence Request, Annex I.

second version of the [REDACTED] conversation was produced by contracted LSS Sango field interpreters, as part of the review ordered by the Chamber.³¹

22. The first version of the conversation was a partial translation, following the detection of a suspected breach, in order to provide the relevant parts of the conversation to the Chief Custody Officer, and subsequently to the Chamber, on an urgent basis.³² This type of transcript is produced quickly, [REDACTED]. Due to the urgency, that initial transcript was requested for only the parts of the conversation at issue, not the entire phone call, which allows for a shorter turn around on the transcript.

23. Following instruction from the Chamber,³³ the Registry later expanded its investigation into Mr Ngaïssona's telephone calls from the Fourth Registry Report, dated on 17 June 2019, until 18 September 2019, for breaches of the Chamber's restrictions on communications. External LSS Sango field interpreters were contracted [REDACTED], who then re-listened and transcribed conversations during this period. One of those conversations was [REDACTED] phone call, thus producing a full transcript of the conversations. The results of that review were provided in the Seventh Registry Report.³⁴

24. When undertaking the review of transcripts used in the Registry's Seventh Report, to be disclosed to the Defence pursuant to the Chamber's order of 11 November 2019,³⁵ the Registry was not provided with the updated full transcript of the [REDACTED] conversation. This was an unintentional oversight as our internal records had shown that the [REDACTED] transcript

³¹ Seventh Decision, para. 55.

³² Fifth Registry Report, Annex.

³³ Seventh Decision, para. 55.

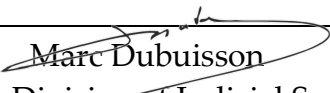
³⁴ Seventh Registry Report.

³⁵ Pre-Trial Chamber II, "Decision on the Ngaïssona Defence Request to Obtain Transcripts", 11 November 2019, ICC-01/14-01/18-393-Conf-Exp.

had already been provided to the Defence on 15 August 2019³⁶ and on 17 October 2019.³⁷ However that was the partial version of the [REDACTED] conversation and not the later created full version of the conversation.

25. The Registry thus appreciates the Defence noticing this discrepancy and requesting the full transcript, which was provided to the Defence on 13 December 2019,³⁸ following the Chamber's order.³⁹

26. Finally, the Registry clarifies that the transcripts of the 5 conversations transferred on 10 January 2020 are also full transcripts that were created as part of the aforementioned review, therefore any discrepancies between the initial transcripts used in the Sixth Report, and subsequently provided to the Defence,⁴⁰ and the transcripts later produced and now disclosed to the Defence⁴¹ would be as a result of the same procedure.


 Marc Dubuisson
 Director Division of Judicial Services
 on behalf of Peter Lewis, Registrar

Dated this 30 March 2021

At The Hague, the Netherlands

³⁶ Fifth Registry Report, Annex.

³⁷ Email communication from the Associate Legal Officer of the Detention Section to the Defence for Mr Ngaïssona, 17 October 2019 at 17:44.

³⁸ Defence Request, Annex II.

³⁹ Email transfer of 10 January 2019.

⁴⁰ Email communication from the Associate Legal Officer of the Detention Section to the Defence for Mr Ngaïssona, 17 October 2019 at 17:44.

⁴¹ Email transfer of 10 January 2019.