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

**TRIAL CHAMBER V**

**Before: Judge Bertram Schmitt, Presiding Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

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

**Public**

**Decision on the Yekatom Defence Request for Reconsideration of the  
Initial Directions on Opening Statements**

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

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**Judge Bertram Schmitt**, acting as Presiding Judge on behalf of Trial Chamber V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 64(2) of the Rome Statute and Rule 140 of the Rules of Procedure and Evidence, issues this ‘Decision on the Yekatom Defence Request for Reconsideration of the Initial Directions on Opening Statements’.

1. On 26 August 2020, the Presiding Judge decided, *inter alia*, that: (i) the Chamber would hear the Prosecution’s opening statement first, followed by the opening statements of the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of Victims of Other Crimes and the Defence; and (ii) the Defence teams may make their opening statements either at the commencement of trial or just prior to the presentation of their evidence, if any.<sup>1</sup> He further decided that the decision on the timing to present their opening statements must be made collectively amongst the Defence teams, as the Chamber would not hear opening statements from the Defence teams at multiple points during trial (the ‘Directions’).<sup>2</sup>
2. On 6 January 2021,<sup>3</sup> the Yekatom Defence requested the Chamber to reconsider the Directions, so as to permit the Yekatom Defence to present its opening statement just prior to its presentation of evidence, irrespective of the timing of the Ngaïssona Defence’s opening statement (the ‘Request’).<sup>4</sup> The Yekatom Defence submits that the Defence teams have been unable to agree on the timing of the opening statements, as the Ngaïssona Defence ‘insists’ on presenting its statement at the start of the trial, while the Yekatom Defence ‘is just as insistent’ about giving its statement after the Office of the Prosecutor (the ‘Prosecution’) has concluded its case-in-chief.<sup>5</sup>

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<sup>1</sup> Initial Directions on the Conduct of the Proceedings, ICC-01/14-01/18-631 (the ‘Initial Directions’), paras 9-11.

<sup>2</sup> Initial Directions, ICC-01/14-01/18-631, para.11.

<sup>3</sup> The Yekatom Defence initially submitted its request by email on 5 January 2021, at 11:02. The Single Judge, by email of 5 January, at 13:01, instructed the Yekatom Defence to formally file its request on the record, and further ordered that any responses be filed within five days of notification.

<sup>4</sup> Request for reconsideration of the “Decision on the Initial Directions on the Conduct of the Proceedings” (ICC-01/14-01/18-631), ICC-01/14-01/18-801, para. 19.

<sup>5</sup> Request, ICC-01/14-01/18-801, para. 8.

3. Under these circumstances, the Yekatom Defence argues that reconsideration is necessary to prevent an injustice and is justified by ‘significant changes in circumstances and new and compelling reasons’. Specifically, the Yekatom Defence submits that: (i) since issuance of the Directions, the Yekatom Defence’s ability to investigate has been severely hampered by circumstances beyond its control; (ii) the circumstances in the present case are ‘very different’ from the circumstances in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, relied upon by the Presiding Judge to support the ‘collective nature’ of the opening statements;<sup>6</sup> (iii) there are significant differences between the two defendants in respect of the charges against them, requiring the Yekatom Defence to conduct a more specific investigation of the events; and (iv) the Prosecution has recently disclosed several statements of witnesses whose identities had previously been withheld from the Defence.<sup>7</sup>
  
4. On 11 January 2021, the Ngaïssona Defence filed its response, requesting the Chamber to grant the Request or, in the alternative, to allow the Ngaïssona Defence to present its opening statement at the commencement of trial in February 2021.<sup>8</sup> Specifically, the Ngaïssona Defence submits that: (i) the two Defence teams should be allowed to choose separately the timing of their opening statements;<sup>9</sup> (ii) making a Defence opening statement at the start of the trial is the norm in international and domestic jurisprudence;<sup>10</sup> (iii) the difference in case preparation between the two teams allows the Ngaïssona Defence to present its opening statement at the commencement of the trial;<sup>11</sup> and (iv) the presentation of the opening statement after the Prosecution’s case-in-chief would be prejudicial to Mr Ngaïssona.<sup>12</sup>

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<sup>6</sup> See Initial Directions, ICC-01/14-01/18-631, para. 11 *referring to* Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Directions on the conduct of the proceedings, 2 September 2015, ICC-01/05-01/13-1209, para. 5.

<sup>7</sup> Request, ICC-01/14-01/18-801, paras 9-18.

<sup>8</sup> Ngaïssona Defence response to the Yekatom Defence’s “Request for reconsideration of the ‘Decision on the Initial Directions on the Conduct of the Proceedings’” (ICC-01/14-01/18-1243), ICC-01/14-01/18-810 (the ‘Ngaïssona Defence Response’).

<sup>9</sup> Ngaïssona Defence Response, ICC-01/14-01/18-810, paras 8-14.

<sup>10</sup> Ngaïssona Defence Response, ICC-01/14-01/18-810, paras 15-19.

<sup>11</sup> Ngaïssona Defence Response, ICC-01/14-01/18-810, paras 20-24.

<sup>12</sup> Ngaïssona Defence Response, ICC-01/14-01/18-810, paras 25-27.

5. On 12 January 2021, the Prosecution filed its response, deferring to the Chamber's discretion on the disposition of the Request, and taking no position on the substantive grounds advanced therein.<sup>13</sup>
6. On the same day, the Common Legal Representative of the Former Child Soldiers responded to the Request.<sup>14</sup> He seeks the dismissal of the Request, arguing that it fails to satisfy the requirements for reconsideration.<sup>15</sup>
7. In light of the Yekatom Defence's submissions, in the particular circumstances at hand, including the new facts presented, and on an exceptional basis, the Presiding Judge allows the Yekatom Defence to present its opening statements prior to its presentation of evidence, irrespective of the timing of the opening statements of the Ngaïssona Defence.

**FOR THE FOREGOING REASONS, THE PRESIDING JUDGE HEREBY**

**GRANTS** the Request.

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




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**Judge Bertram Schmitt**  
**Presiding Judge**

Dated 15 January 2021

At The Hague, The Netherlands

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<sup>13</sup> Prosecution's Response to the Yekatom Defence's Request for reconsideration of the "Decision on the Initial Directions on the Conduct of the Proceedings" (ICC-01/14-01/18-631), ICC-01/14-01/18-814, p. 12.

<sup>14</sup> Response of the Common Legal Representative of the Former Child Soldiers to the "Request for reconsideration of the 'Decision on the Initial Directions on the Conduct of the Proceedings'", 12 January 2021, ICC-01/14-01/18-813 (the 'CLR1 Response').

<sup>15</sup> CLR1 Response, ICC-01/14-01/18-813, paras 2, 11-22.