



**Original: English**

**No. ICC-01/14-01/18  
Date: 13 October 2022**

**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  
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD  
NGAISSONA***

**Public**

**Decision Adopting Additional Directions regarding Statement Corrections  
during Witness Familiarisation**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**TRIAL CHAMBER V** of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, having regard to Articles 64 and 67 of the Rome Statute (the ‘Statute’), issues this ‘Decision Adopting Additional Directions regarding Statement Corrections during Witness Familiarisation’.

## **I. Procedural history**

1. On 27 September 2022, the Yekatom Defence (the ‘Defence’) filed its ‘Urgent Yekatom Defence Request for Reports from Victims and Witnesses Unit regarding Statement Corrections’ (the ‘Request’). It requests the Chamber to order the Victims and Witnesses Unit (the ‘VWU’) to disclose, as part of the familiarisation process, a report to the calling party, which contains (i) ‘an indication of whether any corrections made to a statement were applied by the witness him- or herself, or with the help of an interpreter’ (the ‘First Request’); (ii) ‘the witness’s signature next to each correction made to [their] statement’ (the ‘Second Request’), and (iii) ‘all comments made by the witness to the interpreter relative to corrections made to his or her statement, that cannot be directly reflected by the correction’ (the ‘Third Request’).<sup>1</sup> The Defence further submits that this report should subsequently be provided to all participants, together with the corrected statement.<sup>2</sup>
2. On 3 October 2022,<sup>3</sup> the Ngaissona Defence joined the Request.<sup>4</sup> On the same day, the Common Legal Representatives of the Victims of the Other Crimes and the Common Legal Representative of the Former Child Soldiers informed the Chamber that they do not intend to respond to the Request.<sup>5</sup>

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<sup>1</sup> ICC-01/14-01/18-1584-Conf (with confidential Annex A) (public redacted version notified the same day, ICC-01/14-01/18-1584-Red), paras 9-11, 34.

<sup>2</sup> Request, ICC-01/14-01/18-1584-Red, para. 12.

<sup>3</sup> The Chamber shortened the deadline for responses to the Request to 7 October 2022, *see* email from the Chamber, 27 September 2022, at 17:15.

<sup>4</sup> Email from the Ngaissona Defence, 3 October 2022, at 09:59.

<sup>5</sup> Emails from the Common Legal Representatives of the Victims of the Other Crimes, 3 October 2022, at 11:04 and from the Common Legal Representative of the Former Child Soldiers, 3 October 2022, at 11:50.

3. On 7 October 2022, as instructed by the Chamber,<sup>6</sup> the VWU, in consultation with the Language Service Section (hereinafter: ‘LSS’)<sup>7</sup> provided its observations on the Request (the ‘VWU Observations’).<sup>8</sup> In response to the First Request, the Registry proposes ‘Guidelines for Corrections of Witness Statements by a Third Party’ (the ‘Guidelines Proposal’)<sup>9</sup> as an addendum to the Familiarisation Protocol,<sup>10</sup> and an ‘Explanatory Note – Correction of a Statement by a Third Party’ (the ‘Explanatory Note Proposal’)<sup>11</sup> in order to ensure that corrections made by interpreters are clearly identifiable going forward.<sup>12</sup> It does not consider further additions to the Familiarisation Protocol or the granting of the Second and Third Requests necessary.<sup>13</sup>

## II. Analysis

4. The Chamber notes that the ambiguous origin of corrections made to witness statements during the familiarisation process has disrupted the present proceedings in at least two instances, notably during the testimonies of P-2658<sup>14</sup> and P-1339.<sup>15</sup> In this regard, the Chamber recalls that in both cases corrections were made to the witnesses’ statements during witness familiarisation and that questions subsequently arose as to whether these corrections were applied by an interpreter, a VWU staff member (jointly, the ‘Third Party’) or the witness, and/or whether the witnesses agreed with them. As a consequence, valuable hearing time was spent clarifying these matters with the respective witnesses in the courtroom.

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<sup>6</sup> Email from the Chamber, 27 September 2022, at 17:15.

<sup>7</sup> The Chamber recalls that LSS provides interpretation services during the familiarisation process.

<sup>8</sup> Victims and Witnesses Unit’s Observations on the “Urgent Yekatom Defence Request for Reports from Victims and Witnesses Unit regarding Statement Corrections” (ICC-01/14-01/18-1584-Conf), ICC-01/14-01/18-1600-Conf (with confidential Annex 1, ICC-01/14-01/18-1600-Conf-Anx1).

<sup>9</sup> Annex 1 to the VWU Observations, ICC-01/14-01/18-1600-Conf-Anx, pp. 2-3.

<sup>10</sup> Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial, 8 October 2020, ICC-01/14-01/18-677-Anx1.

<sup>11</sup> Annex 1 to the VWU Observations, ICC-01/14-01/18-1600-Conf-Anx1, p. 4.

<sup>12</sup> Annex 1 to the VWU Observations, ICC-01/14-01/18-1600-Conf-Anx1. *See also* VWU Observations, ICC-01/14-01/18-1600-Conf, paras 7-8, 11.

<sup>13</sup> VWU Observations, ICC-01/14-01/18-1600-Conf, paras 9-10.

<sup>14</sup> Transcript of hearing, ICC-01/14-01/18-T-134-ENG ET, p. 36, line 8 - p. 53, line 8.

<sup>15</sup> Transcript of hearing, ICC-01/14-01/18-T-152-ENG RT, p. 51, line 14 - p. 53, line 23.

5. In light of this experience, the Chamber concurs with the Defence<sup>16</sup> that specifying the author of a correction by way of initialling them would assist in ensuring an expeditious trial going forward. However, the Chamber considers that a differentiated approach needs to be taken based on the circumstances at hand, notably whether a witness corrects their statement without assistance or with the assistance of a Third Party.

**A. Witnesses correcting their statements without assistance**

6. If a witness reads their statements alone – as is the default procedure according to the Familiarisation Protocol<sup>17</sup> – it can be assumed that all corrections made to a statement have been applied by the witness. Accordingly, the Chamber sees no need to initial and date such corrections. Should a witness be assisted by a counsel, the VWU shall instruct this counsel to abstain from applying corrections to the statements.
7. The VWU should provide the corrected statement as expeditiously as possible to the Chamber and the calling participant. The calling participant will subsequently disseminate these documents to the non-calling participants.

**B. Witnesses correcting their statements with the assistance of a Third Party**

8. If statements are read to a witness by an interpreter of the LSS because they are illiterate,<sup>18</sup> the need for assistance in correcting their statement in writing may logically arise. Should this be the case, the interpreters are authorised to assist the witness and ordered to initial and date each correction made by them on behalf of the witness. The same approach is to be applied in situations where the calling participant did not provide the statement ‘in a language in which the witness

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<sup>16</sup> See Request, ICC-01/14-01/18-1584-Red, paras 21-24. The Chamber notes that the Prosecution has not responded to the Request, but previously supported the idea of indicating the author of corrections. See email from the Prosecution, 4 September 2022, at 14:10, indicating that ‘[g]enerally, while witnesses should be assisted in noting any corrections to / modifications of their prior statement during the familiarisation process where necessary, we believe that VWS should provide some indication of the same. This would promote the efficiency of the proceedings, facilitate the Parties’ and Participant’s respective examinations, and avoid confusion’.

<sup>17</sup> Familiarisation Protocol, ICC-01/14-01/18-677-Anx1, para. 86.

<sup>18</sup> Familiarisation Protocol, ICC-01/14-01/18-677-Anx1, para. 83.

originally gave the statement or which the witness can easily understand', as foreseen by the Familiarisation Protocol,<sup>19</sup> and the witness thus requires assistance by an interpreter.

9. The Chamber clarifies in this context that if reading assistance is provided by LSS, but the witness appears to have the ability to *write*, they should be asked to apply corrections themselves. Only if they prove unable to do so, should writing assistance be provided as well. In any case, the statement should be corrected exclusively by either the witness or the interpreter. Situations where the interpreter and the witness both correct the statement should be strictly avoided.
10. If a witness is literate and thus not assisted by an interpreter, but is physically or mentally unable to write, the Chamber authorises the VWU staff to assist the witness and instructs them to initial and date each correction made by them on behalf of the witness.
11. In light of the initials and date to be applied next to each correction by the Third Party, the Chamber does not consider it necessary for the person making the correction to additionally sign and date each page of the statement, as proposed by the Registry.<sup>20</sup>
12. Furthermore, considering that witnesses who need assistance in correcting their statements are usually unable to write themselves or are not proficient in the language in which the statement is written, the Chamber does not consider it practical to order them to also initial each correction applied, as requested by the Defence in its Second Request.<sup>21</sup>
13. The Chamber also does not find it necessary or apposite for the interpreters to record the witness's 'motivations' or other comments made to the Third Party in relation to the witness's corrections 'that cannot be directly reflected by the correction', as requested by the Defence in its Third Request.<sup>22</sup> In this regard, the

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<sup>19</sup> Familiarisation Protocol, ICC-01/14-01/18-677-Anx1, para. 83.

<sup>20</sup> Annex 1 to the VWU Observations, ICC-01/14-01/18-1600-Conf-Anx1, p. 2, second bullet point.

<sup>21</sup> See Request, ICC-01/14-01/18-1584-Red, para. 34 (b). See also the VWU Observations, ICC-01/14-01/18-1600-Conf, para. 9 on this point.

<sup>22</sup> See Request, ICC-01/14-01/18-1584-Red, paras 17, 34 (c).

Chamber recalls that the LSS and VWU are neutral entities in the familiarisation process and should not deal with substantive information from the witness, but merely assist the witness in their statement reading.<sup>23</sup> The Chamber is therefore of the view that it is more appropriate for the participants themselves, or the Chamber, as the case may be, to question the witness in court about the reasons for making certain corrections, including their motivations.

14. Nonetheless, in cases where corrections are applied by a Third Party, the Chamber agrees with the Registry's proposal to include an explanatory note confirming that the corrections were made on behalf and with the consent of the witness. The witness shall therefore review the corrections made (with the assistance of the interpreter as needed) and confirm, in the presence of the VWU staff and the Third Party who corrected the statement, whether they agree with them. The explanatory note should then be dated and signed by the Third Party who made the corrections and the VWU staff.
15. The Chamber further stresses that corrections *within one statement* should be done by *one person* only, in order to avoid any ambiguities. If the witness was assisted by different Third Parties during different familiarisation sessions/days, each Third Party needs to sign a separate explanatory note.
16. Staff members of the LSS or the VWU may sign this explanatory note with their initials, if security concerns prevent them from stating their full name. However, the VWU is ordered to keep a full record of the interpreters who assisted witnesses during any given familiarisation session.
17. The VWU should then provide the corrected statement, together with the explanatory note(s), as expeditiously as possible to the Chamber and the calling participant. The calling participant will subsequently disseminate these documents to the non-calling participants.

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<sup>23</sup> See also VWU Observations, ICC-01/14-01/18-1600-Conf, para. 10, points 1-2.

### C. Concluding remarks

18. In light of the above, the First Request is partly granted and the Second and Third Requests are rejected. The Chamber appreciates the Guideline Proposal and the Registry's suggestion to adopt it as an addendum to the Familiarisation Protocol.<sup>24</sup> However, noting that the above directions deviate from the Guideline Proposal on a number of issues and provide sufficient clarity in their current shape, the Chamber will not adopt the Guideline Proposal in its present or any amended form. Having said that, the Chamber authorises the VWU to use the Explanatory Note Proposal, in accordance with its directions above.
19. The Chamber considers that these directions will reduce uncertainties regarding statement corrections, safeguard an accurate record, expedite the proceedings and preserve the accused's fair trial rights.



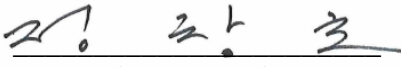
### FOR THESE REASONS, THE CHAMBER HEREBY

**PARTLY GRANTS** the Request;

**ADOPTS** the additional directions regarding statement corrections during witness familiarisation, as set out in paragraphs 6-17 above; and

**ORDERS** the Registry to file a public redacted version of the VWU Observations, ICC-01/14-01/18-1600-Conf and Annex 1 thereto, within one week of notification of the present decision.

Done in both English and French, the English version being authoritative.

 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Péter Kovács</b></p>	 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Bertram Schmitt</b>  <b>Presiding Judge</b></p>	 <hr style="width: 25%; margin: 0 auto;"/> <p><b>Judge Chang-ho Chung</b></p>
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Dated 13 October 2022

At The Hague, The Netherlands

<sup>24</sup> VWU Observations, ICC-01/14-01/18-1600-Conf, para. 11.