

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **23 May 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 & PATRICE-EDOUARD NGAÏSSONA***

Public

**Yekatom Defence Response to the Ngaïssona Defence Request to dismiss
in limine ICC-01/14-01/18-1874 and for orders concerning the Prosecution's
prospective bar table applications**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby responds to the request of the Defence for Mr Ngaïssona to dismiss *in limine* the Prosecution seventh application for submission of Facebook evidence ¹ ('Prosecution Seventh Application') and for orders concerning the Prosecutions's prospective bar table applications² ('Ngaïssona Request').
2. The Defence supports the Ngaïssona Request and respectfully request the Chamber to grant the relief sought.
3. In the alternative, the Defence requests an extension of time to respond to the Prosecution Seventh Application and that the new deadline to respond be set to 25 August 2023.

PROCEDURAL HISTORY

4. On 26 August 2020, the Chamber issued the "Initial Directions on the Conduct of the Proceedings" ('Initial Directions').³ The Initial Directions require that the Prosecution prior to submitting a bar table motion before the Chamber needs to obtain the opposing party's position as to whether it consents or opposes to the information within it.⁴
5. On 17 March 2023, the Prosecution informed the Defence of its intent to seek the submission of 684 items related to 10 Facebook accounts through a bar table motion. The Prosecution asked the Defence to express their objections to the submission of this material at the latest 28 April 2023 in accordance with paragraph 62 of the Initial Directions on the Conduct of Proceedings.⁵

¹ ICC-01/14-01/18-1874.

² ICC-01/14-01/18-1875.

³ ICC-01/14-01/18-631.

⁴ Ibid, para 62.

⁵ Email sent from the Prosecution to the Defence, dated 17 March 2023 at 16:40.

6. On 24 March 2023, the Defence informed the Prosecution that it was not in a position to provide its views and objections on the 684 items by the suggested deadline of 28 April 2023. The Defence suggested to do so at the latest 26 May 2023 in order to have a reasonable amount of time to properly review the items.⁶
7. On 4 April 2023, the Prosecution insisted to maintain the deadline of 28 April 2023,⁷ despite the 24 484 pages of conversations the Defence has to review.
8. On 5 May 2023, the Prosecution asked the Defence to provide its comments on the 684 items by 11 May 2023. It indicated that otherwise, it would be obliged to note the absence of any response in the annex of its motion.⁸
9. On 5 May 2023, the Defence reaffirmed its inability to complete its analysis by May 2023 due to the heavy workload associated with the hearings and the last minutes changes in the witness schedule.⁹
10. On 17 May 2023, the Prosecution filed the “Prosecution’s Seventh Application for Submission of Facebook Evidence from the Bar Table”, (‘Bar Table Application’).¹⁰
11. On 19 May 2023, the Defence of Ngaïssona submitted its request.¹¹
12. On 19 May 2023, Trial Chamber V took note of the Ngaïssona Defence’s Request and shortened the deadline for responses to 23 May 2023 by 15:00. The Single Judge also suspended the deadline to respond the Prosecution Seventh Application until further notice and instructed the Prosecution not to file any

⁶ Email sent from the Defence to the Prosecution dated 24 March 2023 12:47. Email sent from the Defence to the Prosecution dated 24 March 2023 at 12:41.

⁷ Email sent from the Prosecution to the Defence dated 4 April 2023 at 19:49.

⁸ Email sent from the Prosecution to the Defence dated 5 May 2023 at 14:11.

⁹ Email sent from the Defence to the Prosecution dated 5 May 2023 at 15:36.

¹⁰ ICC-01/14-01/18-1874-Conf.

¹¹ ICC-01/14-01/18-1875.

prospective bar table applications until the determination of the Ngaïssona Request.¹²

SUBMISSIONS

13. Considering that the Prosecution failed to meet the procedural requirement of paragraph 62 of the Initial Directions, the Defence fully supports the request of the Defence of Ngaïssona to dismiss *in limine* the Prosecution Seventh Application.¹³
14. It should be noted that in the context of the *inter partes* consultation between the Prosecution and the Defence, the Prosecution ultimately suggested a time period of a month and a half for the submission of 682 Facebook conversations, spanning no less than 24,484 pages.¹⁴ For the Defence to review the evidence within such timeframe, it would have involved the examination of more than 600 pages per working day. Such a short deadline of the 11 May 2023 was simply impossible to meet, given the limited and stretched resources available to the Defence and the workload it is facing at this critical juncture of the proceedings. In spite of that, the Defence agreed, in good faith, to provide its views to the Prosecution by 26 May 2023.¹⁵ However, despite its best efforts to comply with the proposed deadline, the Defence was not in a position to meet it. In this context, it was unwarranted for the Prosecution to proceed and file the Prosecution Seventh Application and it should accordingly be rejected *in limine*.
15. In the alternative, and in view of the stage of the Prosecution's presentation of evidence, the Defence for Mr. Yekatom requests an extension of deadline to respond to 25 August 2023 in order to provide an appropriate delay for the Defence to provide its submissions on the 682 items.

¹² Email sent from Trial Chamber V to the Defence dated 19 May 2023 at 17:01.

¹³ ICC-01/14-01/18-1875.

¹⁴ ICC-01/14-01/18-1874-Conf.

¹⁵ Email sent from the Defence to the Prosecution dated 24 March 2023 at 12:47.

16. The Defence recently had to adapt to the changes of the witness order. Indeed, the Defence was in the midst of preparing the 22nd block of witnesses which was subject to last minute changes as per example, P-1819, P-1437, and P-1990 were successively scheduled to be the last testifying witness of the 22nd block. The Defence had to react quickly to prepare its examination of the witnesses and had to take over a substantial amount of work in order to adjust to the modifications.
17. More specifically, the addition of P-1990 as a witness has become apparent only recently¹⁶ and monopolized resources of the Defence for its preparation. Indeed, the preparation of this witness involved multiple *inter partes* disclosure and redaction lift requests, and it involved satellite imagery preparation with the review and analysis of around 2000 drone pictures.
18. Furthermore, the witnesses scheduled to testify and the evidence that has been or will be presented in block 21 to 23 are all very relevant to the charges brought against Mr Yekatom. This means that the Defence must concentrate all its efforts and its limited resources on their examination at such a pivotal time in the trial.
19. In this context, the Defence has still and so far been unable to dive into the review and analysis of the 682 items that the Prosecution is tendering through its Seventh Application. Considering that there are still hearings, that there are pending matters and the upcoming judicial recess where the resources of the Defence are accordingly more limited, the Defence respectfully request that in the alternative the Chamber grants an extension of deadline to 25 August 2023.
20. The Defence considers that this is reasonable extension in order to review the items concerned by the Prosecution Seventh Application in a way which is

¹⁶ First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules, 17 April 2023 (date of original 6 April 2023), ICC-01/14-01/18-1833-Corr-Red.

consistent with both the right of the accused to have adequate time and facilities for the preparation of the defence and the expeditiousness of the proceedings.

RELIEF SOUGHT

21. In light of the above, the Defence respectfully requests Trial Chamber V to:

GRANT the Ngaïssona Request.

Alternatively :

GRANT an extension of the deadline to respond to the Prosecution Seventh Application to 25 August 2023.

RESPECTFULLY SUBMITTED ON THIS 23th DAY OF MAY 2023¹⁷



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

¹⁷ The Defence thanks legal intern Ms Doriane Huet for her precious assistance in the drafting of this filing.