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**No. ICC-01/14-01/18
Date: 23 April 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 Requests Related to the Prosecution
Submissions on the Conduct of Proceedings**

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 Article 64 of the Rome Statute (the ‘Statute’), Rule 134 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Ngaïssona Defence Requests Related to the Prosecution Submissions on the Conduct of Proceedings’.

I. Procedural history and submissions

1. On 19 March 2020, the Chamber issued an order scheduling the first status conference (the ‘Order’).¹ Therein, it sought submissions from the parties, the participants and the Registry on a number of potential agenda items and announced that it will issue a decision pursuant to Article 68(8)(b) of the Statute.² With regard to the latter, it informed the parties and participants that it ‘may take into account the submissions of the parties on these matters but reserves the right to give directions in such a manner so as to comply with the principles of expeditiousness and fairness.’³
2. On 8 April 2020, as instructed,⁴ the parties, the participants and the Registry filed their submissions on the potential agenda items.⁵ In its submissions, the Office of the Prosecutor (the ‘Prosecution’) announced that it will also file proposals on the conduct of the proceedings.⁶

¹ Order Scheduling First Status Conference, ICC-01/14-01/18-459.

² Order, ICC-01/14-01/18-459, paras 3, 4, 7.

³ Order, ICC-01/14-01/18-459, para. 7.

⁴ Order, ICC-01/14-01/18-459, p. 5.

⁵ Registry Submissions in View of the upcoming Status Conference, ICC-01/14-01/18-470 (with confidential *ex parte* Annex I, only available to the Prosecution and the Registry; confidential *ex parte* Annexes II and III, only available to the Registry; and confidential redacted versions of Annexes II and III); Common Legal Representatives’ joint submissions on the matters identified in the “Order Scheduling First Status Conference”, ICC-01/14-01/18-471; Yekatom Defence Submissions for First Status Conference, ICC-01/14-01/18-472 (with one confidential annex); Defence Submissions pursuant to Trial Chamber V’s “Order Scheduling First Status Conference” (ICC-01/14-01/18-459), ICC-01/14-01/18-473-Conf (with confidential *ex parte* Annex 1, only available to Ngaïssona Defence and the Registry) (the ‘Ngaïssona Defence Submissions on First Status Conference’); Prosecution’s Observations on the Agenda of the First Status Conference, ICC-01/14-01/18-474-Conf (the ‘Prosecution Observations on First Status Conference’).

⁶ Prosecution Observations on First Status Conference, ICC-01/14-01/18-474-Conf, para. 37.

3. On 14 April 2020, the Prosecution filed the announced submissions (the ‘Prosecution Submissions’).⁷ It made general observations on the conduct of the proceedings⁸ and specific submissions on the matters of witness preparation⁹ and the admission of evidence.¹⁰ Additionally, it annexed a proposal of what it requests to be adopted as the directions on the conduct of the proceedings¹¹ and a proposal on witness familiarisation.¹²
4. On 16 April 2020, the Ngaïssona Defence filed a request seeking that the Prosecution Submissions be rejected *in limine* (the ‘Request’).¹³ In the alternative, it requests an extension of time to file its response to the Prosecution Submissions 21 days after issuance of the present decision (the ‘Alternative Request’).¹⁴
5. The Ngaïssona Defence submits that the Prosecution had no legal basis to file its submissions and that it should be rejected for this reason alone.¹⁵ Further, it argues that submissions at this point in time would make the Prosecution the entity being ‘responsible for structuring the conduct of the proceedings’ and violate the principle of equality of arms.¹⁶
6. With regard to the Alternative Request, the Ngaïssona Defence argues that this is the time frame usually set by other chambers of the Court to request submissions on the conduct of the proceedings.¹⁷

⁷ Prosecution’s Submission of Proposed Directions for the Conduct of Proceedings and Proposed Protocol on Witness Familiarisation, ICC-01/14-01/18-476 (with public Annexes A and B, ICC-01/14-01/18-476-AnxA and ICC-01/14-01/18-476-AnxB, respectively).

⁸ Prosecution Submissions, ICC-01/14-01/18-476, paras 6-8, 39-41.

⁹ Prosecution Submissions, ICC-01/14-01/18-476, paras 9-16.

¹⁰ Prosecution Submissions, ICC-01/14-01/18-476, paras 17-26.

¹¹ Annex A to the Prosecution Submissions, ICC-01/14-01/18-476-AnxA.

¹² Annex B to the Prosecution Submissions, ICC-01/14-01/18-476-AnxB; Prosecution Submissions, ICC-01/14-01/18-476, paras 28-38.

¹³ 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, ICC-01/14-01/18-479, paras 1, 7.

¹⁴ Request, ICC-01/14-01/18-479, paras 1, 6, 7.

¹⁵ Request, ICC-01/14-01/18-479, para. 3.

¹⁶ Request, ICC-01/14-01/18-479, para. 4.

¹⁷ Request, ICC-01/14-01/18-479, para. 6.

7. On 17 April 2020, the Prosecution filed its response to the Request (the ‘Response’).¹⁸ It submits that the Prosecution Submissions address paragraph 7 of the Order.¹⁹ Further, even if this were not the case, the Prosecution submits that it has the right to request the Chamber to adopt the procedural directions and protocol it proposed.²⁰

II. Analysis

8. The Single Judge will first decide on the request to dismiss the Prosecution Submissions *in limine* and then address the Alternative Request.
9. Irrespective of the fact that the Chamber did not (yet) invite submissions on the conduct of the proceedings of the question, Rule 134(1) of the Rules provides the parties with the right to make requests or submissions on issues concerning the conduct of the proceedings. Therefore, the Single Judge finds that the Prosecution Submissions did not lack a legal basis. Accordingly, the Single Judge rejects the Request. However, in order to minimize the chance of future litigation in similar situations, the Single Judge advises the parties to exercise restraint and, in case of ambiguity on whether the input of the parties is needed, consult with the Chamber before making such filings.
10. The Single Judge will also address the concerns of the Ngaïssona Defence that the Chamber would not be seen as the entity structuring the conduct of the proceedings. First, the Single Judge repeats in this regard that he, in his role as Presiding Judge, ‘may’ take into account the submissions of the parties when issuing his decision pursuant to Rule 140 of the Rules,²¹ which is by no means an indication that the submissions will necessarily be followed. Second, the Presiding Judge states unequivocally that the conduct of the proceedings will be determined by the Chamber. Accordingly, the Ngaïssona Defence’s concern in this regard is without cause.

¹⁸ Prosecution’s Response to Ngaïssona Defence’s Request for In Limine Dismissal of the Prosecution’s Submission ICC-01/04-01/18-476 and Alternative Request for Extension of Time (ICC-01/14-01/18-479), ICC-01/14-01/18-483.

¹⁹ Response, ICC-01/14-01/18-483, para. 1.

²⁰ Response, ICC-01/14-01/18-483, para. 2.

²¹ Order, ICC-01/14-01/18-459, para. 7.

11. With regard to the Alternative Request, the Single Judge first notes that in its Response, the Prosecution does not specifically oppose the extension of deadline requested by the Ngaïssona Defence. Second, the Single Judge also considers the submissions on equality of arms and finds that an extension of the response deadline sufficiently addresses this concern. Lastly, the Single Judge takes further into account the special circumstances in the host State and the possible impact this has on the efficiency of the work of the parties and participants.
12. In light of the above, the Single Judge considers it appropriate to extend the response deadline for all parties and participants to the Prosecution Submissions to 21 days after the filing of this decision.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request; and

ORDERS the parties and participants to file responses to the Prosecution Submissions 21 days after the notification of this decision.

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



Judge Bertram Schmitt
Single Judge

Dated this 23 April 2020

At The Hague, The Netherlands