

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/14-01/18**  
Date: **17 February 2020**

**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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-  
EDOUARD NGAÏSSONA***

**Confidential, *EX PARTE*, only available to the Prosecution, Ngaissona Defence, the  
Registrar, and the Detention Section**

**Prosecution's Response to Confidential Redacted Version of 'Corrigendum to  
'Defence request for leave to appeal the "Decision Pursuant to Regulation 101 of  
the Regulations of the Court", ICC-01/14-01/18-424-Conf-Exp', ICC-01/14-01/18-426-  
Conf-Exp'**

**Source: Office of the Prosecutor**

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

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**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Detention Section**

Mr Paddy Craig

**Victims Participation and Reparations  
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**Other**

## I. Introduction

1. The Pre-Trial Chamber (“Chamber”) should reject the Ngaissona Defence’s request<sup>1</sup> for leave to appeal the “Decision Pursuant to Regulation 101 of the Regulations of the Court”.<sup>2</sup> The ‘purported ‘issue’ — whether the Pre-Trial Chamber erred in determining that the continued restrictions are necessary and proportionate to the objective of ensuring the integrity of the proceedings — amounts to a mere disagreement with the Decision and does not constitute an ‘appealable issue within the meaning of article 82(1)(d).’<sup>3</sup> Moreover, the Request does not meet the cumulative statutory requirements for granting leave to appeal.

## II. Confidentiality

2. This response is filed “Confidential, *EX PARTE*, only available to the Prosecution, Ngaissona Defence, the Registrar, and the Detention Section”, given that it responds to a filing and concerns a decision of the same designation. The Prosecution does not object to its re-classification as “Public”.

## III. Submissions

3. The Chamber should reject the Request because, as noted, it does not set out an ‘appealable issue’, nor satisfy the cumulative conditions of article 82(1)(d).

### A. The Request does not set out an ‘appealable issue’

4. The Request fails to identify an ‘appealable issue’ within the meaning of article 82(1)(d). In substance, the Request is a mere disagreement with the Chamber’s appropriate assessment of a founded risk to the integrity of the proceedings based on

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<sup>1</sup> ICC-01/14-01/18-426-Conf-Exp-Corr-Red (“Request”).

<sup>2</sup> ICC-01/14-01/18-424-Conf-Exp-Corr-Red (“Decision”).

<sup>3</sup> ICC-01/14-01/18-243-Conf, para. 26.

the Accused's deliberate violation of the contact restrictions. As the Single Judge noted in his 23 January 2019 Decision implementing such restrictions, the Accused "[...] remains a key Anti-Balaka figure, in addition to being a former minister, founder, and President of a political party and successful business man,' which establishes, *inter alia*, that he could be in a position to reach, intimidate or harm (potential) witnesses, their families or other individuals cooperating with the Court" and that "[...] nearly 80% of the territory of CAR is still under the control of armed groups, including the Anti-Balaka."<sup>4</sup> The Chamber correctly determined that the risk assessed was neither speculative nor presumptive but actual, based on the Accused's "[...] communicating with unauthorized individuals and engaging in a pattern of using coded language, and attempt[ing] to circumvent the verification procedure of the Detention Centre."<sup>5</sup> Specifically, the Chamber found that "[...] Ngaïssona has engaged in a pattern of conduct designed to circumvent the rules and the restrictions imposed [...] [and] that there is a high risk that Ngaïssona may engage in further attempts to circumvent the restrictive measures in place."<sup>6</sup>

5. Given the Accused's demonstrated intention to frustrate measures put in place by the Chamber to safeguard the interests of victims and witnesses under article 68, as well as the integrity of the proceedings more broadly, nothing advanced in the Request establishes that the Chamber unreasonably determined the continued risks the Accused poses to the integrity of the proceedings or that the determination exceeded the proper exercise of its broad discretion. The Request's argument that the Chamber's finding is "[...] entirely based on a *presumption* that Mr Ngaïssona may potentially try to interfere with the investigations in the future"<sup>7</sup> ignores the seriousness of the Accused's substantiated and multiple violations of the imposed contact restrictions in July and August of 2019 – as recently as six months ago.<sup>8</sup> In sum,

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<sup>4</sup> ICC-01/14-01/18-98-Conf-Exp, para. 7 (citing ICC-01/14-33-US-Exp, para. 22).

<sup>5</sup> Decision, para. 26; ICC-01/14-01/18-357-Conf-Exp-Corr-Red; ICC-01/14-01/18-413-Conf-Exp-Corr-Red.

<sup>6</sup> ICC-01/14-01/18-413-Conf-Exp-Corr-Red, para. 85.

<sup>7</sup> Request, para. 17 (emphasis added).

<sup>8</sup> Request, para. 21; ICC-01/14-01/18-413-Conf, para. 82.

the Request does not identify an error in the Decision that constitutes an 'appealable issue,' but amounts to a mere disagreement with the Decision's reasonable continuation of contact restrictions for the remainder of the Pre-Trial phase.

**B. The Request does not meet the cumulative conditions of article 82(1)(d)**

6. Assuming *arguendo* that the Request articulates an 'appealable issue', it fails to meet the cumulative requirements of article 82(1)(d).<sup>9</sup> Continuing contact restrictions merely for the remainder of the Pre-Trial phase does not significantly affect the fair or expeditious conduct of the proceedings, or the outcome of the case. The continued restrictions are necessary and proportionate, in that they are limited in nature and duration, and subject to continuous review during the reporting period, and in particular if compelling reasons arise.<sup>10</sup>

7. The Request contends that the Accused should have his contact restrictions lifted because there were no new incidents reported by the Registry in their Eighth Report.<sup>11</sup> As the Chamber noted in its Decision, however, "[r]efraining from prohibited conduct should be the norm."<sup>12</sup> In short, having one reporting period during which there was no detection of prohibited conduct does not justify lifting the contact restrictions. Rather, it shows the restrictions are potentially serving their purpose of protecting the integrity of the proceedings.

8. The Defence's argument that current contact restrictions could affect the Accused's "human rights and mental well-being"<sup>13</sup> is speculative and unsubstantiated particularly because he chose to stop all telephone contact until further notice,<sup>14</sup> despite still being allowed to make calls to family. While parts of the Request are

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<sup>9</sup> ICC-01/14-01/18-243-Conf, paras. 24-25.

<sup>10</sup> Decision, paras. 29-30.

<sup>11</sup> Request, para. 21.

<sup>12</sup> Decision, para. 28.

<sup>13</sup> Request, paras. 17, 22.

<sup>14</sup> ICC-01/14-01/18-420-Conf-Exp, para. 32.

redacted in this regard and the underlying facts thus unavailable, it can hardly be said that the limited and temporary restrictions on the Accused's phone contacts seriously impact his human rights, especially when the lack of contact is the product of his own choice. The Request fails to show how the Accused's choice not to contact his family significantly affects the fairness or expeditiousness of the proceedings. In any case, these concerns relate solely to the nature of the Accused's relations and communications with his family, and not any cognisable criteria under article 82(1)(d).

9. Moreover, the Chamber's continued restriction of the Accused's contacts for the remainder of the pre-trial proceedings<sup>15</sup> is temporary by nature and neither unfair nor disproportionate, given the severity of the Accused's prior violations. The Defence's arguments to the contrary do not show how the fairness and expeditiousness of the proceedings are affected, particularly because the Decision only extends the contact restrictions for a limited time: the remainder of the Pre-Trial phase. In fact, an interlocutory appeal at this stage might actually prolong the proceedings, given the imminent assignment of this case to a Trial Chamber that would likely trigger a review of the current restrictions in any event.

10. Thus, the immediate intervention of the Appeals Chamber would not materially advance the proceedings, nor would it affect the fairness or outcome of the trial.

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<sup>15</sup> ICC-01/14-01/18-424-Conf-Exp, paras. 29-30.

#### IV. Conclusion

11. For the foregoing reasons, the Chamber should dismiss the Request.



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**Fatou Bensouda, Prosecutor**

Dated this 17<sup>th</sup> day of February 2020  
At The Hague, The Netherlands