

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **22 September 2020**

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

**Yekatom Defence Response to Request for Extension of Time:
Rule 68 Applications**

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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1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully respond to the *Prosecution’s Request pursuant to Regulation 35 to vary the Time Limit for the Submission of Applications pursuant to Rule 68 (“Request”)*.¹
2. The Defence does not oppose to the variance proposed by the Prosecution in relation to Rule 68(3) applications. Nor does it take issue with extending the time limit for the submission of Rule 68(2) applications so long as such extension is not beyond 11 January 2021.
3. The Defence will address the individual applications on a case-by-case basis.

RELEVANT PROCEDURAL HISTORY

4. On 11 November 2018, the Pre-Trial Chamber issued its *Warrant of Arrest for Alfred Yekatom*.² Mr. Yekatom made his initial appearance before this Court on 23 November 2018. His hearing on the confirmation of charges was set for 30 April 2019.³
5. On 20 February 2019, over Mr. Yekatom’s objection,⁴ the Chamber joined the case of Mr. Yekatom with that of Patrice-Edouard Ngaïssona, who had been recently arrested and transferred to the Court. Both Mr. Yekatom and Mr. Ngaïssona requested that the date of 30 April 2019 for the confirmation hearing be maintained.⁵ The Prosecution, on the other hand, asked that the confirmation hearing be postponed to 18 June 2019.⁶ The Chamber granted the Prosecution’s request.⁷

¹ [ICC-01/14-01/18-652](#).

² [ICC-01/14-01/18-1-Red](#).

³ [ICC-01/14-01/18-T-1-ENG](#).

⁴ [ICC-01/14-01/18-82](#).

⁵ [ICC-01/14-01/18-82](#), para. 6; [ICC-01/14-01/18-118](#), para. 8.

⁶ [ICC-01/14-01/18-76](#), para. 11.

⁷ [ICC-01/14-01/18-87](#). Leave to appeal this decision was denied on 21 March 2019 ([ICC-01/14-01/18-154](#)).

6. On 1 May 2019, the Prosecution requested yet another postponement of the confirmation hearing until September 2019⁸ over the objection of Mr. Yekatom.⁹ The Chamber again granted the Prosecution's request and postponed the hearing until 19 September 2019.¹⁰
7. The hearing began on 19 September 2019, ten months after Mr. Yekatom's arrival at the Court.¹¹ It concluded on 11 October 2019.¹²
8. On 11 December 2019, the Chamber issued its *Decision on the Confirmation of Charges Against Alfred Yekatom and Patrice-Edouard Ngaïssona* in which it confirmed some of the charges.¹³ The Prosecution's request for reconsideration or leave to appeal was sought,¹⁴ opposed,¹⁵ and denied.¹⁶
9. On 11 March 2020, the Pre-Trial Chamber ordered that the Registry transmit the case file to the Presidency.¹⁷
10. On 16 March 2020, the Presidency assigned the case to Trial Chamber V.¹⁸
11. On 22 May 2020, the Trial Chamber ordered the Prosecution to file a Preliminary Witness List by 15 June 2020.¹⁹ The Prosecution complied.²⁰
12. The Trial Chamber held a status conference on 9 July 2020. During that conference, the Presiding Judge said:

[T]he participants are expected to cooperate with each other wherever

⁸ [ICC-01/14-01/18-186-Red2](#).

⁹ [ICC-01/14-01/18-194-Red](#), paras. 28-31.

¹⁰ [ICC-01/14-01/18-199](#).

¹¹ [ICC-01/14-01/18-T-004-Red2-ENG](#). The *Chamber's Practice Manual* provides that "the typical target date for the confirmation hearing should be around four to six months from the first appearance" (p. 3).

¹² [ICC-01/14-01/18-T-011-Red-ENG](#).

¹³ [ICC-01/14-01/18-403-Red](#).

¹⁴ [ICC-01/14-01/18-437](#).

¹⁵ [ICC-01/14-01/18-443](#).

¹⁶ [ICC-01/14-01/18-447](#).

¹⁷ [ICC-01/14-01/18-447](#).

¹⁸ [ICC-01/14-01/18-451](#).

¹⁹ [ICC-01/14-01/18-528](#).

²⁰ [ICC-01/14-01/18-553](#).

possible and to resolve matters *inter partes* before seizing the Chamber with a request... The Chamber considers this approach to be the most efficient. If a resolution has not been tried *inter partes* beforehand, the Chamber may dismiss the relief sought *in limine*.²¹

13. On 16 July 2020, the Trial Chamber ordered the Prosecution to submit a Provisional Witness List indicating, *inter alia*, the intended mode of testimony,²² and to file its Final Witness List and List of Evidence by 9 November 2020.²³ The same decision scheduled the evidence presentation to start in March 2021.²⁴
14. On 26 August 2020, the Trial Chamber ordered the Prosecution to submit applications under Rule 68(2) and (3) as soon as possible, latest by 9 November 2020.²⁵ It also clarified that submitted expert report(s) must satisfy the procedural prerequisites of Rule 68 unless no such objections to the submission are raised.²⁶
15. On 31 August 2020, the Prosecution filed its Provisional Witness List, indicating its intention to call 44 witnesses through Rule 68(2) and 77 witnesses through Rule 68(3).²⁷
16. The Prosecution filed the *Request* on 14 September 2020.²⁸
17. On 17 September 2020, the Defence wrote to the Prosecution seeking clarifications on some potentially contentious points.²⁹ The Prosecution responded on the same day.³⁰ The parties later discussed the matter over the

²¹ [ICC-01/14-01/18-T-012-ENG](#), p. 6.

²² [ICC-01/14-01/18-589](#), para. 4.

²³ [ICC-01/14-01/18-589](#), para. 16.

²⁴ [ICC-01/14-01/18-589](#), para. 25.

²⁵ [ICC-01/14-01/18-631](#), para. 33.

²⁶ [ICC-01/14-01/18-631](#), para. 67.

²⁷ [ICC-01/14-01/18-642-Conf-AnxA](#); [ICC-01/14-01/18-652](#), para. 7.

²⁸ [ICC-01/14-01/18-628-Conf-Red](#).

²⁹ Email from the Yekatom Defence Lead Counsel to the Prosecution Senior Trial Attorney on 17 September 2020 at 13:08 can be made available upon the Chamber's request.

³⁰ Email from the Prosecution Senior Trial Attorney to the Yekatom Defence Lead Counsel on 17 September 2020 at 16:18 can be made available upon the Chamber's request.

phone. On 18 September, the Prosecution responded again and put the key understandings in writing.³¹

SUBMISSIONS

A. Results of the *inter partes* consultations

18. At the outset, the Defence gratefully acknowledges the Prosecution's prompt engagement in the *inter partes* consultations, which have significantly streamlined the present response.
19. During the consultations, the Defence is informed that the requested extension only concerns the submission of the *applications*. Meanwhile, the *statements* which may, in whole or in part, be subject to a Rule 68 application, including those of an expert, will be disclosed by 9 November 2020.
20. The Defence is also assured that although a witness may clarify or modify a prior statement, the Prosecution does not intend to actively elicit any new or different information during the Rule 68 process.³²
21. In light of this, the Defence considers the prejudice caused by the proposed extension would not be egregious. It accordingly holds the positions below.

B. Rule 68(2) applications

22. The Defence does not oppose to the Prosecution's request for an extension of time to submit applications pursuant to Rule 68(2), provided that they are submitted on a rolling basis as soon as practicable by no later than 11 January 2021.
23. The Prosecution characterises its inability to submit all Rule 68(2) applications

³¹ Email from the Prosecution Senior Trial Attorney to the Yekatom Defence Lead Counsel on 18 September 2020 at 11:21 can be made available upon the Chamber's request.

³² In the event where a witness volunteers new information, the Defence reserves the right to challenge the submission of the corresponding part of the statement through Rule 68. See *Bemba et al.*, [Decision on Prosecution Rule 68\(2\) and \(3\) Requests](#), ICC-01/05-01/13-1478-Red-Corr, 12 November 2015, para. 108.

by 9 November as a problem related to the size and complexity of the present case, as well as its limited resource vis-à-vis the labour-intensive exercise of statement assessment for a Rule 68 application.³³ These reasons have been cited by them when asking for postponement in the past.³⁴

24. Parties are expected to fulfill their procedural obligations and respect the time limits, often despite resource constraints. As the Prosecution indicated itself, necessary prioritisation “is required to ensure and, where possible, increase the speed, efficiency and effectiveness of operations, taking into account the limited resources available to the OTP and the need to avoid spreading those resources too thin”.³⁵ If the difficulty or failure has resulted from a lack of diligence, organisation and efficiency, the tolerance would taint the fairness and expeditiousness of the proceedings.³⁶
25. Nevertheless, the Defence is confident that the Chamber could accommodate the Prosecution’s request without unduly compromising the rights of Mr. Yekatom by granting a limited extension to no later than 11 January 2021. An advance notice of several months should enable it to exercise due diligence to meet a January deadline for Rule 68(2) applications.
26. A mid-January deadline will also allow the Chamber to hear the submissions of the parties, carry out a “cautious item-by-item analysis”, and rule on each and every application prior to the scheduled start of the evidence.³⁷ This, in turn, will avoid the prejudice that will flow from the Defence’s inability to confront witnesses who testify in the first 60 days with inconsistent

³³ [ICC-01/14-01/18-652](#), paras 5-8 and 12-15.

³⁴ See, e.g., [ICC-01/14-01/18-174-Conf-Exp-Red](#), para. 11; [ICC-01/14-01/18-186-Conf-Red-Corr](#), paras. 7, 9 and 36 (public redacted version: [ICC-01/14-01/18-186-Red2](#)); [ICC-01/14-01/18-474-Conf](#), para. 23 (public redacted version: [ICC-01/14-01/18-474-Red2](#)).

³⁵ [Proposed Programme Budget for 2021 of the International Criminal Court](#), ICC-ASP/19/10, 31 August 2020, para. 23.

³⁶ *Ruto & Sang*, [Decision on the “Prosecution’s Request to Amend the Updated Document Containing the Charges Pursuant to Article 61\(9\) of the Statute”](#), ICC-01/09-01/11-859, 16 August 2013, para. 41.

³⁷ *Gbagbo*, [Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled “Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68\(2\)\(b\) and 68\(3\)”](#), ICC-02/11-01/15-744, 1 November 2016, para. 69.

information or to corroborate exculpatory evidence from the Rule 68(2) statements submitted through the applications after the evidence starts.

C. Rule 68(3) applications

27. The Defence does not oppose the Prosecution's request for an extension of time to submit applications pursuant to Rule 68(3) no less than 45 days before the scheduled start of the witness' testimony, provided that they are submitted on a rolling basis as soon as practicable.

CONCLUSION

28. Should the *Request* be granted, the Trial Chamber is respectfully requested to:
- EXTEND** the time limit for the submission of Rule 68(2) applications no further than 11 January 2021.

RESPECTFULLY SUBMITTED ON THIS 22ND DAY OF SEPTEMBER 2020



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