

**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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Public Redacted Version of “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, 20 January 2020**

With confidential, EX PARTE, only available to the Patrice-Edouard Ngaïssona Defence, the Registrar, and the Detention Section, Annex I

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. Pursuant to Pre-Trial Chamber II's ("Chamber") "Decision Pursuant to Regulation 101 of the Regulations of the Court,"¹ dated 15 April 2019, the Defence of Mr Patrice-Edouard Ngaïssona ("Defence") hereby presents its observations in relation to the Registry's "Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" ("Eighth Report").²
2. Mr Ngaïssona's detention conditions have become untenable. The Defence respectfully requests the Chamber to lift the restrictions on contact imposed on Mr Patrice-Edouard Ngaïssona, or in the alternative, significantly reduce his current restrictions in order to put an end to his effective isolation from the outside world. The Defence submits that the absence of any reported incident during the last two monitoring periods warrants, at a minimum, a reduction of Mr Ngaïssona's restrictions.

II. Confidentiality

3. In accordance with regulation 23bis(1) of the Regulations of the Court ("Regulations"), these submissions are filed "confidential, EX PARTE, only available to the Registrar, the Detention Centre, the Prosecutor and the Ngaïssona Defence" as they concern information regarding Mr Ngaïssona's private life and detention-related matters, and also respond to documents of the same classification.

¹ ICC-01/14-01/18-176-Conf-Red.

² ICC-01/14-01/18-416-Conf-Exp. A confidential redacted version is also available: ICC-01/14-01/18-416-Conf-Exp-Red.

III. Procedural history

4. On 23 January 2019, Mr Patrice-Edouard Ngaïssona was transferred to the ICC Detention Centre where he is currently held in pre-trial detention.
5. On the same day, the Single Judge of Pre-Trial Chamber II issued the “Decision pursuant to Regulation 101 of the Regulations of the Court”³ (“First Decision”), directing the Registry to put in place several measures to restrict Mr Ngaïssona’s contact with the outside world.⁴
6. On 6 February 2019, the Registry submitted its “Registry Report on the Implementation of the Restrictions on Contact Ordered by the Single Judge” (“First Report”),⁵ where it reported no incidents during the monitoring of Mr Ngaïssona’s contacts with the outside world.
7. On the same day, the Chamber ordered the Registry to prepare a report on the implementation of the restrictions on contact as ordered in the First Decision “*setting out any relevant information relating to Ngaïssona’s behaviour on 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*”.⁶
8. On 25 February 2019, the Registry issued its “Second Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by the Single Judge” (“Second Report”).⁷ In this report, the Registry reported no incident during the monitoring of Mr Ngaïssona’s contacts with the outside world.

³ ICC-01/14-01/18-98-Conf-Exp.

⁴ ICC-01/14-01/18-98-Conf-Exp, para. 12.

⁵ ICC-01/14-01/18-115-Conf-Exp.

⁶ ICC-01/14-01/18-114-Conf-Exp-Red, para. 12.

⁷ ICC-01/14-01/18-125-Conf-Exp.

9. On 8 April 2019, the Registry issued the “Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by Pre-Trial Chamber II”⁸ (“Third Report”), in which it reported no incidents during the monitoring of Mr Ngaïssona’s contacts with the outside world.
10. On 15 April 2019 the Chamber ordered the extension of the restrictions on Mr Ngaïssona’s contacts for the remainder of the pre-trial proceedings and ordered the Registry to submit a report on their implementation every two months.⁹
11. On 17 June 2019, the Registry issued its “Fourth Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard Ngaïssona Ordered by Pre-Trial Chamber II”¹⁰ (“the Fourth Report”), reporting no incident during the monitoring of Mr Ngaïssona’s contacts with the outside world.¹¹
12. On 15 August 2019, the Registry filed the “Fifth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by the Pre-Trial Chamber II” (“Fifth Report”),¹² in which it reported a single incident relating to a telephone call made from Mr Ngaïssona’s non-privileged telephone list. The Registry further informed the Chamber that no incident was reported with respect to: 1) specific contacts identified on Mr Ngaïssona’s non-privileged telephone list, 2) Mr Ngaïssona’s non-privileged visits, and 3) his incoming and outgoing mail.¹³
13. On 13 September, the Registry filed its ex parte “Sixth Registry Report on the

⁸ ICC-01/14-01/18-166-Conf-Exp.

⁹ ICC-01/14-01/18-176-Conf-Red, pp. 14-5.

¹⁰ ICC-01/14-01/18-225-Conf-Exp.

¹¹ ICC-01/14-01/18-225-Conf-Exp, para. 1.

¹² ICC-01/14-01/18-276-Conf-Exp.

¹³ ICC-01/14-01/18-276-Conf-Exp, paras 18, 22-4.

Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II” (“Sixth Report”), which was only made available to the Defence by way of reclassification on 17 September 2019.¹⁴

14. On 18 September 2019, the Chamber issued its “Decision Pursuant to regulation 101 of the Regulations of the Court” (“Seventh Decision”), in which it found that Mr Ngaïssona violated the restrictions regime by using coded language, and ordered *inter alia*, that all of Mr Ngaïssona’s non-privileged calls, and all non-privileged and non-family visits be suspended on an interim basis.¹⁵ The Chamber ordered that Mr Ngaïssona’s family visits be subject to active monitoring on an interim basis.¹⁶ The Chamber also ordered the Registry to submit its Seventh Report “containing its findings from its investigation into [Mr] Ngaïssona’s calls” by 30 September 2019¹⁷, and “to the extent possible, to investigate the identity of the third party who communicated via speakerphone during the incident and report back (...) in the Seventh Registry Report.”¹⁸

15. On 3 October 2019, the Chamber granted the Registry’s “Request for an Extension of Time for the submission of the Seventh Report,”¹⁹ until 4 November 2019. The Chamber extended the interim contact restrictions for Mr Ngaïssona until 11 October 2019, and ordered that as of 12 October 2019, Mr Ngaïssona shall be granted one hour per week of actively monitored telephone calls with his family only and that Mr Ngaïssona’s family visits shall remain subject to active monitoring.²⁰

16. On 4 November 2019, the Registry submitted its “Seventh Registry Report on

¹⁴ ICC-01/14-01/18-337-Conf-Exp, para. 16.

¹⁵ ICC-01/14-01/18-357-Conf-Exp, para. 18.

¹⁶ ICC-01/14-01/18-357-Conf-Exp, paras 48-9, 52.

¹⁷ ICC-01/14-01/18-357-Conf-Exp, para. 52.

¹⁸ ICC-01/14-01/18-357-Conf-Exp, para. 54.

¹⁹ ICC-01/14-01/18-362-Conf-Exp, para. 14.

²⁰ ICC-01/14-01/18-374-Conf-Exp.

the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" ("Seventh Report"), in which it communicated to the Chamber the outcome of its investigation into all of Mr Ngaïssona's non-privileged phone calls from the Fourth Report to 18 September 2019.²¹

17. On 23 December 2019, the Chamber issued its "Decision Pursuant to Regulation 101 of the Regulations of the Court" ("Ninth Decision"),²² in which it rejected the Defence's "Defence Urgent Request to Lift Restrictions on Mr Ngaïssona's Contact."²³ The Chamber found that the existing restrictions should be maintained for the remainder of the pre-trial proceedings.²⁴

18. On 6 January 2020, the Registry filed its "Eighth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II" ("Eighth Report"),²⁵ in which it informed the Chamber that there had been no incidents in relation to Mr Ngaïssona's contacts.²⁶

19. On 13 January 2020, the Prosecution submitted its "Prosecution's Observations on the *"Eighth Registry report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II"*" ("Prosecution's Observations").²⁷ In its observations, the Prosecution argued that the current contact restrictions should *"at a minimum, be maintained and fully implemented for the remainder of the pre-trial proceedings."*²⁸

IV. Submissions

²¹ ICC-01/14-01/18-390-Conf-Exp.

²² ICC-01/14-01/18-413-Conf-Exp.

²³ ICC-01/14-01/18-408-Conf-Exp.

²⁴ ICC-01/14-01/18-413-Conf-Exp, para 86.

²⁵ ICC-01/14-01/18-416-Conf-Exp.

²⁶ ICC-01/14-01/18-416-Conf-Exp, paras 11-12.

²⁷ ICC-01/14-01/18-418-Conf-Exp.

²⁸ ICC-01/14-01/18-418-Conf-Exp, para 7.

20. The Defence submits that the current restrictions on Mr Ngaïssona's contacts are no longer justified and should therefore be lifted, or at a minimum considerably reduced. Since July 2019, no incidents have taken place with respect to Mr Ngaïssona's contacts with the outside world.²⁹

21. In its last Regulation 101 Decision, the Chamber recalled that *"contact restrictions must be necessary, proportionate to the legitimate aim pursued, and balanced against a suspect's right to private and family life. In addition, careful consideration must be given to the passage of time and severity of the measures imposed."*³⁰ The Defence submits that the current restrictions on Mr Ngaïssona's contacts are neither necessary, nor proportionate to the legitimate aim pursued, namely to protect the Prosecutor's investigation and the integrity of the proceedings. Moreover, the current restrictions on Mr Ngaïssona's contacts have a disproportionate effect on his human rights.

A. The current restrictions regime is neither necessary nor proportionate to the aim pursued

22. In its 23 December 2019 Decision, the Chamber noted that two separate incidents took place with respect to Mr Ngaïssona's contacts with the outside world. One concerns Mr Ngaïssona's conversations with [REDACTED] about [REDACTED], and his exchanges with the latter, which date from July 2019.³¹ The other incident concerns Mr Ngaïssona's conversation with [REDACTED],

²⁹ ICC-01/14-01/18-276-Conf-Exp (Fifth Registry Report) reported one incident, which took place on 15 July 2019; ICC-01/14-01/18-337-Conf-Exp (Sixth Registry Report) did not report any new incident in the relevant reporting period; ICC-01/14-01/18-390-Conf-Exp (Seventh Registry Report) did not report any new incident in the relevant reporting period; ICC-01/14-01/18-416-Conf-Exp (Eighth Registry Report) did not report any new incident.

³⁰ ICC-01/14-01/18-413-Conf-Exp, para 78. A confidential redacted version is also available: ICC-01/14-01/18-413-Conf-Red.

³¹ ICC-01/14-01/18-413-Conf-Exp, para 82.

which took place on 24 June 2019.³² The Defence submits that, in the last six months, no further incident has taken place with respect to Mr Ngaïssona's contacts.

23. When directing the Registry to report on the implementation of Mr Ngaïssona's contact restrictions, the Chamber ordered it to set out "*any relevant information relating to Ngaïssona's behaviour on 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*".³³

24. The Defence submits that neither of the two incidents mentioned above give rise to the suspicion that Mr Ngaïssona is trying to interfere with the Prosecutor's investigation. The updated transcript of the conversation between Mr Ngaïssona and [REDACTED] clearly shows that the two did not discuss any case related issue.³⁴ As for Mr Ngaïssona's conversation with [REDACTED] on 24 June 2019, Mr Ngaïssona simply informed [REDACTED] that [REDACTED].³⁵ [REDACTED], the Defence submits that the above incident can hardly give rise to the suspicion that Mr Ngaïssona is interfering in any way with the Prosecutor's investigation.

25. In its observations on the Eighth Registry Report, the Prosecutor noted that it has "*serious concerns regarding the alleged violations and conduct of the Accused, which present a genuine risk to Prosecution Witnesses and the integrity of the proceedings*."³⁶ However, as submitted above, the alleged incidents which took place during Mr Ngaïssona's contacts cannot be said to pose any "genuine risk" to Prosecution witnesses or the integrity of the proceedings, as they

³² ICC-01/14-01/18-413-Conf-Exp, paras 83-85.

³³ ICC-01/14-01/18-114-Conf-Exp-Red, para. 12.

³⁴ ICC-01/14-01/18-408-Conf-Exp-AnxI.

³⁵ ICC-01/14-01/18-397-Conf-Exp-AnxI, page 6.

³⁶ ICC-01/14-01/18-418-Conf-Exp, para 4.

were totally unrelated to the case against Mr Ngaïssona, and revolved around private matters. Moreover, the Prosecution argues that the fact that Mr Ngaïssona has a “*clear understanding of the case against him*”, coupled with the “*fragile security situation in CAR*”, “*further augment the risk posed to witnesses whether directly or indirectly.*”³⁷ 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.

26. According to Regulation 101(2), the Prosecutor may request the Chamber to set conditions for contact if it has “reasonable grounds to believe” that such contact may, *inter alia*, affect the outcome of the proceedings. However, the Prosecution’s Observations simply present vague and speculative arguments as to why the restrictions on Mr Ngaïssona’s contacts should be maintained. If the Chamber were to accept such arguments, that would amount to stating that once an accused is aware of the case against him and the security situation of his country is volatile, which is often the case in post-conflict or conflict societies, his contacts with the outside world should automatically be restricted. Such an interpretation would be in contrast with the plain meaning of Regulation 101(2), which clearly states that there must be “reasonable grounds” underlying a request for contact restrictions. Moreover, such an interpretation would be in contrast with the Court’s own jurisprudence, according to which restrictive measures must be absolutely necessary in the case at hand.³⁸

³⁷ ICC-01/14-01/18-418-Conf-Exp, paras 5-6.

³⁸ See *The Prosecutor v German Katanga and Mathieu Ngudjolo Chui*, ‘Decision on Request 1200 of the Prosecutor for Prohibition and Restrictive Measures Against Mathieu Ngudjolo with Respect to Contacts Both Outside and Inside the Detention Centre’, ICC-01/04-01/07-1243-tENG-Red, para 25.

27. Since 12 October 2019, Mr Ngaïssona is under the following restrictions: (i) he is granted one hour of non-privileged phone calls per week with a number of family members, subject to active monitoring; (ii) [REDACTED] are excluded from Mr Ngaïssona's list of contacts until further notice; and (iii) his family visits are subject to active monitoring, and thus limited in time and intimacy since the visits cannot be monitored in the visiting area, but can only be monitored in isolated meeting rooms.³⁹ Similar restriction regimes were imposed in the past on other accused persons before the Court, following concrete allegations that they had attempted to interfere with Prosecution witnesses.⁴⁰ However, in the case of Mr Ngaïssona, there has been no indication that he may try to interfere with the integrity of the proceedings. Moreover, the Chamber has never in its decisions on contact restrictions found that the abovementioned incidents did interfere with the integrity of the proceedings. Rather, the Chamber limited its decision to finding that Mr Ngaïssona had communicated with a third individual and had employed "coded" language.⁴¹

28. As averred by the Registry in its Eighth Report,⁴² Mr 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. Mr Ngaïssona deemed this measure

³⁹ ICC-01/14-01/18-413-Conf-Exp, para 79.

⁴⁰ For example, Mr Ntaganda's telephone calls and family visits were subject to active monitoring following allegations of witnesses coaching and references to the identity of Prosecution witnesses during Mr Ntaganda's telephone calls. See *The Prosecutor v. Bosco Ntaganda*, 'Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts', ICC-01/04-02/06-785-Red; Similarly, Mr Ngudjolo's telephone calls and visits were prohibited on an interim basis following allegations of witnesses coaching and references to the identities of Prosecution witnesses during his non-privileged telephone calls. See *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, 'Decision on Request 1200 of the Prosecutor for Prohibition and Restrictive Measures Against Mathieu Ngudjolo with Respect to Contacts Both Outside and Inside the Detention Centre', ICC-01/04-01/07-1243-tENG-Red. These conditions were subsequently relaxed by allowing Mr Ngudjolo to communicate with certain members of his family. See 'Third Decision on Measures of Prohibition and Restriction of Contacts Both Outside and Inside the Detention Centre in respect of Mathieu Ngudjolo', ICC-01/04-01/07-1498-tENG-Red.

⁴¹ ICC-01/14-01/18-413-Conf-Exp, para 82.

⁴² ICC-01/14-01/18-416-Conf-Exp, para 9.

necessary in order to avoid other accusations of impropriety on his part by the Registry. Moreover, Mr Ngaïssona wished, with this decision, to demonstrate to the Chamber that he does not intend to interfere in the proceedings against him. Ever since Mr Ngaïssona was put on notice as to the prohibition of using the speaker phone, no further incident has occurred with respect to Mr Ngaïssona's contacts.

29. In sum, the Defence submits that the current restrictions on Mr Ngaïssona's contacts are no longer justified, as they lack necessity and proportionality to the aim pursued, namely the protection of the Prosecutor's investigation and the outcome of the proceedings. As pointed out by the Chamber, *"restrictions on contacts and communications under the Court's statutory framework must be (re-) assessed in light of concrete, specific and up-to-date information."*⁴³ The Defence respectfully requests the Chamber to reassess the current measures while being mindful of Mr Ngaïssona's good behavior in the past six months.

B. The current restrictions on Mr Ngaïssona's contacts have a disproportionate effect on his human rights

30. The Defence respectfully submits that, in addition to being neither necessary nor proportionate to the aim of protecting the integrity of the proceedings, the current restrictions have a disproportionate effect on Mr Ngaïssona's human rights.

31. The current restrictions disproportionately affect Mr Ngaïssona's right to private and family life. As stated by this Court, "all people – including the

⁴³ ICC-01/14-01/18-176-Conf-Red, para 29.

incarcerated - have a right to family life”.⁴⁴ The ECHR has held that it “is an essential part of a prisoner’s right to respect for family life that the prison authorities assist him in maintaining contact with his close family”.⁴⁵ The right to family life is not absolute and may be interfered with if (i) in accordance with the law; (ii) necessary and (iii) proportionate.⁴⁶ However, as pointed out above, the current restrictions lack necessity and proportionality to the legitimate aim pursued, namely the protection of the Prosecution’s investigation and the outcome of the proceedings. Never has the Chamber made a finding that the breaches of the restrictions regime related to the Prosecution’s investigation or the case against Mr Ngaïssona. The Chamber limited its findings on breaches to the use of coded language and contacts with unvetted individuals who are not on Mr Ngaïssona’s list of contacts.

⁴⁴ ICC-02/04-01/15-1444, para 23, citing Art. 17 of the International Convention of Civil and Political Rights; art. 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; art. 11(2) of the Inter-American Convention on Human Rights. See also UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015, A/RES/70/175 (annex), rule 106 (‘Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.’).

⁴⁵ ICC-01/04-01/07-1709-tENG-Red, para. 22, relying *inter alia* on *Messina v. Italy*, no. 25498/94, 28 September 2000, paras. 61 to 63: “61 ; International Criminal Tribunal for Rwanda, *The Prosecutor v. Ndindiliyimana*, The President’s Decision on a Defence Motion to Reverse the Prosecutor’s Request for Prohibition of Contact Pursuant to Rule 64, Case No. ICTR-2000-56-T, 25 November 2002, para. 10; International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Krajisnik*, Decision on the Defence’s Request for an Order Setting Aside, in Part, the Deputy Registrar’s Decision of 3 February 2004 , 14 May 2004, Case No. IT-00-39-T, para. 9; See ⁴⁵ See for instance, 2015 United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as the “Nelson Mandela Rules”): “[i]mprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore, the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation”. The Mandela Rules further provide that “[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals”, which includes through telecommunication. With respect to restrictive measures specifically, the Mandela Rules indicate that “[t]he means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order”, Rules 3, 58, 43(3) United Nations Standard Minimum Rules for the Treatment of Prisoners, Resolution adopted by the General Assembly on 17 December 2015, https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

⁴⁶ ICC-01/04-01/07-322, 13 March 2008, p. 9; ICC-02/04-01/15-1444, para. 24, citing Art. 8(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (‘There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society [...]’); art. 11(2) of the Inter-American Convention on Human Rights (prohibiting ‘arbitrary or abusive’ interference). See also European Court of Human Rights, Grand Chamber, *Paradiso and Campanelli v. Italy*, 24 January 2017, app. no. 25358/12, para. 181 (‘According to the Court’s established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests’).

Moreover, the current restrictions disproportionately affect Mr Ngaïssona's right to private and family life.

32. By seriously hampering Mr Ngaïssona's right to have meaningful contact with his family, the current restrictions regime considerably aggravates the effects of Mr Ngaïssona's pre-trial detention. Several members of Mr Ngaïssona's family have been excluded from his list of contacts until further notice. Moreover, the nature of active monitoring affects Mr Ngaïssona's family visits in that visits are time-limited, cannot be accommodated during the weekend and do not take place in the visiting room. The weekend restriction prevents working members of Mr Ngaïssona's family from visiting him. In addition, Mr Ngaïssona's decision to stop all telephone calls until further notice has had a serious effect on his mental well-being. While this was solely Mr Ngaïssona's choice, the lack of objectivity exerted by the Registry in its monitoring of Mr Ngaïssona's calls brought about this decision. Mr Ngaïssona has lost trust in the Registry's objectivity when it comes to monitoring. The discovery that the Registry provided an imprecise and misleading transcript relating to the July 2019 incident further affected Mr Ngaïssona's lack of trust. The explanations that were provided by the Registry in respect to this incident only further confirmed this sentiment.⁴⁷

33. Mr Ngaïssona's current mental state has been greatly affected by his effective isolation from his family and friends. [REDACTED].⁴⁸ [REDACTED]. The inability to be close to his family in such times had serious consequences on Mr Ngaïssona's well-being.

⁴⁷ ICC-01/14-01/18-417-Conf-Exp. At para 22 of its 'Registry Report on the Provision of Transcripts', the Registry submitted that the initial transcript of the 18 July 2019 conversation was a "partial translation" which was "produced quickly". However, the Registry had submitted a month earlier that "as per the Registry's practice, transcripts are provided by *verbatim* citations and are not subject to analysis that would jeopardize the Registry's neutrality." See ICC-01/14-01/18-400-Conf-Exp, para 21.

⁴⁸ See Annex I.

34. Moreover, the effective isolation from his family currently constitutes Mr Ngaïssona's only concern, which has in turn seriously hampered his ability to assist his Defence team in the preparation of the case against him. At the same time, the Defence has been mainly occupied with addressing Mr Ngaïssona's detention conditions. Considerable defence resources have been diverted: (i) to address the current regime of restrictions; and (ii) to try to keep Mr Ngaïssona from the edge of despair, since his Defence team constitutes his only contact with the outside world. The Defence is increasingly concerned that this situation, if prolonged, will continue affecting the preparation of the Defence's case, and thus Mr Ngaïssona's fair trial rights.

35. In the absence of any concrete indication that Mr Ngaïssona's behavior may affect the Prosecution's investigation or the outcome of the proceedings, his fundamental human rights outweigh the justification for maintaining the restrictions on communications. These restrictions bear disproportionate and debilitating consequences on Mr Ngaïssona's well-being and on his protected rights to have contact with his family.

36. Moreover, these restrictions inevitably affect Mr Ngaïssona's capacity to adequately assist his Defence in the preparation of the case against him. The disproportionality of these measures is heightened with the passage of time,⁴⁹ given that restrictions have been in place for almost one year, and that no incident has taken place in the last six months, even after the Registry conducted an active investigation into potential breaches of the restrictions regime.

37. In sum, the current restrictions on communications considerably aggravate the conditions of Mr Ngaïssona's pre-trial detention, both physically and mentally. Most significantly, they lack necessity and proportionality; such

⁴⁹ ICC-01/04-02/06-1817-Red, para. 72.

measures are no longer justified, in the absence of concrete indications that Mr Ngaïssona “*[c]ould prejudice or otherwise affect the outcome of the proceedings against [him], or any other investigation*”.⁵⁰ The Defence thus respectfully requests the Chamber to lift, or in the alternative, considerably alleviate, Mr Ngaïssona’s contact restrictions.

RELIEF SOUGHT

38. The Defence respectfully requests the Chamber to:

- **LIFT** the current restrictions on Mr Ngaïssona’s contacts;
or, in the alternative:
- **Considerably REDUCE** the current restrictions on Mr Ngaïssona’s contacts.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

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

⁵⁰ Regulation 101(2)(b), Regulations of the Court.