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**International
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Court**

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

Date: **28 June 2023**

TRIAL CHAMBER V

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

URGENT

Public

**Consolidated Defence Request pursuant to Regulation 35 to vary the time limit to
respond to ICC-01/14-01/18-1945-Conf and ICC-01/14-01/18-1947-Conf**

Source: Defence of Patrice-Edouard Ngaïssona

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

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I. INTRODUCTION

1. On 26 June 2023, the Prosecution filed the “Prosecution’s Eight [sic] Application for Submission of Audio/Videos Evidence from the Bar Table” (‘Eighth Bar Table Application’)¹ consisting of 328 items totaling over 17 hours of audio and visual material, and amounting to 986 pages of transcripts.² The next day, on 27 June 2023, it filed the “Prosecution’s Ninth Application for the Submission of Evidence from the Bar Table and request for reconsideration of the Decision on the submission of CAR-OTP-2053-0576” (‘Ninth Bar Table Application and Reconsideration Request’).³ This request contains 66 items which total 741 pages.⁴ The two bar table applications together comprise 1,727 pages. Without an extension, the deadlines to file responses to the Eighth Bar Table Application and the Ninth Bar Table Application and Reconsideration Request are 7 July 2023 and 10 July 2023, respectively.
2. The Defence for Patrice-Edouard Ngaïssona (‘the Defence’) respectfully requests Trial Chamber V (‘the Chamber’) to vary the time limit for the Defence to respond to both the Eighth Bar Table Application and the Ninth Bar Table Application and Reconsideration Request until 1 September 2023. Given that the deadline to respond to the two requests is fast approaching, the Defence respectfully requests the Chamber to rule on the present request urgently.

¹ ICC-01/14-01/18-1945-Conf.

² The Defence notes that in its information provided to Trial Chamber V, the Prosecution announced that it would submit 330 items with 185 transcripts. However, in the Eighth Bar Table Application the Prosecution noted it would submit 328 items with 186 transcripts. *Compare* ICC-01/14-01/18-1916 *with* ICC-01/14-01/18-1945. The Defence’s references to page totals in the present request are based on the Prosecution’s information provided in ICC-01/14-01/18-1916.

³ ICC-01/14-01/18-1947-Conf.

⁴ The Defence notes that the Prosecution requests to submit through its Ninth Bar Table Application 66 items whereas in ICC-01/14-01/18-1916 the Prosecution noted 68 items. The Defence’s page counts stem from the information provided by the Prosecution in ICC-01/14-01/18-1916.

II. SUBMISSIONS

3. Pursuant to Regulation 35 of the Regulations of the Court ('RoC'), the Defence submits there is good cause to extend the deadlines to respond to the Eighth Bar Table Application and to the Ninth Bar Table Application and Reconsideration Request by 8 weeks for three reasons: (1) the Defence does not have sufficient resources to respond to them in a timely manner without additional support; the Prosecution's strategic decision to submit 10 bar table applications in the last six months of its case is neither within the control of the Defence nor should the Defence be prejudiced by this decision, (2) the recent changes in the witness schedule is monopolizing the available time of several members of the team, and (3) the critical juncture of the case requires that those members who are not in trial be dedicated to preparing the potential Defence case.

4. As the Chamber has recognized, preparing responses to bar table applications does require an in-depth analysis.⁵ As a professional courtesy, in *inter partes* exchanges, the Defence always endeavors to meet the deadlines set by the Prosecution for bar table annexes. This can only be done by delaying this in-depth analysis until the Prosecution files its bar table application with the Chamber. During the *inter partes* stage, the Defence conducts a cursory review of the items through identifying major procedural bars to submission. Next, the Defence, in accordance with Rule 64, conducts the item-by-item analysis with respect to admissibility criteria of the items once the Prosecution submits the bar table application with the Chamber. Certain analytic work cannot be undertaken without the Prosecution arguments in hand. This requires the Defence to request for extensions of time to be able to complete this laborious exercise. Further, in the instant case, because of the Prosecution's bar table

⁵ ICC-01/14-01/18-1884, para 17.

applications effectively amounting to Trial Brief supplements,⁶ the Defence requires even further time to respond to items that have already been submitted, but for which the Prosecution adds extensive arguments in its main submissions.

5. The Defence recalls previous submissions contained in request, ICC-01/14-01/18-1875, in which it alerted the Chamber to the Prosecution's intent to submit the vast majority of its bar table applications at the end of its case.⁷ The Chamber shared the Defence's concern and ordered the Prosecution to provide the Chamber and the parties with information regarding all the outstanding bar tables that the Prosecution must file.⁸
6. As soon as the Defence was put on notice to the scale of the bar table applications that remained to be filed at the close of the Prosecution's case, it took swift action to ensure an effective and efficient defence for Mr Ngaïssona. On 24 May 2023, the Defence requested CSS to hire a temporary legal consultant to assist the team in responding to the remaining bar table applications.⁹ CSS agreed that additional funds were necessary and approved the Defence's request on 7 June 2023.¹⁰
7. Under great time constraints, the Defence was able to find a qualified consultant who began working on 26 June 2023, and who still did not have access to the Court's judicial applications. For this individual to assist the Defence, they need time to familiarize themselves with the bar table annexes and motions,

⁶ ICC-01/14-01/18-1874-Conf, para. 8.

⁷ ICC-01/14-01/18-1875.

⁸ ICC-01/14-01/18-1884.

⁹ Email from the Defence to CSS, sent on 24 May 2023 at 12:39. The Defence stands ready to provide the Chamber with the email exchange if the Chamber deems it necessary to adjudicate the request.

¹⁰ Email from CSS to the Defence sent on 7 June 2023 at 10:08. The Defence stands ready to provide the Chamber with the email exchange if the Chamber deems it necessary to adjudicate the request.

specifically the 1,727 pages of material underlying the Eighth Bar Table Application and the Ninth Bar Table Application and Request for Reconsideration.

8. This individual was specifically hired such that the Defence would not have to divert its limited resources to grapple with the Prosecution's choice to submit most of its documentary evidence via bar table in the last six months of its case. Further, the material underlying the Eighth Bar Table Application was reviewed by the Defence at the end of 2022, and the Defence sent its position to the Prosecution on 25 November 2022, seven months ago.¹¹ This material is no longer fresh in the team members' minds. Moreover, the Defence recalls that its analysis was limited to major procedural bars rather than on the admissibility criteria as required by Rule 64.

9. In terms of workload, the Defence is in the midst of preparing a significant response to one of the biggest bar table motion the Prosecution has filed, namely the "Prosecution's Seventh Application for Submission of Facebook Evidence from the Bar Table," ("Seventh Bar Table Application")¹² which contains 686 conversations totaling 24 484 pages. The Defence is concurrently also reviewing 4 other bar tables annexes,¹³ which the Prosecution sent less than three weeks ago through *inter partes* exchanges. The total number of items to

¹¹ Email from the Defence to the Prosecution sent on 25 November 2022 at 6:00pm. The Defence stands ready to provide the Chamber with the email exchange if the Chamber deems it necessary to adjudicate the request.

¹² ICC-01/14-01/18-1874-Conf.

¹³ On 8 June 2023, the Defence received from the Prosecution both the Anti-Balaka and Central African Republic ('CAR') government documents bar table annex containing 148 items and the Media Articles bar table annex containing 42 items. On 12 June 2023, the Defence received from the Prosecution the Call Data Records bar table annex containing 9 items. Lastly, On 15 June 2023, the Defence was sent another bar table annex consisting of Facebook material containing 178 items. The Defence stands ready to provide the Chamber with the email exchange if the Chamber deems it necessary to adjudicate the request.

review equals 377 items and they total 1 782 pages.¹⁴ The internal deadline the Prosecution has given to respond to three of these bar tables annexes is 21 July,¹⁵ the same day as the Defence's response is due for the Seventh Bar Table Application.

10. The "Prosecution's information regarding its outstanding Bar Table Applications (pursuant to ICC-01/14-01/18-1884)"¹⁶ revealed that as of 9 June 2023, the Prosecution still had to file eight bar table applications, two of which are the subject of this extension request. Given the Chamber has set the deadline of 25 August 2023 for the Prosecution to submit its evidence in writing,¹⁷ this translates to the Prosecution filing seven bar table applications from 25 June 2023 to 25 August 2023. As recalled by the Defence the Prosecution has chosen to only file 5 bar tables in the first two year of its case¹⁸ and to subsequently send the Defence its 10 outstanding bar table annexes and file the bar table applications associated with them between 8 March 2023 and 25 August 2023.¹⁹ The Defence should be given sufficient time to respond to all these requests in order to ensure Mr Ngaïssona's effective and fair representation.

11. In addition to the flood of bar table motions, the Defence has also recently had to invest resources in the changes in the trial schedule as a result of the unforeseen addition of 4 witnesses, namely P-1576, P-2973, P-2050, P-2687 whose statements have been introduced by the Chamber under Rule 68(3) of

¹⁴ The Defence avers that the number of pages is an approximation based off of the information the Prosecution submitted to the Chamber regarding its outstanding bar table applications. ICC-01/14-01/18-1916.

¹⁵ The Prosecution has requested the Defence to provide its position with respect to Facebook material by 4 August 2023.

¹⁶ ICC-01/14-01/18-1916.

¹⁷ ICC-01/14-01/18-1892, para 5.

¹⁸ ICC-01/14-01/18-1875, para. 8.

¹⁹ See ICC-01/14-01/18-1875, para. 8; ICC-01/14-01/18-1916.

the Rules of Procedure and Evidence.²⁰ The Defence learned two weeks ago that Witness P-2973 is scheduled to testify from 3-5 July 2023 and learned yesterday on 26 June 2023 that P-1576 is scheduled to testify during the week of 12-14 July. The Defence is committed to not delaying the proceedings and is diligently preparing for the examination of these witnesses. However, these unforeseen developments have a direct impact on the Defence's ability to respond to bar table motion applications.

12. Lastly, the Defence is prioritizing its resources to meet the deadlines set by the Chamber for the preparation of the potential defence case. Currently, there are Defence team members who are on mission conducting crucial investigations, and others who are tasked with assessing and preparing potential materials that must be filed on 25 August 2023.²¹ These deadlines fall just after the summer recess when the Defence functions with reduced resources. In order to meaningfully respond to the high activity stage of the proceedings, the Defence team members distributed their summer leaves over the weeks to avoid overlap to the greatest extent possible. Nonetheless, for many members the summer recess along with the winter recess is one of the only times that they can travel and see family in their home countries, which is crucial for their well-being and ability to meaningfully contribute to defending Mr Ngaïssona.

13. Since Mr Ngaïssona has been in pretrial detention for several years, the Defence is committed to playing a role in ensuring the expeditiousness of the proceedings. However, prioritizing the preparation of these final witnesses in addition to preparing a potential Defence case has been hindered by the

²⁰ foreseen by the Defence to be *viva voce* witnesses until the Chamber rendered its "Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules" ICC-01/14-01/18-1907.

²¹ ICC-01/14-01/18-1892, para. 18.

Prosecution's strategic choice to file 2/3 of its bar table applications at the end of its presentation of evidence. Since, the Chamber has opted for a submission regime, the response to such motions is not time sensitive like these two other priorities. Under a submission evidentiary regime, the Chamber will only assess the evidence during the deliberation of the judgment pursuant to Article 74 of the Rome Statute, which will occur at the conclusion of the proceedings. Therefore an 8-week delay, will have no impact in bringing this trial to a close, since it will still be ongoing as of 1 September 2023.

14. Given the competing priorities in addition to the several thousands of pages of material that the Defence is currently grappling with in terms of bar table applications that could have been entirely avoided, the Defence submits there is good cause to grant an extension of time of 8 weeks.

III. RELIEF SOUGHT

15. The Defence respectfully requests the Chamber to:

- **GRANT** the Defence's request to vary the time limit to respond to both the Prosecution's Eighth Bar Table Application and Ninth Bar Table Application and Request for Reconsideration by setting the deadline to respond to 1 September 2023

Respectfully submitted,



Mr Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 28 June 2023

At The Hague, the Netherlands.