

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **16 September 2019**

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 Observations under Rule 122(1) of the Rules of Procedure and Evidence pursuant
to the “Order Setting the Schedule for the Confirmation of Charges Hearing”**

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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I. Introduction

1. In the *“Order Setting the Schedule for the Confirmation of Charges Hearing”* of 10 September 2019,¹ the Pre-Trial Chamber instructed “the parties and participants to provide any Rule 122 submissions to the Chamber in writing by no later than 16.00 on 16 September 2019”.²
2. The Defence for Patrice-Edouard Ngaïssona (“Defence”) hereby presents an overview of its submissions pursuant to Rule 122 of the Rules of Procedure and Evidence (“Rules”). The Defence will develop its arguments orally at the confirmation of charges hearing which is set to start on 19 September 2019, at 9:30.
3. In light of the limited time between the Prosecution’s submission of the Document Containing the Charges (“DCC”) and the confirmation of charges hearing, in combination with the ongoing flow of disclosures and filings after the submission of the DCC, the Defence was hampered in effectively preparing for the confirmation of charges hearing. As a result, the Defence will present its submissions at the confirmation of charges hearing without prejudice, in that its submissions at the hearing should not be taken as forfeiting any legal or factual submissions and /or defences, which it may raise at a later stage of the proceedings. The reservation of these rights would only apply in the event the Chamber would confirm the charges.

II. Applicable Law

4. Pursuant to rule 122(1) of the Rules:

1. The Presiding Judge of the Pre-Trial Chamber shall ask the officer of the Registry assisting the Chamber to read out the charges as presented by the Prosecutor. The Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented.

¹ ICC-01/14-01/18-327.

² ICC-01/14-01/18-327, p. 8.

(...)

3. Before hearing the matter on the merits, the Presiding Judge of the Pre-Trial Chamber shall ask the Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing.

5. Article 67(1) of the Rome Statute provides:

1. 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:

(...)

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

III. Submissions

6. The Defence's right "to have adequate time and facilities for the preparation of the defence" is enshrined in Article 67 of the Rome Statute and is fundamental to a fair and impartial trial. It is a minimum guarantee afforded to all suspects and accused persons before the Court.
7. It should be observed that the Defence was provided with only one month to prepare its oral submissions in response to the Prosecution's DCC for the purposes of the confirmation of charges hearing. In the intervening time, the Defence had to attend to several issues and tasks, among which several detention-related matters, which furthermore had an impact on the effective time to prepare the confirmation of charges hearing within one month from the DCC.
8. *First*, insufficient time was afforded to the Defence to prepare for the confirmation of charges hearing, contrary to the Court's statutory framework. The minimum 30-day period between the filing of the DCC and the confirmation of charges hearing, as provided in Rule 121(3) is based on the assumption that the "description of the

charges shall not exceed 30 pages”.³ The Prosecution’s DCC totals 249 pages, excluding Annexes A through J, which alone extend over 700 pages. Moreover, the Prosecution’s case has expanded significantly since the arrest warrant against Mr Ngaïssona, which places the Defence in a situation of further disadvantage in relation to the Prosecution. The Defence was not put on notice of the considerable swelling of the charges against Mr Ngaïssona, which now totals 111 counts. Furthermore, the nature of the crimes charged has also changed. In particular, new locations have been added by the Prosecution, requiring the Defence to adapt to the new allegations.

9. *Second*, the Defence attended to several matters and filings relating to Mr Ngaïssona’s detention conditions, which have caused considerable hardship to Mr Ngaïssona and therefore had to be dealt with swiftly by the Defence team, which overlapped the time frame between the DCC and the hearing.
10. *Third*, in the intervening month since the Prosecution submitted its DCC, the Defence also received several filings from the parties, participants, Registry, and Chamber; however, the Defence was not in a position to respond to all filings on the grounds that it simply did not have the resources to do so.
11. The Defence carefully weighed the possibility of seeking an extension of time to prepare for the confirmation of charges hearing against the hardship of prolonged detention experienced by Mr Ngaïssona, who has been in pre-trial detention since 23 January 2019. The Defence came to the determination that it would not seek to indirectly prolong Mr Ngaïssona’s already protracted pre-trial detention by seeking an extension.
12. Given that the Defence was effectively not in a position, based on the above mentioned circumstances, to have “sufficient time to conceive, prepare and raise meaningful and effective grounds of defence which are tailored to its case”,⁴ it therefore reserves its rights to raise any procedural and substantive arguments which

³ Regulation 38(3)(g), Regulations of the Court.

⁴ *Prosecutor v. Katanga* case, Trial Chamber: Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/07, 7 March 2014, para. 1572.

it cannot raise during the confirmation of charges proceedings, at a later stage, in the event the charges would be confirmed.

RELIEF SOUGHT

13. In light of the above, the Defence respectfully:

- a. **REQUESTS** that the Chamber not preclude the Defence from raising procedural and substantial submissions and defences arising from the DCC and confirmation of charges hearing at a later stage, in the event the charges would be confirmed.

Respectfully submitted, in The Hague, on 16 September 2019,



Mr Knoops
Lead Counsel for Mr. Patrice-Edouard Ngaïssona