

ANNEX 8

PUBLIC

From: Trial Chamber V Communications
Sent: 18 February 2022 13:41
To: Vanderpuye, Kweku; [REDACTED] OTP CAR IIB Operations; OTP CAR IIB Case Management; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team
Cc: Chamber Decisions Communication; Associate Legal Officer-Court Officer; Trial Chamber V Communications
Subject: RE: TC V Order shortening deadline for responses to filing ICC-01/14-01/18-1285-Conf

Dear all,

The Single Judge takes note of the Ngaissona Defence's request that the Chamber extend the deadline to respond to the Prosecution's bar table application contained in its request ICC-01/14-01/18-1285-Conf (the 'Bar Table Application') by twenty days, 'which would begin to run from the issuance of its decision on whether it grants the Prosecution leave to add the 21 items to its List of Evidence, or no earlier than five days after the conclusion of the testimony of P-0889'. Likewise, it takes note of the Yekatom Defence's request to dismiss *in limine* the Bar Table Application or, alternatively, to grant an extension of time to respond on its merits, to 25 March 2022. It also takes note of the Prosecution's response to these requests.

The Single Judge notes that the necessity for a ruling on the Bar Table Application will depend on the outcome of the Chamber's decision on the request to add the relevant items to the Prosecution's List of Evidence. Accordingly, the Single Judge suspends the response deadline to the Bar Table Application until further notice.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 18 February 2022 11:04
To: [REDACTED] Trial Chamber V Communications
[REDACTED] OTP CAR IIB Operations [REDACTED] OTP CAR IIB Case Management [REDACTED]; D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team <[REDACTED]>
Cc: Chamber Decisions Communication [REDACTED] Associate Legal Officer-Court Officer <[REDACTED]>
Subject: RE: TC V Order shortening deadline for responses to filing ICC-01/14-01/18-1285-Conf

Dear Trial Chamber V,

Dear Counsel,

Subject to the points made below, the Prosecution defers to the Chamber's discretion. The Chamber has set a date for the Responses. The Regulations of the Court provide for the manner thereof.

First, in our view, the intention of the Initial Directions with respect to bar table motions is not geared to extend the Parties' time to *respond* to such filings, to 'preview' all of the arguments ultimately advanced, or to allow for 'two bites at the apple'. Nor, is it intended as a procedural hurdle above the Statute or the Court's regulatory framework, operating to bar otherwise perfectly admissible evidence or its formal submission. Instead, it is intended to facilitate the *Chamber's work* in disposing of such applications which normatively comprise *hundreds* of documents, such that

it can focus its limited resources on contested issues and matters of consequence – *i.e.*, matters genuinely in dispute on legal grounds, rather than predicated on strategy or gamesmanship.

Second, the contention that the Defence (both Ngaissona and Yekatom) are not in a position to provide any indication of whether they genuinely oppose (or not) the formal submission of any of the 21 documents is not creditable, given their June 2021 disclosure as ‘material to the preparation of the Defence’ under rule 77, and their inclusion on the 11 January 2021 Examination List for P-0899 ahead of his scheduled testimony – over a month ago. At the very least, the Defence will have been prepared by then to address the subject matter of their contents.

Third, the positions advanced by the respective Defence teams and the manner thereof is unfortunate. The Prosecution has sought to cultivate a good working relationship during the course of the proceedings, and intends to maintain it. However, the Parties’ dealings *bona fides* is an important part of continuing that dynamic.

As noted, the Prosecution otherwise defers to the Chamber’s discretion, which invariably has struck the appropriate balance in dealing with matters of contention among the Parties and Participants. Thank you.

Kind regards,

Kweku Vanderpuye



Cour
Pénale
Internationale
International
Criminal
Court



Kweku Vanderpuye

Senior Trial Lawyer
Prosecution Division
International Criminal Court
Oude Waalsdorperweg 10
2597 AK The Hague, The Netherlands

www.icc-cpi.int

From: [REDACTED]

Sent: 17 February 2022 19:40

To: [REDACTED]; Trial Chamber V Communications [REDACTED]
OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management
[REDACTED]; D29 Yekatom Defence Team [REDACTED]
D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]
[REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team <[REDACTED]>

Cc: Chamber Decisions Communication [REDACTED] Associate Legal Officer-Court Officer [REDACTED]

Subject: RE: TC V Order shortening deadline for responses to filing ICC-01/14-01/18-1285-Conf

Dear Trial Chamber V,

The Yekatom Defence hereby partially responds to the Prosecution’s ‘Request for leave to add 21 Items to the List of Evidence and their Submission from the Bar Table, and to extend the estimated examination time for P-0889’ (ICC-01/14-01/18-1285-Conf) (‘Request’), notified today at 15:19.

The Defence respectfully requests that the Chamber dismiss *in limine* the request for recognition of formal submission from the bar table of 21 documents. The Defence intends to respond to the remainder of the Request by 24 February 2022, in accordance with the Chamber’s direction (see, Email from Trial Chamber V of 17 February 2022, at 17:57)

Dismissal *in limine* is sought on the basis of the Prosecution's failure to comply with the Chamber's Initial Directions on the Conduct of the Proceedings (ICC-01/14-01/18-631); specifically, the direction that 'Before submitting the application, the tendering participant shall inquire whether the opposing participant consents or objects and include this information in the table.' (para. 62).

The Prosecution has not inquired whether the Defence consents or objects to the tendered items before submitting the Request, in any meaningful sense. The Prosecution provided the Defence teams with the Annex to the Request at 10:44 this morning, informing the Defence that it intended to file the corresponding bar table motion this afternoon, and requesting that the Defence indicate whether it would consent to the formal submission of any of the listed items 'in advance of the date to respond to the motion, so that it can be promptly communicated to the Chamber and considered' (email exchange between the Prosecution and the Defence can be provided should the Chamber so request). The Request was subsequently filed at 13.22.

The Prosecution's conduct in this regard – i.e. filing the Request less than three hours after first engaging the Defence for *inter partes* consultations – cannot reasonably be characterised as 'consistent with the Initial Directions' (contra Request, para. 12).

Further, the Prosecution's suggested approach – i.e. that the Defence 'contemporaneously' engage in *inter partes* consultations as to whether it consents or objects to the submission of the tendered items, while simultaneously preparing a response to the Request, which necessarily would comprise the Defence's position on exactly the same issues – will merely engender procedural uncertainty. It remains unclear how the Prosecution intends to include the Defence's position, conveyed *inter partes*, in the Annex for the assistance of the Chamber, if the Annex has already been filed. The Prosecution's novel interpretation of its obligations under the Directions is thus of no discernible benefit to the conduct of the proceedings, and on the contrary would set a negative and confused precedent.

While the Prosecution has indicated to the Defence that 'the circumstances did not allow for another approach in this particular instance', the Defence notes that the 21 items were included in the Prosecution's List of Materials for P-0889 provided on 11 January 2022 (see, Email from Prosecution of 11 January 2022, at 21.09). The Prosecution has not explained why it did not initiate *inter partes* consultations in the five weeks that have since passed; or in the week that has passed since the Prosecution re-classified these items as 'INCRIM', instead opting to request their formal submission on the eve of evidentiary Block 10.

Nor would the Prosecution be prejudiced by dismissal of the Request *in limine*. There does not appear to be any urgency in the formal submission of the 21 items prior to the appearance of P-0889, currently scheduled for 8 March 2022, nor does the Prosecution convincingly argue as much. Following *in limine* dismissal, the Prosecution would presumably meaningfully engage in *inter partes* consultations with the Defence; in this regard, it is submitted that the sought dismissal would further judicial economy, respect Mr Yekatom's right to sufficient time and resources for defence preparation, and ensure that the Chamber's directions are duly complied with.

For the above reasons therefore, the Defence requests that the Chamber dismiss *in limine* the Request with respect to the request for recognition of formal submission from the bar table of 21 documents.

Should the Chamber not be minded to dismiss *in limine* the request for recognition of formal submission of the documents, the Defence respectfully requests an extension of time to respond on its merits, to 25 March 2020.

It is submitted that the sought extension is warranted in the circumstances. The Request was filed on the eve of evidentiary Block 10, in which six witnesses are scheduled to testify over four weeks. Defence preparations have been impacted by the Prosecution's notification that it intends to advance P-2582 over

40 places in its Anticipated Upcoming Witness Order, so as to have her appear at the beginning of Block 11, scheduled to commence on 28 March. Two Prosecution Rule 68(3) Motions are currently pending before the Chamber, for which the Defence has sought limited extensions, which the Chamber has granted (see, Email from Trial Chamber V of 17 February 2020, at 16.42). Lastly, it is submitted that the sought extension would not prejudice the Prosecution, given the nature of the relief sought.

As stated above, should the sought extension be granted and in any event, the Defence intends to respond to the remainder of the Request (the request for leave to amend the List of Evidence and the request for an extension to time to examine P-0889) within the Chamber's stated deadline of 24 February 2022.

Best regards,

[REDACTED]

Legal Assistant, Yekatom Defence

From: [REDACTED]
Sent: 17 February 2022 18:13
To: Trial Chamber V Communications [REDACTED] OTP CAR IIB Operations
 [REDACTED]; OTP CAR IIB Case Management [REDACTED]
 D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team
 [REDACTED]; V44 LRV Team OPCV <[REDACTED]>; V44 LRV Team
 [REDACTED]; V45 LRV Team [REDACTED]
Cc: Chamber Decisions Communication [REDACTED] Associate Legal Officer-
 Court Officer [REDACTED] >
Subject: RE: TC V Order shortening deadline for responses to filing ICC-01/14-01/18-1285-Conf

Dear Trial Chamber V,

We have taken note of your decision shortening the deadline.

The Defence respectfully requests pursuant to Regulation 35(2) of the Regulations of the Court, an extension of time to respond to the Prosecution's request to submit 21 items via bar table contained in the Prosecution request, ICC-01/14-01/18-1285-Conf, which was notified today on 17 February 2022.

The Defence will respond to two of the Prosecution's requests contained in the filing ICC-01/14-01/18-1285-Conf within the (shortened) time limit, namely the request to add 21 items to the List of Evidence and the request to extend the estimated examination time for Witness P-0889. The Defence will dedicate its limited resources, on the eve of the hearing block to respond to these two requests. Given witness P-0889's testimony is forthcoming, the Defence understands that these two requests must be adjudicated prior to the witness appearing before the Court.

However, with respect to the Prosecution's request to submit the 21 items via bar table, the Defence submits that there is good cause to grant a limited extension for the Defence to respond. The 21 items subject to the bar table motion were disclosed to the Defence as Rule 77 documents. It was only 6 days ago that the Defence was put on notice that the Prosecution may intend to rely on these items through its reclassification of the exhibits to INCRIM. The Prosecution files this request a mere three days before an evidence block is about to start, and the Defence's resources are always strained during this time. Given there is no urgency to make a determination on whether these items may be submitted via bar table, the Defence respectfully requests that it be granted a limited extension to respond to the bar table motion contained in the Prosecution request, ICC-01/14-01/18-1285-Conf.

The Defence submits that the adjudication of whether to submit the 21 items via bar table is dependent on the Chamber's adjudication of the Prosecution's request to add the 21 items to the List of Evidence. If the Chamber determines that the documents may not be added to the Prosecution's list of evidence, then the Prosecution will be precluded from submitting them via bar table. It would then be a waste of Defence resources to respond to the bar table motion request before this matter regarding the list of evidence is adjudicated. Therefore the Defence

respectfully requests the Chamber for an extension of twenty days to respond to the bar table motion, which would begin to run from the issuance of its decision on whether it grants the Prosecution leave to add the 21 items to its List of Evidence, or no earlier than five days after the conclusion of the testimony of P-0889.

Kind Regards,
On behalf of Geert-Jan Alexander Knoops

From: Trial Chamber V Communications [REDACTED]
Sent: 17 February 2022 17:57
To: OTP CAR IIB Operations [REDACTED]; OTP CAR IIB Case Management [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V44 LRV Team [REDACTED]; V45 LRV Team <[REDACTED]>
Cc: Chamber Decisions Communication [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; Trial Chamber V Communications <[REDACTED]>
Subject: TC V Order shortening deadline for responses to filing ICC-01/14-01/18-1285-Conf

Dear all,

The Single Judge takes note of the Prosecution's request ICC-01/14-01/18-1285-Conf.

Noting that P-0889 is scheduled to start testifying on 8 March 2022, the Single Judge directs the participants to file responses to the request, if any, by 24 February 2022.

Kind regards, TC V

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.