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**No. ICC-01/14-01/18  
Date: 22 June 2020**

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

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

**Public**

**Decision on the Ngaïssona Defence Request to Redress Violations in Detention**

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Regulation 90 of the Regulations of the Court and Regulations 187(1), 217-222 of the Regulations of the Registry (the ‘Regulations’) issues this ‘Decision on the Ngaïssona Defence Request to Redress Violations in Detention’.

## I. Procedural history and submissions

1. On 2 June 2020, the Ngaïssona Defence (the ‘Defence’) requested the Chamber to redress violations of Mr Ngaïssona’s rights in detention that he claims were occasioned on account of non-compliance with the minimum standards provided in the Regulations of the Court and the Regulations (the ‘Request’).<sup>1</sup> Specifically, the Defence submits that Mr Ngaïssona has suffered ‘undue hardship’ due to the conditions of provision of food in the Detention Centre and the amount of time he needs to spend in his locked cell.<sup>2</sup>
2. The Defence argues that Mr Ngaïssona’s detention conditions have affected his fair trial rights<sup>3</sup> and that advocating for these rights has resulted in strains on its limited resources.<sup>4</sup> The Defence asserts that the Chamber’s involvement is necessary at this stage in order to ensure Mr Ngaïssona’s right to participate in his defence<sup>5</sup> because the complaint procedure in Chapter 5 Section 5 of the Regulations is inadequate and has proved to be ‘unsuitable to rectify’ the violation of Mr Ngaïssona’s rights.<sup>6</sup> The Defence argues that this procedure is intended to only redress discrete violations in a detention regime that is well-functioning and is not suffering from systemic management issues.<sup>7</sup> It adds that

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<sup>1</sup> Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention, ICC-01/14-01/18-541-Conf (with confidential *ex parte* Annexes 1-5, only available to the Ngaïssona Defence and the Registry) (public redacted version of the filing was notified the next day, ICC-01/14-01/18-541-Red), paras 1-2.

<sup>2</sup> Request, ICC-01/14-01/18-541-Red, paras 10-18.

<sup>3</sup> Request, ICC-01/14-01/18-541-Red, paras 2, 32-34.

<sup>4</sup> Request, ICC-01/14-01/18-541-Red, paras 25-31.

<sup>5</sup> Request, ICC-01/14-01/18-541-Red, para. 2.

<sup>6</sup> Request, ICC-01/14-01/18-541-Red, paras 2, 19-24.

<sup>7</sup> Request, ICC-01/14-01/18-541-Red, paras 19-21.

this procedure is not ‘effective’ since it is ‘not capable of providing redress’ to Mr Ngaïssona and ‘does not offer a reasonable prospect of success’.<sup>8</sup>

3. On 8 June 2020, the Common Legal Representative of Victims of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly, the ‘CLR’) informed the Chamber that they will not file a response to the Request.<sup>9</sup>
4. On 15 June 2020, following the Chamber’s order,<sup>10</sup> the Registry submitted its observations on the Request (the ‘Registry Observations’).<sup>11</sup> It requests that the Request be rejected as it raises issues that have been addressed as part of the Registrar’s administrative decisions in the context of the complaints procedure on detention matters provided in the Regulations.<sup>12</sup> The Registry adds that these decisions ‘are either final as they have never been further appealed by the Defence before the Presidency or addressed issues that are pending for resolution’.<sup>13</sup> It also argues that the alleged violations of Mr Ngaïssona’s rights in detention are not justified.<sup>14</sup>
5. On 18 June 2020, the Defence requested leave to reply to the Registry Observations on two issues (the ‘Request for Leave to Reply’), namely: (i) the Registry’s compliance with its obligations under Regulation 103 of the Regulations;<sup>15</sup> and (ii) the Registry’s submissions that the Defence availed itself of the doubling of time-limits for the complaints procedure when seeking review of a recent decision by the Chief Custody Officer (the ‘CCO’).<sup>16</sup>

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<sup>8</sup> Request, ICC-01/14-01/18-541-Red, para. 24.

<sup>9</sup> Email from the CLR to the Chamber, 8 June 2020, at 15:22.

<sup>10</sup> Email from the Chamber to the Registry, 3 June 2020, at 10:03.

<sup>11</sup> Registry Observations on Mr Ngaïssona’s Request related to Detention Matters (ICC-01/14-01/18-541-Conf), ICC-01/14-01/18-556-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence and the Registry (with confidential *ex parte* Annex, only available to the Ngaïssona Defence and the Registry, ICC-01/14-01/18-556-Conf-Exp-Anx).

<sup>12</sup> Registry Observations, ICC-01/14-01/18-556-Conf-Exp, paras 2, 39-44.

<sup>13</sup> Registry Observations, ICC-01/14-01/18-556-Conf-Exp, paras 2, 18-19.

<sup>14</sup> Registry Observations, ICC-01/14-01/18-556-Conf-Exp, paras 2, 20-38.

<sup>15</sup> Request for Leave to Reply to “Registry Observations on Mr Ngaïssona’s Request related to Detention Matters (ICC-01/14-01/18-541-Conf)”, ICC-01/14-01/18-556-Conf-Exp, 15 June 2020, ICC-01/14-01/18-559-Conf, para. 7.

<sup>16</sup> Request for Leave to Reply, ICC-01/14-01/18-559-Conf, para. 8.

## II. Analysis

6. The Single Judge does not consider that further submissions on the issues raised in the Request for Leave to Reply are needed to rule on the Request. The Request for Leave to Reply is therefore rejected.
7. The Single Judge recalls that pursuant to Regulation 217(1) of the Regulations, a detained person may make a complaint against ‘any matter concerning his or her detention’. The complaint shall be addressed to the CCO unless it concerns a decision or order which has been made by the Registrar, in which case it shall be addressed directly to the Registrar.<sup>17</sup> Pursuant to Regulation 218(6) of the Regulations, the decision(s) of the CCO on such complaints are subject to review by the Registrar, whereas decisions of the Registrar are subject to ‘judicial review by the Presidency’. Importantly, both the decisions by the Registrar under Regulation 218(5) and those under Regulation 219(3) are subject to ‘judicial review’ by the Presidency pursuant to Regulation 220(1) of the Regulations.
8. At the outset, the Single Judge notes that the Request concerns two matters related to Mr Ngaïssona’s detention, namely (i) the provision and affordability of medically and culturally appropriate food and (ii) the duration of lockup per day. In respect of both matters, the Single Judge notes that the Defence filed a number of complaints to the CCO and the Registrar.<sup>18</sup> However, despite its dissatisfaction with the decisions taken by the Registrar, the Defence has not applied to the Presidency pursuant to Regulation 220(1) of the Regulations in order for it to undertake a judicial review, as the case may be. Further, recalling that Regulation 220(4) of the Regulations requires for requests for judicial review to be filed within seven calendar days of the respective impugned decision(s), the Single Judge notes that the statutory time-limits in relation to such potential requests have expired and the underlying decisions have become final.

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<sup>17</sup> Regulation 218(1) of the Regulations.

<sup>18</sup> See Annex 1 to the Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention, ICC-01/14-01/18-541-Conf-Exp-Anx1; Annex 2 to the Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention, ICC-01/14-01/18-541-Conf-Exp-Anx2.

9. The Single Judge notes that, instead of requesting judicial review from the Presidency, the Defence has sought the Chamber's intervention to address its dissatisfaction with the Registrar's decisions arguing that it finds the complaint procedure in Chapter 5 Section 5 of the Regulations to be inadequate and unsuitable to address Mr Ngaïssona's situation.<sup>19</sup> For reasons outlined below, the Single Judge does not consider that the Chamber may intervene in the matter at hand.
10. First, as regards the Defence's arguments concerning the inadequacy of the complaints procedure, the Single Judge notes that since the Defence did not exercise the right to judicial review available to Mr Ngaïssona pursuant to Regulation 220(1) of the Regulations, the question of this procedure being ineffective or otherwise inadequate does not arise. The Defence has also not sufficiently justified why issues raised in the Request could not have been otherwise addressed within the review framework provided in the Regulations. Further, the Defence's reference to Rule 192(3) of the Rules is not determinative as this provision is inapplicable at this stage of the proceedings. The Single Judge also considers that the Defence's interpretation of this rule would allow a detained person to simply circumvent the procedure established in Chapter 5 Section 5 of the Regulations.
11. Second, the Single Judge notes that a number of systematic management matters raised in the Request are currently under consideration by the Registrar.<sup>20</sup> Not only would it be inappropriate for the Single Judge to pronounce himself on management matters of the Registry, but it also remains to be seen whether Mr Ngaïssona's complaints persist following the implementation of the Registrar's decisions in this regard.
12. In light of these conclusions, the Single Judge also finds the Defence arguments drawing parallels between the Chamber's powers to examine detention related

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<sup>19</sup> Request, ICC-01/14-01/18-541-Red, paras 2, 19-24.

<sup>20</sup> See Registry Observations, ICC-01/14-01/18-556-Conf-Exp, paras 32-33, 36-38.

matters and those of the European Court of Human Rights to address human rights violations inapposite.<sup>21</sup>

13. Considering the above, the Single Judge finds that he cannot determine detention related complaints by the Defence in these concrete circumstances. Accordingly, the Single Judge rejects the Request.
14. Lastly, the Single Judge notes that there is only a confidential *ex parte* version of the Registry Observations and a confidential version of the Request for Leave to Reply. He hereby instructs the Registry and the Defence to file public-redacted versions within seven days from the notification of this decision.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**REJECTS** the Request and the Request for Leave to Reply;

**DIRECTS** the Registry to file a public redacted version of ICC-01/14-01/18-556-Conf-Exp; and

**DIRECTS** the Defence to file a public redacted version of ICC-01/14-01/18-559-Conf.

Done in both English and French, the English version being authoritative.



**Judge Bertram Schmitt**

**Single Judge**

Dated 22 June 2020

At The Hague, The Netherlands

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<sup>21</sup> See Request, ICC-01/14-01/18-541-Red, para. 24.