



Original: English

No.: ICC-01/14-01/18
Date: 15 December 2021

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 submission pursuant to regulation 35 to vary the time limit to review evidence in its possession and confirm on the record that all documents falling within its disclosure obligations have indeed been disclosed”, 10 December 2021, ICC-01/14-01/18-1207-Conf

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

Mr Karim A. A. Khan QC

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Alfred Yekatom

Ms Mylène Dimitri

Mr Thomas Hannis

Counsel for Patrice-Edouard Ngaïssona

Mr Geert-Jan Alexander Knoops

Mr Richard Omissé-Namkeamai

Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun

Mr Abdou Dangabo Moussa

Ms Elisabeth Rabesandratana

Mr Yaré Fall

Ms Marie-Edith Douzima-Lawson

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Pursuant to regulation 35(2) of the Regulations of the Court (“RoC”), the Prosecution seeks a variation of the time limit regarding Trial Chamber V’s (“Chamber”) direction to *“review the evidence in its possession, and confirm on the record that all documents falling within its disclosure obligations have indeed been disclosed, within one week of notification of the present decision”*, and requests an additional 10 days (“Request”).¹

2. The Request is substantiated by good cause. As the Chamber is well aware, the documents within the Prosecution’s possession comprise one of the largest evidence collections of any case before this Court. To re-review all such material within a week is not feasible. The Prosecution is however mindful of the Chamber’s concern,² and considers that within the short extended time frame it can conduct a targeted *re-review* or re-examination of assessments made regarding specific areas of its collection sufficient to be able to confirm to the Parties, Participants, and the Chamber that its disclosure process has indeed been appropriately and effectively executed, and the corresponding obligations duly discharged.

3. The Request does not unfairly prejudice the rights of either of the Accused given that: (i) the extension is short, and proportionate to the work required and the available resources; and that (ii) it is unlikely that the *re-review* or re-examination will result in the finding of important information that has not already been provided to the Accused in one form or another.

¹ ICC-01/14-01/18-1202-Red, para. 22.

² ICC-01/14-01/18-1202-Red, paras. 12-23.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Request is filed as “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. A variation of the time limit is necessary and justified

5. Under regulation 35(2) of the Regulations, a Chamber may extend a time limit before it has elapsed, if good cause is shown.

6. This criteria is met. As noted, the Prosecution has been directed to *review the evidence in its possession* and to confirm on the record that all documents falling within its disclosure obligations have indeed been disclosed. The Prosecution understands this direction to extend to its whole collection, beyond the documents related to Count 29 and the credibility of the witnesses supporting this Count.³

7. As the Chamber is aware, the documents within the Prosecution’s possession comprise one of the largest collections of materials of any case before this Court.⁴ The Prosecution has reviewed its entire digitized Ringtail collection [REDACTED], and non-Ringtail collections [REDACTED] prior to the disclosure deadline set on 9 November 2020.⁵

8. The process put in place for the review of the digitized Ringtail material comprises manual reviews, assessments, and a characterization of the information (*i.e.*, incriminatory, exculpatory, material to the preparation of the Defence, or irrelevant). Material outside the digitized Ringtail collection has similarly been manually reviewed, with the exception of very voluminous material to which key-

³ ICC-01/14-01/18-1202-Red, para. 22, as compared to the previous paragraphs.

⁴ See *e.g.* ICC-01/14-01/18-474-Conf, paras. 23-24, and its redacted version ICC-01/14-01/18-474-Red.

⁵ ICC-01/14-01/18-589, para. 10.

word searches have been applied instead, and the results registered in Ringtail and reviewed accordingly.

9. Although the method of review in any case of this complexity will inevitably give rise to a margin of error, the Prosecution considers that the methodology that has been applied is appropriate, given the nature of the evidence collection and its size particularly. Moreover, to date, no errors have resulted in unfair prejudice.

10. The Prosecution appreciates and understands the Chamber's concern aimed at identifying and limiting any potential errors. However, a *re-review* of all materials within the Prosecution's possession within one week is untenable.

11. That said, the Prosecution believes that within the additional time requested, it can perform sufficient checks regarding its disclosure procedure to ensure and confirm that its processes have been effectively implemented and discharged. In this respect, and given the time frame, the Prosecution considers that a targeted *re-review* and re-examination of items that were assessed as immaterial,⁶ of specific areas of its collection would allow it to provide confirmation to the Chamber, Parties, and Participants that it has fully met its disclosure obligations. These comprise in particular documents relating to Trial Witnesses and material outside of the digitized Ringtail collection.

B. Granting the Request does not unfairly prejudice the rights of the Accused

12. Granting the Request would not unfairly prejudice the rights of the Accused – quite the opposite, insofar as it would result in a meaningful assurance regarding the state of disclosure.

⁶ For an assessment of 'materiality' see Trial Chamber X's Decision ICC-01/12-01/18-859-Red, para. 9, where it finds that: "(...) the party making the request should be specific and demonstrate materiality of the information sought pursuant to Article 67(2) of the Statute or Rule 77 of the Rules, and particularly how the information has a direct connection to the charges or a live issue in the case" and its findings on the Defence failing to meet this standard in paras. 20-24.

13. *First*, the requested extension is short and proportionate to the work required, and the available resources to carry it out, particularly given the ongoing witness-related tasks and the competing deadlines and responsibilities.

14. *Second*, given the extensive review already conducted, the Prosecution considers that any information which might require disclosure following this review, if at all, will likely: (i) have already been provided to the Defence in another form, (ii) be duplicative, or (iii) be of marginal importance. It is expected that, as has been the case previously,⁷ any such disclosure would not cause serious prejudice.

15. In addition, the Prosecution will continue considering any properly motivated Defence requests for disclosable material *inter-partes*, as it has done, in good faith, since the beginning of the case.⁸

IV. RELIEF SOUGHT

For the above reasons, the Prosecution seeks an additional 10 days to review the evidence in its possession as outlined above.



Karim A. A. Khan QC, Prosecutor

Dated this 15th day of December 2021

At The Hague, The Netherlands

⁷ See e.g. ICC-01/14-01/18-595, para. 19; ICC-01/14-01/18-740-Conf, paras. 16-20; ICC-01/14-01/18-829, paras. 18-19.

⁸ So far, the Prosecution has dealt with around [REDACTED] requests from the YEKATOM Defence [REDACTED], and around [REDACTED] requests from the NGAISSONA Defence.