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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***

Public

**Prosecution's Request for Variation of Time Limit pursuant to Regulation 35 for the
Proposal of Public Redacted Versions of Prior Recorded Testimony Introduced
under Rule 68(2)**

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 an extension of time under Regulation 35 of the Regulations of the Court (“RoC”) for the proposal of public redacted versions (“PRV’s”) of the prior recorded testimonies introduced pursuant to Rule 68(2) of the Rules of Procedure and Evidence (“Rules”). As set out below, extension of the 30-day deadline¹ is substantiated by good cause, and granting it would not occasion any unfair prejudice. The Prosecution believes it will be in a position to submit the proposed PRV’s for the consideration of the Parties and Participants, by 15 November 2023.

II. BACKGROUND

2. Between November 2020 and January 2021, the Prosecution filed eight requests for the introduction of prior recorded testimonies pursuant to Rule 68(2)(b),² and three requests for the introduction of prior recorded testimonies pursuant to Rule 68(2)(c).³

3. On 6 May 2020, Trial Chamber V (“Chamber”) designated the Registry Senior Legal Advisor, or anyone delegated by him, to witness declarations under rule 68(2)(b).⁴ On 18 May 2020, the Registry filed the standardised forms to accompany such declarations.⁵

4. In related consultations with the Registry to organise the certification process, the Registry indicated that it did not have the resources to proceed with the certification process prior to the Chamber’s ruling on the Prosecution Requests.

¹ Email from the Chamber on 20 August 2021 at 10:16.

² ICC-01/14-01/18-710-Conf; ICC-01/14-01/18-744-Conf; ICC-01/14-01/18-745-Conf; ICC-01/14-01/18-794-Conf; ICC-01/14-01/18-795-Conf; ICC-01/14-01/18-802-Conf-Corr; ICC-01/14-01/18-808-Conf; ICC-01/14-01/18-812-Conf (“Prosecution Requests”).

³ ICC-01/14-01/18-1169-Conf; ICC-01/14-01/18-1663-Conf, ICC-01/14-01/18-1677-Conf.

⁴ ICC-01/14-01/18-489; ICC-01/14-01/18-508.

⁵ ICC-01/14-01/18-522 and ICC-01/14-01/18-522-Conf-Anx.

5. On 3 June 2021, the Chamber issued its decision requiring that the Prosecution submit the redacted versions of the prior recorded testimony of all of its rule 68 witnesses within 21 days of fulfilling the requirements under rule 68.⁶ This was modified on 20 August 2021, to require the submission of such redacted versions within 30 days of the last witness called in the Prosecution's case-in-chief.⁷

6. On 6 April 2023, the Chamber issued its First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules ("First Rule 68(2)(b) Decision").⁸ The prior recorded testimonies of 27 witnesses were introduced into evidence, subject to the receipt of the relevant declarations under rule 68(2)(b)(ii) and (iii).⁹

7. On 5 June 2023, the Chamber issued its Second Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(b) of the Rules ("Second Rule 68(2)(b) Decision"), in which the prior recorded testimonies of a further eight witnesses were introduced into evidence, subject to the receipt of the declarations under rule 68(2)(b)(ii) and (iii).¹⁰

8. On 12 July 2023, the Chamber issued its First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules ("First Rule 68(2)(c) Decision"), in which the prior recorded testimonies of three witnesses were introduced into evidence.¹¹

9. On 24 July 2023, the Prosecution requested the Chamber to exceptionally exempt witness P-2467's prior recorded testimony from publication ("Request for Non-Publication").¹²

⁶ Email from the Chamber on 3 June 2021 at 15:58.

⁷ Email from the Chamber on 20 August 2021, at 10:16.

⁸ ICC-01/14-01/18-1833-Conf-Corr.

⁹ ICC-01/14-01/18-1833-Conf-Corr, pp. 101-105.

¹⁰ ICC-01/14-01/18-1907-Conf, pp. 59-64.

¹¹ ICC-01/14-01/18-1975-Conf.

¹² ICC-01/14-01/18-2003-Conf.

10. On 3 August 2023, the Chamber issued its Further Order on the Remainder of the Prosecution Presentation of Evidence ("Further Order"), introducing the prior recorded testimony of one additional witness into evidence, subject to the receipt of the declarations under Rule 68(2)(b)(ii) and (iii) of the Rules.¹³ This brought the number of required declarations to be obtained to 36.

11. On 29 August 2023, the Prosecution concluded the presentation of its evidence-in-chief.

12. On 31 August 2023, the Prosecution filed its Request for the Protection of the Identity of Witnesses P-2546, P-2393, P-1964, P-2132, P-1654 in the Public Redacted Versions of their Statements ("Request for Identity Protection"). Proposed redacted versions of their statements were attached to the filing.¹⁴

13. On 4 September 2023, the Prosecution filed the accompanying declarations of 10 witnesses, namely: P-0365, P-0505, P-0520, P-0925, P-1143, P-1964, P-2132, P-2393, P-2486, and P-2546.¹⁵

III. SUBMISSIONS

14. With the last Prosecution witness in-chief having completed his testimony on 29 August 2023, the time limit to submit proposed redacted versions of *all* authorised prior recorded testimony will expire on 28 September 2023. As explained below, the current deadline is infeasible in the circumstances, and an extension of time is justifiable.

¹³ ICC-01/14-01/18-2016-Conf, p. 22.

¹⁴ CC-01/14-01/18-2072-Conf-Red, with annexes.

¹⁵ ICC-01/14-01/18-2076.

a. Good cause can be demonstrated

15. Under regulation 35(2) of the RoC, a Chamber may extend a time limit where good cause is shown. The Prosecution is largely up-to-date with the proposals of PRVs in respect of the witnesses (i) whose prior recorded testimonies were introduced into evidence under rule 68(2)(c); and those (ii) who - to date - have certified their prior recorded testimonies.

16. In respect of the remaining witnesses, the large number involved, the volume of their prior testimonies, as well as resource constraints and logistical challenges, all justify the requested extension.

b. The current situation

1. Three witnesses whose prior recorded testimonies were introduced into evidence under rule 68(2)(c)

17. As outlined above, three witnesses' prior recorded testimonies were introduced into evidence by the Chamber under rule 68(2)(c). The Prosecution has proposed PRVs of their prior recorded testimony: (i) either through uploading them to the shared file in HPE Records Manager, or (ii) by annexing them to its Request for Identity Protection.¹⁶

2. 36 witnesses whose prior recorded testimonies were introduced into evidence by the Chamber under rule 68(2)(b)

18. Likewise, as indicated above, the prior recorded testimony of 36 witnesses was introduced into evidence by the Chamber through the First Rule 68(2)(b) Decision, the Second Rule 68(2)(b) Decision, and the Further Order.

¹⁶ ICC-01/14-01/18-2015-Conf-Exp, with annexes. Confidential Redacted Version at ICC-01/14-01/18-2072-Conf-Red.

19. To date, 17 of the 36 rule 68(2)(b) witnesses have certified their prior recorded statements.¹⁷ The Prosecution has proposed PRVs for 14 of them: (i) through uploading them to the shared file in HPE Records Manager, (ii) by annexing them to its Request for Identity Protection;¹⁸ or (iii) by filing a Request for Non-Publication.¹⁹ The PRVs for the three remaining witnesses will be uploaded shortly, or included in an upcoming request for the protection of their identity in the public redacted versions of their prior recorded testimony.

20. Of the remaining 19 of the 36 rule 68(2)(b) witnesses, the Prosecution no longer seeks to rely on P-2205 and P-1584, whose prior recorded testimony was provisionally authorised by the Chamber.

c. Logistical constraints in respect of the remaining 17 witnesses

21. Presently, there are 17 witnesses whose prior recorded testimonies still need to be certified and for whom no PRVs have been proposed yet.

22. These remaining certifications present several challenges. The 17 witnesses are spread across various countries and continents, including the Central African Republic ("CAR"), Cameroon, Chad, Côte d'Ivoire, France and Canada. Several logistical and resource issues have delayed the process. Some witnesses require interpretation during the certification process, while other particularly vulnerable witnesses require specific types of assistance. For some witnesses, who remain unreachable, Requests for Assistance have been sent to the relevant authorities. Other witnesses have indicated that they are outside the country of their usual residence, and that they are available only to proceed with the certification upon their return (which, in certain instances is not before October 2023).

¹⁷ The Prosecution will continue to submit the certification documentation of these witnesses on an ongoing basis.

¹⁸ ICC-01/14-01/18-2015-Conf-Exp, with annexes. Confidential Redacted Version at ICC-01/14-01/18-2072-Conf-Red.

¹⁹ ICC-01/14-01/18-2003-Conf.

23. The Prosecution has a team on the ground in both CAR and CHAD who are organising meetings with the witnesses for the purposes of certifying their prior recorded testimony. However, the witnesses' varying geographical locations and availability coupled with the Prosecution's resource constraints result in a complex and time-consuming exercise, such that it will take several weeks before the undertaking is complete.

d. Resource constraints

24. The Prosecution believes it would not be efficient allocation of its limited resources to proceed with proposing PRVs of the prior recorded testimony of the witnesses concerned prior to their actual certification, both because the exercise would be in vain in case a witness would not proceed with the certification, and because the proposed redactions depend on the security concerns discussed with the witness during the certification process.

25. Indeed, like for the witnesses who were subject to the Prosecution's Request for Identity Protection, it is expected that during the certification process, when security issues are further discussed, several more witnesses may raise concerns in relation to the publication of their identity, for security reasons or other reasons falling within the scope of article 68.²⁰ It is anticipated that several more witnesses will justifiably voice apprehension regarding the publication of their identity when they are advised of the same, rendering it necessary for the Prosecution to file further requests for protection of their identity from the public.

26. For these reasons, the Prosecution respectfully submits that good cause exists for the variation of the time limit to propose PRVs of the remaining witness' prior recorded testimony. While the Prosecution will continue to propose the PRV's on an ongoing basis, as it stands, it believes that it will only be in a position to finalise the

²⁰ ICC-01/14-01/18-2072-Conf-Red.

processes of (i) certifying the prior recorded testimony of all outstanding witnesses, (ii) filing further requests for protective measures, and (iii) implementing redactions and proposing the PRVs, by 15 November 2023.

e. There is no prejudice to the Defence

27. There is no prejudice to the Defence in the circumstances. The Defence are in possession of all of the relevant materials, and the timing of the Prosecution's *inter partes* proposal of the PRVs of the prior recorded testimony of the remaining witnesses does not affect their ability to use these items in the course of the proceedings. Moreover, as mentioned, the Prosecution will continue to propose PRV's on an ongoing basis, if and when the prior recorded testimony are certified and the security discussions with the witnesses have been held.

IV. RELIEF SOUGHT

28. For the above reasons, the Prosecution respectfully requests that the Chamber varies the time limit for the proposal of PRVs of the prior recorded testimony of the outstanding Rule 68(2) witnesses to 15 November 2023.



Karim A. A. Khan KC, Prosecutor

Dated this 11th day of September 2023
At The Hague, The Netherlands