

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/22

Date: 4 May 2023

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM
GAWAKA***

Confidential

**Prosecution's Request pursuant to regulation 35 for an extension of the time limit
to respond to the 4 May 2023 'Mokom Defence Request for Disclosure'
(ICC-01/14-01/22-198-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 the Defence Mr Philippe Larochelle
Legal Representatives of Victims Ms Paolina Massidda	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	Detention Section
Victims Participation and Reparations Section	Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests Pre-Trial Chamber II ("Chamber") for a 5-day extension of time to respond to the Mokom Defence Request for Disclosure,¹ pursuant to Regulation 35 of the Regulations of the Court ("RoC").

2. There is good cause to grant the requested extension. The five-day deadline established in the Order on the Conduct of Proceedings² would not allow the Prosecution a meaningful opportunity to respond to the Defence Motion, given its nature, scope, and the intricacies of the arguments and positions advanced. Moreover, the Chamber and the Parties would substantially benefit from a considered and comprehensive response.

3. In addition, as the requested extension is short³ and would not delay the proceedings, granting it would cause no appreciable prejudice. Moreover, given its brevity and the limited time frame, an urgent ruling on the request without further submissions is appropriate.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the RoC, this document is filed as "Confidential" because it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

5. Regulation 35(1) and (2) of the RoC authorise a Chamber to extend a time limit if good cause is shown. The Appeals Chamber has held:

¹ ICC-01/14-01/22-198-Conf ("Defence Motion").

² See ICC-01/14-01/22-157, para. 18(i).

³ The requested extension would entail the filing of a response in accordance with the 10-day limit prescribed in regulation 34 of the Regulations of the Court, thus rendering the deadline 15 May 2023.

"A cause is good if founded upon reasons associated with a person's capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations."⁴

a. Good cause

6. The present request is supported by good cause.

7. *First*, the Defence Motion is extensive – 18 pages in length, and touches upon many discrete issues. As well, it presents various questions requiring detailed analysis and review in order to determine the merits and to provide a substantiated response. To do so within the five calendar day time limit is not tenable, insofar as the Defence Motion covers matters both particular to the disclosure process as applied, and of general consideration under the Court's broader procedural framework.

8. *Second*, a meaningful response entails verifying the Defence's assertions and claims, as well as analysing them within the context of the Prosecution's disclosure obligations. For example, while the Defence argues that in an incriminatory statement there can be potentially exonerating declarations, citing to P-2232 and P-1521,⁵ its assertion fundamentally misconstrues the Prosecution's position, as set out in previous *inter partes* exchanges. As will be elaborated in the response, the Prosecution's disagreement that the passages identified by the Defence in the statements of P-2232 and P-1521 are potentially exculpatory, is case specific. In fact, the identified passages are *incriminating*.

9. Because the Defence Motion is replete with assertions that are either unclear, erroneous, or misunderstand the disclosure process, they warrant careful scrutiny and

⁴ ICC-01/04-01/06-834, para. 7.

⁵ Defence Motion, paras. 14-16.

clarification. The additional time sought is necessary for the Prosecution to properly assess the contentions advanced in the Defence Motion.

10. *Third*, an extension of five days to file a response is reasonable in the circumstances. It would enable the Prosecution to thoroughly present its arguments in addressing the Defence's extensive assertions. This would also assist the Chamber to better appreciate and evaluate the merits of the Parties' respective submissions in reaching its determination.

b. The Chamber is in a position to rule immediately

11. An opportunity to be heard in respect of a regulation 35(2) application is not automatic. Rather, a Chamber may give the parties and participants an opportunity to be heard "*where appropriate*".⁶ It is the Prosecution's view that the Chamber is in a position to rule on this request immediately, and without more.

12. *First*, given the shortened five-day time limit, inviting submissions may ultimately undermine the objective of the request, and indeed the Chamber's direction to file requests for any variation four days prior to the expiry of the time limit concerned.⁷ It is also of consequence that the five day time limit for a response straddles a weekend. Considering the request only after receiving Defence submissions may thus nullify the urgent disposition sought, potentially delaying a ruling until it is too close to the deadline to have any beneficial or material effect.

13. *Second*, no prejudice would result from the Chamber ruling without further submissions. The extension sought is of only five days is proportionate, and would render the extended deadline consistent with regulation 34(b) of the RoC, which is itself presumptively reasonable.

⁶ Regulation 35(2) (*emphasis added*)

⁷ See ICC-01/14-01/22-157, para. 18(ii).

14. In addition, should the Chamber grant the present request, there is ample time for the Parties to adapt to its decision on the Defence Motion, given that over three months remains before the start of the confirmation of charges hearing.

IV. CONCLUSION

15. For the above reasons, the Prosecution respectfully requests that the Chamber grant an extension of time of five days in which to respond to the Defence Motion.



Karim A. A. Khan KC, Prosecutor

Dated this 4th day of May 2023
At The Hague, The Netherlands