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**Cour
Pénale
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**International
Criminal
Court**

Original: English

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

Date: 8 December 2023

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF PROSECUTOR *v.* ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA**

Confidential

Prosecution's Request for Variation of Time Limit pursuant to Regulation 35

Source: Office of the Prosecutor

Document 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 KC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Ms Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamai
Ms Marie-Hélène Proulx

Legal Representatives of Victims

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

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") seeks an extension of time ("extension") under regulation 35 of the Regulations of the Court ("RoC") to respond to Yekatom Defence's request to exclude evidence pursuant to article 69(7) ("Request")¹ until 19 January 2024 (after the judicial recess). There is good cause to grant this extension. The Request is voluminous, more than double the regulatory limit at 50 pages; broaches a number of important issues; and levels several serious allegations. As such, the 10-day deadline to respond would not afford a meaningful opportunity for the Prosecution to respond comprehensively. In addition, as the requested extension includes the judicial recess period running from 18 December 2023 to 7 January 2024 (included), granting it would cause no appreciable prejudice.

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(2) of the RoC, this document is classified as "*Confidential*" because it responds to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

a. Good cause exists

3. Under regulation 35(2) of the RoC, a Chamber may extend a time limit where good cause is shown.²

4. Although the Defence first raised the prospect of such a filing as early as this summer, it chose to submit its Request exactly 10 days before the start of the judicial recess, and some three weeks after the Chamber granted its request for an extension

¹ ICC-01/14-01/18-2240-Conf.

² ICC-01/04-01/06-834, para. 7.

of page limits.³ With that said, there are also several factors which, considered together, justify the extension sought:

- the volume of the Request, consisting of 50 pages;
- the Prosecution's preparations for the upcoming evidentiary block ending on Friday 15 December 2023, i.e. right before the time limit to file a response to the Request expires; and
- the upcoming judicial recess, which entails a significant reduction of available resources.

5. Parts I, II, and III of the Request comprise important allegations and legal arguments, the accuracy and veracity of which will require comprehensive analysis and evaluation. Apart, it appears that the Defence has also advanced argumentative submissions in the over 80 pages of material annexed to the Request, which includes a 30-page chronology.⁴ As such, they circumvent the Chamber's 50-page extension for the Defence Request and contravene regulation 36(2)(b) of the RoC, which provides that "[a]n appendix shall not contain *submissions*."⁵

6. Thus, should the Chamber retroactively authorise argumentative submissions in the annexed material — and there is no reason why it should given its previous decision explicitly limiting the page extension request, along with the well-established jurisprudence of the Court⁶ — the Prosecution would be further called upon to

³ Email of Trial Chamber V, *Decision on Yekatom Defence Request for Extension of Page Limits*, 15 November 2023 at 14:51.

⁴ ICC-01/14-01/18-2240-Conf-AnxA.

⁵ See ICC-01/05-01/13-2275-Red, para. 778; see also e.g., ICC-01/12-01/18-1467, para. 36 *citations omitted* ("Regulation 36(2)(b) of the Regulations provides that in order not to be counted in the calculation of page limits, an appendix shall be limited to 'references, authorities, copies from the record, exhibits and other non-argumentative material' and 'shall not contain submissions'. The Chamber considers that portions of an annex that constitute 'summaries' or 'synthesis' of evidence, which reflect, at least to some extent, the parties' interpretation of circumstances, rather than a purely objective representation of facts, are *contrary to this provision*") (emphasis added).

⁶ See e.g. ICC-01/12-01/18-932-Corr-Red, para. 16 (noting, "the Chamber finds that Annex B violates Regulation 36(2)(b) of the Regulations. In this regard, the Chamber also recalls that it has explicitly limited a Defence request for page extension for the relevant motion to 50 out of a requested 120 pages, considering that 'the fact that the

address the subjective interpretations and representation of the facts put forward therein.

b. There is no prejudice to the Defence

7. In the circumstances, granting the requested extension would cause no prejudice.

8. Pursuant to regulation 33(1)(d) of the RoC, the Prosecution's response is due on 18 December 2023 –the first day of the judicial recess, which ends on Sunday 7 January 2024.

9. Consequently, an extension of time until Friday 19 January 2024 to submit a response to the Request is reasonable, given the subject-matter at hand and considering that it amounts to only 11 days after the judicial recess.

10. The requested extension will not cause undue delay to the proceedings as a whole, and will afford the Prosecution sufficient time to present its arguments, and assist the Chamber in deciding this matter.

subject matter of the motion is a complex one does not constitute extraordinary circumstances which justifies increasing a page limit to five times the original restriction'. The Chamber regrets that the Defence tried to circumvent the Chamber's directions by including substantive submissions in Annex B") (emphasis added).

IV. RELIEF SOUGHT

11. For the reasons set out above, the Prosecution requests that the Chamber grant the extension until 19 January 2024 to respond to Request.



Karim A. A. Khan KC, Prosecutor

Dated this 8th day of December 2023
At The Hague, The Netherlands