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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

**Prosecution's Request for Partial Reconsideration of the 'Further Directions on the
Conduct of the Proceedings' (End of Defence Presentation of Evidence
and Closure of Evidence) (ICC-01/14-01/18-2342)**

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") respectfully requests Trial Chamber V ("Chamber") to reconsider the time and page limits set in the 2 February 2024 'Further Directions on the Conduct of the Proceedings'¹ regarding the submission of the Prosecution's closing brief. As elaborated below, reconsideration is justified in the circumstances.

2. *First*, the 2 February 2024 Further Directions did not benefit from the Parties' and Participants' submissions before its issuance. *Second*, without reconsideration, the limits it imposes will impede the Prosecution's ability to provide effective closing submissions fully taking into account the vast evidentiary record and its complexity, particularly given that the case concerns two Accused whose alleged responsibility for the charged crimes is substantively divergent.

3. Neither the allotment of eight weeks for the submission of its closing brief² nor the 200 pages afforded³ provides the Prosecution with a sufficiently meaningful opportunity to address the unprecedented volume of evidence submitted in this case. As well, the 2 February 2024 Further Directions constrains the Prosecution's ability to discharge its burden of proof, and to assist the Chamber — as the trier of fact — in establishing the truth.

4. The Prosecution recognises that the thrust of the 2 February 2024 Further Directions is to ensure the efficient and expeditious conduct of the proceedings, and to "provide the participants with as much time as possible to organise and plan their workload."⁴ It also acknowledges that the eight weeks provided for the Parties to submit their closing briefs is substantial. It is with this understanding and in

¹ ICC-01/14-01/18-2342 ("2 February 2024 Further Directions").

² ICC-01/14-01/18-2342, para. 9.

³ ICC-01/14-01/18-2342, para. 11.

⁴ ICC-01/14-01/18-2342, para. 4.

anticipation of the Chamber's directions, that the Prosecution has been continually digesting the trial evidence, and is in the early phase of preparing its closing brief.

5. Should the Chamber grant the reconsideration requested, the Prosecution considers that a limit of up to 375 pages for its closing brief and a filing deadline of 10 weeks after the close of evidence, would sufficiently address its concerns.

II. CONFIDENTIALITY

6. Pursuant to regulation 23bis(1) of the Regulations of the Court ("RoC"), this document is filed as "Confidential" because it contains certain information which may not yet be public. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

7. The Chamber's reconsideration of the 200-page limit and eight-week filing deadline provided in the 2 February 2024 Further Direction's regarding the Prosecution's closing brief is necessary to take into account facts and arguments that the Prosecution did not have a previous opportunity to raise.⁵ And, as explained below, it is moreover necessary to prevent an injustice.⁶

⁵ See ICC-01/12-01/18-734, para. 11 (noting that "[n]ew facts and arguments arising since the decision was rendered may be relevant to [assess whether reconsideration is necessary to prevent an injustice]"; see also ICC-01/05-01/13-1282 para. 8; ICC-01/09-01/11-1813 para. 19; and ICC-01/09-02/11-863, para. 11.

⁶ See e.g., ICC-01/12-01/18-1335-Conf-Red, para. 5; ICC-01/04-02/06-611, para. 12; and ICC-01/04-02/06-605, para. 7.

A. A 200-page limit for the Prosecution's closing brief is not sufficient to meaningfully address the extent of the trial evidence in this case

i. The Prosecution should have a meaningful opportunity to argue its case in view of its actual size and scope

a. The trial record is extensive

8. The *Yekatom* and *Ngaissona* trial record as a whole is in many respects the largest ever before the Court. Over the three years it has spanned so far,⁷ the Prosecution's evidence *alone* comprises the testimony of 111 witnesses and nearly 17,000 submitted items. Disclosure has approached 37,000 items; nearly 2,400 'original documents' have been filed by the Chamber, Parties, and Participants to date,⁸ along with numerous informal/email requests and responses, including over 760 email decisions already issued at this stage.⁹

9. In combination, the number of charges and counts; modes of liability, witnesses called; exhibits formally submitted; and that the matter concerns two Accused, all establish the unprecedented size and scope of the trial record in this case. As such, the 2 February 2024 Further Directions does not adequately account for these significant factors in applying the same page limit imposed in other cases which are not fully comparable.

⁷ See ICC-01/14-01/18-875.

⁸ Note that, as of 9 January 2024, according to the Court's JWP database, the number of filings by the Parties during the *trial phase* in multi-Accused trials compare as follows: *Yekatom and Ngaissona* (ongoing) with **2,100** filings; *Gbagbo and Blé Goudé* with **1,272**; *Katanga and Ngudjolo* with **1,198**; *Bemba et al* with **1183**; and *Ruto and Sang* with **972**. As regards single-Accused trials, the Parties' filings in the trial phase reflect of 9 January 2024 reflect: *Al Hassan* (ongoing) – **1,547**; *Ntaganda* – **1,544**; *Bemba* – **1,141**; *Lubanga* - **859**; *Ongwen* - **754**; *Abd-Al-Rahman* (ongoing) - **672**; *Said* (ongoing) - **638**; and *Gicheru* - **335**.

⁹ Compare ICC-02/04-01/15-1762-Red, para. 25 (noting 403 email decision in *Ongwen*); ICC-02/11-01/15-1448-AnxA (noting 101 email decisions in *Gbagbo and Blé Goudé*).

b. Ancillary documents

10. Providing a comprehensive closing brief is essential to the Prosecution's ability to explain how the evidence adduced at trial meets its burden to prove the Accused's guilt beyond a reasonable doubt,¹⁰ and to present its most compelling arguments in establishing the truth.¹¹ In this respect, article 64(2) affords the Prosecution a meaningful opportunity to do so, in view of the nature, complexity, and scope of the case.

11. While ancillary instruments have been filed in the record, they do not supplant the need for the Prosecution to submit a comprehensive closing brief. The Document Containing the Charges¹² and Trial Brief¹³ for instance, do not present and explain the *trial evidence* to the legal threshold required for a conviction. Rather, these instruments are aimed at defining the case and describing the theory and *prospective evidence*, rather than proving it.¹⁴ Moreover, they do not form part of the argumentative record on the trial evidence, so as to diminish the necessity to thoroughly address it. By contrast, the Prosecution's closing brief is critical to explain the submitted evidence – particularly complex evidence, reasonable inferences arising therefrom, and to show how and why that evidence is credible and establishes the Accused's individual criminal responsibility beyond reasonable doubt.

ii. Comparison to other trials

12. More recently, a **200-page** limit for the Prosecution's closing brief was ordered in *Al Hassan*¹⁵ and *Ongwen*.¹⁶ However, while both cases are substantial in their own right,

¹⁰ See article 66(3).

¹¹ See article 54(1).

¹² See ICC-01/14-01/18-282-AnxB1-Red.

¹³ See ICC-01/14-01/18-723-Red.

¹⁴ See ICC-01/14-01/18-686-Conf, para. 2 (Prosecution filing noting the purpose of the Trial Brief "to comprehensively set out the case theory and the principal evidence in a meaningful and coherent manner that benefits the Chamber, Parties, and Participants").

¹⁵ See ICC-01/12-01/18-2308, para. 12(i). Note, this was extended to 225 pages.

¹⁶ See ICC-02/04-01/15-1226, para. 4.

the attendant circumstances are distinguishable. *First*, each case concerns one Accused. *Second*, the volume of their respective trial records is materially different. Notably, although the *Al Hassan* case involved around 13,000 submitted items of evidence, the Prosecution called 69 witnesses altogether, amounting to less than two-thirds of the number here. Conversely, in the *Ongwen* case, while the Prosecution called 116 witnesses, the Chamber recognised the formal submission of 5,149 items of evidence in total, amounting to *less than a third* of the evidence submitted in this case.¹⁷

13. Previous ICC trials, such as the *Ntaganda* case allowed for a substantially greater page limit for the Prosecution's closing brief. There, where the case involved 79 Prosecution witnesses¹⁸ and 1,791 admitted items of evidence,¹⁹ Trial Chamber IV eventually ordered a page limit of **450 pages**.²⁰ In the *Bemba* case, which involved 34 Prosecution witnesses and 733 admitted items of evidence,²¹ Trial Chamber III received a Prosecution closing brief of **319 pages**.²² Likewise in the *Lubanga* case, which involved 36 Prosecution witnesses and 1,373 admitted items of evidence,²³ Trial Chamber I set a page limit for the Prosecution's closing brief of **250 pages**.²⁴

14. Similar to the above single-Accused cases, *Katanga and Ngudjolo* — the only other joint article 5 case to advance to this phase of trial²⁵ — involved 28 Prosecution witnesses and 643 admitted items of evidence.²⁶ There, the Prosecution was permitted to submit a closing brief of **322 pages**.²⁷

¹⁷ ICC-02/04-01/15-1762-Red, para. 25.

¹⁸ See ICC-01/04-02/06-2260, para. 11.

¹⁹ See ICC-01/04-02/06-2359-AnxA, para. 1.

²⁰ See ICC-01/04-02/06-2272, p. 9.

²¹ ICC-01/05-01/08-3343, para. 17.

²² ICC-01/05-01/08-3079-Corr-Red.

²³ See ICC-01/04-01/06-2842, para. 11.

²⁴ See ICC-01/04-01/06-2722, para. 3(a).

²⁵ Both the *Ruto and Sang* and the *Gbagbo and Blé Goudé* trials were terminated at the close of the Prosecution case. Declaring a 'mistrial' (ICC-01/09-01/11-2027-Red-Corr, para. 464(i)); and acquittal (ICC-02/11-01/15-1263, para. 28), respectively.

²⁶ In the *Katanga and Ngudjolo* case 54 witnesses were called, 24 by the Prosecution. Some 261 exhibits were tendered by the Prosecution of the 643 before the Trial Chamber, see ICC-01/04-01/07-3436-tENG, paras. 21-22.

²⁷ See ICC-01/04-01/07-3251-Corr-Red.

iii. *The two Accused and extensive charges in this case require comprehensive exposition*

15. As this case is only the second joint article 5 trial to reach this stage of the proceedings, the Court's determination as to the appropriate page and time limits regarding the Prosecution's closing brief — taking into account its unprecedented size — is a matter of first impression.²⁸

16. The Confirmation Decision charges 21 counts against YEKATOM comprising seven war crimes and six crimes against humanity. NGAISSONA is charged with 31 counts, comprising nine war crimes and seven crimes against humanity.²⁹ The charges relate to several discrete incidents occurring in the context of alleged Anti-Balaka attacks throughout the western part of Central African Republic, lasting from about September 2013 through December 2014.³⁰ Additionally, the scope of relevant evidence in this case spans over two years.

17. Although some of the charged crimes overlap as between the Accused, the modes of liability and the circumstances and evidence underpinning them largely do not. In essence, in terms of establishing the Accused's respective criminal liability, the underlying evidence against them largely does not coincide.

18. In this respect, it is important to note that the Accused are charged with different modes of liability — YEKATOM, as a *principal*, pursuant to articles 25(3)(a) and 25(3)(b); and NGAISSONA as an *accessory*, under articles 25(3)(c) and 25(3)(d).³¹ All of these are predicated on discrete evidentiary and factual grounds concerning their

²⁸ It is notable that the Prosecution's submissions in the *Ruto and Sang* and *Gbagbo and Blé Goudé* trials on 'no case to answer' requests — wherein the legal threshold is substantially less than proof beyond a reasonable doubt — amounted to 177 pages (*see* ICC-01/09-01/11-2000-Conf) and 1,420 pages (*see* ICC-02/11-01/15-1136-Conf-Anx1 (365 pages) and ICC-02/11-01/15-1207-Conf-Anx1 (1055 pages), respectively.

²⁹ ICC-01/14-01/18-403-Corr-Red.

³⁰ ICC-01/14-01/18-403-Corr-Red, pp. 103-106 (regarding Yekatom), 107-110 (regarding Ngaissona).

³¹ Notably, the Chamber has not fully dispensed with the possible recharacterisation of the facts regarding Yekatom under articles 25(3)(c) and (d) and article 28 (*see* ICC-01/14-01/18-2097, para. 6 denying the Prosecution's request for recharacterisation under Regulation 55(2) "without prejudice to notice being given in accordance with Regulation 55 of the Regulations at a later stage, if and when it appears appropriate to the Chamber to do so").

participation regarding the charged incidents and warrant detailed discussion. The required analysis and exposition of the evidence regarding one Accused will not necessarily extend to the other. Accordingly, they separately require comprehensive consideration of the material evidence in relation to each count under the relevant modes of liability.

iv. The nature of the evidence is highly complex

a. Insider witnesses

19. As noted, the volume of submitted evidence comprising the trial record in this case is in most ways exceptional. In addition to its unprecedented volume, its *nature* is also complicated.

20. Much of the Prosecution's case is established by 'insider' evidence – whether members of the Anti-Balaka or its circle of supporters. Close to 40 insider witnesses were called in the Prosecution's case-in-chief.

21. The testimony of insider witnesses normally requires thorough analysis and explanation in closing submissions to identify and address significant factors, such as those relating to, *inter alia*, objectivity, motive, corroboration, extrinsic/intrinsic contradiction, prior inconsistencies, accuracy and completeness, and of course, reliability. Given their complex nature, the analysis of insider testimony differs markedly from that which might be required for different types of witnesses, such as ordinary fact witnesses, crime base witnesses, or even experts.

b. Technical and social media evidence

22. Similarly, technical items such as call data records and social media evidence (which has not often been dealt with in ICC trials) require cogent analysis to properly explain their purpose, significance, and relationship to other evidence.

23. For instance, the Prosecution relies, *inter alia*, on Facebook communications — particularly among Anti-Balaka insiders and supporters — to corroborate testimonial and other evidence probative of the group's knowledge and intent with respect to specific events and contexts: for example, the prevalence of anti-Muslim animus, ongoing Anti-Balaka attacks in various locations, perpetrator and victim group identities, the dissemination of instructions and press communiqués, the implementation of plans and military operations, and the acts and conduct of the Accused, including their whereabouts.

24. Email communications of the Accused as well as insiders also form part of this category of evidence. They are thus benefitted by particular analyses and the further elaboration of discrete issues, beyond the positions set out in the corresponding Prosecution bar table motions.

v. The status of evidence must be taken into consideration

a. Deferred evidential assessments

25. *First*, as the assessment of the “standard evidentiary criteria” for the submitted evidence in this case is deferred under the approach taken by the Chamber,³² it is prudent for the Prosecution's closing brief to account for all *reasonable* potentialities regarding the final evidentiary record in the case.

b. Undetermined submissions

26. *Second*, given the high number of items on the respective Defence lists of evidence, it is reasonable to anticipate that a significant amount of evidence will be submitted during the Defence case (including via rule 68, from the bar table, and through testifying witnesses). The Chamber's determination of such prospective

³² ICC-01/14-01/18-631, para. 52 *et seq.*

applications may likewise impact the scope of the Prosecution's prospective closing brief.

c. Pending appellate admissibility determinations

27. *Third*, the disposition of certain material evidence is currently pending a determination by the Appeals Chamber,³³ following the Chamber's 25 October 2023 authorisations to appeal its decisions formally recognising the submission of the prior recorded testimonies of P-1847,³⁴ P-2602, and P-2269.³⁵

28. All three witnesses provide important evidence going, *inter alia*, to NGAISSONA's individual criminal responsibility. Accordingly, the disposition of the pending appeal may affect the manner in which the Prosecution argues the relevant evidence, and may therefore impact the nature and length of its closing submissions on this critical issue.

vi. The Defence cases have not yet been presented

29. Together, the Defence teams have indicated an intention to call 54 witnesses (fully *viva voce* and pursuant to Rule 68 of the Rules of Evidence and Procedure ("Rules")).³⁶ Of this number, the testimony of fewer than eight of the over 20 witnesses slated to appear has been completed. Therefore, the actual scope of the respective Defence cases that the Prosecution may have to address in its closing brief is yet unknown.

30. Based on the information provided however, the respective Defence cases appear to be directed at the merits of the Prosecution's case, as opposed to presenting evidence of mitigation for instance. As such, the Prosecution assesses that its closing brief would need to take into account potential substantive evidence that may emerge during the

³³ See ICC-01/14-01/18-2183 (regarding the Rule 68(2)(d) appeal); and ICC-01/14-01/18-2184 (regarding the Rule 68(2)(c) appeal).

³⁴ ICC-01/14-01/18-2163.

³⁵ ICC-01/14-01/18-2164.

³⁶ See ICC-01/14-01/18-2212-Conf, para. 5 (Yekatom Defence - 35 witnesses); see ICC-01/14-01/18-2215-Conf-Anx1-Corr (Ngaissona Defence - 19 witnesses).

Defence case (the vast majority of which is yet to come), along with submissions and arguments thereon that are yet unclear.

31. Beyond speculation, at this point it is not possible to know and — imprudent to assume — what the Defence will eventually argue on the basis of their respective cases and thus, what the Prosecution's closing brief may need to show in order to explain how it has nevertheless met its evidentiary burden.

32. Significantly, both Defence teams have submitted lists of evidence which collectively comprise over 15,000 items. It remains to be seen how many and which of these items will be formally submitted. It is moreover not yet known for what purposes they may be tendered, or whether they may require substantial analysis in the Prosecution's closing brief as to their import or weight.

33. Thus, the 2 February 2024 Further Directions does not sufficiently provide for the Prosecution's ability to meaningfully address the prospective Defence cases. It also bears recalling that YEKATOM and NGAISSONA have not so far presented a common defence in this case, which accordingly requires the Prosecution to anticipate and address essentially two separate defences predicated on largely different evidence.

vii. Providing the same page limits is not procedurally 'equal'

34. Because this is a joint trial of two defendants, the common page limit on the Parties' respective submissions — while the *same* in number — are not *equal* in effect. They do not achieve procedural parity. Rather, as explained below, the Prosecution is disadvantaged.

35. Unlike the Accused, respectively allotted 200 pages to develop and argue the facts and evidence on discrete issues going to their specific culpability, the 2 February 2024 Further Directions require that the Prosecution must demonstrate the individual criminal responsibility of both Accused, while additionally having to explain a substantially much broader range of facts and circumstances all within the same page

allotment (*i.e.*, 100 pages each). These comprise evidence establishing the contextual elements, elements of the crimes, and the elements of the applicable modes of liability. Moreover, as noted, the Prosecution bears the burden of proof beyond a reasonable doubt.³⁷

36. The 2 February 2024 Further Directions does not account for these differences in the relative procedural posture of the Parties.

a. The Prosecution should be allotted substantially more pages for its closing brief than each individual Accused

37. In recognising the procedural disparity between the Prosecution and Defence in multi-Accused cases, trial chambers at the *ad hoc* Tribunals have (with rare exception) afforded the Prosecution a substantially greater page limit for closing submissions than each individual accused.

38. For instance: (a) in *Popović* (a seven accused case), the Prosecution was afforded three times the page length as each Defence team;³⁸ (b) in *Prlić*³⁹ and *Butare*⁴⁰ (both six accused cases) the Prosecution was afforded twice the page limit as each Defence team; and notably (c) in *Stanišić and Župljanin* (a two-accused case), the Prosecution was afforded almost twice the word limit as each Defence team.⁴¹ In the *Bemba et al* case, for

³⁷ See article 66(2) and (3).

³⁸ *Prosecutor v. Vujadin Popović et al.*, Order on Final Trial Briefs and Closing Arguments, Case No. IT-05-88-T, 27 March 2009, p. 1 (“The final trial briefs shall not exceed 900 pages in length for the Prosecution, and 300 pages in length for each Defence team.”)

³⁹ *Prosecutor v. Jadranko Prlić et al.*, Amended Scheduling Order (Final Trial Briefs, Closing Arguments for the Prosecution and the Defence), Case No. IT-04-74-T, 30 November 2010, p. 12 (“The Prosecution's final trial brief shall not exceed 400 pages and that of each Defence team shall not exceed 200 pages.”).

⁴⁰ *Prosecutor v. Pauline Nyiramasuhuko et al.*, Scheduling Order - Rules 54 and 86 of the Rules of Procedure and Evidence, Joint Case No. ICTR-98-42-T, 2 July 2008, p. 2 (“the respective final trial briefs of the Defence shall not exceed 200 pages and 60,000 words and that the Prosecution final trial brief shall not exceed 400 pages and 120,000 words”). *But see* *Prosecutor v. Miroslav Kvočka et al.*, Decision on Motion for Variance of Length of Prosecution's Final Brief, Case No. IT-98-30/1-T, 29 March 2001 (same page limit for five accused case).

⁴¹ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Order on Final Trial Briefs and Closing Arguments, Case No. IT-08-91-T, 30 March 2012, p. 1 (“the Prosecution's final trial brief shall not exceed 120,000 words, the Stanišić Defence's final trial brief 80,000 words, and the Župljanin Defence's final trial brief 60,000 words”). *But see* *Prosecutor v. Jovica Stanišić and Franko Simatović*, Decision on the Parties' Requests for Leave to Exceed Word Limit for Final Trial Briefs, Case No. IT-03-69-T, 24 August 2012, p. 2 (granting 100,000 words for all parties).

similar reasons, Trial Chamber VII granted the Prosecution a 50% greater page limit for its closing brief than each of the five accused.⁴²

viii. A 375 page limit for the Prosecution's closing brief is required and justifiable

39. Based on the Prosecution's assessment of the extent of evidence and testimony elicited to date, it considers that it will require up to 375 pages to address the submitted trial evidence, which will *likely* also allow it to account for the unknown (but presumed) scope of the Defence's direct cases.

40. In this respect, the length of the Prosecution's Trial Brief — which required 190 pages (excluding substantive annexes)⁴³ and for which the Prosecution was granted 250 pages⁴⁴ — is a reliable gauge. Notably, when granting the Prosecution's request for an extension of pages regarding the submission of its Trial Brief, the Chamber observed:

"In light of the complexity of the case, specifically the fact that it concerns two accused charged with multiple counts under alternative modes of liability, the Single Judge considers the requested extension of up to 250 pages to be reasonable."⁴⁵

41. The same rationale applies here with respect to the Prosecution's ability to address the trial evidence — even more so, as its closing brief is of greater consequence to its ability to demonstrate how and why the Accused's individual criminal responsibility is proved on the evidence beyond a reasonable doubt. Having extended the page limits for the Trial Brief, a lesser page limit for the Prosecution's closing brief

⁴² See ICC-01/05-01/13-1552, p. 6 (providing for a 150-page limit for the Prosecution closing brief whereas the Defence had been allotted 100 pages, respectively).

⁴³ See ICC-01/14-01/18-723-Red; see ICC-01/14-01/18-723-Conf-AnxA-E.

⁴⁴ See ICC-01/14-01/18-697 (granting the Prosecution's request for an extension up to 250 pages).

⁴⁵ ICC-01/14-01/18-697, para. 7 (finding exceptional circumstances); see also 2 ICC-02/11-01/15-131, para. 6 (finding 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" justified an extension of the page limits of up to 300 pages); see also ICC-01/04-02/06-500 and ICC-01/05-01/13- 1068 applying a similar rational.

on a far more substantial evidentiary record at this stage is counterintuitive. For instance, the Prosecution is unaware of any case at the *ad hoc* tribunals wherein the final trial brief or closing brief was actually less comprehensive than the pre-trial brief.⁴⁶ To the extent this may have occurred at the Court — if ever — it would be the exception, by far.

B. The deadline for filing the Prosecution closing brief is restrictive

42. As noted, the Prosecution acknowledges and appreciates the eight week period provided for to file its closing submissions. It acknowledges that this period exceeds the average time limit ordered in other trials, and thus recognises the complexity and size of the case to a degree. With that said, the same reasons justifying an extension of the 200-page limit for the Prosecution's closing brief, also justify modifying the corresponding filing deadline.

43. Aside, the eight-week time limit warrants reconsideration for other reasons. For instance, the filing deadline does not appear to accommodate any delay in producing edited or final transcripts – which the Parties' will necessarily need to rely on for their closing submissions. To the extent that there is any delay in the finalisation of transcripts during the Defence case, the Parties will be without the benefit of potentially important edited transcripts when preparing their final submissions. While the Prosecution does not anticipate requiring much more than a modest extension of time should this eventuality materialise, it is nevertheless a realistic factor which should be taken into consideration.

⁴⁶ Compare e.g. *Prosecutor v. Milan Lukić and Sredoje Lukić*, Prosecution Final Trial Brief, Case No. IT-98-32/1-T, 12 May 2009 (213 pages with substantive annexes) with *Prosecutor v. Milan Lukić and Sredoje Lukić*, Prosecution's Pre-Trial Brief, Case No. IT-98-32/1-PT, 14 March 2008 (43 pages with substantive annexes); *Prosecutor v. Zdravko Tolimir*, Public Redacted Final Trial Brief, Case No. IT-05-88/2-T, 29 November 2012 (320 pages with substantive annexes) with *Prosecutor v. Zdravko Tolimir*, Public Version of Pre-Trial Brief, Case No. IT-05-88/2-PT, 30 September 2009 (128 pages with substantive annexes); *Prosecutor v. Jovica Stanišić and Franko Simatović*, Prosecution's Public Redacted Version of Prosecution's Final Trial Brief, Case No. IT-03-69-T, 1 March 2013 (439 pages with substantive annexes) with *Prosecutor v. Jovica Stanišić and Franko Simatović*, Prosecution's Pre-Trial Brief, Case No. IT-03-69-PT, 19 July 2004 (91 pages).

C. The extensions sought will not materially affect the expeditious conduct of the trial

44. Should the Chamber be minded to grant the requested page limit extension, the Prosecution considers that the additional two weeks sought in which to file its closing brief will not unfairly delay the proceedings.

45. The Prosecution considers that the expeditious conduct of trial must be evaluated as a whole, and notes that it has undertaken several significant steps to expedite the trial. It has achieved this through various procedural mechanisms, including the extensive use of Rule 68, the use of bar table motions, and through cutting a substantial number of witnesses it might otherwise have called, as well as varying the modes of their respective appearances. Significantly, having been allotted 400 hours,⁴⁷ the Prosecution completed the presentation of its case in chief in 267 hours, calling 75 witnesses⁴⁸ of the 96 projected.⁴⁹

46. Overall, and in consideration of the proceedings in their totality, authorising an additional 175 pages and two weeks for the filing of the Prosecution's closing brief will have only a marginal impact on the celerity of the trial, at most. Above all, it is in the interests of justice and will assist the Chamber's evaluation and assessment of the unprecedented volume of submitted evidence in discharging its statutory duties to both ensure a fair trial and to establish the truth.

IV. REQUESTED RELIEF

47. For the foregoing reasons, the Prosecution respectfully requests the Chamber to reconsider its 2 February 2024 Further Directions, and grant the requested extensions

⁴⁷ ICC-01/14-01/18-631, paras. 21-22.

⁴⁸ This amounts to an average of about 3.5 hours per witnesses appearing before the Chamber, and just 2.4 hours if all Prosecution witnesses are considered.

⁴⁹ ICC-01/14-01/18-724, para. 4, at note 3; *see also* ICC-01/14-01/18-724-Conf-AnxB.

for a page limit of up to 375 pages regarding the Prosecution's closing brief and time limit of 10 weeks in which to file the same.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a small dot.

Karim A. A. Khan KC, Prosecutor

Dated this 1st day of March 2024

At The Hague, The Netherlands