

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: **26 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

***THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Defence request for a swift transmission of the case record to the Presidency pursuant
to Rule 129 of the Rules of Procedure and Evidence**

Source: Defence of Patrice-Edouard Ngaïssona

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

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Section****Other**

I. Introduction

1. With the present request, the Defence of Mr Patrice-Edouard Ngaïssona (“Defence”) respectfully requests Pre-Trial Chamber II (“Chamber”) to swiftly transmit the record of the current proceedings to the Presidency, pursuant to Rule 129 of the Rules of Procedure and Evidence (“Rules”), so that a Trial Chamber may be constituted as soon as possible pursuant to Rule 130 of the Rules.

II. Procedural history

2. On 23 January 2019, Mr Ngaïssona was transferred to the ICC Detention Centre where he is currently held in pre-trial detention.
3. On 20 February 2019, the Chamber joined the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and scheduled the confirmation hearing to commence on 18 June 2019.¹
4. On 15 May 2019, following a request by the Office of the Prosecutor (“Prosecutor”),² the Chamber postponed the confirmation hearing to 19 September 2019.³
5. The confirmation hearing commenced on 19 September 2019 and was scheduled to end on 27 September 2019. On 25 September 2019, the Chamber postponed the closing statements to 11 October 2019.⁴

¹ ICC-01/14-01/18-87.

² ICC-01/14-01/18-186-Conf-Red.

³ ICC-01/14-01/18-199.

⁴ Transcript of 25 September 2019, ICC-01/14-01/18-T-010-ENG, page 4, line 2 to page 5, line 12.

6. On 11 December 2019, the Chamber issued the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona” (“Confirmation Decision”),⁵ ordering that the time-limit for filing an application for leave to appeal the decision be suspended until its translation into French.⁶
7. On 21 February 2020, the French translation of the Confirmation Decision was notified to the parties and participants.⁷

III. Applicable Law

8. Article 67(1)(c) of the Rome Statute ("Statute") states:

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and *to the following minimum guarantees*, in full equality:

(...)

(c) *To be tried without undue delay*. [Emphasis added.]

9. Rule 129 of the Rules states:

The decision of the Pre-Trial Chamber on the confirmation of charges and the committal of the accused to the Trial Chamber shall be notified, if possible, to the Prosecutor, the person concerned and his or her counsel. *Such decision and the record of the proceedings of the Pre-Trial Chamber shall be transmitted to the Presidency*. [Emphasis added.]

⁵ ICC-01/14-01/18-403-Conf. A public redacted version was notified on 20 December 2019, ICC-01/14-01/18-403-Red.

⁶ Confirmation Decision, page 112.

⁷ ICC-01/14-01/18-403-Conf-tFRA.

IV. Submissions

10. With the present request, the Defence hereby informs the Chamber that Mr Ngaïssona will not seek leave to appeal the Confirmation Decision pursuant to Article 82(1)(d) of the Statute.
11. Mr Ngaïssona's decision not to seek leave to appeal the Confirmation Decision should in no event be interpreted as an admission as to the Chamber's decision to (i) confirm 32 of the 111 charges originally brought against him by the Prosecutor and (ii) commit the case to trial.
12. On the contrary, Mr Ngaïssona's position has not changed since he was apprised of his warrant of arrest. Mr Ngaïssona submits once again that his only involvement within the Anti-Balaka was related to his role as peace coordinator. As submitted by the Defence during the Confirmation of Charges hearing,⁸ Mr Ngaïssona only became the National Coordinator of the Anti-Balaka so as to facilitate peace in the Central African Republic.
13. However, Mr Ngaïssona is aware that, pursuant to Article 61(7) of the Statute, the role of a pre-trial chamber is limited to establishing whether the Prosecutor has proved that there are "substantial grounds to believe" that the crimes charged have been committed. As pointed out by the Chamber in the Confirmation Decision:

The evidentiary standard applicable at this stage of proceedings is a lower standard than that required at trial, and is met as soon as the Prosecutor offers 'concrete and tangible proof demonstrating a clear line of reasoning underpinning [the] specific allegations.'⁹

⁸ Transcript of 24 September 2019, ICC-01/14-01/18-T-009-Red-ENG, pp. 5-6 ; 16-20 ; 26-27 ; 29 ; 50-53 ; 66-68 ; 70 ; 72-73 ; 79-80.

⁹ Confirmation Decision, para 17.

14. Mindful that, pursuant to Article 66(3) of the Statute, the evidentiary standard at trial will require the Prosecutor to establish that Mr Ngaïssona has committed the crimes charged "beyond reasonable doubt", Mr Ngaïssona wishes to proceed to trial as soon as possible, to challenge the remainder of the charges against him, and to be able to ultimately return to his family and his country.
15. Mr Ngaïssona has already spent more than one year in pre-trial detention. Moreover, even once the Trial Chamber is constituted, the trial against Mr Yekatom and Mr Ngaïssona will likely not commence before several months.
16. In light of article 61(7)(c) of the Statute, pursuant to which accused persons before the Court are entitled to be tried without undue delay, Mr Ngaïssona respectfully requests the Chamber to swiftly transmit the record of the current proceedings to the Presidency, so that the latter may expeditiously constitute a Trial Chamber, pursuant to Rule 130 of the Rules.

RELIEF SOUGHT

17. In light of the foregoing, Mr Ngaïssona respectfully requests the Chamber to swiftly transmit the record of the current proceedings to the Presidency pursuant to Rule 129 of the Rules.

Respectfully submitted,



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 26 February 2020,
At The Hague, the Netherlands