

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 April 2024

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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA

Public

Public Redacted Version of "Request for an extension of time for the formal submission of the prior recorded testimony of P-6018 pursuant to Rule 68(2)(b) and Second Defence Request for Leave to add items to its List of Evidence", 28 November 2023, ICC-01/14-01/18-2228-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr. Alfred Rombhot Yekatom ('Defence') requests an extension of time, pursuant to Regulation 35 of the Regulations of the Court, to submit an application pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence ('Rules') for six items consisting of an additional statement of P-6018 ('Third Statement') and five associated exhibits (collectively, 'Additional Material').¹
2. The Defence further requests leave to amend its List of Evidence to include the Additional Material (collectively, 'Requests').
3. The Defence submits that there exists good cause to extend the time limit for the submission of a Rule 68(2) application for P-6018, and that the Defence was unable to file the application within the time limit for reasons outside its control.

PROCEDURAL HISTORY

4. On 29 March 2023, Trial Chamber V issued the 'Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)' ('Further Directions').²
5. On 11 September 2023, the Prosecution filed the 'Prosecution's Notice of the Close of its Case-in-Chief'.³
6. From 21 September 2023 to 27 September 2023, the Common Representative of Child Soldiers ('CLRV1') called two witnesses to testify before the Chamber.⁴
7. On 17 November 2023, the Defence filed the 'Yekatom Defence's List of Witnesses and Evidence' (respectively 'Final List of Witnesses' and 'Final List of Evidence').⁵

¹ CAR-D29-0009-0562, CAR-D29-0009-0568, CAR-D29-0009-0570, CAR-D29-0009-0572, CAR-D29-0009-0574, CAR-D29-0009-0575.

² ICC-01/14-01/18-1892.

³ ICC-01/14-01/18-2089.

⁴ ICC-01/14-01/18-T-245-CONF-FRA to ICC-01/14-01/18-248-CONF-FRA.

⁵ ICC-01/14-01/18-2212-Conf.

8. The same day, the Defence filed the 'First Defence Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b)',⁶ seeking the submission of *inter alia* the prior recorded testimony of P-6018, consisting of two statements and four associated exhibits ('First Application').⁷
9. On 28 November 2023, the Prosecution filed the 'Prosecution's Request for Variation of Time Limit pursuant to Regulation 35 to respond to the current and prospective Defence's Requests for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b) and Rule 68 (3)'.⁸

APPLICABLE LAW

10. Regulation 35 of the Regulations of the Court:

1. Applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought.

2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

SUBMISSIONS

11. The Defence requests the extension of time for the formal submission into evidence of the Additional Material as part of the prior recorded testimony of P-6018. The Defence further requests leave from the Chamber to amend its Final List of Evidence to add the Additional Material.

⁶ ICC-01/14-01/18-2213-Conf.

⁷ ICC-01/14-01/18-2213-Conf, paras. 57 to 60.

⁸ ICC-01/14-01/18-2226-Conf.

- A. The requirements of Regulation 35(2) and for leave to add evidence are met
12. The Defence submits that good cause exists to grant the extension of time limit to submit the present 68(2) application⁹ and that all factors to be considered in the determination of the request for leave to amend the Final List of Evidence militate for the sought amendment to be granted. The factors consist of:

the extent to which the requested addition is opposed [...], the time when the addition was sought, the nature and amount of the material concerned, the intended purpose of the [Party]'s requested reliance on such material, and its prospective significance in light of the charges brought against the accused and the rest of the available evidence.¹⁰

13. Since the closing of the presentation of evidence by the Prosecution, the Defence conducted an extensive final review of all the material it intended to rely on during its presentation of evidence, investigated and prepared for the presentation of evidence by the CLRV1 which took place in September 2023, and prepared for the examination of the Chamber's witness, P-0952.
14. This work was conducted while the Defence was finalising the statements of Defence witnesses and obtaining signature and exhibits, up until the deadline of 17 November 2023.
15. Despite its best efforts, the Defence did not succeed in finalising entirely the statement of P-6018 prior to the time limit set by the Chamber's Further Directions. The Defence had scheduled to meet with P-6018 for the purpose of a second interview in the morning [REDACTED] as it was not possible beforehand.¹¹ During that interview, P-6018 provided the Defence with new information regarding [REDACTED] He further stated that [REDACTED].¹² As a result of this new information being communicated to the Defence, another meeting was set in

⁹ See ICC-01/14-01/18-685, paras. 12 and 13.

¹⁰ ICC-01/14-01/18-989-Conf, para. 5; Public Redacted Version ICC-01/14-01/18-989-Red.

¹¹ This corresponds to P-6018's second statement CAR-D29-0009-0557.

¹² See CAR-D29-0009-0557, para. 14.

early afternoon [REDACTED], at which P-6018 was to provide the Defence with further documents relevant to the details of [REDACTED].

16. The Defence vainly waited the return of P-6018 until the last hour before filing the Final List of Evidence and the First Application as, as it later discovered, P-6018 was stuck on the road between [REDACTED] and [REDACTED] due to a [REDACTED]. That is the reason why he only arrived for a third interview with the Defence where he provided additional associated exhibits in the early evening of 17 November 2023.¹³
17. Due to the lateness of the meeting which took place after regular work hours, the Defence was no longer in a position to prepare his Third Statement to be read back and signed on the same day. Another meeting was set for this purpose with P-6018 on [REDACTED], his earliest availability.
18. Prior to the 17 November 2023 deadline, the Defence could not anticipate that a new information such P-6018 [REDACTED] would be elicited and make a third interview with P-6018 necessary so as to be provided with additional documentary evidence from him. Indeed, this only became apparent during P-6018's second interview and up until the very last minute, the Defence also could not anticipate that P-6018 would not be back on time, nor did it understand the reasons for his delay. Indeed, the circumstances preventing P-6018 to attend the third interview, and thus for the Defence to include his evidence in the First Application were outside the Defence's control.
19. These circumstances consists of objective explanation for the Defence's inability to comply with the 17 November 2023 deadline with regard to the Additional Material.

¹³ See CAR-D29-0009-0562-R01, p. 1.

20. Furthermore, the Defence submits that the present Request causes no prejudice to the Parties and Participants.
21. Firstly, the Request arises shortly, i.e. less than two weeks, after the 17 November 2023 deadline and the material was disclosed as soon as practicable on 27 November 2023, i.e. 10 days following the deadline. Thus, the Prosecution is yet to provide its response to the First Application.¹⁴
22. Secondly, the Additional Material is limited in scope for analysis purposes as it consists only of six items totalling 14 pages.
23. Finally, and more importantly, all Parties and Participants are on notice of the main factual allegation that the Third Statement further details and evidences. Indeed, within the second statement, P-6018 specifically provides [REDACTED].¹⁵

B. The application pursuant to Rule 68(2)(b) should be granted

24. The Additional Material was collected on the 17 and 25 November 2023, and the Third Statements totals approximatively six pages. As for the other evidence of P-6018, there are no agreements as to facts contained in the charges, documents, the expected testimony of witnesses, or other evidence pursuant to article 69 which bear on P-6018's Third Statement.
25. Thus in the First Application, the Defence set forth specifically that P-6018's proposed evidence should established the following:

P-6018 [REDACTED].¹⁶

26. The witness's proposed testimony as contained in the Third Statement establishes the following:
 - P-6018 confirms [REDACTED].

¹⁴ See ICC-01/14-01/18-2226-Conf.

¹⁵ CAR-D29-0009-0557-R01, para. 14.

¹⁶ ICC-01/14-01/18-2213-Conf.

- P-6018 explains that [REDACTED].
- P-6018 is shown photographs CAR-OTP-2095-5254, and confirms not recognising anyone on the picture.

27. The Defence submits that the five associated exhibits form an integral part of P-6018's testimony and comprise namely [REDACTED], and a photograph on which the P-6018 does not recognise any individual.¹⁷

28. The Additional Material consists of further evidence showing that the event took place. As such the Additional Material should be seen as complementary to P-6018's proposed evidence.

29. Thus, the Defence incorporates by way of reference the purported relevance of P-6018's evidence¹⁸ and how it is corroborated by other evidence.¹⁹ Further, the Additional Material has been obtained in the same conditions as P-6018's proposed evidence as set out in the First Application,²⁰ therefore having sufficient *indicia* of reliability to meet the requirements of Rule 68(2)(b).

C. The request for leave to add the Additional Material onto the Final List of Evidence should be granted

30. The Additional Material is necessary for the complete appreciation of P-6018's proposed evidence. It provides further information on an important and relevant allegation which is key to the Chamber's ability to establish the truth in these proceedings. Indeed, the fact that [REDACTED] is of prospective significance in light of the charges brought against the accused and the rest of the available evidence.

CLASSIFICATION

¹⁷ CAR-D29-0009-0562, CAR-D29-0009-0568, CAR-D29-0009-0570, CAR-D29-0009-0572, CAR-D29-0009-0574, CAR-D29-0009-0575.

¹⁸ ICC-01/14-01/18-2213-Conf, paras. 17-20 and 58.

¹⁹ ICC-01/14-01/18-2213-Conf, paras. 59.

²⁰ ICC-01/14-01/18-2213-Conf, paras. 10 to 12.

31. This request is filed on a confidential basis as it pertains to confidential material.

A public redacted version will be filed in due course.

RELIEF SOUGHT

32. For the above reasons, the Defence respectfully requests the Chamber to

GRANT an extension of time for the Defence application pursuant to Rule 68(2) in relation to the Additional Material;

GRANT the request for leave to add the Additional Material onto the Final List of Evidence;

GRANT the request for formal submission into evidence of the Additional Material as part of the prior recorded testimony of P-6018.

RESPECTFULLY SUBMITTED ON THIS 3th DAY OF APRIL 2024



Me Mylène Dimitri

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