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No. ICC-01/14-01/18

Date: 29 May 2023

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

**Further Directions on the Conduct of the Proceedings
(Presentation of Evidence by the CLRV and the Defence)**

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 Ngaïssona*, having regard to Articles 64(2), 64(6)(b), (d), 66(2), 67 and 69 of the Rome Statute (the ‘Statute’), Rules 68(3), 78-80 and 140 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 43 of the Regulations of the Court, issues these ‘Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)’.

1. By 1 June 2023, the Office of the Prosecutor (the ‘Prosecution’) anticipates having called 70 out of its currently anticipated 79 witnesses.¹ It may be expected that the Prosecution will complete its presentation of evidence by the end of August 2023.
2. With a view to ensuring a streamlined continuation of the proceedings and facilitating the preparation of all participants, the Chamber considers it appropriate to provide further directions on the conduct of the proceedings, in addition to the initial directions thereon (the ‘Initial Directions’),² by providing for certain time limits, as further set out below.

I. End of the Prosecution’s presentation of evidence

3. The Chamber recalls that it set the time limit to file any applications under Rule 68(2) and (3) of the Rules latest by the time limit set for the Final Witness List, in the case of the Prosecution initially on 9 November 2020.³ The Chamber indicated that this would not preclude later applications under Rule 68(2)(c) of the Rules, should a witness become unavailable.⁴
4. In this regard, the Chamber notes that the Prosecution announced in relation to three witnesses that it would file requests pursuant to Rule 68(2)(c) of the Rules.⁵

¹ See anticipated witness order provided in email from the Prosecution, 1 May 2023, at 17:46. See also email from the Prosecution, 25 May 2023, at 23:50.

² Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631.

³ Initial Directions, ICC-01/14-01/18-631, para. 33 and n. 31; Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, 16 October 2020, ICC-01/14-01/18-685 (the ‘Further Decision on Rule 68’).

⁴ Initial Directions, ICC-01/14-01/18-631, para. 33.

⁵ **P-2200** and **P-0881**: email from the Prosecution, 15 November 2022, at 13:38; **P-0975**: Prosecution’s Observations pursuant to the Chamber’s “Order regarding the Remainder of the Prosecution’s Presentation of Evidence and Pursuant to Article 64(6)(d) of the Statute”, ICC-01/14-01/18-1739-Conf,

At this stage, no such requests have been submitted. The Chamber hereby orders the Prosecution to submit any further requests under Rule 68(2)(c) of the Rules no later than **7 July 2023**.

5. Furthermore, the Initial Directions provide for the procedure to submit evidence in writing.⁶ The Chamber hereby sets the time limit for any further requests by the Prosecution to submit evidence in writing as part of the Prosecution's presentation of evidence on **25 August 2023**.⁷
6. Should the Prosecution intend to file any other 'procedural motions' which must be resolved before the conclusion of its presentation of evidence,⁸ it is directed to do so by **7 July 2023**.
7. Finally, the Prosecution shall notify the conclusion of its presentation of evidence by way of a formal notice to be filed in the case record. This notice must be filed promptly after the conclusion of the Prosecution's presentation of evidence.⁹
8. The time limits which follow are set in accordance with the Prosecution's estimates for the remainder of its presentation of evidence. The Chamber may reconsider these time limits if there are significant changes to the expected conclusion of the Prosecution's presentation of evidence, or in case of other unforeseen developments.

II. Presentation of evidence by the CLRV

9. The Chamber recalls that the Initial Directions provide for presentation of evidence by the Common Legal Representative of Victims of the Former Child

31 January 2023, 10 March 2023, ICC-01/14-01/18-1791-Conf (with one confidential annex, ICC-01/14-01/18-1791-Conf-Anx), para. 6.

⁶ Initial Directions, ICC-01/14-01/18-631, paras 61-62.

⁷ See also Decision on the Ngaïssona Defence's Request to dismiss *in limine* ICC-01/14-01/18-1874 and for orders concerning the Prosecution's prospective bar table applications, 25 May 2023, ICC-01/14-01/18-1884, para. 22.

⁸ See email from the Prosecution, 25 May 2023, at 23:50.

⁹ This notice may be conditional on the Chamber's resolution of any then pending requests for the submission of evidence.

Soldiers and the Common Legal Representatives of Victims of Other Crimes (together, the ‘CLR’) ‘should leave to do so be granted’.¹⁰

10. The Chamber further recalls that the CLR presented opening statements at the beginning of the proceedings.¹¹
11. The CLR are hereby ordered to file any request for leave to present evidence no later than **7 July 2023**. Such request is to detail the nature of the evidence the CLR seek to present, including which witnesses they request leave to call, and with a summary of their anticipated testimony. In this regard, the Chamber stresses again, as pointed out earlier,¹² that the CLR’s role is different from the Prosecution’s, as it is the Prosecution who exclusively carries the burden of proof to establish the alleged crimes. This must be reflected in the scope of any request for leave to present evidence by the CLR. Recalling further that leave must also be sought to present non-evidentiary ‘views and concerns’ of participating victims,¹³ the Chamber notes that it is not provisionally inclined to hear victims present unsworn, non-evidentiary ‘views and concerns’ before its decision pursuant to Article 74 of the Statute.¹⁴
12. Further, the CLR are directed to disclose any evidence they intend to rely on during their presentation of evidence, should leave to do so be granted, by **18 August 2023**.

III. Witness to be called by the Chamber

13. On 31 January 2023, the Chamber decided that it would hear one witness as Chamber witness (the ‘Witness’).¹⁵ In the decision, the Chamber indicated that it

¹⁰ Initial Directions, ICC-01/14-01/18-631, para. 16.

¹¹ Transcript of hearing, 17 February 2021, ICC-01/14-01/18-T-015-ENG.

¹² Initial Directions, ICC-01/14-01/18-631, para. 19.

¹³ Initial Directions, ICC-01/14-01/18-631, para. 16.

¹⁴ See Article 68(3) of the Statute. See also, similarly, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Preliminary Directions for any LRV or Defence Evidence Presentation, 13 October 2017, ICC-02/04-01/15-1021, para. 2(ii).

¹⁵ Order regarding the Remainder of the Prosecution’s Presentation of Evidence and Order pursuant to Article 64(6)(d) of the Statute, ICC-01/14-01/18-1739-Conf (public redacted version notified the same day, ICC-01/14-01/18-1739-Red) (the ‘31 January 2023 Order’), para. 12.

would hear the Witness ‘no later than two weeks after the end of the testimony of the last witness to be called by the Prosecution’.¹⁶

14. To provide for the possibility of the CLRV requesting leave to present evidence, and such leave being granted,¹⁷ the Chamber hereby decides that it will hear the Witness starting on 23 October 2023.

IV. Presentation of evidence by the Defence

15. The Chamber recalls that pursuant to Article 66(2) of the Statute, the onus is on the Prosecutor to prove the guilt of the accused. In contrast, pursuant to Article 67(1)(g) of the Statute, the accused has the right to remain silent and not to be compelled to testify, and may elect not to present evidence.
16. The Chamber also recalls that on 13 January 2021, the Yekatom Defence filed a notice of alibi pursuant to Rule 79 of the Rules.¹⁸
17. Further, the Chamber recalls that the Ngaïssona Defence presented an opening statement at the beginning of the proceedings,¹⁹ and that the Yekatom Defence informed the Chamber that it would present an opening statement prior to the presentation of its evidence.²⁰
18. With a view to facilitating the fair and expeditious continuation of proceedings, the Defence is directed to file a notice as to whether it intends to present evidence by **25 August 2023**. By the same deadline, the Defence is to indicate whether the accused intends to exercise his right under Article 67(1)(h) of the Statute to make an unsworn oral or written statement.
19. In case the notice is in the affirmative, the Defence is ordered to provide, by the **same time limit**, a preliminary list of witnesses and an estimate of how many hours of witness questioning it will require. This preliminary list of witnesses is to include brief summaries of the witnesses’ anticipated testimonies, including

¹⁶ 31 January 2023 Order, ICC-01/14-01/18-1739-Red, para. 12.

¹⁷ *See also* above, paras 9-12.

¹⁸ Defence Notification Pursuant to Rule 79 of the Rules of Procedure and Evidence, ICC-01/14-01/18-818-Conf (public redacted version notified on 5 February 2021, ICC-01/14-010/18-818-Red).

¹⁹ Transcript of hearing, 18 February 2021, ICC-01/14-01/18-T-016-ENG.

²⁰ Email from the Yekatom Defence, 22 January 2021, at 18:04.

the (i) type of witness (e.g. crime base, expert, insider witness, etc.), (ii) intended mode of testimony (*i.e. viva voce* or Rule 68 of the Rules, including for which witnesses they intend to use video-link), and (iii) estimated length of testimony per witness.

20. The Chamber notes that the disclosure obligations of the Defence and the Prosecution differ significantly under the statutory framework. The Defence must, however, permit inspection of any books, documents, photographs and other tangible objects in its possession or control, which are intended for use by it as evidence for the purposes of the trial, in accordance with Rule 78 of the Rules.
21. Bearing in mind a potential presentation of evidence by the CLRV, as well as the scheduling of the testimony of the Witness, and to ensure sufficient time to prepare, the Defence is directed by **17 November 2023** to:
 - (i) file their final lists of witnesses and of evidence. The final lists of witnesses should include the following: (a) witness code and identity; (b) known kinship or other relationship to other witnesses; (c) type of witness (e.g. crime base, expert, insider witness, etc.); (d) expected relevance of witness's testimony to the charges, detailing the specific legal and factual issues the testimony is expected to relate to; (e) intended mode of testimony (*i.e. viva voce* or Rule 68 of the Rules, at the Court or through video-link); (f) language of testimony; (g) estimated length of questioning by the Defence; and (h) expected in-court protective measures to be sought, if any, as well as any issues of self-incrimination;
 - (ii) provide witness statements or summaries of the anticipated testimony for all witnesses; in case no statements are available, the summaries should be sufficiently detailed and comprehensive to enable the participants and the Chamber to meaningfully prepare;
 - (iii) file any applications pursuant to Rule 68(2) and (3) of the Rules, without this precluding later applications under Rule 68(2)(c) of the Rules, should a witness become unavailable; the Chamber encourages the

Defence to consider the use of Rules 68(2)(b) and 68(3) of the Rules; should the Defence anticipate a high number of applications under Rule 68(3), the Chamber may be amenable to considering an approach similar to that taken during the Prosecution's presentation of evidence;²¹ and

- (iv) complete disclosure of all items it intends to use during its evidence presentation, to the extent not already disclosed. The Chamber takes note of the Defence disclosure already affected to date. The Chamber directs that further disclosure should take place on a rolling basis until the final disclosure deadline.
22. If the Yekatom Defence elects to present an opening statement, it shall do so on **28 November 2023**. The Chamber recalls in this regard that the Initial Directions allocated three hours to each Defence team for their opening statements.²²
23. On **11 December 2023**, the Defence is to call its first witness.
24. In this regard, the Chamber notes that the Initial Directions foresee any presentation of evidence by the Defence 'in an order to be decided by the Defence teams between themselves'.²³
25. With a view to ensuring the most efficient and streamlined presentation of evidence by the Defence, the Chamber considers that if the Defence elects to present evidence, their presentation is to take place by topic, rather than one Defence team after the other. The Chamber considers that this will be the best manner specifically to avoid overlap and to maintain a meaningful structure of the presentation, with a view to best assisting the Chamber in making its determinations. The Chamber therefore directs the Defence to organise their presentation of evidence in the following thematic order, to the extent possible:
- Contextual/background evidence;
 - Individual criminal responsibility;

²¹ See Further Decision on Rule 68, ICC-01/14-01/18-685, paras 18-19.

²² Initial Directions, ICC-01/14-01/18-631, para. 10.

²³ Initial Directions, ICC-01/14-01/18-631, para. 16.

- Attack in Bangui on 5 December 2013 and events thereafter;
 - Events at Yamwara School Base;
 - Events concerning PK9-Mbaïki axis;
 - Children under the age of 15 years alleged to be associated with the Anti-Balaka; and
 - Attack in Bossangoa on 5 December 2013 and events thereafter.
26. Having regard to the proceedings and conduct of the Defence teams to date, the Chamber trusts that within this thematic order, the Defence teams will be able to agree between themselves in which order they will call witnesses. Equally, the Defence teams are to agree *inter partes* on any witnesses common to their presentation of evidence.²⁴
27. Witnesses will first be questioned by the Defence team calling them, followed by the other Defence team, the Prosecution, and the CLRV, if leave is granted. The non-calling Defence team may ask leave to question the witness further after the questioning by the Prosecution and the CLRV, if any. The presenting Defence team shall have the right to be the last to question a witness, in accordance with Rule 140(2)(d) of the Rules. If a witness is common to the presentation of evidence of both Defence teams, they shall agree *inter partes* on the order of questioning between themselves.
28. Finally, and unless otherwise specified by the Chamber in these directions, the presentation of evidence by the CLRV and the Defence, if any, will be governed by the Initial Directions²⁵ and amendments or additions thereto.²⁶

²⁴ See, in a similar vein, Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Directions on Defence Presentation of Evidence, 3 November 2015, ICC-01/05-01/13-1450, para. 8.

²⁵ This includes (i) the questioning of witnesses, including by the CLRV; (ii) the time limit for sending updates on the witness order; (iii) testimony by video-link; (iv) use of Rule 68 of the Rules; (v) self-incrimination; (vi) the use of material during the examination of a witness; (vii) use of private and closed session; (viii) in-court redactions; (ix) procedure for submission of evidence; (x) expert witnesses; (xi) in-court protective measures; (xii) transcripts; and (xiii) email decisions (see Initial Directions, ICC-01/14-01/18-631, paras 18-19, 25-26, 28, 30-51, 61-69, 71-73, 75-78).

²⁶ Email from the Chamber, 18 February 2021, at 09:20 (substantial anticipated summaries); email from the Chamber, 7 July 2021, at 17:05 (post-hearing redactions); emails from the Chamber, 30 March 2021, at 16:48, 14 April 2021, at 13:52 and 8 June 2011, at 15:20 (hard copy binders); email from the Chamber, 27 May 2021, at 11:26 (time limit for objections to redactions); transcript of hearing, 12 July 2022, ICC-01/14-01/18-T-142-Red-ENG, p. 3, line 13 to p. 5, line 15 (deadline to provide lists of material).

FOR THESE REASONS, THE CHAMBER HEREBY

ADOPTS the above further directions on the conduct of the proceedings; and

ORDERS the Registry to take all measures necessary to facilitate the appearance of the Witness starting on 23 October 2023.

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



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 29 May 2023

At The Hague, The Netherlands