

ANNEX 7
Public Redacted
Version

From: Trial Chamber V Communications
Sent: 14 November 2023 15:04
To: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; OTP CAR IIB; 'V44 LRV Team'; V44 LRV Team OPCV; V45 LRV Team
Cc: Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber V Communications
Subject: Decision on Yekatom Defence Request for Extension of Time to File Rule 68(2)/(3) Request for D29-5010

[ICC] RESTRICTED

Dear Counsel,

The Single Judge takes note of the request below.

In light of the explanations provided, and noting the absence of objections by the Prosecution, the Single Judge is satisfied that good cause has been shown pursuant to Regulation 35 of the Regulations of the Court.

The request is therefore granted.

The Yekatom Defence is further instructed to inform the Chamber and the rest of participants upon receipt of the respective translation by the LSS.

Kind regards,

TC V

From: OTP CAR IIB [REDACTED]
Sent: 14 November 2023 13:58
To: [REDACTED] Trial Chamber V Communications
Cc: OTP CAR IIB [REDACTED]; D30 Ngaissona Defence Team [REDACTED]
 D29 Yekatom Defence Team [REDACTED]; V44 LRV Team [REDACTED]
 V44 LRV Team OPCV [REDACTED]; V45 LRV Team [REDACTED]
Subject: RE: Yekatom Defence Request for an extension of time to submit a Rule 68(2) or Rule 68(3) application for Witness P-5010

[ICC] RESTRICTED

Dear Trial Chamber V,

The Prosecution does not object to the Defence's request to extend the applicable filing deadline.

Kind regards,

[REDACTED]
 OTP Case Manager

De : [REDACTED]
 Envoyé : mardi 14 novembre 2023 13:02
 À : Trial Chamber V Communications [REDACTED]
 Cc : OTP CAR IIB [REDACTED] D30 Ngaissona Defence Team
 [REDACTED] 29 Yekatom Defence Team [REDACTED]
 V44 LRV Tea [REDACTED]; V44 LRV Team OPCV [REDACTED] V45 LRV Team
 [REDACTED]
 Objet : Yekatom Defence Request for an extension of time to submit a Rule 68(2) or Rule 68(3) application for Witness P-5010

Dear Trial Chamber V,

The Yekatom Defence ("Defence") hereby requests an extension of time, pursuant to Regulation 35 of the Regulations of the Court, to submit a Rule 68(2) or Rule 68(3) application for one witness, namely P-5010. Pursuant to the Further Directions on the Conduct of the Proceedings, the Chamber instructed the Defence to file by 17 November 2023 any applications pursuant to Rule 68(2) and (3). The Defence however submits that there exists good cause to extend the time limit for the submission of a Rule 68(2) or Rule 68(3) application for P-5010.

Indeed, P-5010 is a witness included in the Defence Preliminary Witness List, as potentially testifying pursuant to Rule 68(3), filed on 25 August 2023 (see ICC-01/14-01/18-2060-Conf-AnxA, page 3, witness #2). On [REDACTED], the Prosecution requested to interview P-5010. The witness agreed to meet the Prosecution and an interview was conducted, in the presence of the Defence [REDACTED]. The interview was conducted *inter alia* by Senior Trial Lawyer Mr Vanderpuye, with the assistance of a Prosecution English-Sango interpreter. During the interview some interpretations of the witness' answers were missing, it was noticed at the time by Ms Dimitri who indicated at the end of the interview, in the closing remarks, that the Defence would correct those issues once in possession of the transcript.

[REDACTED] the Prosecution provided the audio of the interview with P-5010 on a USB key.

[REDACTED] the Defence contacted CSS requesting assistance from the Registry in order to provide a transcription by CMS of the English spoken during the interview, and a translation by LSS of the Sango in either French or English depending the interpreters availability. The same day, CSS indicated that LSS would not provide a translation of the Sango portions on the basis that a Sango-English interpretation was done during the interview, and that CMS will only have to provide a transcription.

The Defence subsequently explained orally to CSS that a translation from LSS was needed as the Defence noticed, both during the interview and after listening to the audios, that the English-Sango interpreter missed some answers from the witness. CSS explained orally that for LSS there is a presumption that the live interpretation is correct, the Defence would have to wait for the English transcription by CMS, then from the transcription the Defence will have to pinpoint the exact portions where a misinterpretation occurred, before asking LSS to provide a correction on those specific passages.

The Defence followed-up with CSS as to when the transcription would be provided by CMS but no estimation was given. [REDACTED] the Defence transmitted to CSS the names of the persons present during the interview upon CMS request. There are still no indication as to when the English transcription will be given.

The Defence intends to request the introduction of P-5010's prior recorded testimony, including his [REDACTED] interview with the Prosecution, pursuant to Rule 68(2) or Rule 68(3) of the Rules. The determination between the two modes of introduction of P-5010's prior recorded testimony will be done once the Defence will have in its possession the full corrected transcriptions/translations from LSS.

At this juncture it is not feasible to obtain [REDACTED] the corrected translation by LSS as :

- (i) The Defence is still awaiting the transcription by CMS;
- (ii) The Defence will have to ask [REDACTED] to review the transcription to note where an answer was missed by the interpreter during the interview;

- (iii) The Defence will have to make a request to LSS, through CSS as the Defence is an external party, for a translation of the portions where an answer is missing / misinterpreted ;
- (iv) The Defence will have to stamp, apply appropriate redaction pursuant to the protocol, disclose, and include the transcription and its corrected translation in its Rule 68(2)/(3) application.

In light of the above, the Defence submits that there is good cause to extend the time limit for the submission of the Rule 68 application for P-5010. The Defence highlights that the Prosecution's interview occurred [REDACTED] that it was diligent by transmitting without delay the audio provided by the Prosecution to the Registry, that the internal regulation of CMS / LSS regarding the translation are outside of the Defence control, and that no flexibility was possible despite the Defence explanations.

Due to those circumstances, the Defence respectfully requests to be granted 10 days from the transmission by LSS of the corrected translation, should this extension be granted the Defence commits to immediately inform the Chamber and Parties by email when it will receive the translation from LSS. As the delay relates to the provision of P-5010's interview with the Prosecution, and is limited to one single witness, the Defence submits that no prejudice would arise from an extension of the time limit for the Rule 68 application.

Kind regards,

[REDACTED]
Legal Consultant
Yekatom Defence

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