

Annex 5

From: Trial Chamber V Communications
Sent: 04 May 2020 16:20
To: D29 Yekatom Defence Team
Cc: D30 Ngaissona Defence Team; V44 LRV Team; V45 LRV Team; OTP CAR IIB Managers; Office of the Director DJSS; OTP CAR IIB Case Management; Dimitri, Mylene; Vanderpuye, Kweku; Trial Chamber V Communications
Subject: RE: Yekatom request for variation of time limit to ICC-01/14-01/18-503-Conf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Counsel,

The Single Judge takes note of the Yekatom Defence's requests to (1) permanently modify the time limits for the CLRV, and (2) grant the Defence an extension of 2 days to respond to the Prosecution's request ICC-01/14-01/18-503-Conf.

Request (1): The Single Judge is of the view that the Defence's request to permanently modify the CLRV's time limits in order for the Defence to be able to respond to the CLRV's responses, is misplaced. The Single Judge considers that the Court's legal framework does not provide the Defence with an automatic right to reply to the CLRV's responses. Additionally, the Single Judge recalls that the CLRV's role in the proceedings is to independently present victims' interests and therefore distinct from that of the Prosecution. If the Defence thus wishes to reply to the CLRV's responses, it may ask the Chamber for leave to reply, pursuant to Regulation 24 of the Regulations of the Court. For these reasons, the request is rejected.

Request (2): The Chamber considers that no good cause has been shown to modify this time limit, as required by Regulation 35(2) of the Regulations of the Court. Accordingly, the request is rejected.

Kind regards, TC V

From: Massidda, Paolina
 Sent: 04 May 2020 10:36
 To: Trial Chamber V Communications
 Cc: D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team; V45 LRV Team; OTP CAR IIB Managers; Office of the Director DJSS; OTP CAR IIB Case Management; Dimitri, Mylene; [REDACTED]
 Vanderpuye, Kweku
 Subject: RE: Yekatom request for variation of time limit to ICC-01/14-01/18-503-Conf

Dear All,

The matter is amongst the ones the Common Legal Representatives of the Victims (CLRV) participating in the proceedings intended to deal with at the first status conference to be scheduled as soon as practicable. However, in light of the Defence's request, the CLRV inform the Chamber of their position in the matter.

The CLRV strongly oppose the Yekatom Defence's request.

At the outset, the CLRV wish to recall that, in accordance with the constant practice of the Court, victims play a distinct and independent role in the proceedings before the Court and that their role is not to either support or assist the Prosecution but to effectively and properly represents the interests of their clients.

The rights of the Defence are adequately covered by the Regulations of the Court, namely regulation 24 which provides for the possibility to request leave to reply. Indeed, there will not be always a need for the Defence to address the victims' arguments.

Granting a standard standing order for the CLRV to always file their responses to any document filed by the Prosecution in a time-limit of 5 days from its notification will greatly jeopardise their ability to represent the interests of their clients and it will be unfair and unreasonable.

It will be unfair because it will put the CLRV in a substantially unjustified less favourable position compared to the parties. Particularly during trial, the CLRV – like the parties - will be fully busy in preparing and following the proceedings and a standard shortening of the regular deadline will impact on the very limited resources available to them.

It will also be unreasonable because it will not allow the CLRV to fully consult and take instructions from their clients who – differently from the Accused – reside in several countries in which communication is very often difficult and challenging. The result will then be that the CLRV will not be able to properly represent the interests of their clients and consequently find themselves in the position of having to request often the extension of the deadline, clearly impacting on the celerity and effectiveness of the proceedings.

An additional reason for not granting the Yekatom Defence's request is that there is no reasonable basis for not applying the same procedure to the other parties and participants when the Defence files a submission first. As such, the CLRV contend that this procedure will impact on the effectiveness and expeditiousness of the procedure instead of being of "*greater assistance to the Chamber*" as indicated by the Defence.

Finally, the CLRV of the Victims of the other crimes indicate that, by virtue of the fact that the 5 appointed lawyers reside in 4 different countries, the request will have repercussions on their ability to rapidly consult and take a joint position on any matter having an impact on the interests of the respective clients.

Therefore, the CLRV respectfully request the Chamber to reject the Yekatom Defence's request for a standard order to shorten the regular deadline for their responses to any Prosecution submission.

Additionally, as far as the specific request is concerned (the filing of the Yekatom Defence's response 2 days after notification of the CLRV's response to the recent Prosecution's submission), the CLRV argue that the Defence has not shown good cause in the terms of regulation 35(2) of the Regulations of the Court and, therefore, the request should be rejected.

Kind regards,

Paolina Massidda (on behalf of CLRV of the Victims of other crimes) and Dmytro Suprun

From: Vanderpuye, Kweku

Sent: 04 May 2020 09:45

To: Massidda, Paolina; Trial Chamber V Communications; [REDACTED]

Cc: D29 Yekatom Defence Team; D30 Ngaissona Defenc [REDACTED] m; V45 LRV Team; OTP CAR IIB

Managers; Office of the Director DJSS; OTP CAR IIB Case Management; Dimitri, Mylene

Subject: RE: Yekatom request for variation of time limit to ICC-01/14-01/18-503-Conf

Dear All,

The Prosecution would oppose the issuance of a 'standing order' absent a formal Defence application and an opportunity to respond. However, as concerns a limited request, the Prosecution defers to the Chamber and the Common Legal Representatives. That said, we do not consider that regulation 35(2) of the Regulations of the Court is satisfied solely on the basis of a conjectural ground (i.e., the nature of the CLRVs response to the Prosecution's motion), and note that the Chamber has fielded a previous application by the Defence on the same or similar basis.

Kind regards,

Kweku Vanderpuye

From: Massidda, Paolina
 Sent: 03 May 2020 21:05
 To: Trial Chamber V Communications; [REDACTED]
 Cc: D29 Yekatom Defence Team; D30 [REDACTED] Team; V44 LRV Team; V45 LRV Team; OTP CAR IIB Managers; Office of the Director DJSS; OTP CAR IIB Case Management; Dimitri, Mylene
 Subject: RE: Yekatom request for variation of time limit to ICC-01/14-01/18-503-Conf

Dear Ms [REDACTED]

The Common Legal Representatives will provide their position on the Defence's request tomorrow upon internal consultation.

Kind regards,

Paolina Massidda

From: [REDACTED]
Date: Sunday, 03 May 2020, 7:24 PM
To: Trial Chamber V Communications [REDACTED]
Cc: D29 Yekatom Defence Team [REDACTED], D30 Ngaissona Defence Team [REDACTED], V44 LRV Team [REDACTED], V45 LRV Team [REDACTED], OTP CAR IIB Managers [REDACTED], Office of the Director DJSS [REDACTED], OTP CAR IIB Case Management [REDACTED]
Subject: Yekatom request for variation of time limit to ICC-01/14-01/18-503-Conf

Dear Ms. [REDACTED]

We would be grateful if you could convey the following message to the Judges of Trial Chamber V.

In relation to the *Prosecution's Application for Notice to be given pursuant to Regulation 55(2) on Accused Yekatom's Individual Criminal Responsibility* (ICC-01/14-01/18-503-Conf), the Defence of Mr. Yekatom respectfully requests a variation of the time limit under Regulation 35 of the Regulations of the Court and seeks to have an extension of the usual response deadline of two days.

The responses of the victims will most likely support the Prosecution's Application given the *Common Legal Representatives' Joint Response to the Prosecution's Request for Reconsideration or Leave to Appeal* (ICC-01/14-01/18-442). Since the Defence and victims currently file their responses simultaneously this leaves the Defence with no opportunity to address the additional arguments in favour of the Prosecution's application. By extending the defence response deadline by two days, the Defence will have the opportunity to incorporate the victims' arguments into its response to the Prosecution's Application. The result will be that this sequence of briefing will be of greater assistance to the Chamber .

The Chamber will recall that we raised this issue in our submissions in advance of the first status conference (ICC-01/14-01/18-472, paras. 61-62) when we asked that the Chamber issue a standing order requiring the Legal Representatives of Victims to file any response to Prosecution motions within five days. We consider that the preferable approach, but in the circumstances of this already-filed motion, it is unrealistic to expect the victims responses to be filed so quickly. So we are asking for an extension instead. We would welcome the Chamber addressing this issue on a global basis.

If the Chamber prefers, the Defence can file this variation of time limit request as a formal motion. Please advise.

Kind regards,
Mylène Dimitri

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