Cour
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International
Criminal
Court

Original: **English**

No.**: ICC-01/14-01/18**
Date: **27 March 2019**

**PRE-TRIAL CHAMBER II**

**Before:** **Judge Antoine Kesia-Mbe Mindua, Presiding Judge**
**Judge Tomoko Akane**
**Judge Rosario Salvatore Aitala**

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

**Public Redacted**

**Public Redacted Version of "Prosecution's Response to "Ngaïssona Defence Observations on Disclosure and Related Matters (ICC-01/14-01/18-64-Conf)" (ICC-01/14-01/18-143-Conf) ", 21 March 2019, ICC-01/14-01/18-155-Conf**

**Source:** **Office of the Prosecutor**

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

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## I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests that Pre-Trial Chamber II ("Chamber") reject the modifications and additional requests proposed by the NGAISSONA Defence in its observations to the Chamber's "Decision on Disclosure and Related Matters" ("Decision").[1] None of the Defence's requests, including the imposition of additional modalities on disclosure, the implementation of an In-Depth Analysis Chart ("IDAC"), deadlines for all disclosure in the case, the translation of all documents on which the Prosecution intends to rely at confirmation, a time-frame for all "correspondence", and modifications to the redactions regime, are warranted.

2. Each of these requests is unfounded, unnecessary, or redundant of processes already in place. Many would disproportionately burden the Prosecution or the Registry. Most are also unwarranted by the Court's statutory framework, contradicted by case law, or otherwise unsubstantiated.

3. The Defence Observations reference favourable jurisprudence, but ignores or omits the contrary case law of this or other Chambers of the Court.[2] Further, the modifications and additional requests go beyond—sometimes far beyond—what has been permitted in prior cases without explaining why this Chamber should depart from them, or require more. Moreover, the Defence Observations fail to substantiate why the additional processes and procedures requested are needed given the particular circumstances of this case.

4. A careful and complete consideration of the relevant jurisprudence and the needs of this case warrant rejection of each of these requests.

[1] ICC-01/14-01/18-64-Conf. Given that NGAISSONA's observations advance several new requests for relief, the Prosecution files this response in accordance with regulation 34(b) of the Regulations of the Court.
[2] *See also* ICC-01/14-01/18-150, para. 3(i) (noting the NGAISSONA Defence's selective citation of a decision in the *Gbagbo and Blé Goudé* case).

## II. CONFIDENTIALITY

5. In accordance with regulation 23*bis*(2) of the Regulations of the Court, this filing is classified as "*confidential*" as it responds to a submission of the same classification. The Prosecution will file a public redacted version as soon as practicable.

## III. SUBMISSIONS

6. Each of the Defence's proposed modifications to the Disclosure Protocol is unnecessary, redundant, and/or outside of what is required by the Court's statutory framework.

### A. None of the additional requests are warranted or necessary

*a. The additional modalities for disclosure are unnecessary*

7. The Defence's request that the Parties provide 24-hour advanced notice *before* disclosing any items and that the Parties also obtain signed letters of receipt *after* disclosure is redundant, inefficient, and unnecessary.[3] The current disclosure process already provides a clear electronic record of when, how, and what is disclosed by each Party. The Parties disclose all information *via* E-court—as the common repository of evidence for all Parties, the Registry, and the Chamber.[4] As a courtesy, the Prosecution also provides an electronic link[5] to the disclosure package so that the Defence can import items directly into their own analytical databases (in this case Ringtail).[6] Contemporaneously, the Prosecution notifies the Chamber and the Parties

[3] ICC-01/14-01/18-143-Conf, paras. 23-25.
[4] *See generally* United Technical protocol ("E-court Protocol") for the provision of evidence, witness and victims information in electronic form, ICC-01/14-01/18-64-Anx.
[5] This link is generated using HPE Records Manager (previously known as TRIM)—a software the Defence also has access to.
[6] ICC-01/14-01/18-143-Conf, para. 30 (noting that "the Prosecution, when disclosing evidence, has the possibility to create an electronic link to be sent to the receiving parties via email.").

of the disclosure, including by identifying the item's type, title, confidentiality level, and the legal classification of its disclosure ("INCRIM", "RULE 77", "PEXO"). Below is a screenshot of one such filing in this case:[7]

[REDACTED]

8. Once uploaded to E-court, the metadata for each document similarly identifies *inter alia* the date of disclosure (the "Date Filed"), the disclosing party (the "Participant" field), and the confidentiality level of the document (the "Confidentiality Level" field). The date of the disclosure package and the legal classification of the items are also contained in the title of the disclosure package (the "Disclosures" field). For example, below is a screenshot of the metadata field for CAR-OTP-2001-0050, a public document disclosed to the Defence on 25 January 2019.

[REDACTED]

9. The NGAISSONA Defence fails to explain why additional modalities on disclosure are necessary. The suggestion that 24-hour advanced notice is required for technical reasons[8] is unexplained in the Observations and appears to misunderstand the technicalities of disclosure. To the extent any technical issues arise from importing data from E-court or the link the Prosecution provides, those issues would only be detected at the time of import—not before. Further, it is unclear and unexplained how advance notice as to the legal classification of each item for disclosure has any bearing on the Defence's technical ability to import those items when disclosed.[9]

[7] [REDACTED].
[8] ICC-01/14-01/18-143-Conf, para. 23.
[9] ICC-01/14-01/18-143-Conf, para. 23.

10. It is similarly unclear why a separate document listing each item for disclosure to be signed by each Party should be required after disclosure, whether as a courtesy or otherwise.[10] In prior cases, such letters were required because disclosure was transmitted physically, *via* USB, compact disc, physical files, etc. In those circumstances, a document was necessary to confirm and prove the relevant transfer and receipt of the disclosed material. In this case, an electronic record is created for each transmission and the transfer is formalised in a communication signed by the disclosing Party and filed in the case record.[11] This process is efficient, fully reliable, and obviates the need for anything further.

11. To this end, there is a discrepancy between the Defence's stated intention to "still resort[] to physical disclosure"[12] and the E-court Protocol, which mandates that the disclosing party "format the potential evidence, evidence (stet) and material and provide metadata for it in accordance with the standards set out in section III D of this Protocol."[13] Further, any difficulty the Defence has importing material into E-court or disclosing it electronically can be addressed through technical training and assistance provided by the Office of Public Counsel for the Defence ("OPCD").[14] Training in the Court's latest technologies is also provided by the Registry, including through the Information Management Services Section ("IMSS") and E-court support services.[15] The Defence also has the discretion and means to hire a technical assistant to provide any necessary training or support regarding electronic

[10] ICC-01/14-01/18-143-Conf, paras. 24-25.
[11] *See e.g.* ICC-01/14-01/18-72; ICC-01/14-01/18-105; ICC-01/14-01/18-122.
[12] ICC-01/14-01/18-143-Conf, para. 30.
[13] ICC-01/14-01/18-64-Anx, para. 4.
[14] Regulation 77(4)(b) of the Regulations of the Court provides that OPCD is responsible for "[p]roviding general support and assistance to defence counsel and to the person entitled to legal assistance".
[15] *See* Guide for applicants to the ICC List of Counsel and Assistants to Counsel, p. 14 (noting that "[t]he ICC is a state of the art international court with the latest technologies. It operates as an e-Court. Appropriate training regarding the specific software related to the e-Court system is provided to counsel and their team members."); Behind the Scenes: The Registry of the International Criminal Court, p. 21 ("The Court uses a specific software enabling the evidence presentation and analysis. This software is available to all the parties/participants, the Registry and the Chambers. Relevant training and support is provided by the Registry"). More information concerning these services is available on IMSS' service catalogue: http://janet.icc.int/registry/icts/servicecatalogue/Pages/ECourt.aspx.

disclosure. The Observations' general reference to a "difference of means" fails to account for these options.[16]

*b. An IDAC is unnecessary, disproportionate, and would substantially delay the proceedings*

12. An In-Depth Analysis Chart ("IDAC") is unnecessary and would disproportionately burden the Prosecution.[17]

13. The Defence fails to explain why an IDAC is necessary in this case given the detailed references to the evidence provided in the arrest warrants.[18] The Chamber—apparently foreseeing the Defence's concerns—ensured that the warrants of arrest identifies, in significant detail, the crimes alleged against NGAISSONA and YEKATOM, the relevant modes of responsibility, and the contextual elements for crimes against humanity and war crimes. The crimes, in particular, are described in detail, including the dates of the offences, the number of victims where applicable, and the identities of other co-perpetrators. Each factual proposition cites to the evidence, referencing the relevant page, paragraph, or time-frame (for audio-visual evidence). Altogether, the arrest warrants provide the Defence a concrete indication of how the evidence is being used to substantiate each allegation. Their detailed character contrasts with those cases cited by the Defence[19] where an IDAC was ordered—namely in the *Bemba*[20] and *Ntaganda*[21] cases. In those instances, the warrants lacked detail in the factual descriptions of the crimes and did not cite the relevant evidence. The Chamber has ensured that such is not the case here.

[16] ICC-01/14-01/18-143-Conf, para. 30.
[17] ICC-01/14-01/18-143-Conf, para. 26. The Prosecution recently submitted a comprehensive filing as to the practical and legal issues against imposing an IDAC in the *Al Hassan* case: ICC-01/12-01/18-38-Red2. While only some of those arguments are repeated here due to space constraints and differing circumstances (namely the fact that the Chamber here provided the Defence a detailed and referenced arrest warrant, unlike in *Al Hassan*: ICC-01/12-01/18-2-tENG), the Prosecution generally refers the Chamber to that submission.
[18] *See generally* ICC-01/14-01/18-89-Red; ICC-01/14-01/18-1-Red.
[19] ICC-01/14-01/18-143-Conf, para. 26, fn. 32.
[20] ICC-01/05-01/08-1-tENG.
[21] ICC-01/04-02/06-2-Anx-tENG.

14. Complementing the arrest warrants, the Prosecution, following the indication in the Chambers Practice Manual,[22] intends to file a pre-confirmation brief in advance of the scheduled hearing date. The brief will comprehensively identify, with detailed footnote references, the *supporting evidence* underlying the material facts and legal elements of the charges set out in the Document Containing the Charges ("DCC"). The brief will be hyperlinked, permitting the Defence and the Chamber easy access to the referenced evidence. The arrest warrants, DCC, and the pre-confirmation brief, individually and together, provide the Defence sufficient information to understand the evidence in context well in-advance of the confirmation hearing, obviating any need for an IDAC.

15. The Observations' reference to the Court's prior jurisprudence supporting an IDAC[23] is incomplete and potentially misleading. For instance:

- Regarding the *al Hassan* case requesting submissions on whether to require an IDAC,[24] the Defence omits that the Chamber decided against requiring an IDAC: "*dans la présente affaire de ne requérir des parties aucun tableau d'analyse des éléments de preuve lors de leur divulgation*."[25] In *Al Hassan*, which involved a single suspect and far fewer incidents than alleged here, the Chamber reasoned that the burden of producing an IDAC, particularly on the Prosecution, would be disproportionate to the potential benefits such a table could create. It noted further that such a requirement could considerably delay the confirmation hearing: "*la production d'un tableau d'analyse approfondie des éléments de preuve pourrait créer, le renvoi rendu éventuellement nécessaire de l'audience de confirmation des charges à septembre 2019 serait une mesure*

[22] Chambers Practice Manual, p. 12
[23] ICC-01/14-01/18-143-Conf, para. 26, fn. 32.
[24] *See* ICC-01/14-01/18-143-Conf, fn. 32 (*citing* ICC-01/12-01/18-31, paras. 44-52).
[25] ICC-01/12-01/18-61, para. 23. *See also* ICC-01/12-01/18-61-tENG, para. 23.

*disproportionnée au vue des bénéfices potentiels que la production d'un tel tableau pourrait engendrer*".[26]

- The Defence does not account for the Appeals Chamber jurisprudence from the *Ongwen* case recognising that an IDAC "may place a disproportionate burden on the parties and may ultimately lead to delays in the proceedings"; thus rejecting the imposition of an IDAC without prior submissions by the Parties.[27]

- The Defence does not account for the jurisprudence from the *Lubanga, Blé-Goudé,* and *Bemba et al* cases wherein an IDAC was not required and, in the latter case, explicitly rejected.[28]

- The Defence does not account for the Chambers Practice Manual—adopted after IDACs were required in the *Bemba* and *Ntaganda* cases—which expressly notes that "no submission of any 'in-depth analysis chart' or *similia*, of the evidence disclosed can be imposed on either party" and that "[i]t is up to the parties to determine the best way to persuade the Chamber: there is no basis for the Chamber to impose on the parties a particular modality/format to argue their case and present their evidence".[29] As the Practice Manual intends to reflect best practices and to promote uniformity, even though the Chamber may depart from it, absent cogent reasons to do so, the Practice manual should normatively be observed. The Defence Observations advance no plausible arguments as to why any such deviation is required here.

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[26] ICC-01/12-01/18-61, para. 22. *See also* ICC-01/12-01/18-61-tENG, para. 22.
[27] ICC-02/04-01/15-251, para. 42.
[28] *See Lubanga*: ICC-01/04-01/06-102; *Blé Goudé*: ICC-02/11-02/11-57; *Bemba et al.*: ICC-01/05-01/13-134. *See also Prosecutor v. Salim Jamil Ayyash et al.*, STL-11-01/T /TC, Decision on Merhi Defence Request for a "Table of Incriminating Evidence", 9 May 2014 (summarising the practice of other international courts and tribunals, including the ICC).
[29] Chambers Practice Manual, pp. 10, 14. *See also* ICC-01/05-01/13-134, paras. 5, 7 (noting "that there is no provision, in the Statute, the Rules of Procedure and Evidence or the Regulations of the Court for an in-depth analysis chart." and that "nowhere it is stated that such orders may include specific, binding directions as to the particular *format* in which the parties shall present their evidence or argue their case.").

16. The relevant jurisprudence and practice highlight the very disproportionate burden and procedural delay that ordering an IDAC would cause. This is particularly so given the Defence request an IDAC be prepared for *all* evidence, not just incriminatory information.[30] For example, in *Katanga et al.*, the IDAC was approximately 1,000 pages;[31] in *Bemba*, over 500 pages;[32] in *Kenyatta et al.*, over 6,600 pages;[33] and in *Ruto et al.*, over 12,000 pages.[34] The evidence in this case is likely to exceed the volume of information produced in those cases and, should an IDAC be ordered here, require an exponential amount of work.

17. The length, work, and complexity involved in preparing an IDAC could significantly extend an already complicated process. For instance, in the *Ongwen* and *Al Hassan* cases—two cases with fewer crimes than those alleged here—an IDAC for incriminatory evidence alone was estimated to delay the proceedings for one year[35] and seven months,[36] respectively. Based on those timeframes, the potential delay in this case would be much longer.

18. Finally, the potential utility of an IDAC is at best marginal, as the Defence in other cases have observed:

- In the *Ongwen* case, the Defence argued against an IDAC, estimating that it could amount to 26,000 pages, take two full business years to read, and have limited utility, noting "[t]his document, which is supposed to aid the Pre-Trial Chamber and Defence, would do absolutely nothing except for waste space on the ICC's server".[37]

[30] ICC-01/14-01/18-143-Conf, para. 26. This is a departure from prior cases where an IDAC was required—a point omitted by the Defence
[31] ICC-01/04-01/07-1643-Conf-AnxB to N.
[32] ICC-01/05-01/08-781, Annex A.
[33] ICC-01/09-02/11-257, Annexes C1-C5.
[34] ICC-01/09-01/11-241, Annexes A-E.
[35] ICC-02/04-01/15-T-5-ENG, p. 14, l.11-p. 15, l.16.
[36] ICC-01/12-01/18-38-Red2, para. 43.
[37] ICC-02/04-01/15-232, para. 15.

- In the *Ruto* case, Defence Counsel, who had previously been engaged in the *Katanga* case—which required an IDAC—opined that based on his experience the IDAC "has proved less useful […] because it's such a confusing point of reference."[38]

19. Given the above, an IDAC is not warranted in the particular circumstances of this case, nor do the Defence Observations posit any compelling reasons for its adoption.

*c. Deadlines for the completion of all disclosure is premature at this stage*

20. The Prosecution considers that a firm deadline for the completion of all disclosure, including rule 77 and exculpatory materials, is unnecessary and premature at this stage.[39] Disclosure is a fluid process and dependent on several variables, including the Prosecution's ongoing investigation; the implementation of redactions in accordance with the Chamber's prior and forthcoming protocols on disclosure; the implementation and conditions imposed in a protocol on confidential material; and the assessment and implementation of witness protection measures. These factors were previously detailed in the Prosecution's [REDACTED].[40]

21. The Prosecution considers that before setting any disclosure deadlines, the Chamber hold a status conference pursuant to 121(2)(b) of the Rules of Procedure and Evidence. In this way the Prosecution and the relevant stakeholders, including the Registry's Victims and Witnesses Section ("VWS"), may fully apprise the Chamber of any outstanding issues or developments affecting disclosure.[41] Based on this, the Chamber will be best able to establish reasonable and informed disclosure deadlines regarding material the Prosecution intends to rely upon for confirmation.

[38] ICC-01/09-01/11-T-15-ENG, p. 32, l.15-17 (Defence counsel did, however, note that an IDAC could be useful to the Chamber).
[39] ICC-01/14-01/18-143-Conf, para. 29.
[40] *See generally* [REDACTED].
[41] *See* ICC-01/14-01/18-77-Conf, para. 13.

22. At this stage, the Prosecution considers that an 18 May 2019 deadline for the disclosure of all incriminating and exculpatory information and all information falling under rule 77 is not realistic. Further, the Defence's demand is contrary to the regulatory framework and the Court's well-established practice which permits an investigation to continue through and beyond the confirmation process.[42]

23. *First*, the deadline is untenable because witness protection measures are still being implemented. Moreover, there is no active disclosure protocol in the joint case, or a protocol on confidential material, without which confidential information cannot be provided to the Defence. *Second*, the Prosecution also has the right to continue its investigations up to and past the confirmation hearing and to rely on any information collected during that time at trial. Article 61(3)(b) only foresees the disclosure of evidence on which the Prosecutor intends to rely on at the confirmation hearing at the pre-trial stage. Articles 64(3)(c) and rule 84, all anticipate that the Prosecution's investigation will continue until and after the confirmation hearing, and permit the disclosure of that information until a time set by the Trial Chamber.[43]

24. Thus, the Chamber's prior guidance is more suitable for the time-being—namely that the Prosecutor disclose any article 67(2) evidence "*immediately* after having identified any such evidence" and to "disclose […] exculpatory evidence, alongside any incriminating evidence, on a rolling basis".[44]

**B. None of the proposed amendments to the Redactions Protocol are warranted**

[42] *Contra* ICC-01/14-01/18-143-Conf, para. 29.
[43] *See* Chambers Practice Manual, pp. 21-22; ICC-02/04-01/15-449, paras. 5-6 (noting that a disclosure deadline of three months prior to trial was sufficient notice for the Defence).
[44] ICC-01/14-01/18-64-Red, para. 16.

25. None of the Defence's requests to amend the Redactions Protocol adopted by the Chamber are warranted. Despite claiming that it would not "reiterate arguments already examined by the Chamber",[45] the Defence does just that.

- The NGASSONA Defence's challenges to redaction categories A.8 and B.5[46] are identical to those raised by the YEKATOM Defence.[47] Those challenges were considered and rejected by the Chamber,[48] a fact omitted in the Observations, which also fail to explain why the Chamber should reconsider its determination.

- The Chamber has already considered and rejected a request for strict timelines to adjudicate disclosure disputes.[49] While acknowledging that its arguments are identical to those advanced by the YEKATOM Defence and rejected by the Chamber,[50] the Observations simply reiterate YEKATOM's proposal without more and ignore the Chamber's reasoning. The dispute process provided is already sufficiently precise, namely "the consultation process must be conducted as expeditiously as possible", and "the parties are always in a position to submit urgent filings to the Chamber."[51]

26. The remaining issue, the Defence's request that "leads" be further defined because the category could be used to "embrace large categories of persons and entities",[52] is premature. The Decision provides two safeguards to prevent a Party from abusing the redaction categories or interpreting them too broadly. *First*, the Chamber is furnished with unredacted versions of the evidence "to be able to verify,

[45] ICC-01/14-01/18-143-Conf, para. 31.
[46] ICC-01/14-01/18-143-Conf, para. 33.
[47] *See* ICC-01/14-01/18-47, paras. 49, 60.
[48] ICC-01/14-01/18-64-Red, para. 28.
[49] *Contra* ICC-01/14-01/18-143-Conf, para. 34-37.
[50] ICC-01/14-01/18-143-Conf, para. 37.
[51] ICC-01/14-01/18-64-Red, para. 30.
[52] ICC-01/14-01/18-143-Conf, para. 32.

at its discretion, the necessity of redactions".[53] *Second*, the Defence is permitted to challenge any specific redactions, through *inter partes* consultation or through litigation.[54] The Defence Observations fail to explain why these measures are insufficient to prevent a Party's abuse or misinterpretation of any redaction categories.

### C. NGAISSONA has no legal right to have all evidence translated into French

27. The request to have French translations of all evidence the Prosecution intends to rely on for the confirmation hearing should be denied.[55] NGAISSONA has no legal right under the Statute—and the Defence points to none—to have all evidence to be used at confirmation translated into French, be it by the Prosecution or otherwise.[56] The only duty imposed on the Prosecution to provide translations is contained in rule 76(3), wherein the Prosecutor is to provide the Suspect with witness statements in their original language and in a language which the Suspect fully understands and speaks.[57] The request clearly exceeds the ambit of that rule.

28. The translation into French of all items to be used at confirmation is equally not required under article 67(1)(a) or (f). In this regards, the Defence ignores the Chamber's prior relevant rulings. The Chamber has already confirmed that "suspects do not have an absolute right to have *all* documents translated into a language which they fully understand and speak."[58] That under article 67(1)(a) only documents that are "essential" for the Suspect's understanding of the "nature, cause and content of the charges" require translation, and that this "concerns, first and foremost, core procedural documents".[59] The Chamber has also confirmed that in circumstances, like here, where the Suspect is assisted by counsel, that "it is part and

[53] ICC-01/14-01/18-64-Red, para. 28.
[54] ICC-01/14-01/18-64-Red, para. 30.
[55] ICC-01/14-01/18-143-Conf, para. 41.
[56] *Contra* ICC-01/14-01/18-143-Conf, paras. 38-41.
[57] *See* ICC-01/14-01/18-56-Red, para. 18.
[58] ICC-01/14-01/18-56-Red, para. 14.
[59] ICC-01/14-01/18-56-Red, para. 19.

parcel of the duties of Defence counsel to explain to the suspect the content of filings and documents".[60]

29. The Defence also ignores and omits the relevant contrary jurisprudence. Pre-Trial Chamber II has already opined that "it also appears beyond controversy, in light of article 67(1)(f), that this right does not *per se* translate into the right to obtain the translation of any and all documents which are used in the context of proceedings before the Court and are not in a language which the accused 'fully understands and speaks'".[61] When a similar request was made before Pre-Trial Chamber III, that Chamber also concluded that there was no "absolute right to have all documents translated into a language which [the Suspect] fully understands and speaks."[62] In both decisions, the respective Chambers noted that the translation of a given document is a right for the accused only insofar as it can be held that without the translation, the accused would not be able to understand the nature, cause and content of the charge and thus adequately defend himself or herself.[63] The Defence fails to make any such showing in its application.

## D. The Defence's request that the Chamber set a time-frame for responding to "correspondence" should be rejected

30. The Defence's request that the Chamber impose a five-day deadline for responses to any "correspondence" is unduly vague.[64] It is unclear what the Defence means by "correspondence" and whether the Defence means responses to motions, *inter partes* requests and communications, disclosure notifications, or all of the above. Vagueness alone warrants rejecting this request.

[60] ICC-01/14-01/18-65-Conf, para. 20.
[61] ICC-01/05-01/13-177, para. 6.
[62] ICC-01/05-01/08-307, para. 11. *See also* para. 12: "the accused shall not be served with all documents in a language he fully understands or speaks but only with those documents which are *essential* for his proper preparation to face the charges presented by the Prosecutor and which form the basis of the determination by the Chamber of those charges." (emphasis added).
[63] *See* ICC-01/05-01/13-177, para. 6; ICC-01/05-01/08-307, para. 16.
[64] ICC-01/14-01/18-143-Conf, para. 42.

31. In any event, the Statutory framework is clear as to when responses to motions should be filed. Any alteration of those deadlines can be provided on a case-by-case basis, as need be, assuming the matter requires urgent consideration. To the extent the Defence refers to *inter partes* communications, then (i) the request is duplicative of the Defence's request that a time-frame be set for responding to disclosure disputes—which the Chamber has already rejected;[65] and (ii) the presumption that the Parties will consult in good faith[66] obviates the need for further judicial oversight at this point absent any further showing by the Defence.

## IV. RELIEF SOUGHT

32. For the above reasons, the Prosecution requests that the Defence's requests and modifications to the Decision be rejected and that the Chamber order a status conference in accordance with rule 121(2)(b).

**Fatou Bensouda, Prosecutor**

Dated this 27th day of March 2019
At The Hague, The Netherlands

[65] *See above*, para. 25.
[66] *See e.g.* ICC-01/14-01/18-64-Red, para. 30.