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**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
NGAISSONA***

Public

Public Redacted “Consolidated 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 ‘Request for an Extension of time for the Submission of the Seventh Report’ (ICC-01/14-01/18-362-Conf-Exp)”, ICC-01/14-01/18-373-Conf-Exp, 2 October 2019

Source: Defence of Patrice-Edouard Ngaiissona

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

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I. Introduction

1. In conformity with the Pre-Trial Chamber II's ("Chamber") "Decision Pursuant to Regulation 101 of the Regulations of the Court"¹ dated 18 September 2019 and the Chamber's further instructions communicated via email on 27 September 2019,² the Defence of Mr Patrice-Edouard Ngaïssona ("Defence") hereby respectfully requests the Chamber to lift the restrictions on contact imposed on Mr Patrice-Edouard Ngaïssona and to reject the Registry's "Request for an Extension of Time for the submission of the Seventh Report"³ of 27 September 2019.

II. Confidentiality

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

III. Procedural history

3. On 23 January 2019, Mr Patrice-Edouard Ngaïssona was transferred to the ICC Detention Centre where he is currently held in pre-trial detention.
4. 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"⁴ ("First Decision"), directing the Registry to put in place several measures to restrict

¹ ICC-01/14-01/18-357-Conf-Red.

² E-mail correspondence between [REDACTED] and Counsel on 27 September 2019, at 12:57 and at 14:39.

³ ICC-01/14-01/18-362-Conf-Exp.

⁴ ICC-01/14-01/18-98-Conf-Exp.

Mr Ngaïssona's contact with the outside world.⁵

5. 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").⁶ In this report, the Registry reported no incidents during the monitoring of Mr Ngaïssona's contact with the outside world.
6. 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*".⁷
7. 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").⁸ In this report, the Registry reported no incidents during the monitoring of Mr Ngaïssona's contact with the outside world.
8. On 1 March 2019, the Chamber provisionally granted the Prosecution's request⁹ for an extension of the restrictive measures concerning Mr Ngaïssona's communications and contacts put in place until 15 April 2019.¹⁰
9. On 8 April 2019, the Registry issued the "Third Registry Report on the Implementation of the Restrictions on Contact of Mr Patrice-Edouard

⁵ ICC-01/14-01/18-98-Conf-Exp, para. 12.

⁶ ICC-01/14-01/18-115-Conf-Exp.

⁷ ICC-01/14-01/18-114-Conf-Exp-Red, para. 12.

⁸ ICC-01/14-01/18-125-Conf-Exp.

⁹ ICC-01/14-01/18-131-Conf-Exp, para. 2.

¹⁰ ICC-01/14-01/18-137-Conf-Exp.

Ngaïssona Ordered by Pre-Trial Chamber II”¹¹ (“Third Report”), in which it reported no incidents during the monitoring of Mr Ngaïssona’s contact with the outside world.

10. On 15 April 2019 the Chamber ordered the extension of restrictions on Mr Ngaïssona’s contacts for the remainder of the pre-trial proceedings and ordered the Registry to submit a report every two months.¹²
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”¹³ (“the Fourth Report”), informing the Chamber that no incident during the monitoring of Mr Ngaïssona’s contact with the outside world has been reported.¹⁴
12. On 9 July 2019, the Chamber issued the “Decision Pursuant to Regulation 101 of the Regulations of the Court” (“Sixth Decision”), in which it ordered, *inter alia*, the Registry to “substantially increase the random monitoring of [Mr] Ngaïssona’s telephone calls with [REDACTED]”.¹⁵
13. 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”),¹⁶ 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 specific contacts identified on Mr Ngaïssona’s non-privileged telephone list, with respect to Mr Ngaïssona’s

¹¹ ICC-01/14-01/18-166-Conf-Exp.

¹² ICC-01/14-01/18-176-Conf-Red, pp. 14-5.

¹³ ICC-01/14-01/18-225-Conf-Exp.

¹⁴ Fourth Report, para. 1.

¹⁵ ICC-01/14-01/18-240-Conf-Exp.

¹⁶ ICC-01/14-01/18-276-Conf-Exp.

non-privileged visits, and with respect to his incoming and outgoing mail.¹⁷

14. On 13 September, the Registry filed its ex parte “Sixth Registry Report on the Implementation of the Restrictions on Contact of Mr Ngaïssona Ordered by Pre-Trial Chamber II” (“Sixth Report”) to the exclusion of the Defence. The Sixth Report was only made available to the Defence by way of reclassification on 17 September 2019. In this Report, the Registry informed the Chamber that “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”.¹⁸
15. At 18:47 on 17 September 2019, the Chamber ordered the shortening of the deadline for the parties to present their observations with regard to the Sixth Report to the following day, before 16:00.¹⁹ The Defence presented its observations accordingly, on 18 September 2019, without having had the opportunity to consult with Mr Ngaïssona.²⁰
16. On the same day, the Chamber issued its “Decision Pursuant to regulation 101 of the Regulations of the Court” (“Seventh Decision”), in which the Chamber 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.²¹ The Chamber ordered that visits with Mr Ngaïssona’s wife and family be subject to active monitoring on an interim basis.²² The Chamber also ordered the Registry to submit its Seventh Report “containing its findings

¹⁷ Fifth Report, paras 18, 22-4.

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

¹⁹ E-mail from [REDACTED] to Counsel, 17 September 2019, 18:47.

²⁰ ICC-01/14-01/18-355-Conf-Exp. The Prosecution submitted its observations the same day, ICC-01/14-01/18-356-Conf-Exp.

²¹ ICC-01/14-01/18-357-Conf-Exp, para. 52.

²² Seventh Decision, paras 48-9, 52.

from its investigation into [Mr] Ngaïssona's calls" by 30 September 2019.²³

17. On 27 September 2019, the Registry submitted its "Request for an Extension of Time for the submission of the Seventh Report," requesting an extension of time until 4 November 2019 to submit the Seventh Registry Report.²⁴

IV. Submissions

A. The Registry has failed to show good cause which could warrant the request for an extension of time

18. The Registry was put on notice of its deadline to submit the Seventh Report since the Chamber's Seventh Decision of 18 September 2019. Despite this, the Registry submitted a request for an extension of time one working day prior to the deadline fixed by the Chamber, on Friday 27 September 2019.
19. The Registry has provided no justification as to why it submitted its request for an extension of time on the eve of its deadline ordered by the Chamber. In support of its request, the Registry observed that "since the issuance of the Seventh Decision, the [REDACTED] Sango interpreters available have been fully engaged with the Confirmation of Charges hearing";²⁵ however, the Registry was in a position to anticipate that the Sango interpreters would not be available until after the confirmation of charges hearing, which was scheduled months ago.
20. Not only has no explanation been provided by the Registry as to why it could not have made its request at an earlier stage, it has also failed to provide convincing arguments to show that it has "good cause" which would warrant an extension of time, contrary to the requirements of regulation 35(2) of the

²³ Seventh Decision, para. 52.

²⁴ ICC-01/14-01/18-362-Conf-Exp, para. 14.

²⁵ ICC-01/14-01/18-362-Conf-Exp, para. 14.

Regulations of the Court.²⁶

21. The Defence acknowledges that the Chamber has, on 27 September 2019, provisionally allowed the extension of time until the filing of the Defence response.²⁷ The Chamber has also acknowledged, in its Seventh Decision that the additional restrictions ordered were applied only on an interim²⁸ and urgent²⁹ basis and therefore considered proportionate: “considering that these are interim restrictions that will be subject to further review at the time of the upcoming Seventh Registry Report”.³⁰
22. Allowing the Registry more than an additional month to submit its Seventh Report would not be proportionate, given the extremely restrictive nature of the current restrictions on communications imposed on Mr Ngaïssona. Allowing such an extension of time would only extend the significant prejudice already experienced by Mr Ngaïssona as a result of the restrictions, which in effect amounts to quasi-isolation from the outside world, including from his closest family members. Balancing this prejudice together with Mr Ngaïssona’s right to have contact with his family,³¹ against a shortage of staff to complete the translation and review of telephone calls, it is clear that the Registry’s request for an extension of time is unwarranted.
23. In the alternative, should the Chamber find that the Registry’s request for an extension of time to be warranted, the interim restrictions regime should be immediately lifted, at a minimum, to prevent further serious prejudice caused to Mr Ngaïssona. The current measures lack proportionality and necessity, particularly given that Mr Ngaïssona is already under a stringent monitoring

²⁶ See ICC-01/05-01/08-1618, para. 7; ICC-01/04-02/06-2378-Red, para. 11; ICC-01/04-01/06-834, para. 7.

²⁷ E-mail correspondence between [REDACTED] and Counsel on 27 September 2019, at 12:57 and at 14:39..

²⁸ Seventh Decision, para. 52.

²⁹ Seventh Decision, para. 50.

³⁰ Seventh Decision, paras 52-3.

³¹ This right is a fundamental human right which applies to Mr Ngaïssona, among others, by virtue of Article 21 of the Rome Statute, but is also codified in the Court’s statutory framework, for instance Regulation 99(1)(i), 100(1) of the Regulations of the Court.

regime.

B. The Registry has not demonstrated that Mr Ngaïssona used obscure and coded language

24. First, as a preliminary matter, the Defence wishes to draw the Chamber's attention to the fact that hitherto no transcript of the alleged conversations was provided by the Registry which could have allowed for a contextualization of Mr Ngaïssona's conversations; this stands in contrast to the Registry's Fifth report where a portion of a transcript was provided.³²

25. The fact that the Registry provided, in the Sixth Report, mere excerpts of Mr Ngaïssona's telephone conversations impedes the Defence's ability to present full submissions in relation to those excerpts, which are quoted, translated and paraphrased by the Registry entirely out of their context.³³ In considering the Defence's previous request for the transcripts of the calls and additional time to make submissions, the Chamber found it necessary to render its decision on an urgent basis given that "the Defence will have an opportunity to present further submissions following the issuance of the Seventh Registry Report".³⁴ However, given the change of circumstances, namely that the Registry did not file its report on 30 September 2019 as had been scheduled, the Defence reiterates its request that the Registry provide if with the full transcripts of the conversations from which the excerpts were extracted, which the Registry has deemed contentious. Moreover, the Defence reserves its right to make further submissions once those transcripts are provided.³⁵

26. Second, the Registry makes several observations based on its analysis of phone calls between Mr Ngaïssona and [REDACTED] about i) [REDACTED],

³² ICC-01/14-01/18-276-Conf-Exp-Anx.

³³ See ICC-01/14-01/18-355-Conf-Exp, para. 7.

³⁴ Seventh Decision, para. 50.

³⁵ ICC-01/14-01/18-355-Conf-Exp, para. 7.

and ii) [REDACTED]. The CCO indicates that it 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” as well as [REDACTED].³⁶ However, these excerpts are taken entirely out of their context, and nothing in the extracts of conversation suggests that there is coded or obscure language employed by Mr Ngaïssona. Mr Ngaïssona is committed to cooperate fully and in good faith to assist the Registry and Chamber in dispelling any doubts as to the “coded” or “obscure” nature of these conversations. After consulting Mr Ngaïssona, the Defence can now clarify these conversation excerpts, in order to assist the Registry in its investigations and assist the Chamber in its determination. The Registry’s allegations will be addressed in turn.

i) The [REDACTED]

27. With respect to the Registry’s concern about [REDACTED], the Defence notes that the Chamber considered it to be “coded language”.³⁷ The Defence respectfully submits that this does not constitute coded language nor does it represent an attempt by Mr Ngaïssona to circumvent the Chamber’s order.

28. The [REDACTED] is an acquaintance of Mr Ngaïssona’s, although Mr Ngaïssona doesn’t know her name. This explains why [REDACTED].

29. [REDACTED], [REDACTED]. [REDACTED].³⁸ The Defence confirms that [REDACTED].

30. [REDACTED] had contacted Mr Ngaïssona around two years ago to ask for Mr Ngaïssona’s assistance to [REDACTED]. This is confirmed by the transcript excerpt provided by the Registry in the Annex to its Fifth Report, where [REDACTED].³⁹ [REDACTED]. It was not unusual for an unknown

³⁶ Registry Sixth Report, para. 16.

³⁷ Seventh Decision, para. 49.

³⁸ ICC-01/14-01/18-337-Conf-Exp, para. 13.

³⁹ ICC-01/14-01/18-276-Conf-Exp-Anx, p.2.

individual or a loose acquaintance to come see Mr Ngaïssona seeking financial assistance. Mr Ngaïssona is known in Bangui to help persons in the community, for instance by building churches, buying food and other items for widows etc. As submitted by the Defence in its oral submissions, it is common African cultural practice for individuals with sufficient means to assist those who are in need, regardless of whether there is any pre-existing relationship between them.⁴⁰ This explains why [REDACTED]. It is natural that Mr Ngaïssona does not know her name, as he does not remember the names of every person he has helped. As the President of the FCF, many people know Mr Ngaïssona, without him necessarily knowing them. Often, strangers asked him for help. [REDACTED]. Mr Ngaïssona assumes that she wanted to get in touch with him because she was grateful for his previous assistance.

31. Moreover, when Mr Ngaïssona told [REDACTED],⁴¹ [REDACTED].

32. With respect to the use of the word [REDACTED], Mr Ngaïssona asked [REDACTED] to [REDACTED],⁴² the Defence fails to see the impropriety, as with the other excerpts presented, of this conversation excerpt. This was a common question to ask, given that [REDACTED]. The Defence points out that Mr Ngaïssona intentionally used the French word [REDACTED] instead of the local word used in [REDACTED] precisely in order to avoid language which could be interpreted as “obscure” or “coded” by the interpreters and the Registry. It is only normal that a person would expect one to [REDACTED], as is custom in CAR.

33. The Defence has sought to identify this individual in order to assist the Registry in its investigation. In its investigations, [REDACTED]. The Defence

⁴⁰ [REDACTED]

⁴¹ ICC-01/14-01/18-276-Conf-Exp-Anx, p.1.

⁴² Sixth Report, para 13 d).

did not, however, directly contact this person as to avoid any appearance of meddling with the Registry's investigations; however, the Defence expects the Registry to be able to complete its investigations on the basis of the information provided above on an expedited basis and reiterates Mr Ngaïssona's commitment to fully assist the Registry in its investigation.

ii) 22 July 2019 telephone conversation

34. Turning to the 22 July 2019 conversation, the Registry argues that the "dialogue indicates that Mr Ngaïssona is attempting to breach the Chamber's restrictions on contacts".⁴³ The Registry observes that Mr Ngaïssona does not give protected or restricted information, but expresses concern at the fact that Mr Ngaïssona would have told [REDACTED].⁴⁴ Assuming that Mr Ngaïssona was indeed asking for [REDACTED] to put him on speaker phone in this case, which is, as observed by the Registry, unclear,⁴⁵ the Defence recalls its arguments made in relation to the 18 July 2019 conversation, on 29 August⁴⁶ and 18 September,⁴⁷ that this stemmed from a genuine belief on Mr Ngaïssona's part that this action (having a person on the other end of the line on speakerphone) did not contravene the Chamber's order.⁴⁸ This is evident from Mr Ngaïssona's language used: [REDACTED],⁴⁹ similarly to a conversation recorded a few days prior, on 18 July 2019, in which Mr Ngaïssona told his interlocutor [REDACTED].⁵⁰ Mr Ngaïssona's words clearly show that he was mindful of the Chamber's order and cautious not to breach the Chamber's order. As confirmed by the Registry itself, this did not contain

⁴³ Sixth Report, para. 14.

⁴⁴ Sixth Report, para. 14.

⁴⁵ Sixth Report, para. 14.

⁴⁶ ICC-01/14-01/18-300-Conf-Exp, paras. 19-23.

⁴⁷ ICC-01/14-01/18-355-Conf-Exp, para. 8.

⁴⁸ See ICC-01/14-01/18-300-Conf-Exp, paras 20-23.

⁴⁹ Sixth Report, para. 14.

⁵⁰ Sixth Report, para. 13 d) and ICC-01/14-01/18-276-Conf-Exp-Anx, p. 1.

“protected and restricted information” and it is clear that Mr Ngaïssona genuinely did not intend to breach the order.

35. The Defence recalls that Mr Ngaïssona was only informed on 15 August 2019 by way of a memorandum⁵¹ that speaking with a person who was on speakerphone was prohibited. This memorandum put Mr Ngaïssona on notice for the first time of this specific restriction.⁵² The conversation of 22 July 2019 mentioned in the Sixth Report occurred several weeks before the memorandum was distributed. Since the memorandum was circulated, no incident was reported in which Mr Ngaïssona would have spoken to anyone on speakerphone. The Defence respectfully asks the Chamber to consider the timing of the 18 July and 22 July 2019 conversations and the Registry’s memorandum which was communicated to Mr Ngaïssona several weeks later. The language used by Mr Ngaïssona in these conversations demonstrate that he is mindful of the Chamber’s order, but was not aware that having someone on speakerphone specifically would violate the Chamber’s order. Mr Ngaïssona has since been put on notice and reiterates his full willingness to comply with the Chamber’s order.

iii) The [REDACTED]

36. The Registry informed the Chamber that [REDACTED], referring more specifically to discussions which would have taken place on 1, 11 and 15 July 2019.⁵³ The Defence will clarify the context of this discussion in order to dispel any doubts as to any impropriety of these conversations.

37. The [REDACTED] referred to in these conversations is [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]⁵⁴ [REDACTED]. [REDACTED]. In another telephone conversation, which was not provided by

⁵¹ ICC-01/14-01/18-276-Conf-Exp, para. 17.

⁵² See ICC-01/14-01/18-300-Conf-Exp, paras 21-3.

⁵³ Sixth Report, para. 15.

⁵⁴ Sixth Report, para. 15.

the Registry, Mr Ngaïssona had asked [REDACTED]; however, a few days later, [REDACTED].⁵⁵ [REDACTED].

38. With respect, the Registry appears to identify excerpts of conversations where certain locations are mentioned, such as [REDACTED]. With the scope of the case against Mr Ngaïssona covering a vast proportion of CAR, any location mentioned by Ngaïssona or his interlocutors will resonate in one way or another with the geographic range of the case. This of course does not, however, mean that the content of the case is being discussed.

39. Moreover, as submitted by the Defence in its Response of 18 September 2019,⁵⁶ Central Africans often do not refer to persons by their first or even last names, as this is often considered a sign of disrespect, especially if this person is older than oneself. This is particularly true when referring to [REDACTED]. This explains why Mr Ngaïssona and [REDACTED] refer to [REDACTED] as the [REDACTED], especially because both he and [REDACTED] are younger than [REDACTED]. This way of speaking stems from the way in which Central Africans are raised. Moreover, the notion of “family” in CAR, as in many other countries in Sub-Saharan Africa, is very broad and can include hundreds of people. It is not always possible to know every person’s name, especially older family members’ names since, as explained above, they are almost never referred to by their first or even last names.

40. In conclusion, there is no link between these conversations held between Mr Ngaïssona and [REDACTED] and the Registry’s allegation that Mr Ngaïssona would have used a “pattern of coded conversations with [REDACTED]”.⁵⁷ These conversation excerpts fail to raise any suspicion in relation to the

⁵⁵ Sixth Report, para. 15.

⁵⁶ ICC-01/14-01/18-355-Conf-Exp, para. 9.

⁵⁷ Seventh Decision, para. 51.

integrity of the proceedings or any interference or outcome of the proceedings.⁵⁸

C. Mr Ngaïssona's past behavior in combination with internationally recognized human rights warrant the lifting of the current restrictions on communications

41. Third, additional to the explanations and arguments presented above, Mr Ngaïssona's past behavior since the active monitoring regime was imposed upon his arrival at the Detention Centre in January 2019, warrant the lifting of the restrictions. The Registry has repeatedly reported, in its First, Second, Third and Fourth Reports, that no incident with respect to Mr Ngaïssona's communications had been recorded. However, since the single incident reported in the Fifth report, which has already been extensively addressed by the Defence in previous filings, the Registry appears to have put into question all of Mr Ngaïssona's communications and appears to give meaning to certain words or expressions, without there being, respectfully, a true basis for suspicion.

42. As previously mentioned Mr Ngaïssona wishes to fully assist the Registry and Chamber in explaining the content and context of the conversation excerpts extracted by the Registry. The Defence encourages the Registry and Chamber to read these excerpts within their full context, as these excerpts represent a very small fraction of overall conversations had between Mr Ngaïssona and [REDACTED].

43. Finally, Mr Ngaïssona's fundamental human rights further outweigh the maintaining of the restrictions on communications currently imposed and more significantly, the interim restrictions imposed by way of the Chamber's Seventh Decision. These restrictions bear disproportionate and debilitating

⁵⁸ ICC-01/14-01/18-114-Conf-Exp-Red, para. 12.

consequences on Mr Ngaïssona's well-being and on his protected rights to have contacts with his family.

44. The only form of contacts left to Mr Ngaïssona are currently, to the exclusion of [REDACTED], his [REDACTED] family visits, which are now further reduced because visits are no longer possible on Saturdays because of staff shortage and visits are now considerably shorter because of the requirement for active monitoring. As the Chamber is well aware, [REDACTED] and telephone calls were Mr Ngaïssona's main method of communication with his family.

45. These restrictions are difficult to reconcile with Mr Ngaïssona's fundamental human rights.⁵⁹ The disproportionality of these measures is heightened with the passage of time,⁶⁰ given the additional time elapsed during which Mr Ngaïssona only had limited contact with the outside world. For instance, the ECHR has found 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".⁶¹

⁵⁹ 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.

⁶⁰ ICC-01/04-02/06-1817-Red, para. 72.

⁶¹ 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.

46. These human rights standards have been endorsed in the Court's jurisprudence, which identifies the principles of necessity and proportionality as required in order for restrictive measures to be imposed.⁶² As held in *Prosecutor v. Ntaganda*:

The right to privacy and family life is an internationally recognised human rights principle enshrined in a number of important human rights instruments and thus guides the Chamber's interpretation of the Statute by virtue of Article 21(3) of the Statute. The Chamber further notes that, in giving effect to this right, the European Court of Human Rights ('ECtHR') has held that any interference by a public authority with the exercise of the right to respect a detained person's private and family life, as well as correspondence, must be: i) in accordance with the law; ii) necessary, *inter alia*, for the prevention of disorder and crime and the protection of the rights and freedoms of others; and iii) proportionate to the legitimate aim pursued. The Chamber notes that the provisions of the Court legal framework referred to above provide the relevant legal basis to impose the restrictions sought and will therefore in its analysis only assess whether the continuation of current restrictions and/or additional restrictions are necessary and proportionate to the aim previously identified by the Chamber, namely 'to ensure the safety of witnesses, prevent breaches of confidentiality and ensure the integrity of the proceedings'.⁶³

47. It is submitted that the current restrictions on communications considerably aggravate Mr Ngaïssona's pre-trial detention, both physically and mentally. Most significantly, they lack necessity and proportionality; such 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",⁶⁴ as evidenced by the First, Second, Third and Fourth Registry Reports and the explanations provided above which dispel any doubts as to the impropriety of the conversations between Mr Ngaïssona and [REDACTED].

RELIEF SOUGHT

⁶² ICC-01/04-01/07-322, 13 March 2008, p. 9.

⁶³ ICC-01/04-02/06-785-Red, para. 42.

⁶⁴ Regulation 101(2)(b), Regulations of the Court.

48. The Defence respectfully requests the Chamber to:

- **REJECT** the Registry's request for an extension of time;
- **LIFT** the pending restrictions on contact;
- **LIFT** the suspension of Mr Ngaïssona's [REDACTED] from Mr Ngaïssona's list of contacts;
- In the alternative, **REDUCE** the contact restrictions imposed on Patrice-Edouard Ngaïssona, by allowing him to make and receive telephone calls with his close family.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

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