

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **17 April 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***

**Public**

**Public redacted version of “Corrected version of Prosecution’s Request for Leave to Reply to the Defence Response to the Prosecution’s Request to Amend Charges pursuant to Article 61(9) (ICC-01/14-01/18-468-Conf) (ICC-01/14-01/18-477-Conf), 16 April 2020, ICC-01/14-01/18-480-Conf”, ICC-01/14-01/18-480-Conf-Corr, 17 April 2020**

**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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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
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**Other**

## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests leave to reply to the Ngaiissona Defence’s Response to the Prosecution’s Request to Amend Charges pursuant to article 61(9).<sup>1</sup>

2. A limited and focused reply addressing the legal positions advanced in the Response, particularly in the absence of settled jurisprudence at the Court, would assist Pre-Trial Chamber II (“Chamber”) in the proper determination of the relevant issues, and is otherwise in the interests of justice. These comprise (1) the scope and assessment of relevant factors which a Chamber may reasonably consider in determining article 61(9) applications; and (2) the circumstances attendant to the practicalities and feasibility of obtaining remote evidence in the course of a complex international investigation. The Prosecution would also seek briefly to address certain misleading and inaccurate statements by the Defence.

## II. CONFIDENTIALITY

3. This filing is classified as “Confidential”, as it refers to material that is not available to the public. The Prosecution will file a public redacted version as soon as possible.

## III. SUBMISSIONS

4. The Prosecution requests leave to reply on the issues arising from the Response, as follows:

- (1) *The scope and assessment of relevant factors which a Chamber may reasonably consider and assess under article 61(9):*<sup>2</sup>

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<sup>1</sup> See ICC-01/14-01/18-477-Conf (“Response”).

<sup>2</sup> See ICC-01/14-01/18-477-Conf, para. 31.

- a. Whether the Prosecution's acquisition of incriminatory evidence during the period of postponement of the Confirmation Hearing and in accordance with the Chamber's Practice Manual, renders the material obtained and its use "unjustifiable" or unfairly prejudicial<sup>3</sup> in respect of an article 61(9) application;<sup>4</sup>
- b. Whether the Chamber may consider the impact of crimes in which the Accused's participation has been confirmed on the accessibility of evidence, in balancing the Parties' relative interests in an article 61(9) determination;
- c. Whether the prior inclusion of the *same incident* in the Document Containing the Charges<sup>5</sup> and on which the Prosecution made oral submissions during the confirmation hearing,<sup>6</sup> and now further substantiated in the amendment sought, sufficiently attenuates the Defence's claim of unfair prejudice; and
- d. Whether Ngaïssona's claim of prejudice as a result of the Prosecution's prospective application to amend the charges against the Accused Yekatom<sup>7</sup> is premature, given that, if granted, Ngaïssona may yet avail himself of an application for severance before Trial Chamber V.

(2) *The circumstances attendant to the practicalities and feasibility of obtaining remote evidence:*<sup>8</sup>

- a. Whether and to what extent the Chamber may appropriately take into account the complexity of the case and of the overall investigation, [REDACTED] and charges involved, the logistical and resource

<sup>3</sup> See ICC-01/14-01/18-477-Conf, paras. 34-37.

<sup>4</sup> See ICC-01/14-01/18-477-Conf, p. 6, *et seq* (Section IV(A)(i) and (ii)).

<sup>5</sup> See ICC-01/04-01/18-282-Conf-AnxB1, paras. 385-386.

<sup>6</sup> See ICC-01/04-01/18-T-005-Red-ENG, p. 45, l. 11-13.

<sup>7</sup> See ICC-01/14-01/18-477-Conf, paras. 38-40.

<sup>8</sup> See ICC-01/14-01/18-477-Conf, para. 38 (in regard to the organisation of interviews).

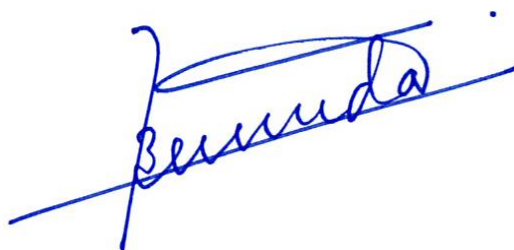
constraints facing a Party, and the “volatile” operational environment, in determining reasonable diligence<sup>9</sup> in the discovery and/or collection of remote evidence as concerns a very limited application under article 61(9).

5. As noted, the Prosecution would additionally seek briefly to address Defence assertions<sup>10</sup>, which it considers mischaracterise and unfairly distort its positions, motives, and actions as concerns the preparation of this case.

6. A reply focused on these limited and discrete matters will distil the salient issues before the Chamber, and assist the fair and considered determination of the Request.

#### IV. RELIEF SOUGHT

7. For the above reasons, the Chamber should permit the Prosecution to reply to the Defence’s Response to the Prosecution’s request to amend the charges pursuant to article 61(9).



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**Fatou Bensouda, Prosecutor**

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

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<sup>9</sup> See ICC-01/14-01/18-477-Conf, paras. 4, 5, and 22; see also *Prosecutor v. Popovic, et al.*, IT-05-88-T, Decision on Motion to Reopen the Prosecution Case, 9 May 2008, para. 31.

<sup>10</sup> See ICC-01/14-01/18-477-Conf, paras. 5, 27, and 29.