

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **25 June 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  
THE PROSECUTOR *v.* ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA**

**PUBLIC**

**Public Redacted Version of "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, 18 June 2020**

**Source:** Defence of Patrice-Edouard Ngaïssona

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

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**REGISTRY**

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**Detention Section**

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## **I. Introduction**

1. Pursuant to regulation 24(5) of the Regulations of the Court ("RoC"), the Defence for Mr Patrice-Edouard Ngaïssona ("Defence") respectfully requests leave to reply to the "Registry Observations on Mr Ngaïssona's Request related to Detention Matters" ("Registry Observations") dated 15 June 2020.<sup>1</sup> The present request focuses on two issues raised in the Registry Observations, that the Defence could not reasonably have anticipated. A limited and focused reply on these two discrete issues would assist Trial Chamber V ("Chamber") in the determination of the Defence's "Request to Redress the Violations of Mr Ngaïssona's Rights in Detention" ("Defence Request").<sup>2</sup>

## **II. Confidentiality**

2. The Defence files the present submissions confidentially pursuant to regulation 23*bis*(2) of the RoC as they concern information regarding Mr Ngaïssona's private life and detention-related matters, and also respond to documents of the same classification.

## **III. Procedural History**

3. On 2 June 2020, the Defence for Mr Ngaïssona filed its Request to Redress the Violations of Mr Ngaïssona's Rights in Detention.<sup>3</sup>

<sup>1</sup> Registry Observations on Mr Ngaïssona's Request related to Detention Matters, 15 June 2020, ICC-01/14-01/18-556-Conf-Exp.

<sup>2</sup> *The Prosecutor v. Bemba*, Decision on the "Defence Request for Leave to Reply to the 'Consolidated Response to the Defence Requests'", ICC-01/05-01/08-3049, 17 April 2014, para 5; *The Prosecutor v. Bemba*, Decision on Mr Fidèle Babala Wandu's request for leave to reply to the "Prosecution opposition to the Babala Defence's appeal against his provisional detention", ICC-01/05-01/13-342, 14 April 2014, para 7; *The Prosecutor v. Katanga*, Decision granting leave to reply, ICC-01/04-01/07-3382, 6 June 2013, para 8.

<sup>3</sup> Defence Request to Redress the Violations of Mr Ngaïssona's Rights in Detention, 2 June 2020, ICC-01/14-01/18-541-Conf

4. On 3 June 2020, the Chamber ordered the Registry to submit its observations on the matters raised in the Defence Request.<sup>4</sup>
5. On 15 June 2020, the Registry submitted its observations pursuant to the Chamber's Order, arguing that the Defence Request ought to be rejected.<sup>5</sup>

#### **IV. Submissions**

6. The Defence requests leave to reply on two discrete issues, which arise from the Registry Observations and could not have been anticipated in the Defence Request.
7. *First*, the Registry dispels the Defence's concerns about Mr Ngaïssona's well-being by [REDACTED].<sup>6</sup> The first issue for which the Defence seeks leave to reply is whether the Registry complied with its obligations under regulation 103 of the ROC to protect the health and safety of Mr Ngaïssona, (i) by relying on a [REDACTED] and (ii) by considering its investigations regarding Mr Ngaïssona's physical and mental well-being completed as a result. The Defence could not have anticipated the necessity to make submissions on this specific issue in its Request, since the Defence found out for the first time about the existence and content of this [REDACTED] in the Registry Observations and the annex thereto.
8. *Second*, the Defence seeks leave to reply on the Registry's submissions that the Defence availed itself of the doubling of time-limits for the complaints

<sup>4</sup> Email from Trial Chamber V to the Registry, 3 June 2020 at 10:03

<sup>5</sup> Registry Observations on Mr Ngaïssona's Request related to Detention Matters, 15 June 2020, ICC-01/14-01/18-541-Conf.

<sup>6</sup> Ex Parte Annex to the Registry Observations.

procedure when seeking review of a CCO's decision [REDACTED].<sup>7</sup> If granted leave to reply, the Defence will demonstrate that, far from accepting the temporary measure doubling the time-limits, the Defence was trying to solve yet another issue with the detention centre by using less cumbersome canals and proposing a safe and proportionate alternative to the Covid-19 Measures ("Measures")<sup>8</sup> in place on the importation of material in the detention centre. The Defence could not have anticipated the need to make submissions on this specific issue given that it expected, in accordance with the Registry's decision on this matter,<sup>9</sup> the gradual lifting of the Measures as of 1 June 2020. However, as of today, the Measures continue to be in place despite the fact that the Dutch authorities have since last week authorized in-person visits of lawyers and experts into the Dutch prisons.<sup>10</sup>

9. Allowing the Defence to reply to the first issue would assist the Chamber in determining whether the Registry's obligations pursuant to regulation 103 of the RoC were properly discharged, or else whether the Registry should not have considered the [REDACTED] provided by [REDACTED] as a sufficient assessment of Mr Ngaïssona's physical and mental well-being. Such a determination will ultimately assist the Chamber in deciding on the Defence Request.
10. Allowing the Defence to reply to the second issue would assist the Chamber by providing it with yet another example of the detention centre's systemic management issues, as shown by the lack of proportionality of the Measure

<sup>7</sup> Registry Observations on Mr Ngaïssona's Request related to Detention Matters, 15 June 2020, ICC-01/14-01/18-541-Conf, p. 15, para 41.

<sup>8</sup> CCO's memorandum on "URGENT New Detention Centre Temporary Measures Regarding COVID-19 ("CCO's Measures"), DS/2020/023/PC/mc, 19 March 2020.

<sup>9</sup> Registrar's Decision on Mr Ngaïssona's Request for Review addressed to the registrar received 4 May 2020, 19 May 2020.

<sup>10</sup> [REDACTED].

in place, whether it is in failing to (i) envisage safe and less prejudicial alternatives to a total prohibition or (ii) re-assess the risk, initially considered as temporary, in a timely manner and in line with the national position of the Host State.

## RELIEF SOUGHT

11. In light of the above, the Defence respectfully seeks leave to reply to the Registry Observations in relation to the two discrete issues mentioned at paragraphs 7 and 8 of the present submissions.

Respectfully submitted on 25 June 2020,



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Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona  
At The Hague, the Netherlands.