

ANNEX 19
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Version

From: Trial Chamber V Communications
Sent: 04 September 2023 09:21
To: D29 Yekatom Defence Team; D30 Ngaissona Defence Team
Cc: OTP CAR IIB; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Requests for extension of time to respond to the Prosecution's 14th and 17th 'bar table' applications
Attachments: Regulation 35 Request for an extension of time to respond to the Prosecution's Fourteenth Bar Table Motion (ICC-01/14-01/18-2057-Conf) and Seventeenth Bar Table Motion (ICC-01/14-01/18-2062-Conf)

[ICC] RESTRICTED

Dear counsel,

The Single Judge takes note of the Yekatom Defence's and Ngaissona Defence's (the 'Defence') requests for extension of time to respond to the Prosecution's 14th 'bar table' application (ICC-01/14-01/18-2057-Conf), filed on 25 August 2023 (the 'Application') (see emails below and attached).

The Single Judge further recalls his decision of 25 August 2023, in which he, exceptionally, authorised the Prosecution to file the Application without including the views of the Defence at this stage, indicating that he would take this into account should the Defence present any requests for extension of time to respond to the Application (see email from the Chamber, 25 August 2023, at 12:43).

Taking into account the arguments of the Defence, while being mindful of the need to advance the proceedings, the Single Judge is of the view that good cause exists pursuant to Regulation 35(2) of the Regulations of the Court to extend the time limit to respond, and grants the Defence an extension of time to respond until **27 October 2023**. This extended time limit also applies to the participants, should they intend to respond.

The Single Judge also notes the Ngaissona Defence's request for extension of time to respond to the Prosecution's 17th 'bar table' application (ICC-01/14-01/18-2062-Conf), filed on 25 August 2023 (see email attached). The Single Judge finds that good cause exists pursuant to Regulation 35(2) of the Regulations of the Court to extend the time limit to respond, and grants the Ngaissona Defence an extension of time to respond until **29 September 2023**. This extended time limit applies to all participants.

Kind regards,
 TC V

From: [REDACTED]
Sent: 30 August 2023 10:48
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED]; D30 Ngaissona Defence Team [REDACTED]; OTP CAR IIB [REDACTED] V44 LRV Team [REDACTED]; V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]
Subject: Yekatom Defence request for extension of time to respond to Prosecution's Request 2057-Conf

Dear Trial Chamber V,
 Dear all,

Pursuant to regulation 35 of the Regulations of the Court, the Defence for Mr Yekatom respectfully requests the Chamber for an extension of time to respond to the *“Prosecution’s Fourteenth Application for Submission of P-1819’s Evidence from the Bar Table”* (ICC-01/14-01/18-2057-Conf), notified on 25 August 2023.

It is recalled that the above mentioned Bar Table request was filed without the Defence being given an opportunity to provide its position during *inter partes* discussions. This exceptional circumstance led the Single Judge to mention that he *“will take this into account should the Defence present any requests for extension of time to respond to the Application”* (Email from the Chamber to the Parties dated 25 August 2023 at 12:43), and the Prosecution to indicate that it would not have objections to an extension of time to respond to their request (ICC-01/14-01/18-2057-Conf, para. 4).

The Defence notes that the Bar Table request is comprised of 546 items, including 312 videos, [REDACTED]. While, as noted by the Single Judge in its 25 August 2023 email, the Defence is aware of the content of the material, a substantial amount of work still needs to be done for the Defence to review each video selected by the Prosecution and provide (i) its position in relation to the submission through a Bar Table, as well as (ii) its own assessment of the relevance and probative value of each video for the consideration of the Chamber during its deliberation. The exceptional non provision of the annex to the Defence prior to the formal submission of the filing did not allow for any lead to be taken on this work. Furthermore, this analysis has to be done with a thorough review of the evidentiary material including and not limited to the comments some trial witnesses provided when shown some of those videos.

In addition to the present P-1819 Bar Table request, the Defence needs to respond to the following requests :

- Prosecution’s Twelfth Application for Submission of Photographic Evidence from the Bar Table (ICC-01/14-01/18-2032-Conf)
- Treizième requête de l’Accusation aux fins de soumission formelle d’éléments de preuve sur le fondement de l’article 69(3) du Statut de Rome, via la “Bar Table” (ICC-01/14-01/18-2048-Conf)
- Prosecution’s Fifteenth submission of miscellaneous items of evidence via the “bar table” (ICC-01/14-01/18-2058)
- Prosecution’s Sixteenth supplementary submission of call data records and related evidence via the “bar table” (ICC-01/14-01/18-2061)
- Prosecution’s Seventeenth Application for Submission of Facebook Evidence from the Bar Table (ICC-01/14-01/18-2062-Conf)

Moreover, the Defence is in the midst of the preparation of the testimony of the CLRV’s witnesses, scheduled to testify from 18 to 28 September 2023, which monopolizes precious resources of the team.

In light of the combination of those factors, the Defence contends that there is good cause under Regulation 35 of the Regulations of the Court to extend the deadline to respond to P-1819 Bar Table application.

Consequently, the Defence respectfully requests an extension of the deadline to respond to the *“Prosecution’s Fourteenth Application for Submission of P-1819’s Evidence from the Bar Table”* to Monday 6 November 2023.

The Defence is cognizant of the particular length of the requested extension, it is however stressed that this deadline takes into account the potential testimony of the Chamber witness currently scheduled 23 October 2023 and on-going missions by several members of the team, which would also impact the available resources to respond to the Prosecution’s bar table. An extension to 6 November 2023, giving the Defence two full months to respond, should not be considered as unreasonable in light of those particular circumstances.

Kind regards,

[REDACTED]
Legal Consultant
Yekatom Defence

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From: Bohne, Elsa [REDACTED]
Sent: 29 August 2023 12:15
To: Trial Chamber V Communications
Cc: OTP CAR IIB; D29 Yekatom Defence Team; V44 LRV Team; V44 LRV Team OPCV; V45 LRV Team; D30 Ngaissona Defence Team
Subject: Regulation 35 Request for an extension of time to respond to the Prosecution's Fourteenth Bar Table Motion (ICC-01/14-01/18-2057-Conf) and Seventeenth Bar Table Motion (ICC-01/14-01/18-2062-Conf)

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[ICC] RESTRICTED

Dear Trial Chamber V,

On 25 August 2023, the Prosecution filed the four following Bar Table Applications:

- Fourteenth Application for Submission of P-1819's Evidence from the Bar Table ('Fourteenth Bar Table Application');
- Fifteenth submission of miscellaneous items of evidence via the "bar table" ('Fifteenth Bar Table Application');
- Sixteenth supplementary submission of call data records and related evidence via the "bar table" ('Sixteenth Bar Table Application');
- Seventeenth Application for Submission of Facebook Evidence from the Bar Table ('Seventeenth Bar Table Application').

The deadline to respond to these Bar Table Applications is on 7 September 2023.

Besides, the Defence for Mr NGAÏSSONA ('Defence') shall file its response to the Eleventh Bar Table Application by 29 September 2023, and its responses to the Twelfth and Thirteenth Bar Table Applications by 6 October 2023 ('6 October Deadline').

Despite the increase in the workload in recent months, the Defence is making its best efforts to meet all competing deadlines and is confident that it will be able to submit its responses to the Fifteenth and Sixteenth Bar Table Applications by 7 September 2023. However, for the reasons set out below, the Defence respectfully requests Trial Chamber V ('Chamber') to vary the time limit until:

- 29 September 2023 for the Defence to respond to the Seventeenth Bar Table Application; and
- 27 October 2023 for the Defence to respond to the Fourteenth Bar Table Application.

The **Seventeenth Bar Table Application** concerns 177 items, amounting to more than 6,800 pages of reading. To meet the tight deadlines requested *inter partes* by the Prosecution, the Defence was only able to carry out a cursory review of the items by solely identifying major procedural bars to submission. Consequently, an additional 15 working days is needed to further analyse the documents and the arguments raised by the Prosecution in the core submissions of its Application, and therefore to be able to file a response to the Seventeenth Bar Table Application.

As far as the **Fourteenth Bar Table Application** is concerned, the request concerns 546 items and amounts to about 7 hours of viewing and more than 750 pages of transcripts and translations. Considering the exceptional authorisation for the Prosecution to present the Application without including the views of the Defence, as well as the Single Judge's undertaking to take this into account should the Defence present any request for extension of


time to respond to the Application (Chamber email decision dated 25 August 2023, at 12h43), the Defence submits that, as recognised by the Chamber, preparing a response to a bar table application requires an in-depth analysis (ICC-01/14-01/18-1884, para. 17). As a result, and given the 6 October 2023 Deadline, an additional 15 working days as of 6 October is needed to wholly review the documents and the arguments raised by the Prosecution in its Application, and therefore to be able to file a response.

Besides, due to the multiple submission of Bar Table Applications, coupled with the preparation of the upcoming testimonies of the three participating victims and that of Chamber witness P-0952, and other investigative activities ahead of the Defence case, the Defence is not able to assign many team members to the drafting of the responses to the Bar Table Applications. As such, the consultant appointed by the Defence to work exclusively on Bar Table Applications has to manage this considerable workload on her own, without the possibility of getting much assistance from other team members.

Given the Defence's various competing priorities and the voluminous Bar Table Applications submitted by the Prosecution, the Defence submits there is good cause to grant an extension of time for the Defence to respond to the Fourteenth and Seventeenth Bar Table Applications. Therefore, taking due account of the need to advance the proceedings, the Defence respectfully requests the Chamber to vary the time limit until:

- 29 September 2023 for the Defence to respond to the Seventeenth Bar Table Application; and
- 27 October 2023 for the Defence to respond to the Fourteenth Bar Table Application.

Kind Regards,


Legal Consultant for the Defence of Patrice-Edouard Ngaissona

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