

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **16 April 2020**

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

**URGENT
PUBLIC**

Defence request for dismissal, *in limine*, of the “Prosecution’s Submission of Proposed Directions for the Conduct of Proceedings and Proposed Protocol on Witness Familiarisation”, ICC-01/14-01/18-476, or, in the alternative, Request for Extension of time pursuant to Regulation 35(2) of the Regulations of the Court

Source: Defence of Patrice-Edouard Ngaiissona

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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I. Introduction

1. On 14 April 2020, the Prosecution submitted, without being ordered or invited to do so, “The Prosecution’s Submission of Proposed Directions for the Conduct of Proceedings and Proposed Protocol on Witness Familiarisation”¹ (“Prosecution’s Proposed Directions”). The Prosecution requested that Trial Chamber V (“the Chamber”) adopt its proposals regarding the conduct of proceedings and witness familiarisation, which it annexed to its main submissions. The Prosecution also made submissions on the possible evidence regime to be adopted in the instant case, though it did not take a stance as to which regime should be adopted. The Defence for Mr Patrice-Edouard Ngaïssona (“the Defence”) respectfully requests that the Prosecution’s submissions be dismissed *in limine* because (a) the Prosecution’s submissions are made without a legal basis, or (b) they are made prematurely. In the alternative, the Defence requests pursuant to Regulation 35(2) of the Regulations of the Court (“the RoC”) to be granted an extension of time of 21 days to provide the Chamber with a response to the Prosecution’s Proposed Directions, which will include its proposals for the Directions on the Conduct of Proceedings, Witness Familiarisation, and the evidence regime to be applied in this case. The Defence submits that the time limit of 21 days should commence running from the date of the issuance of the decision on the present Defence Request.
2. The Defence files the present request urgently because the time limit to respond to the Prosecution’s Proposed Directions has already started to run and a swift resolution of the Defence’s request is needed before the expiration of the time limit.

¹ ICC-01/14-01/18-476.

II. Submissions

a. The Prosecution's Proposed Directions have been filed without a legal basis or they have been filed prematurely

3. Contrary to Regulation 23(d) of the RoC, the Prosecution does not provide "the articles, rules, regulations or other applicable law relied upon" in submitting the Prosecution Proposed Directions. Rather, in the Procedural History Section of the Prosecution's Proposed Directions, the Prosecution mentions, in passing, the Chamber's "Order Scheduling First Status Conference", (" the Order") in which the Chamber informed the parties that it would issue in due course directions on a variety of matters pursuant to Article 64(8)(b), and that it "may take into account" the parties submissions on these matters. However, the Chamber did not invite the parties pursuant to the Order to make such submissions. Therefore, the Prosecution's Proposed Directions are filed without a legal basis, which amount to full-fledged pre-determined protocols instead of mere proposals by the Prosecution.

4. Consistent with the Order, the Defence requested the Chamber that it be allowed to make submissions on the following items: (1) the evidence regime, (2) the preference for witness familiarisation instead of preparation, and (3) the suitability of a No Case to Answer procedure in the instant case.² Similarly, the Prosecution requested that the Chamber consider its submissions with respect to the Conduct of the Proceedings.³ The Chamber has yet to make a decision on the parties' request in this regard. Specifically, the Chamber must determine on which subjects it would be amenable to accept submissions, in what order, and the timeline for such submissions. Thus, even were the Chamber to accept that the Prosecution did have a legal

² ICC-01/14-01/18-473-Conf, para. 45.

³ ICC-01/14-01/18-474-Conf, para. 37.

basis for making the Prosecution Proposed Directions, albeit not explicitly indicated, the Prosecution has made its submissions prematurely, thereby substituting itself as the entity responsible for structuring the conduct of proceedings rather than the Chamber. Entertaining the Prosecution's Proposed Directions would be in direct violation of the equality of arms principle which is enshrined in Article 67 of the Rome Statute.⁴ The Defence has requested the Chamber that it be allowed to make submissions, and is awaiting the Chamber's Decision in which the Chamber will indicate to the parties a timeline, and order in which they should make their submissions.

5. A procedure by which the Chamber orders the parties to make submissions on protocols and provides certain timelines to do so has been consistently applied at the Court.⁵ Specifically, in *The Prosecutor v. Ongwen*, Trial Chamber IX employed the same language as the Chamber in the instant case regarding the possibility that the Trial Chamber could consider the submissions of the parties with respect to the protocols that would govern the conduct of the proceedings.⁶ In *Ongwen*, the Prosecutor requested that it be allowed to make submissions on certain protocols. The parties did not make submissions on these issues until Trial Chamber IX indicated that it would accept such submissions and gave a uniform deadline to the parties and the participants to make their submissions.⁷ Unlike in *Ongwen*, the Prosecution has prematurely made its submissions by not waiting for the Chamber to accept submissions on the various protocols raised by the parties pursuant to "the

⁴ ICC-01/04-01/06-1091, para. 18.

⁵ *The Prosecutor v. Al Hassan*, ICC-01/12-01/18-521, para 2, footnote 3; ICC-01/12-01/18-566; *The Prosecutor v. Ntaganda*, ICC-01/04-02/06-507; ICC-01/04-02/06-416; *The Prosecutor v. Gbagbo*, ICC-02/11-01/11-739; *The Prosecutor v. Gbagbo & Blé Goudé*, ICC-02/11-01/15-7; *The Prosecutor v. Bemba et al.*, ICC-01/05-01/13-824; *The Prosecutor v. Ruto & Sang*, ICC-01/09-01/11-778.

⁶ Compare ICC-01/14-01/18-459, para. 7 with ICC-02/04-01/15-432, para. 4

⁷ ICC-02/04-01/15-504, para. 1

Order Scheduling First Status Conference”. For the aforementioned reasons, the Defence requests that the Prosecution’s Proposed Directions be dismissed *in limine*.

b. In the alternative, the Defence requests for an extension of time to file its response to the Prosecution’s Proposed Directions

6. In the event the Chamber decides to reject the present request, and address the merits of the Prosecution’s Proposed Directions, the Defence requests an extension of time limit pursuant to Regulation 35(2) of the RoC to 21 days from the date of the issuance of the decision on the matter. The Prosecution’s Proposed Directions cover wide-ranging and several discrete topics such as the evidence regime to be applied to the instant case, the possibility of witness preparation, the suitability of a no case to answer motion, and the conduct of proceedings, all of which will impact the fairness and expeditiousness of the entire trial proceedings. By not waiting for the Chamber to determine when to hear submissions on these protocols, the Prosecution has triggered a ten-day time limit for the Defence to respond to their submissions, whereas the Prosecution has spent weeks elaborating these protocols without a fixed time limit. These circumstances constitute “good cause” under Regulation 35(2) of the RoC, and thus the Defence’s request for an extension of time is justified. The Defence requests 21 days as a reasonable time limit when comparing the time limit other chambers of the Court have imposed on parties to make submissions on the conduct of the proceedings and other protocols.⁸

⁸ See *Prosecution v. Ntaganda*, ICC-01/04-02/06-507 (ordering on 12 March 2015 that the parties and participants make submissions with respect to the conduct of proceedings by 7 April 2015); *The Prosecutor v. Gbagbo*, ICC-02/11-01/11-739 (ordering on 18 December 2014 that the parties and participants submit observations on various protocols by 27 February 2015); *The Prosecutor v. Ongwen*, ICC-02/04-01/15-504, para. 2 (indicating that on 23 May 2016 the Trial Chamber ordered the parties to make submissions on various protocols by 17 June 2016).

RELIEF SOUGHT

7. The Defence respectfully requests the Chamber to:

- **DISMISS** the Prosecution's Proposed Directions *in limine*
- **ALTERNATIVELY**, to grant the Defence an extension of the deadline to respond to the Prosecution's Proposed Directions to 21 days from the date of issuance of the relevant decision

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaissona

Dated this 16 April 2020,

At The Hague, the Netherlands.