

ANNEX 31
PUBLIC
REDACTED

From: Trial Chamber V Communications
Sent: 16 June 2022 16:27
To: [REDACTED] Vanderpuye, Kweku; Trial Chamber V Communications
Cc: OTP CAR IIB Case Management; OTP CAR IIB Operations; OTP CAR IIB Managers; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; Chamber Decisions Communication
Subject: RE: Defence request for an extension of time pursuant to regulation 35(2) - ICC-01/14-01/18-1450-Conf

Dear Counsel,

The Single Judge takes note of the Ngaissona Defence's request for extension of time (the 'Request'), the Prosecution's response, and the Ngaissona Defence's reply thereto (*see below* emails from the Yekatom Defence, 13 June 2022, at 05:47 and at 15:28; email from the Prosecution, 13 June 2022, at 12:37).

The Single Judge notes the Ngaissona Defence's submissions, *inter alia*, on the number and nature of past and pending responses, as well as the time needed for the preparation of the witness blocks. In this context, the Single Judge observes that the upcoming block, which is set to commence on 20 June 2022, is expected to last until 22 July 2022.

Moreover, the Single Judge notes that the annex to filing ICC-01/14-01/18-1450-Conf was reportedly in possession of the Ngaissona Defence for two months, and that its observations thereon were limited to 'major procedural bars'. He also recalls that, according to Rule 64(1) of the Rules, '[a]n issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber'. In this regard, the Single Judge notes that filing ICC-01/14-01/18-1450-Conf comprises 38 pages with detailed submissions and an annex with over 300 items to be further analysed by the Ngaissona Defence.

In light of the above, and noting that the Prosecution defers to the Chamber's discretion, the Single Judge finds that 'good cause' has been shown pursuant to Regulation 35(2) of the Regulations and therefore grants the Request. However, mindful of the summer judicial recess, the Single Judge considers it sufficient to grant a limited extension until 15 August 2022. The extension is granted for all participants.

Kind regards,

TC V

From: [REDACTED]
Sent: 13 June 2022 15:28
To: Vanderpuye, Kweku [REDACTED] Trial Chamber V Communications
Cc: OTP CAR IIB Case Management [REDACTED]; OTP CAR IIB Operations [REDACTED] OTP CAR IIB Managers [REDACTED] V44 LRV Team [REDACTED] V44 LRV Team OPCV <[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-01/14-01/18-1450-Conf

Dear Trial Chamber V,
 Dear all,

The Defence submits that the Prosecution's submissions misstate the law. Rule 64(1) unequivocally requires that "any issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber." Therefore, the Prosecution is incorrect when it states that nothing precludes the Defence from advancing arguments regarding standard evidentiary criteria at any point during the trial. Rule 64(1) precludes this manner of proceeding, and therefore the Defence must make these arguments at the moment the Prosecution requests submission of the items, namely when it files its response to the Prosecution's Bar Table Motion filed on 10 June 2022.

Kind Regards

[REDACTED]

Legal Assistant for the Defence of Patrice-Edouard Ngaïssona

From: Vanderpuye, Kweku [REDACTED]
Sent: Monday, June 13, 2022 12:37 PM
To: [REDACTED] Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB Case Management [REDACTED] OTP CAR IIB Operations [REDACTED]
 [REDACTED] OTP CAR IIB Managers [REDACTED]; V44 LRV Team [REDACTED]
 [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]
 [REDACTED] D29 Yekatom Defence Team [REDACTED]; D30 Ngaïssona Defence Team [REDACTED]
Subject: RE: Defence request for an extension of time pursuant to regulation 35(2) - ICC-01/14-01/18-1450-Conf

Dear Trial Chamber V,

Dear Counsel,

The Prosecution does not agree that 'good cause' is shown in respect of the Ngaïssona Defence's Regulation 35(2) request ("Request").

The bar table motion does not entail any give rise to any potential evidentiary procedural bar. No issue of preclusions arises under article 69(7) or Rule 68, for instance. Thus, having had the corresponding Annex in its possession for two months, the Prosecution considers that the Defence has had a sufficient time to develop its position regarding any arguments against the formal *submission* of the tendered emails. There is nothing that precludes the Defence from advancing arguments regarding the standard evidentiary factors that the Chamber will consider at any point during the course of the trial.

Subject to the observations above, the Prosecution defers to the Trial Chamber in the disposition of the Request. Thank you.

Kind regards,

Kweku Vanderpuye

From: [REDACTED]
Sent: 13 June 2022 05:47
To: Trial Chamber V Communications [REDACTED]
Cc: OTP CAR IIB Case Management [REDACTED] OTP CAR IIB Operations [REDACTED]
 [REDACTED]; OTP CAR IIB Managers [REDACTED] V44 LRV Team [REDACTED]
 [REDACTED]; V44 LRV Team OPCV [REDACTED] V45 LRV Team [REDACTED]
 [REDACTED] D29 Yekatom Defence Team [REDACTED]; D30 Ngaïssona

Defence Team [REDACTED]

Subject: Defence request for an extension of time pursuant to regulation 35(2) - ICC-01/14-01/18-1450-Conf

Dear Trial Chamber V,

The Defence for Mr Ngaïssona ("the Defence") respectfully requests an extension of time pursuant to regulation 35(2) of the Regulations of the Court to respond to the "Prosecution's Application for Submission of Yahoo Email Evidence from the Bar Table Pursuant to Article 64(9)" along with confidential Annex A, ICC-01/14-01/18-1450-Conf ("the Request") until 29 August 2022. In the present circumstances, there is good cause, which justifies the granting of the extension, given the in-depth analysis that remains to be conducted of a substantial amount of material subject to the request, the timing of the expiration of the time limit, and the absence of any prejudice to the fairness or the expediency of the proceedings in granting the request.

First, responding to the the Request requires an in-depth analysis and response to over 300 email exchanges, many of which include attachments. Moreover, the importance of the response to this Request cannot be overstated. According to the Prosecution, the items allegedly relate directly to Mr Ngaïssona's criminal responsibility. (Request para.9) The Prosecution has itself acknowledged that responses to bar table motions require an exhaustive analysis of the material when it submitted the Defence's request for an extension of time to respond to the "*Prosecution's Request for leave to add 103 Items to the List of Evidence*" ICC-01/14-01/18-1330 was unjustified since the legal question of adding items to a list of evidence was a discrete narrow legal question, and was not to be conflated with a request to submit evidence through a bar table motion, which requires an in-depth analysis. (Email From: The Prosecution To: Trial Chamber V, on 3/25/2022 at 1:58pm).

The Defence has yet to conduct the in-depth analysis of these conversations in response to the Prosecution's submissions on the relevance and probative value of the items. Further, the Defence has only just received today the Prosecution's arguments contained in its 38-page cover filing to the Yahoo Bar Table Annex. In its response to the Prosecution on whether the Defence objected or agreed to the submission of the items in the Yahoo Bar Table Annex, the Defence responded within one month of the Prosecution sending the annex, and emphasized that it had strictly limited its analysis to major procedural bars to submission of the evidence, and that it would conduct the analysis of the relevant evidentiary criteria once the Prosecution had filed its bar table motion with Trial Chamber V. The Defence also informed the Prosecution that it would be seeking an extension of time with the Chamber to have time to conduct such an analysis. (See email From: The Defence To: The Prosecution on 4/25/2022 at 4:59pm, email available upon request) The Defence proceeded in such a manner in the interest of expediency and professional courtesy with respect to the Prosecution. Therefore, while it has been in possession of the annex for the past two months, the Defence has neither had the time nor the resources to begin the in-depth analysis of the evidence due to several competing tasks, namely preparing evidentiary blocks that are in constant flux due to various schedule changes, responding to the constant flow of Rule 68 applications, and preparing various omnibus filings including a response to the CDR bar table motion, a voluminous request to add items to the list of evidence, and a comprehensive request to disclose items into the SAID and MOKOM cases.

Second, the current deadline to respond to the Request expires at the start of a witness block that will last 5 weeks. 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, which primarily relate to Mr Ngaïssona. Given the length of the next witness block almost the entirety of the Defence's resources have been dedicated to its preparation, including dedicating a substantive amount of time and resources to missions in the field. The Prosecution has also approached the Defence *inter partes* about several changes to the witness schedule. The Defence awaits a new schedule to be notified but raises this as a further constraint on Defence resources. Additionally, there are other competing tasks, which are consuming Defence resources. For example, the Defence is currently responding to another Bar Table Annex for which the Prosecution has requested a response by June 17. Additionally, the Defence must be able to respond to the Rule 68(3) requests submitted by the Prosecution during the course of this trial which are submitted regularly. Even where the

Defence indicates that it does not oppose such requests, the Defence must still analyze the request and dedicate resources to come to such a position.

Third, no prejudice would result from the granting of the sought extension since the Chamber will make its holistic evaluation of the evidence to be submitted through the bar table at the end of the proceedings. The variation of the deadline will not prevent the Prosecution using any email in proceedings should it wish to raise such material with a witness. It therefore has no impact on the expediency of the proceedings or the fairness of the trial if the Defence's response to the Request is extended until two weeks after the end of the summer recess. The requested deadline takes into account that following the end of the next witness block the Defence will be operating under resource constraints seeing as almost all team members plan their leave around the two major winter and summer recesses.

In light of the above circumstances, good cause exists pursuant to regulation 35(2) and the Defence respectfully requests an extension until 29 August 2022 to file its response to the Request.

Kind Regards,



Legal Assistant for the Defence of Patrice-Edouard Ngaïssona

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