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**No. ICC-01/14-01/18
Date: 23 October 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

Decision on the Prosecution Request for Extension of Page Limits

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Regulations 35, 37 and 38(1)(b) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution Request for Extension of Page Limits’.

1. On 16 July 2020, the Chamber, *inter alia*, ordered the Office of the Prosecutor (the ‘Prosecution’) to disclose all disclosable material in its possession and file a Trial Brief, by 9 November 2020.¹
2. On 16 October 2020, following an extension of the initial deadline,² the Chamber ordered the Prosecution to submit its applications pursuant to Rule 68(2) of the Rules of Procedure and Evidence (the ‘Rules’) on a rolling basis, at the latest by 11 January 2021.³
3. On 19 October 2020, the Prosecution requested an extension of page limits for (i) the Trial Brief, to 250 pages; (ii) applications pursuant to Rule 68(2)(b) of the Rules ‘to allow for the consolidation of up to 10 witnesses per application’, without indicating a specific page limit; (iii) an application under Rule 81(2) of the Rules pertaining to redactions to call data records and related materials, to 120 pages (or alternatively, three filings of 45 pages); and (iv) an application under Rule 81(2) of the Rules pertaining to redactions to witness related materials, to 35 pages (the ‘Request’).⁴
4. On 22 October 2020, the Yekatom Defence responded to the Request (the ‘Yekatom Defence Response’). In essence, it does not oppose the Request but provided ‘a few caveats to safeguard the fair and expeditious conduct of the

¹ Decision Setting the Commencement Date of the Trial, ICC-01/14-01/18-589, p. 10.

² See Initial Directions on the Conduct of Proceedings, 26 August 2020, ICC-01/14-01/18-631, para. 33; Prosecution’s Request Pursuant to Regulation 35 to vary the Time Limit for the Submission of Applications pursuant to Rule 68, 14 September 2020, ICC-01/14-01/18-652.

³ Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, ICC-01/14-01/18-685 (the ‘Rule 68 Decision’), para. 17, p. 16.

⁴ Request for Extension of Page Limits for the Prosecution’s Trial Brief, Rule 68(2)(b) applications and two motions for non-standard redactions, ICC-01/14-01/18-686-Conf, paras 1, 22.

proceedings’.⁵ Most notably, should the Prosecution’s requested page extension in relation to ‘consolidated’ Rule 68(2)(b) applications be granted, it requests to extend the response time limit to 15 days (the ‘Yekatom Defence Request’).⁶

5. The Single Judge recalls that, according to Regulation 37(1) of the Regulations, filings shall not exceed 20 pages. Regulation 38(1)(b) of the Regulations further provides a specific page limit for trial briefs of 120 pages. Pursuant to Regulation 37(2) of the Regulations, a chamber may extend these page limits, at the request of a participant, in ‘exceptional circumstances’.
6. With regard to the Trial Brief, the Prosecution submits that the requested extension is necessary to enable the Prosecution to comprehensively set out its case theory and principal evidence in a manner benefitting the Chamber, parties and participants.⁷ In this regard, the Single Judge stresses again that trial briefs are a useful tool for the preparation of trial,⁸ especially for the defence. This is particularly true in this case, where the charges against the accused have substantially changed since the Prosecution filed its document containing the charges, and additional evidence has been obtained since the confirmation of charges hearing.⁹
7. Accordingly, the Single Judge considers that exceptional circumstances exist, warranting an extension of page limits. In light of the complexity of the case, specifically the fact that it concerns two accused charged with multiple counts under alternative modes of liability, the Single Judge considers the requested extension of up to 250 pages to be reasonable.¹⁰

⁵ Yekatom Defence Response to the Prosecution’s Page Extension Request, ICC-01/14-01/18-694-Conf, para. 1. The Ngaïssona Defence and the Common Legal Representative of Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (the ‘CLRV’) indicated that they would not respond to the Request (*see* email from the CLRV to the Chamber, 19 October 2020, at 17:45; email from the Ngaïssona Defence to the Chamber, 22 October 2020, at 11:59).

⁶ Yekatom Defence Response, ICC-01/14-01/18-694-Conf, para. 19. *See also* para. 11.

⁷ Request, ICC-01/14-01/18-686-Conf, paras 2, 7-11.

⁸ *See* transcript of hearing, 9 July 2020, ICC-01/14-01/18-T-012-ENG, p. 22, lines 10-12.

⁹ *See* Request, ICC-01/14-01/18-686-Conf, para. 8.

¹⁰ The Single Judge also notes that similar extensions were granted in other cases, *see e.g.* Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the Prosecution request for an extension of page limit for the Pre-Trial Brief, 10 July 2015, ICC-02/11-01/15-131 (300 pages); Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on the Prosecution request for

8. As regards the requested extension for applications pursuant to Rule 68(2)(b) of the Rules, the Single Judge recalls that these applications are to be submitted on a rolling basis, at the latest by 11 January 2021. The Single Judge appreciates the Prosecution's intention to consolidate the applications in batches of 10 witnesses per filing to promote the expeditiousness of the proceedings.¹¹ Noting that the Prosecution is required to carefully assess all underlying witness statements and to develop its analysis on the requirements under Rule 68 of the Rules,¹² the Single Judge considers that exceptional circumstances exist, requiring the extension of the applicable page limit under Regulation 37(1) of the Regulations. The Single Judge does not deem it necessary to impose a specific number of pages at this point, and notes that the Prosecution made no concrete request in this regard. Rather, the Single Judge trusts that the Prosecution will keep its submissions succinct and focused on providing the Chamber with the necessary information to conduct a case-by-case assessment of each application.
9. The Yekatom Defence Request seeks an extension of the response time limit to the abovementioned 'consolidated' applications under Rule 68(2)(b) of the Rules. Pursuant to Regulation 35 of the Regulations, a chamber may extend a time limit if 'good cause' is shown. The Yekatom Defence has not done so in this instance. The Single Judge considers that it can hardly be argued in the abstract that more time is needed to respond to an application, without having seen its scope or content. Accordingly, the Yekatom Defence Request is rejected. The Yekatom Defence is however not barred from submitting a new request once it receives a concrete application and is able to show that good cause exists.
10. With regard to the requested page limit extension for an application under Rule 81(2) of the Rules pertaining to redactions to call data records and related

an extension of page limit for the Pre-Trial Brief, 6 March 2015, ICC-01/04-02/06-500 (250 pages); Trial Chamber VII, *The Prosecutor v. Jean Pierre Bemba, et al.*, Decision on the Prosecution Request for Extension of Page and Time Limits regarding its Pre-Trial Brief, 8 July 2015, ICC-01/05-01/13-1068 (200 pages).

¹¹ See Request, ICC-01/14-01/18-686-Conf, paras 12-13.

¹² See also Rule 68 Decision, ICC-01/14-01/18-685, para. 14.

materials, the Prosecution submits that the complexity of the issues involved and the volume of materials for which the Prosecution will need to propose redactions is such that the applicable page limit would not allow it to fully substantiate its arguments.¹³ In light of this, and noting the Prosecution's obligation to provide detailed justifications for each redaction sought under Rule 81(2) of the Rules,¹⁴ the Single Judge considers that exceptional circumstances warranting an extension of pages exist. Further noting the need to holistically assess these applications, the Single Judge considers that a consolidated filing would indeed be most efficient. The requested extension of 120 pages is thus granted.

11. For the same reasons, the Single Judge considers that the Prosecution's obligation to provide detailed justifications for redactions to witness-related materials of 10 witnesses under Rule 81(2) of the Rules constitutes an exceptional circumstance. The Single Judge is thus of the view that the requested page extension to 35 pages is warranted.
12. Notwithstanding the above page extensions, the Single Judge reminds the Prosecution to keep its submissions focused and concise. Furthermore, the Single Judge appreciates the Yekatom Defence inviting the Prosecution to engage in *inter partes* consultations (at least in the context of its application under Rule 81(2) of the Rules pertaining to call data records and related material),¹⁵ and encourages the Prosecution to do so.
13. Lastly, the Single Judge notes that both the Request and the Yekatom Defence Response were filed confidentially. The Yekatom Defence does not oppose the reclassification of its response and contends that the Request should equally be reclassified as public. Having reviewed the content of both filings, the Single Judge sees no reason to maintain the current classification and orders their reclassification.

¹³ Request, ICC-01/14-01/18-686-Conf, para.18.

¹⁴ See Decision on the Prosecution Request for Non-Standard Redactions, 30 September 2020, ICC-01/14-01/18-670-Conf-Exp (confidential redacted version notified the same day), paras 6-10.

¹⁵ Yekatom Defence Response, ICC-01/14-01/18-694-Conf, para. 14.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request;

REJECTS the Yekatom Defence Request; and

ORDERS the Registry to reclassify filings ICC-01/14-01/18-686-Conf and ICC-01/14-01/18-694-Conf as public.

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



Judge Bertram Schmitt
Single Judge

Dated 23 October 2020

At The Hague, The Netherlands