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No. **ICC-01/14-01/18**
Date: **1 November 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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

Decision on the Ngaïssona Defence Request for Extension of Time

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

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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 Ngaïssona Defence Request for Extension of Time’.

1. On 29 May 2023, the Chamber issued its Further Directions on the Conduct of the Proceedings (the ‘Further Directions’).¹ In these Further Directions, the Chamber set 17 November 2023 as the time limit for the Defence teams to (i) file their final lists of witnesses and of evidence (the ‘First Part’); as well as (ii) provide witness statements or summaries of the anticipated testimony for all witnesses; (iii) file any applications pursuant to Rule 68(2) and (3) of the Rules of Procedure and Evidence (the ‘Rules’); and (iv) complete disclosure of all items it intends to use during its evidence presentation (the ‘Second Part’; collectively, the ‘Time Limit’).² It further set 11 December 2023 as the date on which the Defence is to call its first witness.³
2. On 29 August 2023, the Chamber rejected a request by the Ngaïssona Defence (the ‘Defence’) for reconsideration of the Further Directions, asking, *inter alia*, that the Time Limit be moved to 15 December 2023.⁴ It also rejected a request for leave to appeal its decision rejecting the request for reconsideration.⁵
3. On 20 October 2023, the Defence filed a request pursuant to Regulation 35 of the Regulations for extension of the Time Limit until 15 December 2023 (the ‘Request’).⁶ The Defence argues that good cause is shown due to (i) ‘[t]he Prosecution’s persistent delay in the fulfilment of its obligation to disclose Rule 77 Material related to the Defence’s Preliminary List of Witness’;⁷

¹ Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence), ICC-01/14-01/18-1892.

² Further Directions, ICC-01/14-01/18-1892, para. 21.

³ Further Directions, ICC-01/14-01/18-1892, para. 23.

⁴ Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings, ICC-01/14-01/18-2068.

⁵ Decision on the Ngaïssona Defence Request for Leave to Appeal the Decision Rejecting its Request for Reconsideration of the Further Directions, 14 September 2023, ICC-01/14-01/18-2095.

⁶ 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) (with one confidential annex).

⁷ Request, ICC-01/14-01/18-2157-Conf-Red, paras 13-18.

(ii) logistical constraints due to the effect of external circumstances on the Defence's field investigations;⁸ and (iii) logistical constraints resulting from the Court's cyber security incident.⁹ In the alternative, the Defence requests that the time limit for the Second Part be varied such that it may proceed with the Second Part on a rolling basis as of 17 November 2023 and until no later than 22 December 2023 (the 'Alternative Request').¹⁰

4. On 31 October 2023, the Office of the Prosecutor (the 'Prosecution') responded to the Request, deferring to the discretion of the Chamber (the 'Response').¹¹ However, it states that should the Chamber postpone the deadline of 17 November 2023, it should similarly postpone the deadline of 11 December 2023 'by four weeks or more', to provide the Prosecution 'with sufficient time to adequately prepare for the testimonies of the first Defence witnesses in the case'.¹² As regards the Defence's submission in relation to a suggested delay in disclosure pursuant to Rule 77 of the Rules, the Prosecution argues that 'there is no requirement that such material be disclosed *prior* to the Defence's filing of its final witness list'.¹³ It also states that it intends to provide 'documents relevant to a group of priority witnesses' by 31 October 2023, and 'all remaining documents' by 17 November 2023.¹⁴
5. Pursuant to Regulation 35(2) of the Regulations, a chamber may extend a time limit at the request of a participant 'if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard'.
6. The Chamber is of the view that in light of the reasons provided, in particular as regards the matter of disclosure under Rule 77 of the Rules and noting the submissions of the Prosecution as to the expected timing of its disclosure of such material, a variation of the Time Limit is warranted.

⁸ Request, ICC-01/14-01/18-2157-Conf-Red, paras 19-25.

⁹ Request, ICC-01/14-01/18-2157-Conf-Red, paras 26-28.

¹⁰ Request, ICC-01/14-01/18-2157-Conf-Red, paras 4, 33.

¹¹ Prosecution's Response to the Ngaissona Defence's Request pursuant to Regulation 35 to vary the time limit (ICC-01/14-01/18-2157-Conf-Red), ICC-01/14-01/18-2175-Conf.

¹² Response, ICC-01/14-01/18-2175-Conf, paras 1, 6-7.

¹³ Response, ICC-01/14-01/18-2175-Conf, para. 5.

¹⁴ Response, ICC-01/14-01/18-2175-Conf, para. 5.

7. However, bearing in mind the need to ensure not only the fairness but also the expeditiousness of the proceedings, the Chamber considers that the time limit for the First Part must stand. Similarly, the Chamber is not willing to alter the start of the Defence presentation of evidence as set for 11 December 2023.
8. In light of the above, the Chamber finds that good cause exists for an extension of time regarding the Second Part, subject to the following conditions: the Defence must, **by 17 November 2023**, and in relation to any witnesses which it intends to call or material it intends to rely on in the hearing week scheduled for December 2023, as well as the hearing weeks scheduled between 15 January and 2 February 2024,¹⁵ (i) provide witness statements or summaries of the anticipated testimony for its witnesses; (ii) file applications pursuant to Rule 68(2) and (3) of the Rules, and (iii) complete disclosure of items it intends to use.
9. At the same time, the Defence may proceed, **on a rolling basis, as of 17 November 2023, and until no later than 15 December 2023**, with all of the above in relation to witnesses and material that are not to be called and/or relied upon in the hearing weeks scheduled for December 2023 and between 15 January and 2 February 2024.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request;

PARTLY GRANTS the Alternative Request,



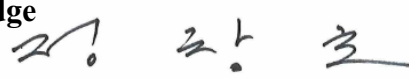
ORDERS the Defence to (i) provide witness statements or summaries of the anticipated testimony for its witnesses; (ii) file applications pursuant to Rule 68(2) and (3) of the Rules; and (iii) complete disclosure of items it intends to use during its presentation of evidence in relation to all witnesses it intends to call or material it intends to rely on in the hearing weeks scheduled in December 2023 and between 15 January and 2 February 2024, by 17 November 2023;

¹⁵ See email from the Chamber, 13 September 2023, at 12:11.

ORDERS the Defence to (i) provide witness statements or summaries of the anticipated testimony for its witnesses; (ii) file applications pursuant to Rule 68(2) and (3) of the Rules; and (iii) complete disclosure of items it intends to use during its evidence presentation on a rolling basis, as of 17 November 2023, and until no later than 15 December 2023, for witnesses and material that are not to be called and/or relied upon in the hearing weeks scheduled for December 2023 and between 15 January and 2 February 2024; and

ORDERS the Defence and the Prosecution to file public redacted versions, or request reclassification to public, of the Request, ICC-01/14-01/18-2157-Conf-Exp, and the Response, ICC-01/14-01/18-2175-Conf, respectively, within one week of notification of this decision.

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

 <hr style="width: 25%; margin: 0 auto;"/> <p>Judge Péter Kovács</p>	 <hr style="width: 20%; margin: 0 auto;"/> <p>Judge Bertram Schmitt Presiding Judge</p>	 <hr style="width: 20%; margin: 0 auto;"/> <p>Judge Chang-ho Chung</p>
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Dated 1 November 2023

At The Hague, The Netherlands