

ANNEX

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Le Bureau du Procureur
The Office of the Prosecutor

Confidential

via Email

Mylène Dimitry, Counsel for Alfred Yekatom
Geert-Jan Knoop, Counsel for Patrice-Edouard Ngaïssona

Ref: OTP/PD/06222020/KV

Date: 22 June 2020

Subject: Rules 79 and 80 Disclosure Request

Dear Ms Dimitry and Mr Knoop,

The Prosecution requests timely notice and disclosure of information and evidence concerning any prospective defence under rules 79 and 80 of the Rules of Procedure and Evidence ("Rules").

The Prosecution notes the Yekatom Defence's stated intention to rely on an alibi defence, as expressed in its 8 April 2020 "Defence Submissions for First Status Conference"¹. Similarly, we understand that the Ngaïssona Defence may also raise a defence under rules 79 and/or 80². The Prosecution further recalls the arguments advanced by both Defence teams during the confirmation proceedings.

In relevant part, rule 79 requires that the Defence notify the Prosecution of its intention to "[r]aise the existence of an alibi, in which case the notification shall 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 witnesses and any other evidence upon which the accused intends to rely to establish the alibi". Moreover, it requires that such notice "be given sufficiently in advance to enable the Prosecution to prepare adequately and to respond". Rule 80 requires the same notice, in respect of prospective defences under article 31, paragraph 3.

The Prosecution considers that, as of the 11 December 2019 Confirmation Decision, the Defence has been fully aware of the dates, times, and places

¹ See ICC-01/14-01/18-472, para. 42.

² See ICC-01/14-01/18-473-Conf, para. 33.

concerning the confirmed charges, as well as the factual circumstances underpinning the Accused's respective criminal responsibility. The Defence is presently well-positioned to provide the Prosecution with timely notice describing with sufficient specificity the relevant physical location(s) the Accused claims to have been at the time(s) of the alleged crimes³ or key events underlying the modes of liability, and further details regarding any other anticipated defences under the Rules.

The Prosecution invites the prompt disclosure of the required notice and details related to any intended defence(s) under rule 79 and/or 80. This includes, but is not limited to, the nature of the prospective defence, the names of witnesses and the evidence on which the Accused intends to rely to establish the specific defence(s). In the case of alibi, this further includes the Accused's precise whereabouts on the relevant dates and times, the contact information for the witnesses establishing the Accused's location, as well as any supporting documentary evidence.

The Prosecution considers that disclosure of the requisite notice and supporting evidence by 6 July 2020 would allow the Parties and Participants to meaningfully participate in the status conference, and to prepare adequately for trial, given the prevailing circumstances.⁴

As always, your cooperation is greatly appreciated. Please let me know if you have any questions or concerns.

Kind regards,



Kweku Vanderpuye
Senior Trial Lawyer

³ See *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, Decision on Prosecution Motion for Order Requiring Particulars of Accused's Alibi Defence, 1 December 2010, para. 22 ("an accused intending to use the defence of alibi must provide the Prosecution with notice that describes with specificity the relevant physical location(s) the accused will claim to have been at the time(s) of the alleged crimes").

⁴ See ICC-01/0401/06-1235-Corr-Anx1, para. 29(a) ("[b]y Rule 79(1)(a) of the Rules, the defence is obliged to reveal to the prosecutor the existence of a defence of alibi, as well as the particulars of time and place, the details of the witnesses who allegedly support the alibi and any other relevant evidence (and if this defence is raised, by Rule 79(2) the Prosecutor shall be notified sufficiently in advance of the trial to enable the prosecution to prepare adequately)"); see ICC-02/04-01/15-460, para. 8 (regarding rule 80, "the Defence is to provide notification of its intention to assert grounds for excluding criminal responsibility under either Article 31(1) or (3) of the Statute prior to the commencement of trial").