

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **14 September 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Confidential

**Prosecution's Request for Summary Dismissal of the Ngaissona Defence's
Response to the Prosecution's Submissions
on the Scope of the Charges (ICC-01/14-01/18-650-Conf)**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri

Mr Peter Robinson

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Legal Representatives of Victims

Mr Dmytro Suprun

Mr Abdou Dangabo Moussa

Ms Elisabeth Rabesandratana

Mr Yaré Fall

Ms Marie-Edith Douzima-Lawson

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests Trial Chamber V ("Chamber") to summarily dismiss the Ngaissona Defence's Response to the Prosecution's Submissions on the Scope of the Charges ("Response").¹ The Response circumvents the Chamber's 9 July 2020 Order requiring the Parties and Participants to raise any remaining issues in relation to the charges by 31 August 2020.²

2. *First*, the Response is transparently a 'submission' which rehearses NGAISSONA's previous requests to curtail, if not preclude, the Prosecution's presentation of relevant and probative evidence at trial on an *in limine* basis. *Second* and alternatively, given the procedure foreseen in the 9 July 2020 Order, the Response is improperly filed.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Request is filed as "Confidential", as it refers to a filing of the same classification.

III. SUBMISSIONS

A. The Response circumvents the Chamber's 9 July 2020 Order

i. The 9 July 2020 Order precludes submissions on the scope of the charges beyond 31 August 2020

4. During the 9 July 2020 Status Conference, the Chamber "set [] 31 August 2020 as the final deadline to raise any remaining issues in relation to the charges.

¹ ICC-01/14-01/18-650-Conf.

² ICC-01/14-01/18-T-012-ENG ET, p. 63, lns. 20-22.

Thereafter the Chamber will not hear any more motions on this matter".³ No provision was made for the Parties' and Participants' responses.

5. The Order was issued following NGAISSONA's attempt to raise his prior submissions again seeking to restrict the Prosecution's prospective use of relevant and probative evidence, given the reduction in the number of charges as confirmed against NGAISSONA.

ii. The Response is tantamount to a 'submission'

6. The Response amounts to a 'submission', which continues NGAISSONA's prior requests for the exclusion of relevant evidence in this case. The filing is not genuinely responsive to the Prosecution's Submission, but is instead used as a mere vehicle to skirt the Chamber's Order.

7. NGAISSONA first argued for the restriction of the *evidence* on which the Prosecution may rely to prove the confirmed charges on 8 April 2020.⁴ The Prosecution responded on 20 April 2020, explaining the continued pertinence of certain evidence which NGAISSONA contended was no longer relevant following the Decision on the Confirmation of Charges.⁵ The Prosecution reserved "its right to further *respond* on this issue, in the event the Defence seeks to raise a formal evidentiary challenge *in limine*."⁶ Thus, albeit informal, it is clear that NGAISSONA affirmatively initiated the challenge to the scope of evidence to be presented— not *responsively*. The affirmative posture of his prior submissions is underscored by the fact that no evidence has yet been tendered in the case.

8. Again, on 26 June 2020, NGAISSONA dedicated the near entirety of a 20-page submission to this specific issue, reserving the right to make even further

³ ICC-01/14-01/18-T-012-ENG ET, p. 63, lns. 20-22.

⁴ See ICC-01/14-01/18-473-Red.

⁵ See ICC-01/14-01/18-488-Red.

⁶ ICC-01/14-01/18-488-Red, para. 19 (emphasis added).

submissions on the matter at the 9 July 2020 Status Conference.⁷ There too, NGAISSONA made further submissions seeking to restrict the Prosecution's use of relevant and probative evidence of the confirmed charges, advancing the same affirmative requests he had repeatedly articulated since April 2020.⁸ Thus, the Prosecution responded once again to NGAISSONA's *in limine* requests.⁹ NGAISSONA's ostensible 'response' now simply repackages these same requests.

9. The Response makes no secret of its true nature. For instance, it "request[s] the Chamber to not allow the introduction of evidence which was previously rejected by the Pre Trial Chamber as insufficient to meet the "substantial grounds to believe" evidentiary standard".¹⁰ This is obviously a submission¹¹ — not a 'response'.

B. The Response warrants summary dismissal

10. *First*, as a *de facto* submission, the Response violates the Chamber's Order, as it raises the Defence's affirmative requests again concerning the charges that are otherwise filed out of time.¹²

11. *Second*, even if the Chamber concludes that the Response is genuine, it should be rejected given the inapplicability of regulation 24(1) of the RoC in this circumstance.

⁷ *see also* ICC-01/14-01/18-573-Red.

⁸ *See* ICC-01/14-01/18-T-012-ENG ET. p. 34, ln. 23 – p. 38, ln 4.

⁹ *See* ICC-01/14-01/18-T-012-ENG ET. p. 40, ln. 7 – p. 41, ln. 24 (noting specifically that the Prosecution was *responding* to the arguments of advanced by Counsel).

¹⁰ ICC-01/14-01/18-650-Conf, para. 41.

¹¹ *See e.g.*, ICC-01/14-01/18-650-Conf, paras. 7-9, 12, 14-15, 17, 20, 21, 22, 23 (expressly requesting the exclusion of testimony), 28, 29 (requesting the preclusion of evidence of the Accused's acts and conduct toward establishing the contextual elements under article 7), 33, 34, 35, 36-38 (requesting the preclusion of testimony concerning the Accused's intent at para. 36); *see also* *See* ICC-01/14-01/18-650-Conf, para. 12

¹² *See e.g.*, ICC-02/04-01/15-1476, para. 12, 22, 24, and 36 (Trial Chamber IX in the *Ongwen* case, noting the requirement of timeliness regarding motions challenging the formulation of the charges and the application of rule 134(2), requiring *in limine* dismissal); *see* ICC-02/04-01/15-1562, para. 145 (affirming Trial Chamber IX appropriate exercise of discretion in dismissing *in limine* the Defence's untimely submissions).

12. As the Chamber has previously clarified, where it has explicitly set out a procedure to address a given concern which does not provide the Parties with a right to respond, regulation 24(1) of the RoC does not apply.¹³ In this instance, the procedure to address outstanding issues concerning the charges was expressly laid out at the 9 July 2020 Status Conference. It provided for each of the Parties and Participants to raise these matters by 31 August 2020 as a final deadline, without further recourse.¹⁴

13. The 9 July 2020 Order was unambiguous, both as to the system contemplated by the Chamber and the deadline imposed. Thus, either way, the Response is improperly filed.

IV. CONCLUSION

14. For the above reasons, the Prosecution requests that the Chamber summarily dismiss the Response.



James Stewart, Deputy Prosecutor

Dated this 14th day of September 2020
At The Hague, The Netherlands

¹³ See ICC-01/14-01/18-540-Conf, para. 14.

¹⁴ ICC-01/14-01/18-T-012-ENG ET, p. 63, lns. 21-22.