

ANNEX 33

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Version

From: Trial Chamber V Communications
Sent: 13 July 2023 10:30
To: OTP CAR IIB; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on the Defence requests for extension of time
Attachments: Regulation 35 Request for an extension of time for two Rule 68 applications

[ICC] RESTRICTED

Dear counsel,

The Single Judge takes note of the requests for extension of time by the Ngaïssona Defence and the Yekatom Defence, as well as the objection to part thereof by both teams of the Common Legal Representatives of Victims (the 'CLR') (see emails below and attached).

Turning first to the extensions requested by the Ngaïssona Defence, the Single Judge notes the absence of objections and is further of the view that, in light of the explanations provided, good cause has been shown pursuant to Regulation 35(2) of the Regulations of the Court (the 'Regulations') to extend the time limit to respond to filings ICC-01/14-01/18-1967-Conf and ICC-01/14-01/18-1971-Conf as requested.

This request is therefore granted.

Second, as regards the request by the Yekatom Defence, the Single Judge notes the absence of objections to its request for extension of time to respond to the Prosecution's application for notice to be given pursuant to Regulation 55(2) of the Regulations, ICC-01/14-01/18-1973-Conf. The Single Judge is of the view that, in light of the explanations provided, good cause has been shown pursuant to Regulation 35(2) of the Regulations and therefore grants this part of the request.

In relation to the extension requested by the Yekatom Defence to respond to the requests presented by the CLR for leave to present evidence (the 'Requests for Leave'), ICC-01/14-01/18-1969-Conf-Corr and ICC-01/14-01/18-1972-Conf-Red, the Single Judge notes, at the outset, that the requested extension is limited.

The Single Judge is mindful of the logistical and planning challenges which are raised by the CLR. At the same time, the Single Judge is not of the view that a potential delay of mere days in issuing a decision on the Requests for Leave will have an impact which could not be addressed otherwise. In particular, the Single Judge takes due note in this regard of the CLR's request to issue a decision on the Requests for Leave no later than two weeks before the disclosure deadline set by decision ICC-01/14-01/18-1892.

Bearing in mind the above, and considering that good cause has been shown pursuant to Regulation 35(2) of the Regulations, the Single Judge therefore also grants this part of the Yekatom Defence's request.

Accordingly, the following time limits to respond will apply to the respective Defence teams:

- 24 July 2023 for response to ICC-01/14-01/18-1969-Conf-Corr and ICC-01/14-01/18-1972-Conf-Red by the Yekatom Defence;
- 1 August 2023 for response to ICC-01/14-01/18-1967-Conf by the Ngaïssona Defence;
- 7 August 2023 for response to ICC-01/14-01/18-1971-Conf by the Ngaïssona Defence; and
- 21 August 2023 for response to ICC-01/14-01/18-1973-Conf by the Yekatom Defence.

Kind regards,
 TC V

From: Suprun, Dmytro [REDACTED]
Sent: 11 July 2023 11:41
To: Dimitri, Mylene [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED] V45 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; [REDACTED]; D29 Yekatom Defence Team [REDACTED]; Office of the Director DJSS [REDACTED] >
Subject: RE: Regulation 35 Request for an extension of time to respond to ICC-01/14-01/18-1973-Conf, ICC-01/14-01/18-1972-Conf-Red & ICC-01/14-01/18-1969-Conf

[ICC] RESTRICTED

Dear Trial Chamber V,

The Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly the “CLRv”) oppose the Defence’s request for an extension of time to respond to their respective applications for leave to present evidence.

In its [Further Directions](#) the Chamber set the deadline for the filing of requests for leave to present evidence on 7 July 2023 and the disclosure of evidence to be relied on by the CLRv on 18 August 2023 (paras. 11-12). In these circumstances, granting the Defence’s request for an extension of time to respond to the relevant CLRv applications will inevitably delay the Chamber ruling on the matter and shorten the already limited time available to the CLRv to meet their disclosure obligations.

In addition, should leave be granted, it is presently unknown when the CLRv presentation of evidence will take place. In its [decision of 9 June 2023](#), the Chamber indicated that said presentation will be scheduled sometime before the testimony of the witness to be called by the Chamber on 23 October 2023 (para. 7). In light of the present uncertainty on the matter, any delay - even few days - in obtaining a Chamber’s ruling on the CLRv pending applications will have a substantial impact on the CLRv’s ability to adequately prepare for the presentation of the evidence.

The implementation of relevant protective measures and the necessary travel arrangements for the victims to be present at the seat of the Court, are time consuming and need to be carried out diligently. Should leave be granted, the CLRv are expected to disclose relevant material and the identity of the victims called to testify by 18 August 2023. However, before doing so, the CLRv will have to liaise with the VWS for implementing the necessary protective measures with respect to their clients. If the Chamber’s decision is issued too close to the scheduled deadline for disclosure, the VWS will be unable to implement the CLRv request for protective measures, and therefore the security, safety and wellbeing of the victims will be endangered. Upon the issuance of the Chamber’s decision, and as already announced in their respective applications, the CLRv will also need to file requests for in-court protective measures and to transmit to the VWS information about the witnesses called to testify, to arrange video-link facilities or to prepare their travel. Regarding the witnesses expected to testify at the seat of the Court, the VWS will need sufficient time to properly organize the attendance of the concerned witnesses, including all documentation and visa formalities.

The Chamber rejected the CLRv’s request for extension of time to present their applications for leave to present evidence for the reason that “[g]ranted the Request would [...] have real implications for the expeditiousness of the proceedings, such as requiring delays in the start of any presentation of evidence by the Defence or reducing the relevant preparation time” (the [decision of 9 June 2023](#), para. 7). The same considerations should be taken into account *vis-à-vis* the Defence request for extension of time. In this regard, the CLRv contend that the “fair trial” guarantees shall apply throughout the proceedings not only to the Defence (see, for instance, ICTY, *The Prosecutor v. Zejnil Delalić*, Case No. IT-96-21-T, Decision on Zdravko Mucić’s Motion for the Exclusion of Evidence, 2 September 1997, paras. 43-44 and 55; and *The Prosecutor v. Radoslav Brjdanin*, Case No. IT-00-36-T, Decision on the Defence « Objection to Intercept Evidence », 3 October 2003, para. 63. See also ICTR, *The Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecution Motion for Admission into Evidence of Post-Arrest Interviews with Joseph Nairorera and Mathieu Ndirumpatse, 2 November 2007, para. 25), but in respect to all the parties and participants, including victims (the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the UN General

Assembly, 29 November 1985, Principles 4-7). In the same vein, the requirements of fair proceedings shall apply to all the parties and participants before the Court, and not only to the suspect/accused (see, for instance, the “Decision on the admission of material from the ‘bar table’” (Trial Chamber I), No. ICC-01/04-01/06-1981, 24 June 2009, para. 42), and shall prevail over the specific interests of the parties (see, for instance, SCSL, *The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu*, Written Reasons for the Trial Chamber’s Oral Decision on the Defence Motion on Abuse of Process due to the Infringement of Principles of Nullum Crimen Sine Lege and Non-Retroactivity as to Several Counts, Case No. SCSL-04-16-PT, 31 March 2004, para. 26).

As regards the Defence’s submission that some team members already started to take their entitled summer holiday, the Chamber dismissed a similar argument raised by the CLRV as “*it does not amount to a showing of good cause which would justify an extension of time*” (the [decision of 9 June 2023](#), para. 6). Granting the Defence’s request on this ground, would be unfair to the CLRV, along with members of their much smaller teams, who had no choice but renouncing to their rest time during the Court recess to fulfill their mandate and meet the relevant deadlines.

The Defence was fully aware of the fact that any response to the CLRV’s applications had to be filed before the court recess and should have been prepared to do so accordingly.

In light of the above, the CLRV respectfully request the Chamber to reject the Defence’s request for an extension of time to respond to their respective applications for leave to present evidence. They do not oppose the remaining of the Defence’s request.

Should the Chamber grant the requested extension, the CLRV respectfully request that the Chamber’s decision on their applications is issued no later than two weeks before the current deadline set for the disclosure of relevant evidence and the identity of the concerned victims, to allow the CLRV to prepare and the VWS to put in place protective measures with respect to the concerned victims, as appropriate.

Kind regards,
Paolina Massidda and Dmytro Suprun

From: Dimitri, Mylene [REDACTED]
Sent: Monday, July 10, 2023 17:38
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB [REDACTED]; V45 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; D29 Yekatom Defence Team [REDACTED]; Office of the Director DJSS [REDACTED]
Subject: Regulation 35 Request for an extension of time to respond to ICC-01/14-01/18-1973-Conf, ICC-01/14-01/18-1972-Conf-Red & ICC-01/14-01/18-1969-Conf

Dear Trial Chamber V,

Pursuant to regulation 35(2) of the Regulations of the Court, the Yekatom Defence hereby seeks an extension of time to respond to the following :

- Prosecution’s Application for Notice to be given pursuant to Regulation 55(2) on Accused YEKATOM’s Individual Criminal Responsibility, ICC-01/14-01/18-1973-Conf, (Regulation 55 Application);
- Requête des Représentants Légaux Communs des Victimes des autres crimes aux fins de la Présentation des Preuves, ICC-01/14-01/18-1972-Conf-Red ;
- Request of the Common Legal Representative of the Former Child Soldiers for leave to present evidence, ICC-01/14-01/18-1969-Conf, (CLRV Applications)

Every single team member of the Yekatom Defence team is now fully engaged in several different tasks involving competing priorities and tight deadlines. While some team members are on mission to meet the deadlines contained

in the Chamber's Further Directions, others will be attending court hearings for the next witness and the remaining are currently working on active filings among which are the followings :

- The Prosecution's 7th Bar Table application involving over 25 000 pages of Facebook material and with a Defence response due for the 21st of July;
- The Prosecution's 10th Bar Table application involving over 600 pages of Facebook material and with a Defence response due for the 28 August;
- The Prosecution *inter partes* consultation on a Facebook Bar Table application involving more than 5000 pages of documents with a Defence response expected for the 4th August;
- The Prosecution *inter partes* consultation on CDR Bar Table application with a Defence response expected for the 21 July;
- The Common Legal Representatives of Victims' Joint Request for Leave to Introduce into Evidence P-0925's Additional Report and Associated Material pursuant to Rule 68(3) of the Rules of Procedure and Evidence with the Defence response due for the 14th July;
- Six Prosecution's Request for Submission of the Prior Recorded Testimony pursuant Rule 68 (2) namely for P-2269, P-2602, P-1965, P-2200, P-1819 & P-1847, with the Defence response due for the 17th July and 20 July respectively;
- The preliminary list of witnesses due for the 25 August.

In addition to all these competing priorities and tight deadlines, some team members already started to take their entitled summer holiday in order to distribute the coming weeks evenly and avoid having everyone out of office at the same time. Others have been involved in several detention matters that required various detention filings which also diverted time and resources.

The Defence submits given these competing priorities this limited extension to respond to the Regulation 55 Application and the CLRV Application is warranted. The extension will not have an impact on the expeditiousness of the proceedings, as the Regulation 55 Response will still be filed prior to the closing of the Prosecution's case and the Response to the CLRV Application will be filed only a few days after the current deadline.

For the aforementioned reasons, the Defence respectfully requests that the Chamber to grant its request to respond to the Regulation 55 Application by 21 August 2023 and to respond to the CLRV Applications by 24 July 2023.

Should the Chamber prefer that this request be filed by way of a formal motion on the records, the Defence stands ready to do so.

Kind regards,
Mylène Dimitri

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From: [REDACTED]
Sent: 10 July 2023 13:06
To: Trial Chamber V Communications
Cc: OTP CAR IIB; V45 LRV Team; V44 LRV Team; V45 LRV Team; D29 Yekatom Defence Team; D30 Ngaïssona Defence Team
Subject: Regulation 35 Request for an extension of time for two Rule 68 applications
Importance: High

Dear Trial Chamber V,

The Defence for Mr Ngaïssona ("the Defence") respectfully requests an extension of time pursuant to regulation 35(2) of the Regulations of the Court to respond to two of the Rule 68 applications the Prosecution submitted on 7 July 2023. Specifically, the Defence requests an additional **11 days** to respond to the "Prosecution's Request for Submission of the Prior Recorded Testimony of P-2200 pursuant to Rule 68(2)(c)", ICC-01/14-01/18-1967 ('P-2200 Rule 68(2)(c) Application') and an additional **17 days** to respond to the "Prosecution's Request for the Formal Submission of the Prior Statements of P-1847", ICC-01/14-01/18-1971 ('P-1847 Rule 68(2)(d) Application').

The Defence submits there is good cause to grant the extension.

First, the Defence is preparing to meet the Chamber's 25 August 2023 deadline related to its potential Defence case in addition to finalizing its preparations for the last witness to testify in this block. This 25 August 2023 deadline necessitates assessing the Defence's investigations and completing several investigatory tasks and making several decisions, which not only involves the specific team members tasked with investigations, but also the team as a whole. Several team members are travelling internationally in order to be able to consult each other fully at this critical juncture of the case.

Second, the Defence is currently assessing several requests that have been filed in the past week and preparing responses, if necessary, thereto. It is in the final stages of drafting its response to the Prosecution's significant bar table related to Facebook evidence, which is due on the 21 July 2023. This date is one day after the current deadline to respond to the P-2200 Rule 68(2)(c) Application and to the P-1847 Rule 68(2)(d) Application. The Defence also intends to file its responses, without recourse to a request for an extension of time, to the several Rule 68(2)(c) applications namely ICC-01/14-01/18-1957, ICC-01/14-01/18-1958, and ICC-01/14-01/18-1965. It is also assessing the four other requests which have been filed on Friday, 7 July 2023, namely ICC-01/14-01/18-1968, ICC-01/14-01/18-1969, ICC-01/14-01/18-1972, ICC-01/14-01/18-1973.

The Defence submits given these competing priorities this limited extension to respond to the P-2200 Rule 68(2)(c) Application and the P-1847 Rule 68(2)(d) Application is warranted. The extension will not have an impact on the expeditiousness of the proceedings, especially since the current deadline falls just before the judicial recess and the Defence would also respond during this period of low activity. The Defence requests an additional further additional time to respond to the P-1847 Rule 68(2)(d) Application because of the complexity of the topic and its sensitivity.

For the aforementioned reasons, the Defence respectfully requests that the Chamber to grant its request to respond to the P-2200 68(2)(c) application by **1 August 2023** and to respond to the P-1847 Rule 68(2)(d) application by **7 August 2023**.

Kind Regards,



On behalf of the Ngaïssona Defence team

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