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

Date: **19 November 2020**

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

**Public Redacted Version of “Prosecution’s Request for Extension of time pursuant
to Regulation 35(2) of the Regulations of the Court” 5 November 2020,
(ICC-01/14-01/18-715-Conf)**

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") to disclose and to add them to its List of Evidence: (i) transcripts and translations of seven speeches by YAKITE; and (ii) transcripts and translations relating to 36 audio visual materials. The requested extensions are justified in the circumstances and supported by good cause. Further, they will in no way prejudice the Defence.

2. The Prosecution additionally notifies the Chamber, Parties, and Participants that several outstanding requests for evidential material from States Parties, remain outstanding, and are likely to be obtained subsequent to 9 November 2020.

II. CONFIDENTIALITY

3. This request is filed "Confidential" as it contains material that is not available to the public. A public redacted version of this request will be filed as soon as possible.

III. SUBMISSIONS

A. The Requested Extension is Justified

i. Disclosure of transcripts and translations of seven speeches by Levy YAKITE and addition to the List of Evidence

4. A variation of the 9 November 2020 time limit to disclose the transcripts and translations relating to seven items of audio-visual materials containing speeches by Levy YAKITE ("YAKITE"), and to add them to its List of Evidence by 11 December

2020¹ is necessary and justified. The audio-visual materials themselves will be disclosed to the Defence by the 9 November 2020 deadline.

a. Good cause exists

5. [REDACTED].² [REDACTED].³ [REDACTED], *inter alia*, seven audio-visual recordings of speeches given by YAKITE in CAR between May and July 2014. The speeches were given in Sango and are approximately two hours in total.

6. These recordings are potentially of high relevance to the case. YAKITE was a prominent figure in the early development of the Anti-Balaka, playing a role in meetings with **NGAISSONA** and others in Cameroon and in Paris.⁴ Depending on the content of the speeches – which is not known– they may contain incriminatory material on which the Prosecution may seek to rely at trial, or equally material disclosable under rule 77 of the Rules of Evidence and Procedure (“Rules”) or article 67(2). For these reasons, the Prosecution will ensure that the audio-video material itself is disclosed to the Defence prior to the 9 November 2020 deadline.

7. The Prosecution is coordinating with the Language Services Unit (“LSU”) to complete the translation and transcription of this Sango material into French. The transcription and translation of these materials are time-consuming and resource intensive which has been recognised in granting appropriate extensions of time. For instance, the Chamber in the *Ntaganda* case recognised that “a translation burden may provide good cause for an extension of deadline”.⁵

¹ Based on the Language Services Unit providing the transcripts and translations on 7 December 2020, and allowing time for disclosure processing.

² [REDACTED].

³ [REDACTED].

⁴ See ICC-01/14-01/18-282-AnxB1-Red, section III.B.a) and d).

⁵ ICC-01/04-02/06-537-Red2, para. 54.

8. Given that the Prosecution only became aware of the audio-video material on 23 October 2020, shortly before the disclosure deadline, there is good cause to vary the time limit in this case.

b. Absence of prejudice

9. There is no prejudice to the Defence in the circumstances. *First*, the Defence will be in possession of these audio-visual materials by the disclosure deadline. *Second*, both Accused are fully able to understand the content of the material without the need for any translation and transcription into French, and thus fully able to participate and assist in their own defence and in its preparation.

ii. Disclosure of transcripts and translations relating to 36 audio visual materials and addition to the List of Evidence

10. A variation of the 9 November 2020 time limit to disclose the transcripts and translations relating to 36 audio visual materials⁶ and to add them to its List of Evidence by 11 December 2020⁷ is necessary and justified. The audio-visual materials themselves are already in the possession of the Defence.

a. Good cause exists

11. The transcribing and translating of these audio visual materials are time-consuming and resource intensive. All of these audio visual materials contain Sango and the LSU has limited resources for the Sango translations. The Chamber in the

⁶ CAR-OTP-2000-0677, CAR-OTP-2000-0686, CAR-OTP-2000-0689, CAR-OTP-2108-1307, CAR-OTP-2065-4942, CAR-OTP-2065-4946, CAR-OTP-2065-4954, CAR-OTP-2079-0677, CAR-OTP-2079-0808, CAR-OTP-2065-0730, CAR-OTP-2065-3208, CAR-OTP-2065-3700, CAR-OTP-2065-3794, CAR-OTP-2065-4009, CAR-OTP-2065-4504, CAR-OTP-2065-4617, CAR-OTP-2065-4851, CAR-OTP-2065-4902, CAR-OTP-2065-4906, CAR-OTP-2005-0129, CAR-OTP-2019-1359, CAR-OTP-2058-0571, CAR-OTP-2060-0795, CAR-OTP-2000-0655, CAR-OTP-2042-2132, CAR-OTP-2042-1890, CAR-OTP-2112-1385, CAR-OTP-2042-2107, CAR-OTP-2000-0724, CAR-OTP-2000-0522, CAR-OTP-2065-3488, CAR-OTP-2065-3973, CAR-OTP-2066-0211, CAR-OTP-2066-0213, CAR-OTP-2079-0809, CAR-OTP-2079-0815, CAR-OTP-2082-0605.

⁷ Based on the Language Services Unit providing the transcripts and translations on 7 December 2020, and allowing time for disclosure processing.

Ntaganda case recognised that “a translation burden may provide good cause for an extension of deadline”.⁸ There is good cause to vary the time limit in this case and the variation of the time limit as requested will not “derail the proceedings from their ordained course”.⁹

b. Absence of prejudice

12. There is no prejudice to the Defence in the circumstances. *First*, the Defence is already in possession of the audio visual materials, many of which were disclosed in 2019. *Second*, the 36 outstanding translations and transcriptions constitute a small percentage of the total number of 1,485 translations and transcripts that the Prosecution has prepared and already disclosed to the Defence.

B. Outstanding evidentiary materials

13. Several timely submitted Requests for Assistance (“RFA”) to States Parties remain undischarged and pending, and it is unlikely that this outstanding evidentiary material will be received before the 9 November 2020 final disclosure deadline. This may warrant an application by the Prosecution to seek the addition of such material to its List of Evidence, as may be justified.

14. As is well known, the Prosecution depends entirely on international cooperation pursuant to article 54(3), to investigate the crimes under the Court’s jurisdiction, [REDACTED]. As previously noted, the global COVID-19 pandemic has further impeded the relevant States from expeditiously fulfilling the Prosecution’s requests.

15. As the Prosecution is not yet in possession of the requested material, it is unable to assess their potential incriminating or exonerating nature. As such, it is not

⁸ ICC-01/04-02/06-537-Red2, para. 54.

⁹ ICC-01/04-01/07-653, para. 6.

presently in a position to provide a cogent basis for an extension of time, even in the abstract. That said, the Prosecution intends to promptly review any incoming evidentiary material for disclosure purposes as and when it is transmitted. At such time, and if appropriate, the Prosecution may request the addition of such material to its List of Evidence as may be justified in the circumstances, and particularly in view of its statutory obligation pursuant to article 54(1) to establish the truth in these proceedings. The Appeals Chamber in the *Ngudjolo* case emphasised that “the establishment of the truth is one of the principal objectives of the Statute, to which the Trial Chamber must actively contribute”.¹⁰

IV. RELIEF SOUGHT

16. For the above reasons, the Prosecution seeks the Chamber’s leave to extend the time limit to disclose and to add them to its List of Evidence: (i) transcripts and translations of seven speeches by YAKITE; and (ii) transcripts and translations relating to 36 audio visual materials.



James Stewart, Deputy Prosecutor

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

¹⁰ ICC-01/04-02/12-271-Corr, para. 256.