

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: **1 December 2020**

TRIAL CHAMBER V

Before: Judge 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***

Confidential

**Defence Request Pursuant to Regulation 35 to vary time Limit for the Response to
the Prosecution's Second and Third Requests for the Formal Submission of Prior
Recorded Testimony pursuant to Rule 68(2)(b)**

Source: Defence of Patrice-Edouard Ngaïssona

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Kweku Vanderpuye

Counsel for the Defence of Mr Ngaïssona

Mr Geert-Jan Alexander Knoops

Counsel for the Defence of Mr Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis

Legal Representatives of the Victims

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda
Mr Dmytro Suprun

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented
(Participation/Reparation)**

Applicants

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

I. Introduction

1. The Defence for Mr Ngaïssona ("the Defence") hereby submits a request under Regulation 35 to vary the time limit for the response to the Prosecution's Second Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b) ("Second Request") and the Prosecution's Third Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b) ("Third Request").¹ These requests were filed on the same date and therefore the responses to both are due of the same date.
2. The Defence submits that the good cause criterion under Regulation 35 is met for at least two reasons: first, responding to Rule 68 (2) (b) applications is labour-intensive work which is exacerbated by the fact that the two request have the same deadline; second, the Defence's limited resources are focused on evidence review for trial preparation. For these reasons, the Defence requests an extension of time of ten days to respond to the Prosecution's requests.² Moreover, in the event the Chamber grants the Yekatom Defence request to stay the time limit to respond, the Defence requests that such a stay apply to its response such that both defence teams are on the same schedule.

II. Relevant Procedural History

3. On 26 August 2020, the Presiding Judge issued the 'Initial Directions on the Conduct of the Proceedings' in which he ordered the Prosecution to file applications pursuant to Rule 68(2) and (3) of the Rules as soon as possible, and latest by 9 November 2020.³

¹ ICC-01/14-01/18-744-Conf and ICC-01/14-01/18-745-Conf.

² Email from D29 to the Trial Chamber, 30 November at 11:26.

³ Directions, ICC-01/14-01/18-631, para. 33.

4. On 14 September 2020, the Prosecution requested an extension of time pursuant to Regulation 35 of the Regulations asking the Chamber to allow the submission of Rule 68(2) Applications up until 60 days after the scheduled start of evidence and Rule 68(3) Applications not less than 45 days before the scheduled start of the witness's testimony (the "Request for Extension of Time").⁴
5. On 6 October 2020, the Single Judge partly granted the Request, and ordered the Prosecution to file its Rule 68(2) Applications on a rolling basis, latest by 11 January 2021 and its Rule 68(3) Applications not less than 45 days before the scheduled start of the witness's testimony. On 16 October 2020, the Chamber, noting the importance of the issues raised in the Prosecution's request gave reasons in support of the Single Judge's decision ("Decision on extension of time").⁵
6. On 2 November 2020 the Prosecution's Request the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b) (the "First Request") was filed.⁶
7. On 9 November 2020 the Prosecution filed its List of Witnesses and Evidence⁷ together with 3 annexes as well the Trial Brief and five annexes.⁸
8. On 16 November 2020 the Defence filed a response to the First Request within the required deadline.

⁴ ICC-01/14-01/18-652, paras 12-15, para 12-27.

⁵ ICC-01/14-01/18-685, para. 10.

⁶ ICC-01/14-01/18-710-Conf.

⁷ ICC-01/14-01/18-724.

⁸ ICC-01/14-01/18-723-Conf.

9. On 28 November 2020 the Prosecution filed the Second and Third Requests⁹ to which the Defence hereby seeks an extension of time limit to respond.

III. Confidentiality

10. In accordance with Regulation 23*bis*(1) of the Regulations of the Court ("Regulations"), the response is filed confidentially as it responds to a document of the same classification. A public redacted version of this response will be filed as soon as possible.

IV. Applicable Law

11. Under Regulation 35(2) of the Regulations, a chamber may extend or reduce a time limit if 'good cause' is shown. The Appeals Chamber has held that good cause within the meaning of regulation 35(2) translates to a party's inability to conform to a procedural rule or regulation, which "must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligation."¹⁰

V. Submissions

12. According to Regulation 34 (b) a response referred to in Regulation 24, such as the Defence's intended response to the Second and Third Requests, is to be filed within 10 days of notification. Both the Second and Third Requests were filed on 27 November 2020; therefore, they have the same deadline which falls

⁹ ICC-01/14-01/18-744-Conf and ICC-01/14-01/18-745-Conf.

¹⁰ *Prosecutor v Lubanga*, "Reasons for the 'Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007' issued on the 16 February 2007", ICC-01/04-01/06- 834 OA8, 21 February 2007, paras 7-9; *Prosecutor v. Katanga and Ngudjolo*, Reasons for the "Decision on the 'Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor's Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation'", ICC-01/04-01/07-653, 27 June 2008, para. 5.

on 10 December 2020. The Defence submits that it is unable to meet this deadline first because responding to Rule 68 (2) (b) applications is labour intensive work and second because the Defence's limited resources are currently focused on evidence review for trial preparation.

13. *First*, in order to respond to Rule 68 Applications the Defence is required to analyse all the proposed witness statements to determine whether the criteria established under the said rule are applicable. The review is conducted to determine whether the statements: do not relate to the alleged acts and conducts of the accused; do not relate to issues that are materially in dispute; are of a cumulative or corroborative nature; merely relate to background information; and, that the interest of justice is best served by their introduction. The Defence also needs to check the annexes which the Prosecution intends to submit with the statements to establish whether they are inseparable and indispensable parts of the proposed statements. The Defence must be thorough in its assessment since cross-examination is not permitted for witnesses whose statements are thus introduced. This is a very labour-intensive work which the Defence is unable to carry out with regard to both the Second and Third Requests by 10 December 2020.

14. *Second*, the limited resources available to the Defence make it impossible to meet the deadline considering other competing tasks. On 9 November the Defence received the Prosecution's List of Evidence and Final List of Witnesses as well as the Trial Brief, as stated above. The Defence also continues to receive the Prosecution's disclosures of evidence which need to be analysed in view of the impending commencement of trial. In the Request for Extension of Time, the Prosecution stated that this case is among the largest ones prosecuted at the Court. In this regard the Prosecution stated that:

“As the Confirmation Decision details, the case involves a matrix of crimes committed by and through a network comprising an organised armed group committed over a vast expanse of territory, during a period lasting over a year. It is a heavily witness-based case and foresees the calling of around 145 fact witnesses.⁶ As such, notwithstanding its partial confirmation, the case remains among the largest prosecuted at the Court.”¹¹

15. Due to the complexity of the case stated above and the impending commencement of trial, the Defence has to dedicate its limited resources to preparation for trial.

16. Furthermore, in the Decision on the Request for Extension of Time the Chamber found that that “in light of the high number of applications under Rule 68 of the Rules anticipated by the Prosecution, and the related labour-intensive work, good cause has been shown to extend the Deadline”.¹² In a similar vein, the Defence submits that good cause has been shown in this instance since: the deadline for the Second and Third Requests fall on the same date; responding to Rule 68 (2) (b) is labour-intensive; and the Defence’s limited resources are directed towards the preparation for trial.

17. For aforementioned reasons, the Defence submits that its request for an extension of an additional ten days to respond is justified. The Defence is also mindful of the Yekatom Defence request for a stay of the deadline for reasons which have been redacted. In the event the Chamber were to find that the Yekatom Defence’s request should be granted, the Defence requests that it

¹¹ ICC-01/14-01/18-652, para. 6.

¹² ICC-01/14-01/18-685, para. 14.

also obtain a stay of the deadline to respond, such that the two Defence teams remain on the same schedule.¹³

VI. Relief Sought

The Defence respectfully requests the Chamber to:

- in the event the Chamber grants the pending Yekatom Defence request to stay the deadline, to grant the same relief to the Defence;
- extend the deadline to respond by ten days such that the Defence responds to the two requests by 21 December 2020.

Respectfully submitted,



Mr Geert-Jan Alexander Knoops, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 1 December 2020,

At The Hague, the Netherlands.

¹³ See ICC-02/11-01/15-1289, para 16