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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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

Prosecution's Response to the Defence Request to dismiss *in limine* ICC-01/14-01/18-1874-Conf and for orders concerning the Prosecution's prospective bar table applications (ICC-01/14-01/18-1875)

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Ms Anta Guissé
Mr Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Landry Omissé-Namkeamaï
Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun
Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Trial Chamber V (“Chamber”) should reject the NGAISSONA Defence’s “Request to dismiss *in limine* ICC-01/14-01/18-1874-Conf and for orders concerning the Prosecution’s prospective bar table applications” (“Request”).¹

2. The NGAISSONA Defence was given two months to provide their views and comments on the items contained in the Annex to the Bar Table Motion (“Bar Table Motion”),² and to articulate their position regarding their formal submission.

3. Nevertheless, the Prosecution defers to the Chamber’s discretion to the extent that the Defence may seek an extension of the applicable time limit to respond to the pending motion.

II. SUBMISSIONS

4. The Annex to the Bar Table Motion was sent to the Defence on 17 March 2023, proposing a deadline of 28 April 2023 and which was further extended to 11 May 2023.³ Given that both Defence teams could not provide their views and comments by that time,⁴ the Prosecution filed its Bar Table Motion on 17 May 2023.

¹ ICC-01/14-01/18-1875.

² ICC-01/14-01/18-1874-Conf.

³ E-mail from the Prosecution to both Defence teams, dated 17/03/23 at 16:40, and e-mail from the Prosecution to both Defence teams, dated 05/05/23 at 14:11.

⁴ On 24 and 31 March 2023 respectively, the Defence teams indicated that they could not provide their views and comments before 26 May 2023 (e-mail from the YEKATOM Defence to the Prosecution, dated 24/03/23 at 12:41, and e-mail from the NGAISSONA Defence to the Prosecution, dated 31/03/23 at 14:30). On 4 April 2023, the Prosecution reiterated its position to expect the Defence’s views and comments by 28 April 2023 (e-mail from the Prosecution to both Defence teams, dated 04/04/23 at 17:33). On 20 April 2023, the NGAISSONA Defence reiterated its request to extend the deadline to 26 May 2023 (e-mail from the NGAISSONA Defence to the Prosecution, dated 20/04/23 at 20:19). On 5 May 2023, the Prosecution, on good faith, extended the deadline to 11 May 2023 (e-mail from the Prosecution to both Defence teams, dated 05/05/23 at 14:11). On 5 May 2023, the YEKATOM Defence responded it was not in a position to provide any views by 11 May 2023, nor by 26 May 2023 as originally indicated (e-mail from the YEKATOM Defence to the Prosecution, dated 05/05/23 at 15:36). On 8 May 2023, the NGAISSONA Defence indicated it could provide comments by 26 May 2023 (e-mail from the NGAISSONA Defence to the Prosecution, dated 08/05/23 at 10:52).

5. Having had the Annex in its possession for two months by the time of the filing, the Prosecution considers that the Defence had sufficient time to develop its position regarding any arguments against the formal submission of the tendered documents.

6. *First*, the intention of the Initial Directions with respect to bar table motions is not geared to extend the Parties' time to respond to such filings, to 'preview' all of the arguments ultimately advanced, or to allow for 'two bites at the apple'. Nor, is it intended as a procedural hurdle above the Statute or the Court's regulatory framework, operating to bar otherwise perfectly admissible evidence or its formal submission. Instead, it is intended to facilitate the Chamber's work in efficiently and timely disposing of such applications which normatively comprise hundreds of documents, such that it can focus its limited resources on contested issues and matters of consequence – *i.e.*, matters genuinely in dispute on legal grounds, rather than predicated on strategy or gamesmanship.

7. *Second*, the contention that the Defence is not in a position to provide any indication of whether it genuinely opposes (or not) the formal submission of any of the documents is not creditable. All but three of the 682 items were disclosed as INCRIM three years ago – in 2020. Of the remaining three items, one was disclosed as Rule 77 in 2020 (the Request for Assistance to obtain the records), and two were disclosed as Rule 77 in May 2021. At the very least, the Defence will have been well-prepared to address the subject matter of their contents.

8. *Finally*, contrary to the Defence's arguments,⁵ articulating a response in respect of the 10 Facebook profiles submitted, does not require an in-depth analysis of every single message contained therein.

9. Instead, as the Chamber has reiterated in its first decision on the submission of items from the bar table, at this stage, the Chamber will only consider the admissibility

⁵ E.g., ICC-01/14-01/18-1875, para. 10.

of items in the context of the statutory exclusionary rules, including procedural bars, obstacles and preconditions.⁶ In other words, there is nothing that precludes the Defence from advancing arguments regarding the standard evidentiary factors that the Chamber will consider at any point in the future. Moreover, the Defence may raise any pertinent positions or observations they may hold in the course of their response. There is no procedural bar to doing so, and certainly none that arises from the application of an *inter partes* deadline to indicate for the Chamber's benefit whether or not the Defence consents to the submission of the tendered documents.

10. Nevertheless, while the Regulations of the Court provide for clear deadlines to respond to motions filed by the Parties and Participants, the Prosecution defers to the Chamber's discretion to extend the time for the Defence to respond to the pending Bar Table Motion, as may be necessary or justified.

IV CONCLUSION

11. For the reasons above, the Chamber should reject the Request. The Prosecution defers to the Chamber with respect to the extension of the time limits to file a response, if deemed necessary.



Karim A. A. Khan KC, Prosecutor

Dated this 23th day of May 2023
At The Hague, The Netherlands

⁶ ICC-01/14-01/18-1359, para. 12.