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**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: *English*

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

Date: **30 October 2023**

**THE APPEALS CHAMBER**

**Before:**

**Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Marc Perrin de Brichambaut  
Judge Solomy Balungi Bossa  
Judge Gocha Lordkipanidze**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF**

***THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**URGENT**

**CONFIDENTIAL**

**Consolidated Defence Request for an Extension of Page and Time Limits**

**Source: Defence of Patrice-Edouard Ngaissona**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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**Unrepresented Applicants  
(Participation/Reparation)**

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**States' Representatives**

**Amicus Curiae**

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**REGISTRY**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other**

## Section

### I. INTRODUCTION

1. On 25 October 2023, Trial Chamber V rendered two decisions namely the “Decision on the Ngaiissona Defence Request for Leave to Appeal the Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules”<sup>1</sup> and the “Decision on the Ngaiissona Defence Request for Leave to Appeal the Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules”.<sup>2</sup> Both decisions granted the Defence for Patrice-Edouard Ngaiissona’s (‘the Defence’s’) request for leave to appeal.
2. Pursuant to Regulation 37(2) and Regulation 35(2) of the Regulations of the Court (‘Regulations’), the Defence respectfully request an extension of time and page limits to file its two appeal briefs against the “Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules” (‘the Rule 68(2)(d) Decision’)<sup>3</sup> and the “Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules” (‘the Rule 68(2)(c) Decision’).<sup>4</sup>
3. Specifically, the Defence submits that exceptional circumstances warrant an extension of page limit. The Defence requests a modest extension of an additional 5 pages to file its appeal against the Rule 68(2)(c) Decision and an extension of an additional 15 pages for the Rule 68(2)(d) Decision. Further, the Defence requests that the time limit to file the two appeal briefs start running from the first working day after the Defence will have submitted all the material

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<sup>1</sup> ICC-01/14-01/18-2163.

<sup>2</sup> ICC-01/14-01/18-2164.

<sup>3</sup> ICC-01/14-01/18-2126-Conf.

<sup>4</sup> ICC-01/14-01/18-2127-Red.

associated with its presentation of evidence,<sup>5</sup> that is 20 November 2023. This would translate to the deadline expiring on 1 December 2023 to file both appeal briefs.

4. The Defence makes the request urgently since the deadline to file the two appeal briefs expires in one week, 6 November 2023. The Defence will need to evaluate the distribution of its resources based on the Appeals Chamber decision. While it would have been preferable, the Defence was unable to file the request last week due to its concomitant obligations which included conducting investigations, examining Trial Chamber V's witness, and consulting internally regarding a discrete detention matter.

## **II. CONFIDENTIALITY**

5. Pursuant to Regulation 23bis(2) of the Regulations, the Defence files the present request confidentially since it makes reference to confidential Defence activities. A public redacted version will be filed in due course.

## **III. APPLICABLE LAW**

6. Pursuant to Regulation 65(4) of the Regulations, when leave to appeal is granted, the appellant must file within 10 days of notification of the decision granting leave to appeal an appeal brief.
7. Under Regulation 37(1) of the Regulations, "a document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber".
8. Under Regulation 37(2) of the Regulations, the 20-page limit generally applicable to documents filed with the Registry may be extended in

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<sup>5</sup> ICC-01/14-01/18-1892, para. 21.

“exceptional circumstances”. The Appeals Chamber has granted page limit extensions under Regulation 37(2) because of the nature of the issues presented on appeal including their novelty and complexity,<sup>6</sup> the number of issues presented on appeal,<sup>7</sup> and the necessity to provide sufficient factual detail in the appeal brief.<sup>8</sup>

9. Regulation 35(2) of the Regulations permits the Chamber seized of the matter to extend or reduce a deadline that is either ordered by the Chamber or that is made pursuant to the Regulations when good cause is shown. In the context of appeals, the Appeals Chamber has reasoned that ‘good cause’ may exist when a party has competing obligations in proceedings before the Court, resulting in the inability to meet a deadline.<sup>9</sup>

#### IV. SUBMISSIONS

10. Under Regulation 37(2) and Regulation 35(2) of the Regulations, exceptional circumstances and good cause exist to extend the page and time limits for both the Defence’s appeal against the Rule 68(2)(d) Decision and its appeal against the Rule 68(2)(c) Decision. The present request will address separately the question of the extension of page limits and time limits.
11. The Defence requests an extension of page limit for both appeal briefs for the following reasons. First, both appeal briefs will present novel and complex issues. While in *The Prosecutor v. Ruto & Sang*, the Appeals Chamber was seized of an appeal containing some of the same issues on appeal as the Rule 68(2)(c)

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<sup>6</sup> ICC-02/11-01/15-1333-Corr; ICC-01/04-01/07-1546, para. 4.

<sup>7</sup> ICC-01/09-01/11-1971, para. 6; ICC-01/04-01/10-248, page 3.

<sup>8</sup> ICC-01/09-01/11-1971, para. 6.

<sup>9</sup> ICC-01/12-01/18-1339, para. 6 *citing* ICC-01/04-01/07-653, para. 5.

and the Rule 68(2)(d) Decisions,<sup>10</sup> the Appeals Chamber in that case only addressed the first ground of appeal in its judgment. The first ground of appeal did not relate to the interpretation and application of Rule 68(2)(c) and Rule 68(2)(d) of the Rules of Procedure and Evidence ('the Rules').<sup>11</sup> The Defence's respective appeals against the Rule 68(2)(d) Decision and the Rule 68(2)(c) Decision will be the first time the Appeals Chamber will interpret and potentially apply the different cumulative criteria of Rule 68(2)(d) and Rule 68(2)(c) of the Rules. Thus, the issues raised by the two appeals briefs are novel. With respect to Rule 68(2)(d), there is only one other case at the Court where evidence was introduced pursuant to this rule.<sup>12</sup>

12. The issues are also complex. The Prosecution requested a 15-page extension to introduce testimony pursuant to P-1847<sup>13</sup> whereas the issues on the Rule 68(2)(c) Decision relate to two witnesses, P-2269 and P-2602 for whom the Prosecution made two separate requests, which in total came to 32 pages,<sup>14</sup> thereby demonstrating the necessity of additional pages to develop arguments on appeal. Consequently, the Defence respectfully requests an additional 5 pages for its appeal brief on the Rule 68(2)(c) Decision an additional 15 pages for the Rule 68(2)(d) Decision. The difference in the requested page limit extensions is due to the increased number of issues certified on appeal for the Rule 68(2)(d) Decision and the added complexity of introducing evidence under Rule 68(2)(d) the Rules, which requires that 5 cumulative criteria be met.<sup>15</sup>

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<sup>10</sup> ICC-01/09-01/11-2024.

<sup>11</sup> *Prosecutor v Ruto & Sang*, Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony, paras 9, 97.

<sup>12</sup> See *Ibid.* The Defence makes this submission on the basis of information, which has been made publicly available.

<sup>13</sup> See ICC-01/14-01/18-2126-Conf.

<sup>14</sup> ICC-01/14-01/18-1957; ICC-01/14-01/18-1958.

<sup>15</sup> The Defence will raise six issues on appeal against the Rule 68(2)(d) Decision and three issues on appeal against the Rule 68(2)(c) Decision.

13. Additionally, the competing obligations the Defence is currently facing constitute good cause to extend the time limit for the Defence to file its appeal briefs against the Rule 68(2)(c) and the Rule 68(2)(d) Decisions. The current phase of the proceedings is the most work intensive period the Defence has ever confronted. If the deadline is not extended, the Defence will have to submit its two appellate briefs on 6 November 2023, which falls during the most critical juncture of the case for Mr Ngaissona. The Defence is less than three weeks away from the most important deadline it has ever had to meet. On 17 November 2023, the Defence must submit the following to the Trial Chamber: (1) its Final List of Witnesses; (2) its Final list of Evidence, (3) Defence witness summaries, (5) Defence Witness Statements (4) all requests that will be made pursuant to Rule 68(2)(b) and (3) of the Rules, (5) and the disclosure of all items that the Defence intends to use in its presentation of evidence.<sup>16</sup>

14. In the aim of complying with the Trial Chamber's deadline, several Defence team members are either currently on mission or are scheduled to go in the next few weeks. Consequently, Defence team members who are not on mission must absorb the daily tasks of members who are no longer disposed to complete them, all the while completing their tasks associated with meeting the 17 November deadline. This has stretched Defence resources to the point where it will not be able to divert further resources into drafting two appeal briefs. Even under normal working conditions, the Defence would need at least a modest extension of the 10-day time limit given that the two appeal briefs will have to address a total of 9 grounds of appeal, and whose importance cannot be

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<sup>16</sup> ICC-01/14-01/18-1892, para. 21.

understated.<sup>17</sup> As the Trial Chamber recognized, the appeal will have an effect on the outcome of the proceedings.<sup>18</sup>

15. Therefore, the Defence respectfully requests that the Appeals Chamber take into consideration the significant time constraints that the Defence is currently operating and suspend the 10-day time limit to submit the two appeal briefs until 20 November 2023, such that the Defence will file both briefs on 1 December 2023. While the Defence will still be operating under time constraints given that it is scheduled present its first witness as of 11 December 2023,<sup>19</sup> the Defence submits that it will be able to divert its resources to the drafting of the two appeal briefs once the 17 November deadline has passed.

16. The Defence presents a consolidated request for an extension of time because the current deadline for both the appeal against the Rule 68(2)(d) Decision and the Rule 68(2)(c) Decision is the same. Counsel has consulted with the team and has received confirmation that all of the legal team members are currently working full-time to meet the 17 November deadline in addition to their daily tasks, which include ensuring Mr Ngaïssona's well-being, to the extent that is possible in detention. The concurrent deadline for two appellate briefs requires at least two members of the Defence, who are well versed in the core legal texts of the Court, to draft the appeal briefs. The Defence cannot, at this critical juncture, request that two such members work full-time on the appeal without it endangering its ability to meet the Trial Chamber's 17 November deadline. The critical juncture of the case in addition to the resources needed to draft two appeal briefs covering a total of nine grounds of appeal constitute good cause to extend the deadline until 1 December 2023.

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<sup>17</sup> ICC-01/14-01/18-2164, para. 2; ICC-01/14-01/18-2163, para. 2.

<sup>18</sup> ICC-01/14-01/18-2163, para. 7. ICC-01/14-01/18-2164, para. 7.

<sup>19</sup> ICC-01/14-01/18-1892, para. 23.



17. The Defence would not be opposed to the Prosecution receiving an extension. However, it does recall that the Prosecution has closed its case against Mr Ngaissona. Therefore, contrary to the Defence, the Prosecution's workload at this stage of the proceedings is not as significant. The reasons for the extent of the Defence's extension rests on the Defence entering the phase of the case where it will present its evidence.
18. The Defence further submits that the impact of the Appeals Chamber granting the Defence's request for an extension of time will be minimal to the expeditiousness of the proceedings. Under the Chamber's Practice Manual, the Defence can expect a judgment within four months after the Prosecution responds to the Defence appeal briefs.<sup>20</sup> At that stage of the proceedings, the Defence will still be presenting its witnesses before the Trial Chamber.

## V. RELIEF SOUGHT

19. For the reasons above, the Defence respectfully requests the Appeals Chamber to:
- **GRANT** the Defence's request to vary the page limit and grant the Defence 5 additional pages to file its appeal brief against the Rule 68(2)(c) Decision;
  - GRANT** the Defence's request to vary the page limit and grant the Defence 15 additional pages to file its appeal brief against the Rule 68(2)(d) Decision;
  - GRANT** the Defence's request to suspend the 10-day time limit prescribed by Regulation 65(4) of the Regulations until 20 November 2023, such that the Defence may submit both the appeal brief against the Rule 68(2)(d) Decision

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<sup>20</sup> Chamber Practice Manual, Seventh Edition, Adopted following the judicial retreat of 2023, para. 93.

and the appeal brief against the Rule 68(2)(c) Decision by the latest 1 December 2023.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a stylized name, possibly 'Mr. Knoop', written over a horizontal line.

Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 30 October 2023

At The Hague, the Netherlands.