

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: **21 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
NGAÏSSONA***

Confidential

**Defence Request Pursuant to Regulation 35 to vary time Limit to respond to
‘Confidential redacted version of “Prosecution’s Request for in-court protective
measures’ 7 December 2020, (ICC-01/14-01/18-757-Conf-Exp)”**

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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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

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

I. Introduction

1. The Defence for Mr Ngaïssona ("the Defence") respectfully requests the Chamber to afford it an extension of time to respond to the Prosecution's "Confidential redacted version of 'Prosecution's Request for in-court protective measures' 7 December 2020, (ICC-01/14-01/18-757-Conf-Exp)" ("Request"), notified to the Defence on Friday 18 December 2020, pursuant to regulation 35 of the Regulations of the Court ("Regulations").
2. The Defence submits that good cause exists, which justifies an extension of the time limit: (1) first, the deadline to respond to the Prosecution's Request for in-court protective measures expires on New Year's Eve, during the Court's Winter Judicial Recess. Given that the Defence team will be working at diminished capacity during this time, an extension of the deadline until after the Judicial Recess is necessary in order to prepare its response; (2) second, the very broad scope of the Prosecution's Request further justifies an extension of time. The Defence therefore respectfully requests a suspension of the 10-day time limit so that it will start running on Monday 4 January 2021.

II. Confidentiality

3. In accordance with Regulation 23*bis*(1) of the Regulations of the Court ("Regulations"), the response is filed confidentially as it refers to a confidential redacted document.

III. Applicable Law

4. 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.”¹

IV. Submissions

5. According to Regulation 34 (b), a response referred to in Regulation 24 is to be filed within 10 days of notification of a document filed by a participant. While the Prosecution filed the *ex parte* version of its Request on 7 December 2020, the confidential redacted version of the Request was only notified to the Defence on Friday 18 December, one day prior to the start of the Winter judicial recess, which begins on 18 December (17:30) and ends on Monday 11 January 2021 (9:00).² In the present circumstances, a reasonable extension of time is justified, as good cause exists.
6. *First*, the deadline to respond to the Request expires on New Years’ Eve, and is preceded by two official Court Holidays, namely Christmas Day (25 December 2020) and Boxing Day (28 December 2020).³ The Defence team will be working at diminished capacity, as most Defence team members will be on leave during this time. Given its limited resources, which will be further limited during the period of 18 December 2020 until 4 January 2021, the Defence will not be in a position to meet the regulatory deadline of 31 December 2020. Moreover, the Defence’s preparation of its response to the Prosecution’s Request runs concurrently to several other tasks the Defence must perform during the judicial recess, including preparing other procedural and substantive matters

¹ *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.

² <https://www.icc-cpi.int/visit>.

³ <https://www.icc-cpi.int/visit>.

leading up the start of trial, which is scheduled to begin in early 2021, as well as attending to detention-related matters.

7. *Second*, the Prosecution's Request is extensive and broad. The Prosecution seeks in-court protective measures for the vast majority of witnesses, namely 72 out of 96 of the witnesses it intends to call live.⁴ Preparing a response to the Request is labour intensive, as it requires a thorough review and analysis of each individual application for in-court protective measures, as argued by the Prosecution in its main filing but also as argued in the table which it annexed to the Request.⁵ This analysis entails, *inter alia*, a careful examination of the arguments put forward by the Prosecution, which include serious allegations against Mr Ngaïssona – at times without any source cited⁶ – and an analysis by the Defence, for each individual witness, whether the legal criteria for in-court protective measures are met. An assessment must also be conducted by the Defence of whether Mr Ngaïssona's fundamental fair trial rights were adequately considered and would be respected in each individual case. In addition, in its Request, the Prosecution departs from the in-court protective measures as initially projected in its 9 November 2020 Witness List, which entails further analysis on the Defence's part than originally anticipated.⁷
8. Thus, given the voluminous task at hand, and the timing of the deadline for the Defence's Response, it will not be possible for the Defence to meet the regulatory deadline of 31 December 2020; this amounts to good cause. The Defence therefore respectfully requests the Chamber to grant it a suspension of the time limit, so that the 10-day time limit will start running on the first working day after New Year's Day, that is, Monday 4 January 2021.

⁴ Request, para. 1 and ICC-01/14-01/18-757-Conf-Anx-Red; ICC-01/14-01/18-724-Conf-AnxB.

⁵ ICC-01/14-01/18-757-Conf-Anx-Red.

⁶ See Request, para. 17.

⁷ Request, para. 8.

V. Relief Sought

The Defence respectfully requests the Chamber to:

- Suspend the 10-day time limit to respond to the Request so that it will start running on Monday 4 January 2021.

Respectfully submitted,



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

Dated this 21 December 2020,

At The Hague, the Netherlands.