

From: Trial Chamber V Communications
Sent: 15 February 2021 14:02
To: Vanderpuye, Kweku; Dimitri, Mylene; Trial Chamber V Communications
Cc: [REDACTED]

Subject: [REDACTED]
 ICC-01/14-01/18-883-Red - Decision on the Ngaïssona Defence Motion to Strike P-2843 from the Final Witness List

Dear counsel,

The Chamber notes the email from the Yekatom Defence (dated 12 February 2021, at 14:07) in relation to the Decision on the Ngaïssona Defence Motion to Strike P-2843 from the Final Witness List (11 February 2021, ICC-01/14-01/18-883-Red) and the Prosecution's email response thereto (dated 12 February 2021, at 16:27).

The Chamber acknowledges that, due to an oversight, the Yekatom Defence's response to the 'Defence Motion to strike Witness P-2843 from the Prosecution's Final List of Witnesses' (ICC-01/14-01/18-842-Conf) has not been considered for the purpose of its decision. While the Chamber regrets this unfortunate omission, it notes that the analysis and outcome of the decision remain unchanged.

In relation to the Yekatom Defence's specific inquiries in its email, the Chamber confirms that (i) the term 'Defence' in the analysis of the decision shall be understood to comprise both Defence teams; and that (ii) this decision is without prejudice to any future requests.

Finally, the Chamber kindly directs the Yekatom Defence to also file a public redacted version of its response.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 12 February 2021 16:27

Subject: RE: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona: ICC-01/14-01/18-883-Red - Decision on the Ngaïssona Defence Motion to Strike P-2843 from the Final Witness List

Dear All,

The Prosecution is mindful of the concerns raised in the Yekatom Defence's 20 January Response to Ngaïssona's Motion to strike P-2843. As we noted in our Response (ICC-01/14-01/18 -831-Conf, p. 5, fn. 7), and wish to clarify again, the reference in P-2843's witness summary to Boeing and Cattin denotes the general category used to identify witnesses whose evidence concerns the 5 December 2013 Bangui Attack and its immediate aftermath. As concerns P-2843, the Prosecution does not have information at this time suggesting that the prospective testimony will cover alleged crimes committed by Yekatom and his elements in Boeing or Cattin, but instead relates more generally to the events leading to the 5 December 2013 Anti-Balaka Attack.

To the extent that the Yekatom Defence is concerned about the absence of a witness statement which may impact its preparedness to deal with other witnesses, the Prosecution reiterates that this is a matter squarely within the control of the Defence which, unlike the Prosecution, is not constrained [REDACTED] in terms of procuring a statement from P-2843. Accordingly, its absence cannot form the grounds for any relief, barring some other or consequential impediment to preparation that is neither voluntary nor strategic. That said, should the witness raise unanticipated matters during the course of his evidence, the Prosecution would defer to the Chamber's discretion as to the appropriate course of action.

I trust the above is responsive to the inquiry posed by the Yekatom Defence and further clarifies the Prosecution's position on the presently known scope of P-2843's evidence. Thank you for your consideration.

Kind regards,

Kweku Vanderpuye

From: Dimitri, Mylene [REDACTED]

Sent: 12 February 2021 14:07

To: Trial Chamber V Communications [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona: ICC-01/14-01/18-883-Red - Decision on the Ngaïssona Defence Motion to Strike P-2843 from the Final Witness List

Dear Trial Chamber V,

The Defence respectfully refers to the 'Decision on the Ngaïssona Defence Motion to Strike P-2843 from the Final Witness List' (ICC-01/14-01/18-883-Red) of 11 February 2021.

The Defence notes that in the Decision, the Trial Chamber does not make express reference to the 'Yekatom Defence Response to the Ngaïssona "Defence Motion to strike Witness P-2843 from the Prosecution's Final List of Witnesses"' (ICC-01/14-01/18-809-Conf) of 20 January 2021, ICC-01/14-01/18-842-Conf.

The Defence therefore respectfully inquires as to whether it should expect a further decision on issues specific to the Yekatom Response. In this respect the Defence notes that in the latter, the Defence had raised concerns regarding the possibility that, in light of the importance of Boeing and/or Cattin to the charges against Mr Yekatom, the impact of lacking witness statements for P-2843 could extend to the Defence's ability to prepare for Prosecution witnesses who are scheduled to testify on similar matters, before P-2843.

In the alternative, noting that the Trial Chamber has held in the Decision that it would be 'amenable to requests by the Defence for additional time to prepare its examination, if appropriate, after the Prosecution has concluded questioning the witness', the Defence respectfully inquires as to whether i) the Trial Chamber intends that the Yekatom Defence be included within the term 'Defence' for the purposes of the above; and ii) the Decision is without prejudice to any future justified requests for recall of Prosecution witnesses, scheduled to testify before P-2843, in the event that information arises from P-2843's evidence that would have affected Defence preparations for said witnesses.

Kind regards,
Mylène Dimitri

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