

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **19 January 2022**

**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***

**PUBLIC**

**Public Redacted Version of the “Defence Request Pursuant to Regulation 35 to vary time Limit for the Response to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0306 pursuant to Rule 68(3)” (ICC-01/14-01/18-1057-Conf)”, 13 July 2021**

**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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**Applicants**

**The Office of Public Counsel for Victims**

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**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”) hereby submits a request under Regulation 35 of the Regulations of the Court (“Regulations”) to vary the time limit for the response to the “Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-0306 pursuant to Rule 68(3)” (“Request”).<sup>1</sup> The Request was filed on 9 July 2021, thereby making any responses thereto due on 22 July 2021.
2. The Defence submits that the good cause criterion under Regulation 35 is met for the following reasons: (1) responding to the Request entails a thorough review of the transcripts of P-0306, which comprise almost 500 pages and were only disclosed to the Defence in their non-redacted version on 2 July 2021; (2) the Defence’s resources are currently fully invested in the preparation of the witnesses testifying in the fourth evidentiary block, which is set to end on 23 July 2021. For these reasons, the Defence requests that the deadline be extended such that the response be due on 30 July 2021.

## **II. Relevant Procedural History**

3. On 16 July 2020, Trial Chamber V (“the Chamber”) instructed the Prosecution to disclose all evidence related to its anticipated witnesses for trial at the latest by 31 August 2020.<sup>2</sup>
4. On 31 August 2020 and 11 September 2020, following two Prosecution’s Regulation 35 requests,<sup>3</sup> the Chamber provisionally granted the Prosecution’s

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<sup>1</sup> ICC-01/14-01/18-1057-Conf.

<sup>2</sup> Decision Setting the Commencement Date of the Trial, ICC-01/14-01/18-589, para. 11.

<sup>3</sup> Confidential redacted version of “Prosecution’s Request pursuant to Regulation 35 to vary the Time Limit for Disclosure of evidence related to trial witnesses listed on the Preliminary Witness List”, ICC-

request to disclose P-0306's [REDACTED].<sup>4</sup> It further instructed the Prosecution to [REDACTED].<sup>5</sup>

5. On 13 November 2020, the Chamber granted the Prosecution's Rule 81(4) request for [REDACTED].<sup>6</sup> Further, the Chamber instructed the Prosecution [REDACTED].<sup>7</sup>
6. On 20 November 2020 and 21 December 2020, the Prosecution disclosed lesser redacted versions of 12 out of 21 tracks of P-0306's November 2019 statement.<sup>8</sup>
7. [REDACTED].<sup>9</sup>
8. On 2 July 2021, the Prosecution disclosed the non-redacted versions of P-0306's statement.<sup>10</sup>
9. On 9 July 2021, the Prosecution filed the Request.

### III. Confidentiality

10. In accordance with regulation 23*bis*(1) of the Regulations, this request is filed confidentially as it contains information about filings for which public redacted versions have yet to be filed.

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01/14-01/18-628-Conf-Red, para 1; Prosecution email, 3 September 2020, at 16:13, ICC-01/14-01/18-775-Anx33.

<sup>4</sup> Trial Chamber V's email decision of 31 August 2020, at 14:58, ICC-01/14-01/18-775-Anx30; Decision on the Prosecution Request to Vary the Time Limit for Disclosure of Evidence related to Witnesses on the Preliminary Witness List, ICC-01/14-01/18-648-Conf-Red, paras 46-47.

<sup>5</sup> ICC-01/14-01/18-648-Conf-Red, paras 49-50.

<sup>6</sup> Decision on the Prosecution Request pursuant to Rule 81(4) for the Delayed Disclosure of the Identity and Materials related to Witness P-0306, ICC-01/14-01/18-728-Conf-Red, para. 19.

<sup>7</sup> *Ibid.*, para. 28.

<sup>8</sup> Prosecution Communications of the Disclosure of Evidence ICC-01/14-01/18-736 and ICC-01/14-01/18-792.

<sup>9</sup> Trial Chamber V's email decision of 16 June 2021, at 17:07.

<sup>10</sup> Prosecution Communication of the Disclosure of Evidence, ICC-01/14-01/18-1046.

#### 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."<sup>11</sup>

#### V. Submissions

12. According to Regulation 34 (b), a response referred to in Regulation 24, such as the Defence's intended response to the Prosecution's Request, is to be filed within 10 days of notification. The current deadline for responding to the Request is 22 July. The Defence submits that it is unable to meet this deadline because responding to the Request entails the thorough review of P-0306's non-redacted statement, at a time when the Defence's resources are fully invested with the preparation of witnesses testifying in the fourth evidentiary block and with attendance to hearings.

13. *First*, in order to meaningfully respond to the Prosecution's Request, the Defence needs to undertake a thorough review of the transcripts of P-0306's non-redacted statement, which comprise a total of 493 pages. While the transcripts were previously disclosed to the Defence in redacted form, the large number of redactions applied rendered the transcripts almost unintelligible.

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<sup>11</sup> *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.

Now that [REDACTED] has been lifted, the Defence will need to review the transcripts *ex novo* in order to meaningfully respond to the Prosecution's Request. The Defence will especially need to focus on information concerning P-0306's alleged contacts and dealings with Mr Ngaïssona, which has only been made available to the Defence [REDACTED].

14. *Second*, the Defence's resources are currently fully invested with the preparation of cross-examination of the last two witnesses testifying in the fourth evidentiary block, as well as with attendance to hearings. In particular, the Defence's resources which are not engaged with the witness currently testifying, are invested in preparing the cross-examination of insider Prosecution witness P-0884, who is set to testify for five days and for which the Defence anticipates conducting a 6-7 hours cross-examination.
15. In light of these circumstances, the Defence respectfully requests to be able to submit its response to the Prosecution's Request by 30 July 2021. This limited extension would allow the Defence to conduct a thorough and effective review of P-0306's statement in preparation of its response, without having to divert resources which are currently essential to the effective preparation of the fourth evidentiary block hearings.

## **VI. Relief Sought**

The Defence respectfully requests the Chamber to:

- extend the deadline to respond to the Prosecution's Request to 30 July 2021.

Respectfully submitted,



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

Dated this 19 January 2022,  
At The Hague, the Netherlands.