

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 YEKATOM AND PATRICE-EDOUARD
NGAÏSSONA**

PUBLIC

Public Redacted Version of “Confidential Redacted Version of “Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II”, dated 15 August 2019”, filed on 15 August 2019, ICC-01/14-01/18-276-Conf-Red

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” (“Fifth Decision”)¹ issued by the Pre-Trial Chamber II (“Chamber”) on 15 April 2019, in which the Registry is ordered to report on the implementation of the restrictions on contact for Patrice-Édouard Ngaïssona (“Mr Ngaïssona”) every two months, the Registry hereby submits its report on the monitoring of Mr Ngaïssona’s non-privileged telephone calls, visits and incoming and outgoing mail since 17 June 2019. In this report, the Registry informs the Chamber of one reported incident.

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. On 6 February 2019, the Registry submitted its “Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge”,³ reporting no incidents.
4. On 6 February 2019, the Chamber issued the “Third Decision pursuant to Regulation 101 of the Regulations of the Court”⁴ in which it ordered, *inter alia*, the Registry to prepare a report on the implementation of the restrictions on

¹ Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Fifth Decision”), 15 April 2019, ICC-01/14-01/18-176-Conf-Red.

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 Registry, “Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge”, 6 February 2019, ICC-01/14-01/18-115-Conf-Exp.

⁴ 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.

contact as ordered in the First Decision “setting out any relevant information relating to Ngaïssona’s behaviour or communications that may give rise to suspicion that he interferes with the 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”.⁵

5. On 25 February 2019, the Registry submitted the “Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona”,⁶ reporting no incidents.
6. On 1 March 2019, the Chamber issued the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Fourth Decision”) in which it decided, *inter alia*, that “Ngaïssona’s non-privileged telephone conversations and visits (apart from private family visits) shall henceforth be actively monitored *at random* [...] as frequently as possible”.⁷
7. On 8 April 2019, the Registry submitted the “Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by the Pre-Trial Chamber II”,⁸ reporting no incidents.
8. On 15 April 2019, the Chamber issued its Fifth Decision, deciding, *inter alia*, to extend the restrictive measures for the remainder of the pre-trial proceeding.⁹ The Decision also requested the Registry ensure that time required to set up a telephone call does not affect the time allotted to speak on the phone, and to

⁵ *Ibid.*, para. 12.

⁶ Registry, “Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by the Pre-Trial Chamber II”, 25 February 2019, ICC-01/14-01/18-125-Conf-Exp.

⁷ Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Fourth Decision”), 1 March 2019, ICC-01/14-01/18-137-Conf-Exp, paras. 19-20.

⁸ Registry, “Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Édouard Ngaïssona Ordered by the Single Judge”, 8 April 2019, ICC-01/14-01/18-166-Conf-Exp.

⁹ Fifth Decision, para. 32.

submit a report on implementation of the restrictive measures every two months.¹⁰

9. On 17 June 2019, the Registry submitted its “Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaissona Ordered by the Pre-Trial Chamber II” (“Fourth Report”), reporting no violations.¹¹

10. 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 and visits [REDACTED] in the Registry’s Fourth Report.¹²

II. Classification

11. 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 and the Registry, as it contains sensitive information regarding Mr Ngaissona’s private life and detention-related matters. A confidential redacted version of the present report has been prepared, as ordered by the Chamber.¹³

IV. Applicable law

12. For the purpose of the present submission, the Registry has considered regulations 99(1)(h), (i) and 100 of the RoC, and regulations 168, 169, 170, 173, 174, 175, 179, 180, and 183 of the Regulations of the Registry (“RoR”).

¹⁰ Fifth Decision, para. 32.

¹¹ Registry, “Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaissona Ordered by the Pre-Trial Chamber II”, 17 June 2019, ICC-01/14-01/18-225-Conf-Exp.

¹² Pre-Trial Chamber II, “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Sixth Decision”), 9 July 2019, ICC-01/14-01/18-240-Conf-Exp, para. 30.

¹³ Fifth Decision, para. 32.

V. Submissions

Non-privileged telephone calls

13. During the reporting period, Mr Ngaïssona made telephone calls to the individuals on his non-privileged telephone contact list according to an implemented time schedule. As of 13 June 2019, considering the reasonable demands of the daily schedule at the Detention Centre (“DC”) and the availability of the interpreter, Mr Ngaïssona has the opportunity to make non-privileged telephone calls twice a week, for a period of one hour on each scheduled day. The Registry has extended the time available for Mr Ngaïssona to make phone calls from 45 minutes to one hour, in order to effectively implement the Chamber’s Fifth Decision.¹⁴ As such, the time required to set up, connect or reconnect a telephone call does not affect the time allocated to Mr Ngaïssona for non-privileged telephone calls.

14. During the reporting period, the Registry implemented the Chamber’s Fourth Decision by actively monitoring the scheduled telephone calls made by Mr Ngaïssona at random.

15. The Registry informs the Chamber that during one such telephone conversation between Mr Ngaïssona and [REDACTED], the [REDACTED] put [REDACTED] telephone on speaker phone and the interpreter heard the female voice of an unknown third person speaking to Mr Ngaïssona. The [REDACTED] then switched the phone call off speaker phone and continued [REDACTED] conversation.

¹⁴ Fifth Decision, para. 32.

16. The Registry 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 Chief Custody Officer ("CCO") considers that the content of the conversation with the third person was in obscure or coded speech.¹⁵ As such, the CCO decided on 14 August 2019 to temporarily suspend Mr Ngaïssona's [REDACTED] from his non-privileged telephone contact list, which was communicated to Mr Ngaïssona. The CCO is currently undertaking a retrospective analysis of previous conversations with Mr Ngaïssona's [REDACTED].
17. As a further precautionary measure, the CCO has issued a memorandum to all detained persons reminding them that their telephone contacts are not allowed to switch their phones to speakerphone at any time; otherwise DC staff will terminate the call. [REDACTED].
18. The Registry also implemented the Chamber's Sixth Decision, to substantially increase the random monitoring of the specific contacts identified, and can hereby confirm that no incidents were reported for those contacts during this reporting period.
19. Nevertheless, the Registry informs the Chamber that the implementation of the Sixth Decision, as regards the significant increase in random monitoring only to specific contacts, poses logistical challenges. Detained persons retain the freedom to choose which individuals they wish to call from their list of contacts during their scheduled telephone calls. The 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. The Registry is nevertheless internally

¹⁵ See Annex.

addressing these challenges, but informs the Chamber that in the future it may wish to seek the Chamber's guidance on the matter.

20. Finally, the Registry highlights that all calls are simultaneously recorded, pursuant to regulation 174 of the RoR, whether or not calls are subject to the random active monitoring.

21. As regards adding additional contacts to non-privileged telephone contact lists, the Registry carefully and duly verifies all persons before the adding a new name to a detained person's contact list. Specifically for Mr Ngaïssona, the CCO requests the Victims and Witnesses Unit for support as necessary. The Registry does not have any challenges to report to the Chamber regarding the implementation of the Chamber's Decisions in this regard during this reporting period.

Non-privileged Visits

22. Pursuant to the Fourth Decision, Mr Ngaïssona's non-privileged visits shall be actively monitored at random as frequently as possible, with the exception of family visits from his wife and children only.¹⁶ Accordingly, the latter are supervised in accordance with regulation 183 of the RoR. Pursuant to the Sixth Decision, the Registry was ordered to substantially increase the frequency of random monitoring of Mr Ngaïssona's visits with specifically identified individuals.¹⁷ The Registry informs the Chamber that it has fully implemented these two Decisions and that no incidents have been reported.

23. In order to effectively implement the Chamber's Decisions, and due to the operational realities of the DC, the Registry wishes to inform the Chamber that all visits, other than those individuals allowed for private family visits, are

¹⁶ Fourth Decision, paras. 19-20.

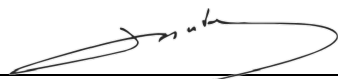
¹⁷ Sixth Decision, para. 30.

simultaneously audio recorded whether or not they are subject to random active monitoring at the time. No incidents were reported during any of the monitored visits.

Incoming and outgoing mail

24. Any written correspondence or packages that are sent or received, pursuant to regulations 168, 169 and 170 of the RoR, will be closely monitored in accordance with the relevant aforementioned Chambers Decisions and regulations. The Registry does not have any incidents or concerns to report for this reporting period.

25. As a final note, the implementation of monitoring orders is a complex and highly detailed process which is resource intensive. The Registry is operating at full capacity in implementing the monitoring orders and decisions, and remains vigilant in implementing the decisions of the Chamber.



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

Dated this 31 March 2021

At The Hague, the Netherlands