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No. **ICC-01/14-01/18**
Date: **29 November 2023**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Decision on the Prosecution Request for Extension of Time to Respond to
Current and Prospective Requests under Rule 68(2)(b) and 68(3) of the Rules**

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

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Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Regulation 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution Request for Extension of Time to Respond to Current and Prospective Requests under Rule 68(2)(b) and 68(3) of the Rules’.

1. On 26 August 2020, the Presiding Judge rendered the ‘Initial Directions on the Conduct of the Proceedings’ (the ‘Initial Directions’), providing directions for the introduction of prior recorded testimonies, including expert reports, under Rule 68(2) and (3) of the Rules of Procedure and Evidence (the ‘Rules’).¹
2. On 29 May 2023, the Chamber issued its Further Directions on the Conduct of the Proceedings (the ‘Further Directions’).² In these Further Directions, the Chamber set 17 November 2023 as the time limit for the defence teams to, *inter alia*, file any applications pursuant to Rule 68(2) and (3) of the Rules.³
3. On 1 November 2023, in response to a request from the Ngaïssona Defence,⁴ the Chamber granted a partial extension to the 17 November 2023 deadline, permitting the Ngaïssona Defence to, *inter alia*, file applications pursuant to Rule 68(2) and (3) of the Rules, on a rolling basis, from 17 November 2023, and until no later than 15 December 2023, for witnesses that are not to be called in the hearing weeks scheduled for December 2023 and between 15 January and 2 February 2024.⁵
4. On 17 November 2023, the Yekatom Defence and the Ngaïssona Defence (the ‘Defence’) submitted their Final Witness Lists indicating (i) the witnesses they

¹ Initial Directions, ICC-01/14-01/18-631, paras 32-35, 58, 67.

² Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), ICC-01/14-01/18-1892.

³ Further Directions, ICC-01/14-01/18-1892, para. 21.

⁴ Defence Request pursuant to Regulation 35 to vary the time limit, ICC-01/14-01/18-2157-Conf-Exp, confidential *ex parte*, only available to the Ngaïssona Defence (confidential redacted version notified the same day, ICC-01/14-01/18-2157-Conf-Red, public redacted version notified on 8 November 2023, ICC-01/14-01/18-2157-Red) (with one confidential annex).

⁵ Decision on the Ngaïssona Defence Request for Extension of Time, ICC-01/14-01/18-2181, para. 9, p. 6.

intend to call to testify fully *viva voce*, (ii) the witnesses they intend to call pursuant to Rule 68(3) of the Rules and (iii) the witnesses whose testimony they seek to introduce pursuant to Rule 68(2) of the Rules.⁶

5. On the same day, the Yekatom Defence submitted two requests for formal submission of prior recorded testimonies pursuant to Rule 68(2)(b) of the Rules for 22 witnesses; and a request to introduce D29-6025's prior recorded testimony pursuant to Rule 68(3) of the Rules (respectively, the 'First Rule 68(2)(b) Request', the 'Second Rule 68(2)(b) Request', and the 'Rule 68(3) Request').⁷
6. On the same day, the Chamber granted a separate Yekatom Defence request⁸ for an extension of time to submit a Rule 68(2) application for D29-5016.⁹
7. On 28 November 2023, the Office of the Prosecutor (the 'Prosecution') responded to the Rule 68(3) Request, deferring to the Chamber's discretion.¹⁰
8. On the same day, the Prosecution requested a one week extension of time pursuant to Regulation 35 of the Regulations to respond to the (i) current;¹¹ and (ii) prospective¹² Defence requests for the formal submission of prior recorded

⁶ Yekatom Defence's List of Witnesses and Evidence, ICC-01/14-01/18-2212-Conf (with confidential Annexes A, B, C and D, ICC-01/14-01/18-2212-Conf-AnxA, ICC-01/14-01/18-2212-Conf-AnxB); Defence Submission of its Final List of Witnesses and its List of Evidence, ICC-01/14-01/18-2215 (with confidential Annexes 1 and 2, ICC-01/14-01/18-2215-Conf-Anx1) (the 'Ngaïssona Defence Final Witness List'), para. 2 in which the Ngaïssona Defence noted that '[p]ursuant to an agreement made with the Defence team for Mr Yekatom, the Defence does not intend to call any witnesses in the hearing week scheduled for December 2023, as well as the hearing weeks scheduled between 15 January and 2 February 2024. In light thereof, the Defence will [...] file applications pursuant to Rule 68(2) and (3) of the Rules [...] on a rolling basis until 15 December 2023, in accordance with the Decision [ICC-01/14-01/18-2181]'

⁷ First Defence Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), ICC-01/14-01/18-2213-Conf (with confidential Annex A, ICC-01/14-01/18-2213-Conf-AnxA); Second Defence Request for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b), ICC-01/14-01/18-2214-Conf (with confidential Annex A, ICC-01/14-01/18-2214-Conf-AnxA); Yekatom Defence Application for the Introduction of P-6025 prior recorded testimony pursuant to Rule 68(3), ICC-01/14-01/18-2210-Conf (with confidential Annex A, ICC-01/14-01/18-2210-Conf-AnxA).

⁸ Email from the Yekatom Defence, 17 November 2023, at 14:17.

⁹ Email from the Chamber, 17 November 2023, at 15:56.

¹⁰ Prosecution Response to the 'Yekatom Defence Application for the Introduction of P-6025 prior recorded testimony pursuant to Rule 68(3)', ICC-01/14-01/18-2210-Conf, ICC-01/14-01/18-2224-Conf.

¹¹ *I.e.* the First Rule 68(2)(b) Request, ICC-01/14-01/18-2213-Conf and Second Rule 68(2)(b) Request, ICC-01/14-01/18-2214-Conf.

¹² *See* Ngaïssona Defence Final Witness List, ICC-01/14-01/18-2215, para. 2; email from the Chamber, 17 November 2023, at 15:56.

testimonies pursuant to Rule 68(2)(b) and 68(3) of the Rules (respectively, the ‘First Prosecution Request’, the ‘Second Prosecution Request’, and jointly the ‘Prosecution Requests’).¹³

9. On the same day, the Common Legal Representative of the Former Child Soldiers and the Common Legal Representative of Victims of Other Crimes (jointly, the ‘CLR V’) emailed the Chamber in support of the Prosecution Requests and requested that the CLR V be granted an equivalent extension to any such extension granted to the Prosecution to file their respective responses (the ‘CLR V Request’).¹⁴
10. Also on the same day, the Yekatom Defence requested (i) an extension of time under Regulation 35 of the Regulations to submit an application pursuant to Rule 68(2)(b) of the Rules for six items consisting of an additional statement of D29-6018 and five associated items (the ‘Additional Material’); and (ii) leave to amend its List of Evidence to include the Additional Material (the ‘28 November Yekatom Defence Requests’).¹⁵
11. At the outset, having regard to Regulation 35 of the Regulations, the Single Judge does not consider it necessary to receive views from the other participants before deciding on the Prosecution Requests.
12. The Single Judge notes the Prosecution’s submissions that (i) the ‘volume of these [prior recorded] testimonies, as well as the Prosecution’s ongoing preparations for the Defence cases, including in anticipation of the examination of witnesses in the upcoming evidentiary blocks, all justify the modest extension requested’; and (ii) as the requested extension is short, it would cause no prejudice to the

¹³ Prosecution’s Request for Variation of Time Limit pursuant to Regulation 35 to respond to the current and prospective Defence’s Requests for the Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(b) and Rule 68(3), ICC-01/14-01/18-2226-Conf, paras 1, 6.

¹⁴ Email from the CLR V, 28 November 2023, at 11:36.

¹⁵ Request for an extension of time for the formal submission of the prior recorded testimony of P-6018 pursuant to Rule 68(2)(b) and Second Defence Request for Leave to add items to its List of Evidence, ICC-01/14-01/18-2228-Conf, paras 1-2, 32.

Defence.¹⁶ The Single Judge further notes that the CLRV also cited ‘limited resources’ in support of their request.¹⁷

13. With regards to the First Prosecution Request, in light of the explanations provided, the Single Judge is satisfied that good cause has been shown pursuant to Regulation 35 of the Regulations. Therefore, the Single Judge grants the Prosecution a one week extension of time (the ‘Extended Time Limit’) to respond to the Defence’s current requests for the formal submission of prior recorded testimonies.¹⁸ The Extended Time Limit also applies to the other participants.
14. Turning to the Second Prosecution Request, the Single Judge reiterates that ‘no extension of time to respond to *prospective* filings can be granted’.¹⁹ Therefore, the Second Prosecution Request is rejected. This is without prejudice to ruling on any requests for an extension of time to respond to further Defence applications for the formal submission of prior recorded testimonies, if and when such applications are filed on the record.
15. The Chamber further instructs the Prosecution and the other participants to file any responses to the 28 November Yekatom Defence Requests by the Extended Time Limit.

¹⁶ Prosecution Requests, ICC-01/14-01/18-2226-Conf, paras 3-5.

¹⁷ Email from the CLRV, 28 November 2023, at 11:36.

¹⁸ *I.e.* the First Rule 68(2)(b) Request, ICC-01/14-01/18-2213-Conf and Second Rule 68(2)(b) Request, ICC-01/14-01/18-2214-Conf.

¹⁹ *See* email from the Chamber, 24 August 2023, at 17:22 in relation to the Ngaïssona Defence’s request for an extension of time to respond to a bar table application and all other outstanding bar table applications.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the First Prosecution Request, as set out in paragraph 13 above;

GRANTS the CLRV Request, as set out in paragraph 13 above;

REJECTS the Second Prosecution Request; and

INSTRUCTS the Prosecution and any other participants to respond to the 28 November Yekatom Defence Requests by the Extended Time Limit as set out in paragraph 15 above.

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



Judge Bertram Schmitt

Single Judge

Dated 29 November 2023

At The Hague, The Netherlands