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**Cour
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**International
Criminal
Court**

Original: English

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

Date: 12 January 2024

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***

Confidential

**Prosecution Response to the Ngaïssona Defence Request for Leave to Reply to the
"Prosecution Response to the 'Second Ngaïssona request to introduce prior
recorded testimonies of Defence Witnesses P-4680 and P-4777 pursuant to Rule
68(2)(b)' (ICC-01/14-01/18-2259-Conf)" (ICC-01/17-01/18-2284-Conf)**

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
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamai
Ms Marie-Hélène Proulx
Ms Despoina Eleftheriou

Legal Representatives of Victims

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

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. The NGAISSONA Defence request for leave to reply¹ to the Prosecution's Response² concerning their request to introduce prior recorded testimonies of Defence witnesses P-4680 and P-4777 under Rule 68(2)(b)³ fails to meet the requirements of Regulation 24(5) of the Regulations of the Court ("RoC"). It should be dismissed. No reply is warranted. Nor, would the reply requested assist Trial Chamber V ("Chamber") in its resolution of the matter.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(2) of the RoC, this document is filed as "Confidential" because it responds to a filing of the same classification. The Prosecution does not oppose its reclassification to "Public".

III. SUBMISSIONS

3. The NGAISSONA Defence identifies no new issues arising from the Prosecution's Response meriting a reply, nor does it raise any issue that it could not have reasonably anticipated given the contents of P-4777's proposed testimony.

4. *First*, the NGAISSONA Defence is well aware of the Prosecution's several previous requests and submissions on the requirement of providing timely alibi notice.⁴ Following the provision by the Defence of their provisional witness lists, the Prosecution had expressly raised the applicability of Rule 79 of the Rules on 4 August

¹ ICC-01/14-01/18-2291-Conf ("Leave Request").

² ICC-01/14-01/18-2284-Conf ("Prosecution Response").

³ ICC-01/14-01/18-2259-Conf ("NGAISSONA Request").

⁴ See ICC-01/14-01/18-851-Conf and Annex; ICC-01/14-01/18-473-Red, para. 33; ICC-01/14-01/18-818-Conf, para. 6; ICC-01/14-01/18-873-Red, para. 39; ICC-01/14-01/18-911; Prosecution Email to the NGAISSONA Defence and the YEKATOM Defence, 4 August 2023, at 18:37, *Request for updated Rule 79(1)(a) information* ("Prosecution 4 August 2023 Email"); Prosecution Email to the NGAISSONA Defence and the YEKATOM Defence, 14 September 2023 at 9:19, *Defence Disclosures and Notice* ("Prosecution 14 September 2023 Email"). Emails available on request.

2023,⁵ and again on 14 September 2023, indicating that “several witnesses appear to provide at least partial alibi evidence, although they have not been previously identified as Rule 79 requires”.⁶

5. *Second*, the contents of the NGAISSONA Request itself reveal that the proposed testimony of P-4777 pertains to NGAISSONA’s whereabouts during the relevant period.⁷ Bearing in mind the Prosecution’s previous requests on provision of complete or partial alibi “whether in temporal or geographic scope, as concerns any charge”,⁸ the NGAISSONA Defence cannot reasonably argue now that the issue of Rule 79 of the Rules could not have been anticipated.

6. In any instance, the Chamber would not benefit from further exposition of the issue. The NGAISSONA Request and the Prosecution Response are sufficient for the Chamber to reach its determination on the matter, considering the well-established criteria of Rule 68(2)(b) of the Rules.

⁵ Prosecution 4 August 2023 Email, expressly requesting the NGAISSONA Defence and the YEKATOM Defence to indicate whether the Accused “intend to assert alibi defences (complete or *partial*), or intend to vary or modify any qualified previous sub (1)(a) notice – whether in temporal or geographic scope, as concerns any charge, or regarding the nature or extent of the supporting evidence”; and expressly stating that in such a case, the Prosecution considered “that Rule 79 applies”. The Prosecution requested the NGAISSONA Defence and the YEKATOM Defence, in such an event, to “specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names of the witnesses and any other evidence upon which the accused intends to rely to establish the alibi”.

⁶ Prosecution 14 September 2023 Email; *see also* NGAISSONA Defence response Email, 29 September 2023, at 14:30, making the same argument as in the Leave Request. Email exchange available on request.

⁷ NGAISSONA Request, para. 12.

⁸ *See*, in particular, Prosecution 4 August 2023 Email.

IV. CONCLUSION

7. For the foregoing reasons, the Chamber should dismiss the NGAISSONA Defence's Leave Request.



Karim A. A. Khan KC, Prosecutor

Dated this 12th day of January 2024
At The Hague, The Netherlands