

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: **21 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
NGAÏSSONA***

Public

**Public Redacted Version of '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), filed on
12 December 2023**

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. Pursuant to Regulation 35(2) of the Regulations of the Court ('RoC'), the Defence for Patrice-Edouard Ngaïssona ('the Defence') requests Trial Chamber V ('the Chamber') for an extension of time to submit its Rule 68(3) applications ('First Request'). Specifically, the Defence requests the Chamber to allow the Defence to submit such applications not less than 45 days before the start of the witness's scheduled testimony. Additionally, the Defence requests that the Chamber extend the time limit for the Defence to disclose D30-P-4197's prior recorded testimony ('Second Request'). D30-P-4197 has not yet attested to the truth of his statement, and the [REDACTED]. Without the witness attesting to the truth of his statement, the statement is incomplete. As such, it cannot be disclosed by Chamber's deadline set for Defence disclosure, namely 15 December 2023.¹
2. Both the First Request and Second Request are justified in the present circumstances and good cause supports granting each request. Moreover, no prejudice would be occasioned to the parties and participants if the Chamber were to grant the requests.
3. The Defence respectfully files the present consolidated request on an urgent basis given that the deadline for the Defence to submit its Rule 68(3) applications and to disclose all the material it intends to present in its case expires on 15 December 2023.²

II. CONFIDENTIALITY

¹ ICC-01/14-01/18-2181, para. 9.

² Ibid.

4. Pursuant to Regulation 23bis(1) of the RoC, this request is filed as confidential since it contains confidential information about the Defence's witnesses. The Defence will file a public redacted version in due course.

III. SUBMISSIONS

5. Regulation 35(2) of the RoC, allows chambers to vary time limits if appropriate and if good cause is shown. The Appeals Chamber has held that a cause is good if incapability to conform to the applicable procedural rule or regulation or the directions of the court is for sound reasons.³ Such reasons must provide an objective justification for the party's inability to comply with his or her obligations.⁴ For both the First Request and Second Request, there are sound reasons for which the Defence is unable to comply with the Chamber's deadline of 15 December 2023.

A. The Defence's First Request is justified under Regulation 35(2) of the RoC

6. On 29 May 2023, the Chamber issued the "Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)"⁵ wherein it made several orders regarding the Defence's presentation of evidence, and set a global deadline of 17 November 2023.⁶ However, with respect to Rule 68(3) applications, the Chamber specifically mentioned that it could be amenable to considering an approach similar to that taken during the Prosecution's presentation of evidence, leaving the possibility open that a different set of deadlines could apply to such applications.⁷

³ ICC-01/04-01/06-834, para. 7.

⁴ Ibid.

⁵ ICC-01/14-01/18-1892.

⁶ This deadline was subsequently extended to 15 December 2023 for witnesses scheduled to testify after 2 February 2023. ICC-01/14-01/18-2181, para. 9.

⁷ Ibid., para 21(iv)

7. Before the Prosecution's presentation of evidence, the Chamber issued its "Decision on the Prosecution's Extension Request and Initial Guidance on Rule 68 of the Rules"⁸ wherein it agreed with the Prosecution's request to vary the time limit for it to submit its Rule 68(3) applications. The Chamber noted the high number of expected Rule 68(3) applications and that the rights of the accused and the efficiency of the proceedings were best served by varying the time limit for the Prosecution to submit the applications.⁹
8. The Chamber also agreed with the Prosecution's proposal to set staggered deadlines for the Rule 68(3) applications. Specifically, the Prosecution was ordered to submit its Rule 68(3) applications not less than 45 days before the scheduled start of the witness' testimony.¹⁰ In agreeing with the Prosecution's proposal, the Chamber noted that "applications on a rolling basis, and close to the time of a witness' testimony, allows for the distribution of the workload associated with these applications over an extended time period, thereby easing the burden on the participants and the Chamber".¹¹
9. Here, the Defence faces similar circumstances as the Prosecution did in filing its request to set staggered deadlines for the filing of Rule 68(3) applications. [REDACTED].¹² This constitutes a high number of Rule 68(3) applications when assessed within the context of the size of the Defence's case. It means that more than half of the Defence's witnesses could testify under Rule 68(3). While the Defence initially announced that 5 witnesses would be subject to Rule 68(3) applications, it has recently reassessed its presentation of evidence and submits that it would be in the interest of the expediency of the proceedings to introduce

⁸ ICC-01/14-01/18-685

⁹ Ibid., para 18.

¹⁰ Ibid., para. 19.

¹¹ Ibid., para.18.

¹²[REDACTED].

D30-P-4608's and D30-P-4504's prior recorded testimonies under Rule 68(3). The objective in requesting such a high number of Rule 68(3) applications is to expedite the proceedings: (1) by reducing the time needed to examine the witnesses and (2) by streamlining the Defence's presentation of evidence.

10. The Defence understands that its request comes on the eve of the deadline to submit Rule 68(3) applications, and that it would have been preferable to make such a request at an earlier stage. However, the Defence submits that it only recently became apparent that such a request was necessary for the reasons that follow.

11. First, the Defence increased the number of anticipated Rule 68(3) applications in the past week upon internal consultation with the Defence team. Second, the Defence is not in possession of the prior recorded testimony for three of the witnesses for whom it will submit Rule 68(3) applications. The Defence has sought the Chamber's guidance regarding the process of obtaining the prior recorded testimony of two of these witnesses in a fully remote manner.¹³ For the remaining witness, namely D30-P-4504, the Defence is scheduled to have his witness statement signed [REDACTED]. Third, the Defence is still waiting for D30-P-4885's expert report. Even if the Defence were to receive the report this week, it will not be able to fully digest the report and make a Rule 68(3) application in time for the 15 December 2023 deadline.

12. Even though the Defence makes such a request the same week as the 15 December 2023 deadline, it submits that no prejudice results from it. Indeed, the Prosecution recently made an extension of time request to respond to the prospective Defence applications made pursuant to Rule 68(3) and Rule 68(2).¹⁴

¹³ Email to the Chamber re: Request for guidance - Process for obtaining prior statements remotely dated 12/4/2023 at 4:27pm.

¹⁴ ICC-01/14-01/18-2226-Conf.

While the Chamber rejected the request regarding prospective applications,¹⁵ the Defence submits that the Prosecution's request shows: that the Prosecution concurs with the Defence's submission 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 to the requests. The Defence has been disclosing all available and complete witness statements on a rolling basis since 17 November 2023, and it is doing its utmost to complete all disclosure by the 15 December 2023 deadline.

13. For the aforementioned reasons, the Defence submits that there are sound reasons for granting the Defence's First Request, in that, the Defence will file a high number of Rule 68(3) applications in the current proceedings, and the efficiency of the proceedings would be advanced if the request is granted.

B. The Defence's Second Request is justified under Regulation 35(2) of the RoC

14. Among the witnesses for which the Defence is seeking an extension to submit a Rule 68(3) application is Witness D30-P-4197. For this witness, it is not possible to submit a Rule 68(3) request at this juncture since he has not yet attested to the truth of his statement's content.
15. Since [REDACTED] Witness D30-P-4197. It has made [REDACTED]. In such circumstances, even if the Chamber were to grant the Defence's request to take Witness D30-P-4197's prior recorded testimony in a fully remote manner, the Defence would still be unable to do so at this time due to his [REDACTED]. Therefore, the Defence requests the Chamber to grant the Second Request until such time that the Defence can [REDACTED]. The Defence stands ready to

¹⁵ ICC-01/14-01/18-2229-Conf, para. 14.

make monthly updates in this regard and to disclose the statement within the first week of the Defence obtaining it.

16. The Defence submits that there is good cause to grant the Second Request, and that it is appropriate in these circumstances. The Defence interviewed D30-P-4197 at [REDACTED], well in advance of the Chamber's deadline. Upon completion of drafting his statement, the Defence had no reason to believe that D30-P-4197 would be [REDACTED]. Until recently, the witness had always been [REDACTED]. Indeed, the witness even showed preference for [REDACTED]. The witness made such a request for security reasons.

17. For the aforementioned reasons, the Defence submits that there are sound reasons for granting the Defence's Second Request, in that the Defence is unexpectedly [REDACTED] Witness D30-P-4197 to complete the taking of his prior recorded testimony. This completely unforeseeable circumstance constitutes good cause for the Defence to seek a request for variation of time limit to disclose his statement.

IV. RELIEF SOUGHT

18. The Defence respectfully requests the Chamber to:

- **GRANT** the Defence's First Request in that the Defence will be allowed to submit its Rule 68(3) applications not less than 45 days before the witnesses are scheduled to appear; and
- **GRANT** the Defence's Second Request in that the Defence will be allowed to disclose D30-P-4197 prior recorded testimony at a later stage, as foreseen in paragraph 15 of the present consolidated request.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a final horizontal stroke.

Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 21 December 2023

At The Hague, the Netherlands.