

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/18

Date: 3 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Prosecution's Second 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. Further to the Request of 11 September 2023,¹ the Office of the Prosecutor ("Prosecution") seeks a further extension of time under Regulation 35 of the Regulations of the Court ("RoC") for the proposal of public redacted versions ("PRVs") of the prior recorded testimonies introduced pursuant to Rule 68(2) of the Rules of Procedure and Evidence ("Rules"). As set out below, an extension of the deadline is substantiated by good cause, and granting it would not occasion any unfair prejudice. The Prosecution believes it should be in a position to submit the proposed PRVs for the consideration of the Parties and Participants by the end of December 2023.

II. SUBMISSIONS

2. As set out in the its Decision on the Prosecution's Requests for Extension of Time for Public Redacted Versions of Prior Recorded Testimonies and for Publication of Summaries ("Decision"), the time limit to submit proposed redacted versions of all authorised prior recorded testimony will expire on 15 November 2023.² As explained below, the current deadline is infeasible in the circumstances, and a further extension of time is justifiable.

a. Good cause can be demonstrated

3. Under regulation 35(2) of the RoC, a Chamber may extend a time limit where good cause is shown. In the current instance, the large number of witnesses involved, the volume of their prior testimonies, as well as ongoing resource constraints and logistical challenges, all justify the requested extension.

¹ Request ICC-01/14-01/18-2090; Decision ICC-01/14-01/18-2107.

² ICC-01/14-01/18-2107, para. 8.

b. The current circumstances

4. The prior recorded testimony of 36 witnesses was introduced into evidence by the Chamber between 6 April and 3 August 2023.³ Of the 34 such witnesses the Prosecution seeks to rely on,⁴ 22 have by now certified their statements. Three more stand ready to certify theirs on a mission to YAOUNDE departing at the end of the week. Another witness will fly to ABIDJAN for this purpose in the coming days.

5. PRVs have been, or in some instances will be, proposed shortly for witnesses who recently certified their statements, either through uploading them to the shared file in HPE Records Manager, or by annexing them to a third request for identity protection.

c. Logistical and resource constraints

6. Aside from the four scheduled certifications noted above, there remain eight witnesses whose prior recorded testimonies still need to be certified and for whom no PRVs have been proposed yet.

7. Some of these certifications are anticipated to take place in time for the Prosecution to propose PRVs for the relevant prior recorded testimony prior to the deadline of 15 November 2023. However, other certifications present serious challenges, and several logistical and resource issues have further delayed the process. Some witnesses remain unreachable, and the Prosecution has taken several steps to locate and contact witnesses, including through RFAs pending with state authorities. In addition, illness has played a role in delaying witness availability, and witnesses' travel constraints have also resulted in postponement of the certification process. A Prosecution team in CAR recently returned having successfully met with two witnesses, but is assisting others in obtaining valid ID before they can certify their

³ ICC-01/14-01/18-1833-Conf-Corr; ICC-01/14-01/18-1907-Conf; ICC-01/14-01/18-2016-Conf.

⁴ The Prosecution no longer seeks to rely on P-2205 and P-1584.

prior recorded testimony, as the Registry has required. In sum, the witnesses' varying geographical locations and availability coupled with the Prosecution's resource constraints mean this complex and time-consuming exercise will take additional time to complete.

8. As outlined in the First Regulation 35 Request,⁵ the Prosecution believes it would not be an efficient allocation of its limited resources to propose PRVs of the prior recorded testimony of the witnesses concerned prior to their actual certification. This is because such an exercise would be futile should the certification not proceed due to non-cooperation or unavailability, and because the proposed redactions necessarily depend on discussions with the witness regarding their security concerns.

9. Indeed it is not unlikely that several more witnesses will justifiably raise concerns in relation to the publication of their identity once advised of the same, for reasons of security or others falling within the scope of article 68.⁶ The Prosecution is working on a third request for identity protection and expects to draft further such requests following the relevant discussions.

10. For these reasons, the Prosecution submits that good cause exists for the variation of the time limit to propose PRVs of the remaining witnesses' prior recorded testimony. While the Prosecution will continue to propose the PRVs on an ongoing basis, as it stands, it believes that it will only be in a position to finalise the 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 the end of December 2023.

⁵ ICC-01/14-01/18-2090, para. 24.

⁶ ICC-01/14-01/18-2072-Conf-Red.

d. There is no prejudice to the Defence

11. 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 PRVs on an ongoing basis, if and when the relevant prior recorded testimony is certified and the security discussions with the witnesses have been held.

III. RELIEF SOUGHT

12. For the above reasons, the Prosecution 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 the end of December 2023.



Karim A. A. Khan KC, Prosecutor

Dated this 3rd day of November 2023
At The Hague, The Netherlands