

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/21

Date: **5 July 2024**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public
with Confidential Annex A**

**Prosecution's urgent application under regulation 35 for variation of time limits
related to the introduction of videos**

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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**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. Pursuant to regulation 35 of the Regulations of the Court (“Regulations”) and articles 64(2), 64(6)(f) and 69(3) of the Rome Statute (“Statute”), the Prosecution exceptionally requests the Chamber’s authorisation to add items to its List of Evidence.
2. Specifically, the Prosecution requests the Chamber that it be permitted to add video CAR-OTP-2055-2610. The video was sourced from France 24, is public and shows the PK9 barrier/checkpoint in Bangui. It was disclosed to the Defence on 14 June 2021.¹ The video was also included on the Defence’s amended List of Evidence at the confirmation stage of proceedings.²
3. The Prosecution also requests authorisation to add still images derived from the video (Annex A).³
4. In addition, the Prosecution requests that it be authorised to disclose and add video CAR-OTP-2118-0723 to its list of evidence. This video is also sourced from France 24 and shows the same PK9 barrier/checkpoint from a different vantage point.
5. The Prosecution submits that inclusion of the requested material is in the interests of justice because it will assist witnesses to provide testimony using visual aids, further assisting the Chamber in its determination of the truth under article 69(3) of the Statute.
6. The Prosecution further submits that the inclusion of the requested materials will not cause any prejudice to the Accused’s right to a fair trial under article 67(1).

¹ ICC-01/14-01/21, Pre-Confirmation INCRIM package 022, 14 June 2021.

² ICC-01/14-01/21-202-Conf-Anx1.

³ [CAR-OTP-00036710](#); [CAR-OTP-00036711](#); [CAR-OTP-00036712](#); and [CAR-OTP-00036713](#).

II. SUBMISSIONS

There is good cause to extend the time limit for the disclosure and addition of the materials

7. Regulation 35(2) of the Regulations provides that the Chamber “may extend or reduce a time limit if good cause is shown.” The Appeals Chamber has held that “[a] cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations.”⁴
8. As the Ntaganda Trial Chamber held, “additions to a list ... after the relevant deadline may, in principle, be made when the terms of Regulation 35(2) of the Regulations are met or, even where the terms of that regulation have not been met, where to do so would nonetheless be in the interests of justice and the determination of the truth.”⁵
9. The Prosecution submits that adding the requested material to its list of evidence in this particular instance is in the interests of justice.
10. First, the Prosecution assumed that video CAR-OTP-2055-2610 was already listed as evidence, as it had been disclosed to the Defence on 14 June 2021. The Defence has also included the video in its amended List of Evidence during the confirmation of the charges.⁶ The Prosecution contends that its oversight in this

⁴ Prosecutor v. Katanga and Ngudjolo Chui, “Reasons for the ‘Decision on the Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’”, 27 June 2008, ICC-01/04-01/07-653, para. 5.

⁵ Prosecutor v. Ntaganda, “Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior record testimony of Witness P-0551”, 19 January 2017, ICC-01/04-02/06-1733, para. 6.

⁶ ICC-01/14-01/21-202-Conf-Anx1.

instance is not a fair reason to exclude relevant material needed to assist witnesses to provide their testimony and to establish the truth under article 54.

11. Second, good cause is shown because the material sought to be admitted is relevant. The PK9 barrier/checkpoint and related incidents are explicitly mentioned in the Prosecution's pre-trial brief.⁷ The Defence's inclusion of the video CAR-OTP-2055-2610 in its list of evidence at the confirmation stage implicitly accepts this.
12. Third, there is substantial justification for admitting the material in this instance. Without site visits, visual footage of relevant locations greatly aids witnesses in providing accurate testimony. The requested footage is essential for the Chamber and all parties in their pursuit of the truth.

The requested extension is not prejudicial to the Accused's right to a fair trial

13. Public video footage showing the PK9 barrier/checkpoint has been in the possession of the Defence since 2021. Furthermore, the footage does not involve acts and conduct of the Accused.
14. Under these circumstances, Mr SAID's rights under article 67, including in particular 67(1)(a) and (b), are not materially impacted.

⁷ ICC-01/14-01/21-359-Conf, paras. 70-71.

III. RELIEF REQUESTED

15. For the aforementioned reasons, the Prosecution respectfully requests for authorisation to include video CAR-OTP-2055-2610 and related still images in its list of evidence. The Prosecution further requests authorisation to disclose and add video CAR-OTP-2118-0723 to its list of evidence.

A handwritten signature in blue ink, appearing to be 'K.A.A. Khan', with a horizontal line underneath.

Karim A. A. Khan KC, Prosecutor

Dated this 5th day of July 2024
At The Hague, The Netherlands