

**Original: English****No. ICC-01/14-01/18 OA3 OA4****Date: 3 November 2023****THE APPEALS CHAMBER****Before:****Judge Solomy Balungi Bossa, Presiding
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Gocha Lordkipanidze****SITUATION IN THE CENTRAL AFRICAN REPUBLIC II****IN THE CASE OF THE PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA****Public document****Decision on the consolidated application of Mr Patrice-Edouard Ngaïssona for
an extension of the page and time limits**

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Ms Mame Mandiaye Niang

Counsel for Mr Alfred Yekatom

Me Mylène Dimitri
Mr Thomas Hannis

Legal Representatives of Victims

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda
Mr Dmytro Suprun

Counsel for Mr Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamai

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Patrice-Edouard Ngaïssona against the decision of Trial Chamber V entitled “Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules” of 6 October 2023 (ICC-01/14-01/18-2126-Conf), and

In the appeal of Mr Patrice-Edouard Ngaïssona against the decision of Trial Chamber V entitled “Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules” of 6 October 2023 (ICC-01/14-01/18-2127-Red),

Having before it the “Consolidated Defence Request for an Extension of Page and Time Limits” of 30 October 2023 (ICC-01/14-01/18-2171-Conf),

Renders, pursuant to regulations 35(2) and 37(2) of the Regulations of the Court, the following

DECISION

1. The page limit for the filing of the Defence’s appeal brief against the “Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules” (ICC-01/14-01/18-2126-Conf) and the respective responses thereto by the Prosecutor and the victims is extended by seven pages to 27 pages, in total.
2. The page limit for the filing of the Defence’s appeal brief against the “Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules” (ICC-01/14-01/18-2127-Red) and the respective responses thereto by the Prosecutor and the victims is extended by five pages to 25 pages, in total.
3. The time limit for the filing of the Defence’s appeal briefs is extended to 16h00 on Wednesday, 15 November 2023. The time limit for the filing of the respective responses thereto by the Prosecutor and the victims is extended to 16h00 on Wednesday, 6 December 2023.

REASONS

I. PROCEDURAL HISTORY

1. On 6 October 2023, Trial Chamber V (hereinafter: “Trial Chamber”) rendered two decisions entitled “Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules” (hereinafter: “Rule 68(2)(d) Decision”),¹ and “Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules” (hereinafter: “Rule 68(2)(c) Decision”).²
2. On 16 October 2023, the Defence filed a request for leave to appeal the Rule 68(2)(d) Decision in respect of six issues,³ and a request for leave to appeal the Rule 68(2)(c) Decision with respect to three issues.⁴
3. On 25 October 2023, the Trial Chamber granted leave to appeal the Rule 68(2)(d) Decision, certifying the six issues proposed by the Defence,⁵ and the Rule 68(2)(c) Decision, certifying the three proposed issues.⁶
4. On 30 October 2023, the Defence filed a consolidated application for an extension of the page and the time limits to file its appeal briefs against the Rule 68(2)(d) Decision and the Rule 68(2)(c) Decision (hereinafter: “Application”).⁷
5. On 31 October 2023, the Prosecutor filed his response to the Application (hereinafter: “Prosecutor’s Response”).⁸

¹ ICC-01/14-01/18-2126-Conf.

² ICC-01/14-01/18-2127-Red.

³ 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[”], ICC-01/14-01/18-2126-Conf.

⁴ 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”, ICC-01/14-01/18-2127-Conf.

⁵ Decision on Ngaïssona 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, ICC-01/14-01/18-2163.

⁶ Decision on Ngaïssona Defence Request for Leave to Appeal the Third Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(c) of the Rules, ICC-01/14-01/18-2164.

⁷ Consolidated Defence Request for an Extension of Page and Time Limits, ICC-01/14-01/18-2171-Conf.

⁸ Prosecution Response to “Consolidated Defence Request for an Extension of Page and Time Limits”, ICC-01/14-01/18-2176-Conf.

6. On 1 November 2023, the common legal representative of the victims of the other crimes and the common legal representative of the former child soldiers submitted a joint response to the Application (hereinafter: “Victims’ Response”).⁹

II. MERITS

A. Request to extend the page limit of the appeal briefs

1. *Appeal Brief against the Rule 68(2)(d) Decision*

7. The Defence submits that an extension of 15 additional pages for the appeal brief against the Rule 68(2)(d) Decision is warranted, considering that the appeal brief will present novel and complex issues for which the Appeals Chamber will, for the first time, interpret and apply the different cumulative criteria of rule 68(2)(d) of the Rules of Procedure and Evidence (hereinafter: “Rules”),¹⁰ and given the number of issues certified on appeal, as well as the added complexity of introducing evidence under rule 68(2)(d) of the Rules, which sets forth five cumulative criteria.¹¹

8. The Prosecutor and the victims submit that a more modest extension may be more appropriate in the circumstances, considering that the Defence fails to substantiate its arguments relating to complexity.¹²

9. Pursuant to regulation 37(2) of the Regulations of the Court (hereinafter: “Regulations”), a chamber may grant an extension of the page limit “in exceptional circumstances”. In the present case, the Appeals Chamber is persuaded that the Defence has demonstrated the existence of “exceptional circumstances” within the meaning of regulation 37(2) of the Regulations.

10. However, the Appeals Chamber considers that a page extension of seven additional pages, as opposed to the 15 additional pages requested by the Defence, is adequate and sufficient in the circumstances. The Appeals Chamber recalls that it

⁹ Joint response by the Common Legal Representatives of the Victims to the “Consolidated Defence Request for an Extension of Page and Time Limits”, ICC-01/14-01/18-2185-Conf.

¹⁰ Application, paras 11-12.

¹¹ Application, para. 12.

¹² Prosecutor’s Response, para. 4; Victims’ Response, para. 4.

expects the parties and participants to present their submissions in a concise and focused manner, avoiding repetitions.¹³

11. Consequently, the Defence's request for an extension of the page limit for the appeal brief against the Rule 68(2)(d) Decision is granted in part.

2. *Appeal Brief against the Rule 68(2)(c) Decision*

12. The Defence also seeks an extension of the page limit for the appeal brief against the Rule 68(2)(c) Decision by 5 additional pages.¹⁴ It contends that the appeal brief will present novel and complex issues for which the Appeals Chamber will, for the first time, interpret and apply rule 68(2)(c) of the Rules.¹⁵

13. The Appeals Chamber considers that complex and novel issues relating to the interpretation and application of rule 68(2)(c) of the Rules may indeed arise on appeal. The Appeals Chamber thus finds that, in the specific circumstances of this case, there are "exceptional circumstances" in terms of regulation 37(2) of the Regulations, which justify an extension of the page limit for the Defence's appeal brief against the Rule 68(2)(c) Decision. Furthermore, the Appeals Chamber considers that the length of the extension sought (five pages) is reasonable.

14. Therefore, the Appeals Chamber grants the requested extension of the page limit for the appeal brief against the Rule 68(2)(c) Decision.

B. Request to extend the time limit for the filing of the appeal briefs

15. The Defence also seeks an extension of the time limit for the filing of both appeal briefs until 1 December 2023.¹⁶ The Defence submits that the circumstances in relation to the upcoming deadline concerning its presentation of evidence, namely the time constraints and its workload at this phase of the proceedings, as well as the limited

¹³ See Appeals Chamber, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, [Decision on requests of Mr William Samoei Ruto and Mr Joshua Arap Sang for extension of page limit for their documents in support of the appeal](#), 3 June 2014, ICC-01/09-01/11-1335 (OA7 OA8), para. 5.

¹⁴ Application, paras 3, 11-12.

¹⁵ Application, paras 11-12.

¹⁶ Application, paras 3, 13-18.

resources for drafting two appeal briefs covering, in total, nine grounds of appeal, establish good cause to grant the requested extension.¹⁷

16. The Prosecutor and the victims submit that a limited extension of time by one week may be more appropriate in the circumstances.¹⁸ The Prosecutor argues that the current working conditions of the Defence are, albeit on a busy schedule, not out of the ordinary.¹⁹

17. Regulation 35(2) of the Regulations provides that a chamber may extend a time limit if “good cause” is shown. Noting the Defence’s submissions relating to the constraints of time and resources, the Appeals Chamber considers that good cause within the meaning of regulation 35(2) of the Regulations has been shown warranting an extension of time for the filing of the appeal briefs.

18. As to the period of extension of the time limit, the Appeals Chamber recalls that “any departure from the time limits set by the Rules or Regulations of the Court must not derail the proceedings from their ordained course, requiring that they be conducted and concluded within a reasonable time”.²⁰ In particular, the Appeals Chamber expects the Defence to organise its resources and work in a manner that allows it to manage competing obligations.²¹

19. Accordingly, the Appeals Chamber considers that, in the circumstances of this case, an extension by 10 days to 16h00 on Wednesday, 15 November 2023 for the filing of both appeal briefs is appropriate.

20. The Defence’s request for an extension of the time limit is therefore granted in part.

¹⁷ Application, paras 13-17.

¹⁸ Prosecutor’s Response, para. 5; Victims’ Response, paras 2, 5.

¹⁹ Prosecutor’s Response, para. 5.

²⁰ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the Central African Republic’s request for an extension of the time limit](#), 8 September 2010, ICC-01/05-01/08-878 (OA3), para. 21, and jurisprudence cited therein.

²¹ See Appeals Chamber, *The Prosecutor v. Bemba et al.*, [Decision on Mr Bemba’s request for extension of the time and page limits for his document in support of the appeal](#), 29 March 2017, ICC-01/05-01/13-2129 (A A2 A3 A4 A5), para. 10.

C. Responses of the Prosecutor and the victims

21. In light of the above, and noting the requests of the Prosecutor and the victims that, should the Appeals Chamber grant the Application, equal page and time extensions should be given for their responses thereto,²² the Appeals Chamber deems it appropriate to extend the page limit for the respective responses by the Prosecutor and the victims (i) to the Defence's appeal brief against the Rule 68(2)(d) Decision by seven additional pages ; and (ii) to the Defence's appeal brief against the Rule 68(2)(c) Decision by five additional pages.

22. The Appeals Chamber also extends the time limit for the filing of the respective responses by the Prosecutor and the victims to the Defence's appeal briefs by 10 days to 16h00 on Wednesday, 6 December 2023.

Done in both English and French, the English version being authoritative.



Judge Solomy Balungi Bossa

Presiding

Dated this 3rd day of November 2023

At The Hague, The Netherlands

²² Prosecutor's Response, paras 2, 6-7; Victims' Response, paras 2, 6.