

ANNEX 29

PUBLIC

From: Trial Chamber V Communications
Sent: 28 March 2022 18:35
To: Vanderpuye, Kweku; [REDACTED] Trial Chamber V Communications
Cc: OTP CAR IIB Case Management; OTP CAR IIB Managers; V44 LRV Team OPCV; V44 LRV Team; V45 LRV Team; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; Chamber Decisions Communication
Subject: Decision on Defence request for an extension of time pursuant to regulation 35(2) - ICC-01/14-01/18-1330-Conf

Dear Counsel,

The Single Judge takes note of the Ngaissona Defence's request to extend the deadline to respond to ICC-01/14-01/18-1330-Conf until 17 June 2022 and the Prosecution's objection thereto (see emails below).

In light of the reasons provided, the Single Judge considers that good cause has been shown to extend the time limit pursuant to Regulation 35(2) of the Regulations of the Court. However, having regard to the scope of the filing and noting the Prosecution's objections, the Single Judge finds that a limited extension until 27 May 2022 is sufficient.

Responses should therefore be filed by 27 May 2022. The extension is granted for all participants.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 25 March 2022 13:58
To: [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Managers [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team [REDACTED] V45 LRV Team [REDACTED]; D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]
Subject: RE: Defence request for an extension of time pursuant to regulation 35(2) - ICC-01/14-01/18-1330-Conf

Dear Trial Chamber V,

Dear All,

The Prosecution opposes the Ngaissona Defence's Regulation 35(2) application below ("Application"). The arguments advanced are mistaken or unsubstantiated. Further, the Chamber should disregard the ancillary and extraneous arguments and/or remarks put forth, as well as contentions inappropriately going to the merits of the Prosecution's pending request. These should be advanced in a formal response.

The addition of the Items to the Prosecution's List of Evidence ("LoE") is a discrete issue. This should not be conflated with separate matters which may require an in-depth analysis of the relevant conversations. Such analyses as may attend to an assessment of the standard evidentiary criteria concerning the Items in the context of the submission, or its *admissibility* otherwise, is not necessary at this stage. And, it should be underscored that the addition of the items to the LoE does not foreclose litigation of these criteria or the weight to be accorded the Items at the appropriate time. The Application puts the cart before the horse.

The Prosecution does not consider that the extension is warranted in view of the narrow legal question at issue here, and the Application should therefore be rejected.

Kind regards,

Kweku Vanderpuye

From: [REDACTED]
Sent: 25 March 2022 11:48
To: Trial Chamber V Communications [REDACTED]
 [REDACTED]
Cc: OTP CAR IIB Case Management [REDACTED] OTP CAR IIB Managers
 [REDACTED]; V44 LRV Team OPCV [REDACTED] V44 LRV Team
 [REDACTED] V45 LRV Team [REDACTED]; D29 Yekatom Defence Team
 [REDACTED] D30 Ngaissona Defence Team [REDACTED]
Subject: Defence request for an extension of time pursuant to regulation 35(2) - ICC-01/14-01/18-1330-Conf

Dear Trial Chamber V,

The Defence for Mr Ngaissona respectfully requests an extension of time pursuant to regulation 35(2) of the Regulations of the Court to respond to the “*Prosecution’s Request for leave to add 103 Items to the List of Evidence*” along with Annexes A and B, ICC-01/14-01/18-1330-Conf (“the Request”) until 17 June 2022.

In the present circumstances, there is good cause which justifies the granting of the extension, given the voluminous task at hand, the timing of the expiry of the time limit for responding, and the absence of prejudice.

First, the Prosecution’s Request is voluminous. The Items comprise over 5595 pages of facebook conversations and data between multiple interlocutors. The two Annexes alone, which provide a mere overview of the Items, comprise 60 pages. With the current deadline, the magnitude of the Request would require redirecting considerable Defence resources away from trial preparations to responding to the Request. The Prosecution itself has emphasised at length in its Request the complexity entailed in the review and interpretation of the Items (see in particular, Request, paras 9-11) and has affirmed its choice to file an omnibus Request rather than requesting addition of items to its List of Evidence (“LoE”) on a rolling basis (Request, para. 24).

Second, the current deadline to respond to the Request expires in the middle of the upcoming Witness Block 11 which is set to begin in three days. The timing of the Request significantly impacts the Defence’s ability to respond within the deadline, given that most of the limited defence resources are focused on the preparations of cross-examination and investigations in relation to the upcoming witnesses scheduled to testify. Additionally, there are other competing tasks which are consuming Defence resources. Currently, the Defence is preparing its response to the Prosecution’s request to submit CDR evidence from the bar table, which includes responding to an annex comprising over 895 pages. The Chamber has kindly granted the Defence an extension of time until 13 May to respond to this significant request. In addition, the Defence must stand ready to respond to the continuous stream of Rule 68(3) requests submitted by the Prosecution during the course of this trial. As noted by the Chamber in its ruling of 16 October 2020, the Prosecution in this case intends to introduce witness testimony through Rule 68(3) on an unprecedented scale, and has exceptionally permitted the Prosecution to file its Rule 68(3) requests on a rolling basis (ICC-01/14-01/18-685-Conf, paras 13, 18-19). The review of these continuous requests and responses contributes to straining the Defence’s limited resources. Moreover, the Request was filed after the Chamber held explicitly that it expected no more oversights from the Prosecution and that any additions to the Prosecution’s LoE were to be made on an exceptional and timely manner (*See* ICC-01/14-01/18-1206, para. 15; Email of the Chamber, 29 September 2021, at 10:00, transcript of hearings of 5 November 2021, ICC-01/14-01/18-T-073-ONF-ENG, p. 3, lines 9-15).

Given the volume of the Request, its unfortunate timing and the strain on Defence resources, it is clear that the Defence is objectively not in a position to respond within the regulatory time limit.

Third, no prejudice would result from the granting of the sought extension. The Prosecution has been in possession of the Items for over one year but has only now decided to file the Request to amend its LoE (see Request, para. 3). There is therefore no urgency for the adjudication of the Request. The Prosecution itself has distinguished the Request with a previous similar request relating to P-0889's facebook conversations, filed ahead of P-0889's testimony, which the Prosecution had argued required a timely ruling (see Request, footnote 52). No such circumstances exist here: this Request is filed after all the witnesses who could have potentially commented on the contents of the Items have already testified. Therefore, there is no urgency to the adjudication of the Request.

In light of the above circumstances, good cause exists pursuant to regulation 35(2) and the Defence respectfully requests an extension until 17 June 2022 to file its response to the Request.

Kind regards,



Legal Assistant, Defence of Mr Ngaïssona

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