

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **31 October 2023**

TRIAL CHAMBER V

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Confidential

**Prosecution's Response to the Ngaissona Defence's Request pursuant to Regulation
35 to vary the time limit (ICC-01/14-01/18-2157-Conf-Red)**

Source: Office of the Prosecutor

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

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Unrepresented Victims	Unrepresented Applicants (Participation/Reparation)
States Representatives	Amicus Curiae

REGISTRY

Registrar Mr Osvaldo Zavala Giler	Counsel Support Section
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Victims Participation and Reparations Section	Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") defers to the discretion of Trial Chamber V ("Chamber") in the disposition of the Ngaissona Defence's Request pursuant to Regulation 35 to vary the time limit ("Request"),¹ subject to the observations below. However, should the Chamber postpone the 17 November 2023 deadline by four weeks, it should similarly postpone the 11 December 2023 deadline by four weeks or more. A lesser amount of time *between* these two deadlines would not provide the Prosecution with sufficient time to adequately prepare for the testimonies of the first Defence witnesses in the case.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this document is filed as "Confidential", as it responds to a filing of the same designation. The Prosecution has no objection to its reclassification as "Public."

III. SUBMISSIONS

3. The Prosecution takes note of the Ngaissona Defence's Request and defers to the discretion of the Chamber in deciding on whether a variation of the time limit is justified in all the circumstances. The Prosecution takes no position regarding the grounds set out for the requested extension of time, except as pertains to it.

4. As regards the latter, the Defence's submissions that the Prosecution's delay in fulfilling its obligations under rule 77 of the Rules of Procedure and Evidence ("Rules")² justifies the request is unavailing.

¹ ICC-01/14-01/18-2157-Conf-Red.

² See ICC-01/14-01/18-2157-Conf-Red, para. 13-18.

5. While the Prosecution's duty to review material in its database is continuing, notably as lines of defence take form³ and (by extension) in regard to a preliminary list of witnesses, there is no requirement that such material be disclosed *prior* to the Defence's filing of its final witness list. There is no case law or practice at the Court supporting such a proposition, nor does the Request cite to any. The only requirement as to timing is that the material "must be provided to the Defence sufficiently in advance for the accused to prepare his or her defence pursuant to Article 67(1)(b) of the Statute",⁴ which in turn guarantees the accused's right "to have adequate time and facilities for the preparation of the defence." Notably, a very recent decision from Trial Chamber I allowed the Prosecution to cross-examine a Defence witness using documents disclosed only one day prior.⁵ By contrast, the Prosecution will provide any documents material to Defence preparation, based on its preliminary witness list, well ahead of the beginning of the Defence case. It intends to provide documents relevant to a group of priority witnesses (identified by the Defence) by 31 October 2023. It aims to provide all remaining documents by 17 November 2023. This leaves more than adequate time for the Defence fully to prepare for the examination of its witnesses from 11 December 2023 onwards.

6. Should the Chamber grant the Defence's Request, a corresponding postponement of four weeks or more of the 11 December 2023 start date for the Defence to call evidence would appropriately balance the relative interests of the Parties and Participants. The Prosecution refers to and repeats the reasoning put forward in its response to a similar request for postponement of the 17 November 2023 deadline by the Defence.⁶

³ See ICC-01/12-01/18-777-Red, para. 27.

⁴ ICC-01/04-01/07-2388, para. 48.

⁵ See ICC-02/05-01/20-T-132 CONF-ENG ET, p. 55, l. 22-p. 56, l. 6, p. 71, l. 21-p. 72, l. 7.

⁶ ICC-01/14-01/18-2008, para. 5-7, in response to ICC-01/14-01/18-1997-Red (rejected in decision ICC-01/14-01/18-2068, with request for leave to appeal also rejected in decision ICC-01/14-01/18-2095).

IV CONCLUSION

7. For the foregoing reasons, the Prosecution defers to the discretion of the Chamber in the disposition of the Request. However, should the request to postpone the 17 November deadline be granted, the 11 December deadline should also be postponed by at least four weeks.



Karim A. A. Khan KC, Prosecutor

Dated this 31st day of October 2023
At The Hague, The Netherlands