

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **10 March 2023**

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 ROMBHOT YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Public Redacted Version of the “Ngaïssona Request for leave to Reply to the
‘Prosecution’s Response to the Ngaïssona Defence Motion for Disclosure’ (ICC-01/14-
01/18-1671-Conf)”, 22 November 2022, ICC-01/14-01/18-1674-Conf**

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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**Unrepresented Applicants
(Participation/Reparation)**

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
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Other

I. Introduction

1. The Defence for Mr Ngaïssona (“Defence”) requests leave from Trial Chamber V (“Chamber”) to file a discrete reply to the “Prosecution’s Response to the Ngaïssona Defence Motion for Disclosure of 21 November 2022” (“Response”).¹ This request is filed pursuant to regulations 24(5) and 34(c) of the Regulations of the Court (“Regulations”).
2. The present request is classified as “confidential” pursuant to regulation 23*bis*(1) of the Regulations, as it refers to confidential documents and information.

II. Submissions

3. The Defence seeks the Chamber’s leave to reply on a new and discrete issue which could not have been anticipated by the Defence, arising from the Prosecution’s Response. The issue is of particular importance as it relates to an incorrect portrayal of the Prosecution’s disclosure in this case and of the Defence’s motion of 9 November 2022 (“Motion”).² Submissions by the Defence in this respect will assist the Chamber.³
4. In its Response, the Prosecution contends it had previously disclosed to the Defence the date of the search and seizure operation, which it claims was carried out in [REDACTED], “long after the witness withdrew his cooperation”, as reflected in the metadata of CAR-OTP-2134-0385.⁴ The Prosecution uses this argument to contend that (i) the items subject to the Defence’s disclosure request are not “material” given they allegedly do not relate to P-2625’s refusal to cooperate with the Prosecution, and (ii) the Defence ignored this information in

¹ ICC-01/14-01/18-1671-Conf (“Prosecution’s Response”).

² ICC-01/14-01/18-1658-Conf.

³ ICC-01/04-01/07-3382, para. 8.

⁴ Prosecution’s Response, paras 6, 18. However, in its 31 October 2022 response to the Defence, the Prosecution failed to point to document CAR-OTP-2134-0385, which could have prompted further *inter partes* discussions and averted this particular point being litigated before the Chamber, *see* ICC-01/14-01/18-1658-Conf, footnote 9.

its Motion.⁵ However, this portrayal of the evidence is incorrect; the Prosecution has not disclosed the date of the search and seizure operation to date. The metadata of CAR-OTP-2134-0385 merely indicates that the [REDACTED] provided the document, which dates from [REDACTED], to the Prosecution [REDACTED]. Neither the metadata, nor the document itself indicate the date upon which the document was actually obtained by the [REDACTED], or that it was obtained through a search and seizure operation of [REDACTED] at the Prosecution's request. On the contrary, the document and its metadata are unclear as to circumstances of the Prosecution acquiring this document, its connection to the present case, and the date of the search and seizure operation of [REDACTED], which according to information provided to the Chamber and the Defence, prompted his refusal to cooperate with the Prosecution.⁶ It is moreover unfortunate that the Prosecution attempts to shift responsibility on the Victims and Witnesses Unit for its own failure to disclose this information to the Defence.⁷

5. Should the Defence be granted leave to reply, it will provide submissions on the unanticipated, new and discrete argument raised by the Prosecution to assist the Chamber in its assessment of the Defence Motion.

III. Conclusion

6. Given the novelty of the information provided by the Prosecution in its Response, its factual inaccuracy, and the importance of the issue for the Chamber's assessment of the Defence's disclosure request, the Defence seeks the Chamber's leave to file a reply on the above discrete issue.

⁵ Prosecutions Response, paras 6-7, 18.

⁶ Email from VWU to the Chamber and parties, 25 October 2022, at 15:16.

⁷ Prosecution's Response, para. 7.

IV. Relief Sought

7. The Defence respectfully requests the Chamber to GRANT the Defence leave to reply to the Prosecution's Response.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 10 March 2023,

At The Hague, the Netherlands