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**International
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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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Confidential

**Request for the Extension of Page Limits for the Prosecution's Trial Brief, Rule
68(2)(b) applications and two motions for non-standard redactions**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests an extension of the applicable page limits pursuant to regulations 38(2)(b) and 37(2) of the Regulations of the Court (“RoC”) regarding its: (i) Trial Brief, to 250 pages; (ii) applications pursuant to rule 68(2)(b) of the Rules of Evidence and Procedure (“Rules”), to allow for the consolidation of up to 10 witnesses per application; (iii) application for rule 81(2) redactions to Call Data Records (“CDR”) and related materials to protect the Seleka Investigation, to 120 pages (or alternatively, three separate filings of 45 pages); and (iv) application for rule 81(2) redactions to witness related materials to protect the Seleka Investigation, to 35 pages.

2. The requested extension for the Trial Brief is warranted and necessary to enable the Prosecution to comprehensively set out the case theory and the principal evidence in a meaningful and coherent manner that benefits the Chamber, Parties, and Participants, in light of the Decision on the Confirmation of Charges.¹ In addition, extending the page limit for the Prosecution’s rule 68(2)(b) applications as explained below would allow for the proper substantiation of the specific requirements of the provision, and promote the interests of judicial economy.

3. The requested extension for the rule 81(2) redactions for CDR filings is warranted and necessary to enable the Chamber to comprehensively assess the underlying reasons and justifications for each submitted redaction. The Prosecution will need to propose redactions to at least 52 excel files which include target CDR for both Anti-Balaka and Seleka Investigations. In addition, a total of 70 accompanying materials such as transmission letters and Requests for Assistance (“RFA”) will need to be redacted under rule 81(2).

¹ ICC-01/14-01/18-403-Red-Corr (“Confirmation Decision”).

4. Finally, the Prosecution will require an extension of the page limit to comprehensively justify proposed rule 81(2) redactions in relation to the materials of 10 witnesses whose information impacts the Seleka Investigation.

II. CONFIDENTIALITY

5. This Request is filed “Confidential” as it contains sensitive information regarding ongoing investigations which could be jeopardised if exposed.

III. SUBMISSIONS

A. The requested page limit extension for the Trial Brief is justified

6. In the *Gbagbo* and *Blé Goudé* case, the Trial Chamber was satisfied that exceptional circumstances warranted granting the Prosecution an extension of up to 300 pages and noted that:

“the scope of the charges to be addressed in the Pre-Trial Brief, as well as the requirement that, for each count, the Prosecution must set out the relevant evidence upon which it intends to rely, and how that evidence relates to the charges in respect of both Accused.”²

7. This case is highly complex, concerning two Accused charged with multiple counts of crimes against humanity and war crimes under different, alternative modes of liability. The underlying facts are intricate and involved. Thus, a meaningful presentation of the Prosecution’s case theory regarding the confirmed charges with reference to the relevant evidence in a comprehensive, focused, and accessible manner requires a substantial page limit extension.

² ICC-02/11-01/15-131, para. 6; see, ICC-01/04-02/06-500, para. 9.

8. Although the Parties and Participants already benefit from a comprehensive Document Containing the Charges³ (as was the case in *Al Hassan*⁴), the Trial Brief in this case must also account for a substantial departure from the charges alleged in the DCC, and the corresponding shift in the focus of the relevant evidence. The Trial Brief intends to address this change and, to some extent, elaborates and re-frames the overall case theory in this context, as well as the significance of the evidence to the elements of the charges. Thus, further to providing comprehensive references to relevant evidence, the Trial Brief also accounts for the salient evidence additional to, and obtained *after*, that relied on at the confirmation hearing. In addition, it addresses in detail the Prosecution's case in relation to the applicable modes of liability. Each alternative mode requires both an analysis of the law, and the evidence underpinning the material elements of the charges against the Accused, all warranting the requested extension.

9. The Prosecution acknowledges that the quality and effectiveness of a Trial Brief is not contingent on its length. It intends to keep its submissions as concise as possible. However, important information and references to key evidence may be essential to providing a complete and cogent overview of the Prosecution's case, and require a reasonable degree of explanation.

10. Based on a careful assessment of the length necessary to complete its Trial Brief, having substantially progressed in its drafting, the Prosecution has calculated that it will require up to 250 pages.

11. The requested extension is justified by "exceptional circumstances" within the meaning of regulation 37(2), as a more detailed articulation of the Prosecution's case and evidence will assist the Chamber, as well as the Parties and Participants in their preparation for trial.

³ ICC-01/14-01/18-282-Conf-AnxB1 ("DCC").

⁴ ICC-01/12-01/18-143-tENG, paras. 29-30.

B. The requested page limit extension for rule 68(2)(b) applications is justified

12. The Prosecution proposes to file consolidated applications under rule 68(2)(b) on a rolling basis, in view of its intention to tender the prior statements of over 40 witnesses for formal submission.

13. An extension of the applicable page limit to allow the Prosecution's consolidation of up to 10 witnesses per application will avoid overburdening the Chamber and the Parties with multiple single applications. It thus advances the interests of judicial economy and promotes efficiency in their disposition. Moreover, extending the page limits in this manner would further allow the Prosecution to develop and present the legal and factual analysis necessary to meet the conditions for the formal submission of each witness's prior statement concisely. Allowing the Prosecution an extension of pages to frame cogent, as opposed to generalised applications, will promote the expeditious conduct of the proceedings.

14. The reasons set out above constitute exceptional circumstances, within the meaning of regulation 37(2). The Prosecution acknowledges that if this relief is granted, the Defence may require reasonable extensions for their responses.

C. The requested page limit extension for rule 81(2) for Call Data Records

15. The ongoing and detailed review of CDR obtained as part of the Anti-Balaka Investigation has identified that some of the excel sheets and files provided by the telecommunications companies concerned also include target CDR requested as part of the Seleka Investigation. In total, there are 52 registered excel files, many of which have multiple sheets holding combined information, which have been identified as being disclosable in the present proceedings. These excel sheets include the target data of up to 40 individuals, with 96 phone numbers attributed and requested, for persons relevant *only* to the Seleka Investigation. In addition, these CDR were

transmitted with documents by the providers which also comingled information relevant to both investigations. This concerns 30 RFAs and 40 related documents on transmission of CDR.

16. To set out the review and proposed redactions process for the exact data affected comprehensively, including a description of what was received and how it is to be redacted, an extension of the applicable page limit to a maximum of 120 pages is necessary. A consolidated filing would enable the Chamber to consider the Prosecution's arguments in their totality and in full context, and avoid overburdening the Chamber with multiple discrete applications. It thus advances the interests of judicial economy. Moreover, extending the page limit in this manner would further allow the Prosecution to develop and present the specific legal and factual analysis necessary to meet the conditions for the formal submission of each CDR and related documents concisely. Allowing the Prosecution an extension of the page limit to frame cogent, as opposed to generalized, applications will promote the expeditious conduct of the proceedings.

17. However, if the Chamber prefers, the Prosecution is equally able to submit separate applications related to the categories of persons affected by the disclosure, which would amount to three separate filings of a maximum 45 pages each. The Prosecution intends to file this motion, or motions, within the next 10 days.

18. The requested extension is justified by "exceptional circumstances" within the meaning of regulation 37(2), as the complexity of the issue and the magnitude of the material involved and to be provided to the Parties and Participants in preparation of trial, necessitates sufficient description and argumentation, which is not possible within the applicable page limits.

D. The requested page limit extension for rule 81(2) for witness-related materials

19. The Prosecution presently intends to request non-standard rule 81(2) redactions to the materials (witness statements, screenings and/or annexes where applicable) of 10 witnesses whose materials are yet to be disclosed.

20. In doing so, the Prosecution will be guided by the Chamber's reasoning in its recent Decision on the Prosecution's first request for non-standard redactions under rule 81(2) concerning witness-related materials.⁵ For the Prosecution to set out why requested redactions are justified to the level of specificity required by the Chamber, an extension of the page limit to a maximum of 35 pages is necessary.

21. The requested extension is justified by "exceptional circumstances" within the meaning of regulation 37(2), given the unique manner in which the disclosure of witness-related materials in the present proceedings poses risks for the Seleka Investigation, which the Prosecution is required to substantiate in a full and detailed manner. While the Prosecution could alternatively file two or more separate requests, a consolidated filing is in the interests of judicial economy, as it will assist the Chamber to view the individual requests in a broader context and help the Chamber's appreciation of the recurring subjects in the materials identified directly bearing on the Seleka Investigation.

IV. RELIEF SOUGHT

22. For the above reasons, the Prosecution requests an extension of the applicable page limits pursuant to regulations 38(2)(b) and 37(2) regarding its:

⁵ ICC-01/14-01/18-670-Conf-Exp.

- (i) Trial Brief, to 250 pages;
- (ii) Rule 68(2)(b) applications, to allow for the consolidation of up to 10 witnesses per application;
- (iii) Rule 81(2) application in respect of CDR to protect the Seleka Investigation, to 120 pages (or alternatively three separate filings of 45 pages); and
- (iv) Rule 81(2) application in respect of witness-related materials to protect the Seleka Investigation, to 35 pages.



James Stewart, Deputy Prosecutor

Dated this 19th day of October 2020
At The Hague, The Netherlands