



Original: English

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

Date: **6 September 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAÏSSONA***

PUBLIC

**Public Redacted Version of the “Ngaïssona Defence’s Request for Urgent
Intervention regarding State Cooperation”, ICC-01/14-01/18-2545-Conf, 24 June
2024**

Source: Defence of Patrice-Edouard Ngaïssona

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 the Defence of Mr Ngaïssona

Mr Geert-Jan Alexander Knoops
Ms Marie-Hélène Proulx
Ms Lauriane Vandeler
Ms Despoina Eleftheriou

Counsel for the Defence of Mr Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

Legal Representatives of the Victims

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

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Defence for Mr Patrice-Edouard Ngaïssona ('the Defence') hereby requests the urgent intervention of Trial Chamber V ('Chamber') to order the Central African Republic ('CAR') to issue, without any further delay, the authorizations needed for both witnesses CAR-D30-D30-4914 ('D30-4914') and CAR-D30-D30-4679 ('D30-4679') to testify. The delay in issuing the said authorizations by the CAR authorities has already severely affected the trial schedule and risks jeopardizing the appearance of two key Defence witnesses before the Chamber. The Defence thus kindly requests the Chamber to intervene in order to secure the two authorizations on time for the witnesses' scheduled testimonies.
2. The Defence wishes to clarify that the present request is not a request for reconsideration of the Chamber's decision not to issue an order to the CAR authorities,¹ rather a new, urgent request for intervention in light of the upcoming dates of testimony for witnesses D30-4914 and D30-4679 and the time that has already passed since the two requests for authorization were submitted.

II. CONFIDENTIALITY

3. In accordance with Regulation 23*bis*(1) of the Regulations of the Court, the present Request is filed as "confidential" as it contains confidential information related to Defence witnesses and state cooperation. A public redacted version will be filed in due course.

¹ See email from the Chamber on 3 June 2024, at 09:52.

III. PROCEDURAL HISTORY

4. On 17 November 2023, the Defence submitted its Final List of Witnesses and its List of Evidence, informing, *inter alia*, the Chamber, parties and participants about its intention to call witnesses D30-4914 and D30-4679.²
5. On 7 March 2024, the Defence sent a cooperation request to the Counsel Support Section ('CSS') for it to be transmitted to the CAR authorities; the Defence requested that D30-4914 be authorized to testify before the Chamber given [REDACTED]³ ('D30-4914 Request').⁴ On the same day, CSS acknowledged receipt of the D30-4914 Request and informed the Defence that it was sent to the relevant Registry section for onward transmission to the CAR authorities.⁵
6. On 3 April 2024, the Defence followed up with CSS, requesting updates on the D30-4914 Request, stressing the need to receive the authorization on time to allow the Victims and Witnesses Unit ('VWU') to organize D30-4914's travel to the seat of the Court.⁶ On the same day, CSS responded, asking the Defence to "send the original request once again so as to facilitate their follow-up"⁷ and the Defence re-sent the request immediately.⁸
7. On 8 April 2024, the Defence communicated its provisional schedule for Block 32, according to which witness D30-4914 was scheduled to testify from 20 until 23 May 2024 at the seat of the Court.⁹

² ICC-01/14-01/18-2215 and ICC-01/14-01/18-2215-Conf-Anx1.

³ D30-P-4914 is currently [REDACTED].

⁴ Email from the Defence to CSS on 7 March 2024, at 13:21.

⁵ Email from CSS to the Defence on 7 March 2024, at 13:33.

⁶ Email from the Defence to CSS on 3 April 2024, at 10:21.

⁷ Email from CSS to the Defence on 3 April 2024, at 10:55.

⁸ Email from CSS to the Defence on 3 April 2024, at 10:58.

⁹ Email from the Defence to CSS on 8 April 2024, at 10:08.

8. On 12 April 2024, the Defence liaised with CSS requesting updates on the D30-4914 Request. The Defence explained to CSS that, based on the information received by VWU, D30-4914 was [REDACTED], [REDACTED]. Consequently, the authorization needed to be issued 2 weeks prior to his departure, which, at the time, was scheduled for 26 April. The Defence thus requested CSS to follow-up with the CAR authorities to expedite the issuance of the authorization.¹⁰
9. On 12 April 2024, the Defence sent a cooperation request to CSS for transmission to the CAR authorities; the Defence requested that D30-4679 be authorized to testify before the Chamber given [REDACTED] ('D30-4679 Request').¹¹
10. On 22 April 2024, the Defence reached out to CSS again, requesting updates on the D30-4914 Request.¹² On the same day, CSS informed the Defence that the Country Office ('CO CAR') was closely following-up.¹³
11. On 25 April 2024, the Defence emailed CSS, informing them that the authorization required for D30-4914 needs to be received by 26 April 2024. The Defence further requested that this deadline be communicated to the CO CAR so that they could prioritise the D30-4914 Request.¹⁴
12. On 29 April 2024, the Defence contacted CSS again requesting for the D30-4914 Request to be dealt with in priority since VWU would not organise the witness's travel to the HQ unless an authorization was issued.¹⁵ On the same day, CSS sent the following response:

¹⁰ Email from the Defence to CSS on 12 April 2024, at 09:12.

¹¹ Email from the Defence to CSS on 12 April 2024, at 11:14.

¹² Email from the Defence to CSS on 22 April 2024, at 11:09.

¹³ Email from CSS to the Defence on 22 April 2024, at 15:23.

¹⁴ Email from the Defence to CSS on 25 April 2024, at 15:07.

¹⁵ Email from the Defence to CSS on 29 April 2024, at 11:24.

“Given the urgency, the NV was entrusted to the [REDACTED], [REDACTED]. The FP said he would need the dates or period in which the person is expected to testify. Would it be possible to have this period? This information will be mentioned in the response from the Central African authorities.” CSS has reverted to the CO CAR with the dates of D30-4914’s travel and testimony.¹⁶

13. On 3 May 2024, the Defence communicated its provisional schedule for Block 33, according to which witness D30-4679 was scheduled to testify from 10 until 14 June 2024 at the seat of the Court.¹⁷

14. On 8 May 2024, CSS informed the Defence that the authorization for witness D30-4679 was issued, albeit with the wrong dates of testimony. Furthermore, the CAR authorities indicated that they were not in a position to answer the D30-4914 Request that week.¹⁸ On the same day, and after consultation with VWU, the Defence requested an amended authorization for D30-4679 to avoid issues with immigration.¹⁹

15. On 8 May 2024, the Defence informed the Chamber, the parties and participants about the abovementioned developments²⁰ and on the same day, the Chamber ordered that the witness be called via video-link.²¹

16. On 10 May 2024, the Defence sought the reconsideration of the Chamber’s decision to have witness D30-4914 testify via video-link and requested that witness D30-4679 testifies on those dates instead.²² However, VWU clarified that they cannot guarantee D30-4679’s appearance for reasons outside of their control.²³

¹⁶ Email from CSS to the Defence on 29 April 2024, at 11:32.

¹⁷ Email from the Defence to CSS on 3 May 2024, at 12:11.

¹⁸ Email from CSS to the Defence on 8 May 2024, at 12:44.

¹⁹ Email from the Defence to CSS on 8 May 2023, at 15:47.

²⁰ Email form the Defence on 8 May 2024, at 12:32.

²¹ Email form the chamber on 8 May 2024, t 15:27.

²² Email form the Defence on 10 May 2024, at 09:33.

²³ Email from VWU on 10 May 2024, at 10:20.

17. On 10 May 2024, the Chamber ordered the Defence to liaise with VWU and to inform the Chamber and participants by 13 May 2024 which witness will appear from 20 to 23 May 2024.²⁴
18. On 13 May 2024, the Defence informed the Chamber, parties and participants that it was unable to secure a witness for the week of 20-24 May 2024 due to the absence of authorizations for the two witnesses and the unavailability of the other two remaining Defence witnesses, *i.e.* P-4496 and P-4608.²⁵
19. On 14 May 2024, and given the absence of authorization for D30-4914, the Defence informed CSS that D30-4914's testimony was postponed for 3-6 June 2024, thus the pending authorization had to reflect those dates of testimony and needed to be issued by 24 May 2024 at the latest to avoid further postponements and gaps in the schedule.²⁶ On the same day, CSS responded that the information had been transmitted to the CO CAR.²⁷
20. On 21 May 2024, the Defence was informed by CSS that the CO CAR had no updates from the CAR authorities.²⁸
21. On 22 May 2024, the Defence informed the Chamber on the situation regarding D30-4914's authorization and, more specifically, on the fact that [REDACTED], [REDACTED].²⁹
22. On 22 May 2024, CSS informed the Defence that their colleagues in CAR had a meeting with [REDACTED], [REDACTED] and Focal Point for the CAR authorities ('CAR Focal Point') They again stressed the urgency of this request and the fact

²⁴ Email from the Chamber on 10 May 2024 at 11:31.

²⁵ Email from the Defence on 13 May 2024, at 16:52.

²⁶ Email from the Defence to CSS on 14 May 2024, at 15:41.

²⁷ Email from CSS to the Defence on 14 May 2024, at 15:51.

²⁸ Email from CSS to the Defence on 21 May 2024, at 10:33.

²⁹ Email from the Defence to the Chamber on 22 May 2024, at 10:45.

that the letter needs to be signed by 24 May 2024 otherwise the witness would not be able to testify. According to CSS, they even offered to prepare the draft letter themselves to facilitate the process, which was not accepted. They were, however, reassured again that, despite the CAR Focal Point's busy agenda, the letter would be ready by 24 May.³⁰

23. On 24 May 2024, the Defence sought updates from CSS regarding the D30-4914 Request³¹ and was informed that "despite all of the Registry's efforts, the '*lettre d'autorisation*' for [REDACTED] will not be ready by today's deadline. We have no further information as to the exact date by which the letter will be received".³² The Defence explained again how crucial witness D30-4914's testimony was for the defence case and that, if the authorization was obtained by 27 May 2024, the witness would still be able to travel to the HQ.³³

24. On 27 May 2024, the Defence sought again updates on the matter of D30-4914's authorization³⁴ only to be informed that the CAR Focal Point indicated that "the authorization for [REDACTED] [D30-4914] can't be obtained before the next two weeks".³⁵ On the same day, the Defence informed the Chamber about this development.³⁶

25. On 27 May 2024, the Defence also sought updates about the request to amend the authorization issued for D30-4679³⁷ but was informed that there were no updates.³⁸

³⁰ Email from CSS to the Defence on 22 May 2024, at 17:41.

³¹ Email from the Defence to CSS on 24 May 2024, at 09:23.

³² Email from CSS to the Defence on 24 May 2024, at 10:04.

³³ Email from the Defence to CSS on 24 May 2024, at 10:08.

³⁴ Email from the Defence to CSS on 27 May 2024, at 11:59.

³⁵ Email from CSS to the Defence on 27 May 2024, at 13:37.

³⁶ Email from the Defence CSS on 27 May 2024, at 17:11.

³⁷ Email from the Defence to CSS on 27 May 2024, at 13:46.

³⁸ Email from CSS to the Defence on 27 May 2024, at 13:56.

26. On 28 May 2024, the Single Judge ordered the Registry to provide a report, by 30 May 2024, “detailing (i) its past and ongoing efforts in securing the attendance of all remaining witnesses (*see* the respective witness orders in the email from the Ngaïssona Defence, 1 May 2024, at 14:25 and the email from the Yekatom Defence, 1 May 2024, at 09:52, as well as witness D30-4848) and (ii) its realistic estimate on which dates their testimonies can be arranged”. In addition, The Single Judge ordered the Defence teams “to explain by the same deadline why no viable contingency witness is available, despite the Chamber’s clear orders in that regard”.³⁹
27. On 28 May 2024, the Defence informed CSS that, in the absence of authorization, D30-4914’s testimony needs to be postponed for July; thus the authorization needed to mention the new dates of testimony.⁴⁰
28. On 30 May 2024, the Defence provided its explanations to the Chamber as to “why no viable contingency witness is available”, despite the Defence’s best efforts to organise contingency witnesses in order to avoid any gaps in the schedule.⁴¹
29. On 30 May 2024, the Registry submitted its “Report on its Efforts to Secure the Attendance of Defence Witnesses”.⁴²
30. On 31 May 2024, the Defence requested updates from CSS regarding the authorization for D30-4679 and noted that, for the witness to be able to arrive on 4 June 2024 in The Hague as per VWS’s schedule, the authorization needed to be delivered by 15:00 on 31 May 2024.⁴³ On the same day, CSS responded that “it is not clear to the ICC whether and when the authorization letter can get updated by the CAR authorities” and suggested that VWU could attempt to have D30-4679

³⁹ Email from the Chamber on 28 May 2024, at 16:03.

⁴⁰ Email from the Defence to CSS on 28 May 2024, at 16:44.

⁴¹ Email from the Defence on 30 May 2024, at 16:37.

⁴² ICC-01/14-01/18-2513-Conf-Red and ICC-01/14-01/18-2513-Conf-Red-Corr.

⁴³ Email from the Defence to CSS on 31 May 2024, at 12:11.

travel to The Hague even though the dates mentioned in the letter are incorrect.⁴⁴ The Defence responded, explaining that (i) as per VWU's explanation, D30-4679's travel could be blocked at the airport unless he has an authorization mentioning the correct dates; (ii) VWU will not risk any issues with immigration thus will not book any plane tickets pending the correction of the authorization, and (iii) testimony *via* video-link from the Field Office can no longer be arranged due to other trials taking place simultaneously.⁴⁵

31. On 3 June 2024, the Defence was informed that "[t]he CAR [REDACTED] has informed the ICC that a formal request with the new dates is needed prior to issue another authorization for D30-4679. Considering this new information, the country office advises to transmit a new formal request with new dates for D30-4914 as well".⁴⁶ On the same day, the Defence submitted the two amended requests, mentioning the new dates of testimony⁴⁷ and received confirmation that the letters were handed over to the CAR Focal Point⁴⁸

32. On 3 June 2024, the Defence communicated its provisional schedule for block 34 and its anticipated witness order, informing the Chamber, parties and participants that witness D30-4914 would testify from 9 to 11 July 2024 and witness D30-4679 would testify on 12, 15-18 July 2024.⁴⁹

33. On 13 June 2024, the Defence forwarded again to CSS the two amended requests for authorization. The Defence not only communicated the deadlines by which the authorizations need to be issued for VWU to arrange the witnesses' travel to The

⁴⁴ Email from CSS to the Defence on 31 May 2024, at 16:47.

⁴⁵ Email from the Defence to CSS on 31 May 2024, at 17:23.

⁴⁶ Email from CSS to the Defence on 3 June 2024, at 11:05.

⁴⁷ Email from the Defence to CSS on 3 June 2024, at 12:44.

⁴⁸ Email from CSS to the Defence on 3 June 2024, at 16:36.

⁴⁹ Email from the Defence on 3 June 2024, at 13:07.

Hague,⁵⁰ but also stressed once again the importance of their testimony for the defence case.⁵¹

34. On 16 June 2024, Counsel for the Defence contacted [REDACTED] about the pending authorizations. [REDACTED] responded that they have indeed received the requests for cooperation; the [REDACTED].

IV. APPLICABLE LAW

35. According to Article 87(1)(a) of the Rome Statute ('Statute'), "[t]he Court shall have the authority to make requests to States Parties for cooperation. [...]".

36. The type of cooperation that the Defence is requesting the Chamber to seek from the CAR is provided for in Article 93(1)(e) of the Statute, which obliges States Parties to comply with requests by the Court to provide assistance with "facilitating the voluntary appearance of persons as witnesses or experts before the Court".

37. Pursuant to Article 93(3) of the Statute, "[w]here execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary".

⁵⁰ According to VWU, the authorization for P-4914 needs to be received by 28 June 2024, and that for P-4679 by 1 July 2024.

⁵¹ Email from the Defence to CSS on 13 June 2024, at 15:42.

38. Article 96(2) of the Statute requires the cooperation request to contain or be supported by the following: (a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request; (b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided; (c) A concise statement of the essential facts underlying the request; (d) The reasons for and details of any procedure or requirement to be followed; (e) Such information as may be required under the law of the requested State in order to execute the request; and (f) Any other information relevant in order for the assistance sought to be provided. [...]

39. Article 97 of the Statute stipulates that “[w]here a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter”.

40. Article 64(2) of the Statute establishes that the Chamber “shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses”.

V. SUBMISSIONS

a. The delays by the CAR authorities amount to no cooperation

41. The Defence has followed the standard procedure in order to obtain these authorizations, namely both requests were prepared in conformity with Article 96(2) of the Statute, were sent through the designated channels and the Defence stood ready to provide any further information the CAR authorities might have needed to facilitate the execution of these requests.

42. On the contrary, the CAR authorities have been uncooperative, despite their obligations as a State Party to the Statute to facilitate the appearance of

witnesses. So far, no justification has been provided about these delays and the Defence is only left with unanswered questions as to why the CAR authorities cannot process these two requests that were sent three months ago. In addition, the Defence is unaware of any legal impediment or problem in executing these requests; should such an issue exist, the CAR authorities should have consulted with the Court as per Articles 93(3) and 97 of the Statute. However, to the Defence's knowledge, no such consultations took place as the CAR authorities never raised any issues with the Defence's requests or their execution thereof.

43. Indefinitely postponing the execution of the cooperation requests combined with the absence of any justification as to why the whole process is constantly delayed amount to failure to cooperate by the CAR authorities. For that reason, the Chamber's intervention is necessary to remedy the situation, as will be further analysed below.

b. The Chamber's intervention is necessary to receive the two authorizations

44. As evident from the timeline detailed above, the Defence has done everything in its power to secure the authorizations for witnesses D30-4914 and D30-4679, *i.e.* sent the requests well in advance, diligently followed-up regarding their status and has tried to find alternative solutions to avoid gaps in the schedule. During a hectic and stressful period for the Defence, when it needs to present and conclude its case before the Chamber, the Defence has to allocate its limited time and resources to continuously following-up on these matters.

45. Nevertheless, none of these efforts had the desired outcome for reasons unknown to the Defence. Still to this day, so far as the Defence is aware, no one knows if and when these authorizations will be issued,⁵² therefore creating uncertainty as to the

⁵² ICC-01/14-01/18-2513-Conf-Red, para. 28 where the Registry admits that it is difficult "to indicate with certainty whether the documents will be issued on time".

trial schedule and causing further delays, despite the Defence's objective to have its remaining witnesses testify before the summer recess.

46. Besides the effects on the trial, this situation has taken a toll on the two Defence witnesses awaiting to testify. As mentioned previously, [REDACTED], hence the need for authorization in the first place. Witness D30-4914 expressed [REDACTED], a fear that has been communicated to VWU and the Chamber.⁵³ As such, the Registry guaranteed to the Defence that the request would be dealt [REDACTED]. The unjustified delays in obtaining the authorization, however, cause added stress to the witness who is already [REDACTED].

47. As far as D30-4679 is concerned, awaiting for the authorization and having his testimony postponed is draining for the witness, who needs to constantly change his schedule to accommodate the new, potential dates of his testimony. Overall, this situation has caused a lot of stress and the Defence is fearful that, should the uncertainty continue, the witnesses will cease their cooperation. Such a scenario would not only affect the trial schedule, but, most importantly, would cause irreparable damage to the Defence case since two key witnesses for the charges brought against Mr Ngaïssona would be prevented from testifying before the Chamber.

48. The Defence, with the Registry's assistance, has exhausted all potential avenues in order to obtain these two authorizations. At this stage, the CAR authorities have been unresponsive, jeopardizing the appearance of both witnesses before the Chamber, without providing any justification for these repeated delays. This situation cannot continue, especially as the end of the Defence case is approaching and with only three witnesses left to testify – two of which are D30-4914 and D30-4679 – leaving no other option to the Defence but to requests the Chamber's

⁵³ ICC-01/14-01/18-2395-Conf, paras 18-23.

intervention on the matter. With the deadlines for the issuance of these authorizations fast approaching⁵⁴ and without any updates from the CAR authorities, the time is now for the Chamber to intervene in order to secure these authorizations and, consequently the appearance of the witnesses.

49. The issue falls squarely under state cooperation, or lack thereof. This is not the first instance the Defence has experienced issues and delays with respect to cooperation with the CAR authorities to the detriment of the defence case.⁵⁵ The Defence cannot risk not having these two witnesses testify before the Chamber due to the importance of their testimonies which challenge keys aspects of the Prosecution's narrative. Without them, the Defence would not dispose of its duty to effectively and efficiently represent Mr Ngaïssona, as stipulated in Article 67 of the Statute.

50. In light thereof, the intervention of the Chamber is warranted to receive the two authorisations promptly and avoid any further postponements of the witnesses' appearances before the Chamber.

VI. RELIEF SOUGHT

51. For the reasons presented above, the Defence respectfully requests the Chamber to use its powers under Part 9 of the Statute to urgently request and compel the CAR authorities to issue the two pending authorizations without any further delay, and no later than on time for the scheduled testimonies of D30-4914 and D30-4679 respectively.

⁵⁴ According to VWU the authorisation for P-4914 needs to be received by 28 June 2024 while the authorisation for P-4679 needs to be received by 1 July, to allow the organisation of their travel to The Hague.

⁵⁵ [REDACTED].

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a final horizontal stroke.

Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 6 September 2024

At The Hague, the Netherlands.