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**No. ICC-01/14-01/18
Date: 14 December 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Ngaißsona Defence Request to Extend the Time Limit for the
Submission of Rule 68(3) Requests and for the Disclosure of D30-4197's
Prior Recorded Testimony**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Rule 68 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Ngaïssona Defence Request to Extend the Time Limit for the Submission of Rule 68(3) Requests and for the Disclosure of D30-4197’s Prior Recorded Testimony’.

I. Procedural history and submissions

1. The Chamber recalls its ‘Decision on the Ngaïssona Defence Request for Extension of Time’, including the procedural history set out therein. In this decision it, *inter alia*, ordered the Ngaïssona Defence (the ‘Defence’) to (i) file applications pursuant to Rule 68(3) of the Rules; and (ii) complete disclosure of all items it intends to use during its evidence presentation ‘on a rolling basis, as of 17 November 2023, and until no later than 15 December 2023’.¹
2. On 12 December 2023, the Defence requested an extension of the above-mentioned time limit. In particular, it requests authorisation to (i) file its requests pursuant to Rule 68(3) of the Rules ‘not less than 45 days before the start of the witness’s scheduled testimony’ (the ‘First Request’); and (ii) postpone the disclosure of D30-4197’s prior recorded testimony ‘until such time that the Defence can resume contact with the witness’ (the ‘Second Request’; jointly, the ‘Request’).²
3. It argues that good cause exists for the First Request because (i) of the ‘high number of Rule 68(3) applications when assessed within the context of the size of the Defence’s case’; (ii) after reassessing its presentation of evidence, it only recently increased the number of anticipated requests under Rule 68(3) of the Rules; (iii) it is currently not in possession of all prior recorded testimonies for the witnesses for whom it intends to submit Rule 68(3) requests; and (iv) a recent

¹ ICC-01/14-01/18-2181.

² Consolidated Ngaïssona Defence request to extend the time limit for the submission of Rule 68(3) applications and for the disclosure of Witness D30-P-4197’s prior recorded testimony, ICC-01/14-01/18-2256-Conf.

request by the Prosecution for extension of time to respond to the prospective requests under Rule 68(3) of the Rules shows, in its view, that the Prosecution concurs ‘that there will be a high number of Rule 68(3) requests and that its burden would be eased by extending the deadline to respond’.³

4. As regards the Second Request, it submits that good cause equally exists because the witness has not yet attested to the truth of his statement’s content and the Defence is presently unable to reach him.⁴
5. On 13 December 2023, after the Chamber shortened the deadline to respond,⁵ the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of Victims of Other Crimes indicated that they do not intend to respond to the Request.⁶

II. Analysis

6. Pursuant to Regulation 35(2) of the Regulations, a chamber may extend a time limit at the request of a participant ‘if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard’.
7. In relation to the First Request, the Chamber recalls that it previously indicated that it may be amenable to considering an approach similar to that taken during the Prosecution’s presentation of evidence, should the Defence anticipate a high number of applications under Rule 68(3) of the Rules.⁷ In this respect, the Chamber also recalls that it eventually authorised the Prosecution ‘to submit its Rule 68(3) Applications latest 45 days before the scheduled date of a witness’s testimony’.⁸

³ Request, ICC-01/14-01/18-2256-Conf, paras 9, 11-12.

⁴ Request, ICC-01/14-01/18-2256-Conf, paras 14-17.

⁵ Email from the Chamber, 13 December 2023, at 13:57.

⁶ Joint email from the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of Victims of Other Crimes, 13 December 2023, at 14:21.

⁷ See Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), 29 May 2023, ICC-01/14-01/18-1892, para. 21(iii), *with reference to* Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, 16 October 2020, ICC-01/14-01/18-685 (the ‘Decision on Prosecution Extension Request’), paras 18-19.

⁸ Decision on Prosecution Extension Request, ICC-01/14-01/18-685, para. 19.

8. The Chamber acknowledges that the Defence intends to present the majority of its *viva voce* witnesses pursuant to Rule 68(3) of the Rules, thus representing a large number within the context of its case.⁹ Furthermore, it takes note of the circumstances described by the Defence in relation to the status of its anticipated requests under this provision,¹⁰ as well as the fact that no objections were received to the First Request. In light of the above, the Chamber considers that good cause exists. Accordingly, the First Request is granted.
9. As regards the Second Request, the Chamber notes that the D30-4197 has not yet attested to the truth of his statement's content and his sudden unavailability. Further noting that the request was not opposed, the Chamber considers that good cause exists and grants the Second Request. However, in order not to postpone disclosure indefinitely and in the interests of transparency and efficiency, the Chamber finds it appropriate to monitor the Defence's progress on this matter. Accordingly, it orders the Defence to provide monthly updates on the status of disclosure of D30-4197's prior recorded testimony, starting on 8 January 2024, and to disclose the witness's prior recorded testimony within one week of obtaining it.¹¹

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

ORDERS the Ngaïssona Defence to provide monthly updates on the disclosure of D30-4197's prior recorded testimony, starting on 8 January 2024;

ORDERS the Ngaïssona Defence to disclose D30-4197's prior recorded testimony within one week of obtaining it; and

ORDERS the Ngaïssona Defence to file a public redacted version of the Request, ICC-01/14-01/18-2256-Conf, within one week of notification of the present decision.

⁹ See Request, ICC-01/14-01/18-2256-Conf, para. 9, indicating that seven out of its 13 *viva voce* witnesses are intended to be called pursuant to Rule 68(3) of the Rules.

¹⁰ See para. 3 above.

¹¹ See also Request, ICC-01/14-01/18-2256-Conf, para. 15.

Done in both English and French, the English version being authoritative.

		
Judge Péter Kovács	Judge Bertram Schmitt	
	Presiding Judge	
		
		Judge Chang-ho Chung

Dated 14 December 2023

At The Hague, The Netherlands