

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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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's Response to Ngaïssona's Defence Request for Leave to Reply to the
"Prosecution's Response to the Ngaïssona Defence Request for Formal Submission
of Prior Recorded Testimony of Defence Witness D30-P-4197 pursuant to Rule 68(3)
of the Rule (ICC-01/14-01/18-2368-Conf)"**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Trial Chamber V ("Chamber") should deny the Ngaissona Defence's Request¹ for Leave to Reply to the Prosecution's response² ("Request") as it broaches issues going to the intrinsic reliability of D30-P-4197's statement which should have been reasonably anticipated by the Defence in its original submissions.³ In any event, the issue regarding the disclosure of D-30-P-4197's prior statement is hardly new and does not derive from the Prosecution's Response. In fact, the matter was previously litigated and the Chamber clarified that the further directions on the conduct of the proceedings ("Further Directions")⁴ obliged the Defence to disclose the "formalised statements" of their witnesses to the participants.⁵

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis* of the Regulations of the Court ("RoC"), this response is filed as "Confidential", as it responds to a filing of the same designation and contains information that may not be made public. A public redacted version will be submitted as soon as practicable.

III. SUBMISSIONS

3. The "two interrelated and limited issues"⁶ on which the Defence basis its Request relate essentially to matters that have already been litigated and adjudicated before this Chamber: the nature of a prior statement and the Defence's obligation to disclose the prior statement of its witnesses to the participants. In clarifying the relevant provisions of the Further Directions,⁷ the Chamber clearly held that the Defence was

¹ ICC-01/14-01/18-2389-Conf.

² ICC-01/14-01/18-2379-Conf.

³ ICC-01/14-01/18-2389-Conf, para. 12.

⁴ Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), ICC-01/14-01/18-1892.

⁵ ICC-01/14-01/18-2242, paras. 9-10.

⁶ ICC-01/14-01/18-2389-Conf, para. 2.

⁷ ICC-01/14-01/18-1892, para. 21(ii).

obliged to disclose the “formalised statements” of their witnesses⁸ pursuant to Rule 78 of the Statute.⁹

4. Whether as a ‘formalised statement’ or an ‘associated exhibit’ thereto (given the manner in which the Ngaïssona Defence elected to confirm the content of the witness’s prior statement), it should have reasonably anticipated both the statement’s disclosure and its submission relative to the underlying request. Its failure to do so cannot properly substantiate a request for leave to reply.

5. Finally, the Defence’s explanations regarding the manner in which it “finalised the transcript of the read-back of D30-P-4197’s statement”¹⁰ – which it proposes to elaborate upon in a reply - relate to the intrinsic reliability of D30-P4197’s statement. This is a matter which the Defence clearly should have anticipated and addressed in its original submissions. As such, the Request fails to meet the requirements for leave to reply.

IV. CONCLUSION

6. For the above reasons, the Chamber should deny the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 4th day of March 2024
At The Hague, The Netherlands

⁸ ICC-01/14-01/18-2242, paras. 9-10.

⁹ ICC-01/14-01/18-1892, paras. 20 and 21 (ii).

¹⁰ ICC-01/14-01/18-2389-Conf, para. 12.