

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 31 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 ROMBHOT YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

Public Redacted Version of “Defence Response to the ‘Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II,’” 18 September 2019

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. Introduction

1. On the eve of the confirmation hearing, the Registry submitted *ex parte* on 13 September 2019 its “Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II ”¹ (“the Report”). In the Report, the Registry provides the Chamber with findings from the investigation it conducted following the alleged speaker phone incident that occurred while Mr Ngaïssona was speaking to [REDACTED] on 18 July 2019.²
2. On 17 September 2019 at 16:20, the Report was notified to the Defence for Mr Ngaïssona (“the Defence”). At 18:47 on the same day, the Chamber shortened the deadline to file Defence observations on the Report and requested that the Defence make its observations by 16:00 on 18 September 2019.
3. The Defence has therefore been put in a position to provide its observations in less than 24 hours from being notified of the deadline being shortened. The Defence takes this opportunity to inform the Chamber that it has not been able to meaningfully consult with Mr Ngaïssona regarding the Report. Indeed, to schedule a visit with Mr Ngaïssona the Defence was required to submit such request by noon on 17 September 2019.³ At that time, the Defence was not yet aware of the Report. In the interim, the Defence has only been able to communicate with Mr Ngaïssona by telephone, which given the sensitivity of the matter does not allow for a full and effective discussion.
4. Given these constraints, the Defence is not able to provide the Chamber with full and detailed submissions. However, the Defence endeavors to accommodate the Chamber with its observations to the best of ability at this

¹ ICC-01/14-01/18-337-Conf-Exp

² See ICC-01/14-01/18-276-Conf-Exp and its annex.

³ Regulation 178 of the Regulations of the Registry

stage. The Defence therefore reserves its right to make further submissions on the matter when the Registry renders its next Report.

II. Classification

5. The Defence classifies these observations as *ex parte* only available to the Registrar, Detention Section, and Victims and Witnesses Unit, as it responds to a filing with this classification. Moreover, it concerns the private life of Mr Ngaïssona and detention related matters. The Defence will provide the Chamber with a confidential redacted version as soon as practicable given its current time and resource constraints.

III. Submissions

6. The Defence makes the following preliminary submissions with respect to the Registry's Report, which mitigate against the increased monitoring of Mr Ngaïssona's visits, telephone calls, and the reduction of his family visits. The Defence also requests that [REDACTED].
7. First, the Defence notes that it has not been provided with the transcripts of the conversations mentioned in the 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. The Defence recalls that when provided with the transcript of the 18 July 2019 conversation that Mr Ngaïssona had with [REDACTED], it was able to substantiate that the conversation only related to family matters.⁴ In this regard, the Defence submits that the Registry has not provided any information that would suggest that [REDACTED]. [REDACTED]. Again, the Defence does not have access to the transcript and so cannot make full submissions on the matter.

⁴ See ICC-01/14-01/18-300-Conf-Exp, para. 27.

8. Second, the Defence submits that contrary to the Registry's submissions at paragraph 14, 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]. With respect to putting the telephone on speaker, the Defence incorporates by reference its submissions on Mr Ngaïssona not being put on notice of the rule against this practice until 15 August 2019.⁵

9. Third, 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. The Registry has culled the conversations in which certain phrases appear, and has presented them to suggest a pattern of using codes or obscure languages. However, referring to individuals by general names such as [REDACTED] or [REDACTED] is indicative of Mr Ngaïssona's speech patterns. While he is mindful of the monitoring regime, Mr Ngaïssona is not able to change his manner of speech. Using precise names every time Mr Ngaïssona engages with someone on the phone is unreasonable. Further, the Defence notes that in the Central African context often individuals are identified by kinship terms such as "frère," "cousin," and "mama." The emphasis in the culture is on the community and not on the individual so it would be natural for Mr Ngaïssona to call someone by a general term such. With respect to [REDACTED], the Registry has not shown how this could not relate to [REDACTED] given that Mr Ngaïssona is speaking to [REDACTED].

⁵ See ICC-01/14-01/18-300-Conf-Exp, paras 21-23.

10. Fourth, the Defence recalls its submissions regarding the importance of Mr Ngaïssona having meaningful contacts with his family while he is detained.⁶ By taking [REDACTED] off the phone contact list and refusing [REDACTED] visit, the Detention Centre has effectively deprived Mr Ngaïssona from maintaining a relationship with his [REDACTED] for an indefinite period of time. The Defence submits that such a measure is disproportionate, also in light of the absence of any conclusive evidence for the Registry's interpretation. The Report states that the Detention Centre refused to have Mr Ngaïssona's [REDACTED] visit because the Chamber had determined the Detention Centre should not monitor private family visits from [REDACTED]. The Defence notes that at the time, the Chamber decided to not monitor private family visits because no incident had been reported by the Registry regarding the monitoring of Mr Ngaïssona's contacts.⁷ Therefore, this decision which was made because Mr Ngaïssona was complying with the Restrictions regime. It is respectfully submitted that Mr Ngaïssona should not now experience negative consequences for his compliance, and thus have [REDACTED] be taken off his visitors list.

Respectfully submitted,



Mr Geert-Jan Alexander Knoops
Lead Counsel for Mr. Patrice-Edouard Ngaïssona

Dated this 31 March 2021
At The Hague, the Netherlands.

⁶ ICC-01/14-01/18-300-Conf-Exp, paras 38-39.

⁷ ICC-01/14-01/18-137-Conf-Exp, paras 19-20.