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**No. ICC-01/14-01/18
Date: 14 September 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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Ngaißsona Defence Request for Leave to Appeal the Decision
Rejecting its Request for Reconsideration of the Further Directions**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

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

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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 82(1)(d) of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Ngaïssona Defence Request for Leave to Appeal the Decision Rejecting its Request for Reconsideration of the Further Directions’.

I. Procedural history

1. On 29 May 2023, the Chamber issued its Further Directions on the Conduct of the Proceedings (the ‘Further Directions’).¹ In these Further Directions, the Chamber set 17 November 2023 as time limit for the Defence teams to (i) file their final lists of witnesses and of evidence; (ii) provide witness statements or summaries of the anticipated testimony for all witnesses; (iii) file any applications pursuant to Rule 68(2) and (3) of the Rules of Procedure and Evidence (the ‘Rules’); and (iv) complete disclosure of all items it intends to use during its evidence presentation.² It further set 11 December 2023 as the date on which the Defence teams are to call their first witness.³
2. On 21 July 2023, the Ngaïssona Defence (the ‘Defence’) filed a request for reconsideration of the Further Directions, asking that the time limit of 17 November 2023 be moved to 15 December 2023, and the date of 11 December 2023 to 22 January 2024 (the ‘Request for Reconsideration’).⁴

¹ Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), ICC-01/14-01/18-1892.

² Further Directions, ICC-01/14-01/18-1892, para. 21.

³ Further Directions, ICC-01/14-01/18-1892, para. 23.

⁴ Defence Request for Reconsideration of the “Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)” (ICC-01/14-01/18-1892), 29 May 2023, ICC-01/14-01/18-1997-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence (confidential *ex parte*, redacted version, only available to the Ngaïssona Defence and the Prosecution, and confidential redacted version notified the same day, ICC-01/14-01/18-1997-Conf-Exp-Red and ICC-01/14-01/18-1997-Conf-Red; public redacted version notified on 4 September 2023, ICC-01/14-01/18-1997-Red).

3. On 29 August 2023, the Chamber rejected the Request for Reconsideration, finding that postponing the deadline and date as requested by the Defence was not ‘necessary to prevent an injustice’ (the ‘Impugned Decision’).⁵
4. On 4 September 2023, the Defence requested leave to appeal the Impugned Decision (the ‘Request’),⁶ on the ground that the Chamber ‘erred in reaching the Impugned Decision as it did not take into consideration key relevant factors relating to the Defence’s preparation of its case and its pending investigations’ (the ‘Issue’).⁷
5. On 8 September 2023, the Office of the Prosecutor (the ‘Prosecution’) responded, submitting that the Request should be rejected (the ‘Prosecution Response’).⁸

II. Analysis

6. The Chamber recalls the applicable law governing requests for leave to appeal under Article 82(1)(d) of the Statute, as previously set out by the Chamber.⁹
7. The Defence submits that (i) the current schedule is not realistic and ‘will result in a definite infringement of Mr Ngaïssona’s right to a fair trial’; (ii) the Chamber ‘would have benefitted from consulting with the parties before issuing the Further Directions’;¹⁰ and (iii) the Chamber ‘significantly underestimated both the time needed for the finalisation of the Defence’s preparations prior to the presentation of its case before it and the impact the testimony of the Chamber’s witness will have on the defence case, its final list of witnesses and evidence’.¹¹

⁵ Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings, ICC-01/14-01/18-2068.

⁶ Defence Request for Leave to Appeal the “Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings (ICC-01/14-01/18-2068)”, ICC-01/14-01/18-2075.

⁷ Request, ICC-01/14-01/18-2075, para. 10.

⁸ Prosecution’s Response to the “Defence Request for Leave to Appeal the ‘Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings’, ICC-01/14-01/18-2068”, (ICC-01/14-01/18-2075), ICC-01/14-01/18-2087.

⁹ Decision on the Ngaïssona Defence Request for Leave to Appeal the Decision on Restrictions on Contacts and Communications, 22 May 2020, ICC-01/14-01/18-525, paras 15-21.

¹⁰ Request, ICC-01/14-01/18-2075, para. 11.

¹¹ Request, ICC-01/14-01/18-2075, para. 12.

8. The Prosecution argues that the Issue does not arise from the Impugned Decision but is rooted in the Further Directions, which the Defence did not seek leave to appeal.¹² It further submits that even if the Issue is considered to arise from the Impugned Decision, it is not appealable, as the Request ‘merely disagrees with the Chamber’s exercise of its broad discretion to give directions on the conduct of the proceedings under the established law’.¹³
9. The Chamber considers that the first two arguments underlying the Issue concern the deadlines as set in the Further Directions, rather than the Impugned Decision. Considering that the Defence did not request leave to appeal the Further Directions, the Chamber will not further address these arguments to the extent that they relate to the Chamber’s initial decision on setting certain deadlines in the Further Directions.
10. As regards the third argument underpinning the Issue, the Chamber is of the view that it constitutes a mere disagreement with the Impugned Decision. In fact, the Chamber did consider the Defence’s arguments relating to its workload and need to finalise its investigations and conduct further missions, but found them not justifying any reconsideration of its Further Directions.¹⁴ In particular, the Chamber considered that hearings during the relevant period were and have been limited, and that the deadlines set by the Further Directions had been known to the Defence for three months.¹⁵ Moreover, the Chamber took into account that it had granted the Defence certain extensions to respond to applications to submit evidence ‘from the bar table’, having considered the workload of the Defence and the need to use resources also to prepare for any presentation of evidence.¹⁶ Similarly, the Chamber addressed the Defence’s concerns as regards the alleged impact of the testimony of the Chamber witness on its resources and capability to meet the set deadlines. Yet, the Chamber also found this to not justify reconsideration of its Further Directions.¹⁷

¹² Prosecution Response, ICC-01/14-01/18-2087, para. 4.

¹³ Prosecution Response, ICC-01/14-01/18-2087, paras 5, 7-8.

¹⁴ See Impugned Decision, ICC-01/14-01/18-2068, paras 8-9.

¹⁵ Impugned Decision, ICC-01/14-01/18-2068, para. 9.

¹⁶ Impugned Decision, ICC-01/14-01/18-2068, para. 8.

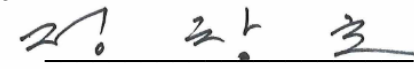
¹⁷ See Impugned Decision, ICC-01/14-01/18-2068, para. 6.

11. As the Defence's submissions amount to no more than a disagreement with the Chamber's findings, the Chamber considers that the Defence failed to identify an appealable issue.
12. In this light, it is not necessary to address the remainder of the cumulative criteria of Article 82(1)(d) of the Statute.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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

 _____ Judge Péter Kovács	 _____ Judge Bertram Schmitt Presiding Judge	 _____ Judge Chang-ho Chung
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Dated 14 September 2023

At The Hague, The Netherlands