

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/12
Date: 25 September 2015

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

IN THE CASE OF

*THE PROSECUTOR
v. MATHIEU NGUDJOLO CHUI*

Public

Prosecution's response to Mr Ngudjolo's request to reply to "Prosecution's response to Mathieu Ngudjolo Chui's request for compensation"

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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A. Introduction

1. On 24 September 2015, Mathieu Ngudjolo Chui requested leave to reply to the Prosecution's response to his request, under article 85 of the Statute, seeking compensation.¹ Although Mr Ngudjolo identifies four issues for reply, he fails to show good cause to reply for three out of the four proposed issues.²

2. The first proposed issue canvasses that he was acquitted by the Court and alleges errors by various Court organs;³ the second relates to his detention before and during trial, and claims that the monetary amount sought is not excessive;⁴ and the third relates, yet again, to Mr Ngudjolo's claims about the alleged violation of his presumption of innocence.⁵ None of these three issues are new. Rather, they arise from his original Compensation Request. Further, they merely disagree with the Prosecution's position. The Chamber will not be assisted at this stage by Mr Ngudjolo's additional submissions on issues already extensively canvassed in some 100 pages of written submissions filed by Mr Ngudjolo and the Prosecution. Because his failure to show good cause for reply for the First, Second and Third Issues undermines his Request, it should be dismissed *in limine*.

3. Although Mr Ngudjolo could have anticipated from the case record the fourth issue, which appears to relate to the various judicial findings about his efforts to interfere with witnesses in the case,⁶ the Prosecution leaves it to the Chamber's discretion on whether Mr Ngudjolo should be granted leave to reply on this limited issue.

¹ ICC-01/04-02/12-293 ("Request to reply" or "Request"); ICC-01/04-02/12-290 ("Compensation Request"); ICC-01/04-02/12-292 ("Prosecution's Response").

² Request, paras. 9-11.

³ First Issue.

⁴ Second Issue.

⁵ Third Issue; Request, paras. 9-11.

⁶ Fourth Issue; Request, paras. 12-13.

4. If the Chamber decides to grant Mr Ngudjolo leave to reply, the Prosecution notes that rule 174(1) of the Rules of Procedure and Evidence gives it “an opportunity to respond in writing” to “a request for compensation and any other written observation by the person filing the request[...]”.⁷ In any case, the Prosecution requests the Chamber’s permission to file a limited and focused sur-reply to address any new arguments that Mr Ngudjolo may then raise.

⁷ Rule 174(1).

B. Submissions

i. Mr Ngudjolo must show good cause for a reply

5. Before being granted leave to reply, Mr Ngudjolo must first show good cause.⁸ In general, a “reply must be narrowly tailored to only address new issues” raised in a response.⁹ Moreover, replies are only permitted if the Chambers will benefit from such additional submissions.¹⁰ Having regard to the principle of judicial economy, a Chamber will not be assisted by additional submissions on issues falling reasonably within the scope of the moving party’s original arguments.¹¹ Nor will it be assisted by additional submissions on matters which have been extensively rehearsed by the Parties, even if the Parties disagree on the applicable law, facts, or procedure, or quite simply, have a different view.

ii. Mr Ngudjolo fails to show good cause for a reply

6. Mr Ngudjolo’s First, Second and Third Issues have been exhaustively canvassed in his original Compensation Request. The Prosecution’s Response did not raise any “new issues” which deserve a reply at this stage. To the contrary, these three Issues arise directly from Mr Ngudjolo’s original Compensation

⁸ See e.g., ICC-01/05-01/08-294, paras. 1-3; ICC-02/04-01/15-252, p. 3.

⁹ See ICC-01/05-01/08-3165-Red, para. 5. See also ICC-01/05-01/13-893-Red, para. 10 (rejecting a request for “leave to reply in order to clarify the record in the face of alleged misrepresentations” because “it does not identify any new issue which arises from the [...] Response”).

¹⁰ See e.g., ICC-02/11-01/11-775, para. 7 (“[t]he Single Judge therefore considers that the Chamber may benefit from [...] submissions in reply”); ICC-01/05-01/08-3233, para. 10 (“the Chamber considers it may benefit from the defence’s views on the nine issues identified”); ICC-01/05-01/08-3165-Red, para. 5 (“[t]he Chamber is of the view that it may benefit from the defence’s views on certain issues set out in its Request”); ICC-01/09-02/11-979, para. 6 (“the Request for Leave to Reply identifies some new issues of law and fact on which [the Chamber] may benefit from receiving further observations; [...] the Chamber is not persuaded that submissions on the remainder of the issues would be of assistance to it”).

¹¹ See e.g., ICC-01/09-01/11-1417 OA7 OA8, para. 13 (rejecting a request to make additional submissions in support of an interlocutory appeal—albeit under the distinct provision of regulation 28 of the Regulations of the Court, rather than as a reply—on the basis that the issues for which leave was sought fell “within the ambit of the issues on appeal”, that the arguments in response were “foreseeable” in the circumstances, and that the applicants had already received the material possibility of presenting “all arguments” within the scope of their appeals). See also ICC-01/13-12, para. 2 (submitting that “a reply should not be a procedural vehicle to address oversights in the original motion, but only issues arising from a response to that motion which could not reasonably have been anticipated”).

Request. A reply is not a second chance to further submit on—much less repeat—the same arguments and issues.

7. In particular, the First Issue reiterates Mr Ngudjolo's status as an acquitted person and the various ways in which the Prosecution, the Pre-Trial Chamber and the Trial Chamber purportedly erred.¹² This issue has been comprehensively litigated.¹³ The Second Issue raises, yet again, Mr Ngudjolo's detention before and during trial—an issue which Mr Ngudjolo has previously emphasised in great detail in his Compensation Request.¹⁴ Equally, his claim that "*[l]e montant de la réparation sollicité n'est aucunement excessif*"¹⁵ is not new. He has already advanced detailed submissions which, in his view, justify the compensation amount sought.¹⁶ He now only merely opposes the Prosecution's position that such amount is excessive. A reply cannot be justified merely because the Parties disagree among themselves on legal or factual arguments, or because they take adversarial positions to each other. Further, as rule 173(3) makes clear, Mr Ngudjolo's original Compensation Request should "contain the grounds and the amount of compensation requested."¹⁷ A reply on the amount of compensation sought would only traverse grounds already covered.

8. Likewise, the Third Issue rehearses, once more, Mr Ngudjolo's claims of purported violations of his presumption of innocence.¹⁸ The Compensation Request has already dealt with this issue.¹⁹ Mr Ngudjolo does not show that the Prosecution's Response raised any new matter, and therefore fails to show good cause for a reply.

¹² Request, para. 9.

¹³ See Compensation Request, paras. 9-115.

¹⁴ See Compensation Request, paras. 9-115.

¹⁵ Request, para. 10.

¹⁶ See Compensation Request, paras. 116-157.

¹⁷ Rule 173(3).

¹⁸ Request, para. 11.

¹⁹ See Compensation Request, paras. 9-115.

9. As his Fourth Issue, Mr Ngudjolo claims that he will submit on “*les huit Juges qui ont eu connaissance des soi-disant ‘efforts (du Requérent) to interfere with witnesses and unduly influence the outcome of his case’[...].*”²⁰ Equally, Mr Ngudjolo claims that he will interpret the Appeals Chamber’s decision on “*des écoutes téléphoniques*”.²¹ Although Mr Ngudjolo did not address these issues in his original Compensation Request, despite being well-documented in the case record, the Prosecution considers that they were foreseeable, and could have been reasonably anticipated. Nor does Mr Ngudjolo show why the Chamber would benefit from these additional submissions at this stage. Nevertheless, the Prosecution leaves it to the Chamber’s discretion on whether it requires further submissions from Mr Ngudjolo on this limited Fourth Issue.

10. If the Chamber were to grant Mr Ngudjolo leave to reply on the Fourth Issue (and/or any of the proposed issues), the Prosecution considers that it can, under rule 174(1), respond in writing. In any case, out of an abundance of caution, the Prosecution seeks the Chamber’s permission to submit a focused sur-reply to Mr Ngudjolo’s further submissions, if they are allowed and if necessary.

²⁰ Request, para. 12.

²¹ Request, para. 13.

C. Relief

11. Mr Ngudjolo fails to show that a reply is warranted. The Request should therefore be dismissed. If the Chamber is minded to grant Mr Ngudjolo leave to reply on any of the proposed issues, the Prosecution considers that it may, under rule 174(1), respond in writing. In any case, out of an abundance of caution, the Prosecution seeks the Chamber's permission to submit a focused sur-reply to Mr Ngudjolo's further submissions, if necessary.



Fatou Bensouda, Prosecutor

Dated this 25th day of September 2015

At The Hague, The Netherlands