

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **6 January 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 *THE PROSECUTOR v.*  
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

**Public**

**Request for reconsideration of the "Decision on the Initial Directions on the  
Conduct of the Proceedings" (ICC-01/14-01/18-631)**

**Source:** Defence for Mr. Alfred Rombhot Yekatom

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

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**Victims Participation and Reparations  
Section**

## INTRODUCTION

1. The Yekatom Defence respectfully requests the Trial Chamber to reconsider its *Decision on the Initial Directions on the Conduct of the Proceedings*<sup>1</sup> on the limited aspect of the timing of the Defence opening statements.

## PROCEDURAL BACKGROUND

2. On 16 March 2020, the Presidency constituted the Trial Chamber V and referred the case to the Chamber.<sup>2</sup>
3. On 19 March 2020, the Chamber ordered the schedule of the first status of conference on 21 April 2020. The parties were given the opportunity to file their submission on different matters by 8 April 2020. One of the subjects recommended by the Chamber was “opening statements”.<sup>3</sup>
4. On 8 April 2020, the two Defence teams filed their submissions. The Yekatom Defence expressed its wish to defer its opening statement at the commencement of its case.<sup>4</sup> The Ngaïssona Defence informed the Chamber of its intention to make its opening statements at the commencement of the Trial.<sup>5</sup>
5. On 26 August 2020, the Chamber adopted the *Initial Directions on the Conduct of the Proceedings*. The Chamber specifically directed the parties that a “decision must be made collectively amongst the respective [Common Legal Representatives of Victims (“CLRV”)] and Defence teams. The Chamber will not hear opening statements from the CLRV or the Defence teams at multiple points during the trial”.<sup>6</sup>

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<sup>1</sup> [ICC-01/14-01/18-631](#).

<sup>2</sup> [ICC-01/14-01/18-451](#).

<sup>3</sup> [ICC-01/14-01/18-459](#), para. 3.

<sup>4</sup> [ICC-01/14-01/18-472](#), para. 45.

<sup>5</sup> [ICC-01/14-01/18-473-Red](#), para. 36.

<sup>6</sup> [ICC-01/14-01/18-631](#), para. 11.

## APPLICABLE LAW

6. The Court's jurisprudence recognizes that a Chamber has the power to reconsider its own decisions. However, reconsideration is an exceptional measure that should only be granted if a manifest error of reasoning has been demonstrated or if reconsideration is necessary to prevent an injustice.<sup>7</sup> The jurisprudence also recognizes that the existence of new facts may also lead to reconsideration by the Chamber.<sup>8</sup>

## SUBMISSIONS

7. The Defence thoroughly considered the direction of the Chamber that the decision regarding the timing of the opening statements must be made jointly by the respective Defence teams; and the instruction of the Chamber to the effect that it will not hear opening statements from the Defence teams at multiple points during the trial.
8. Unfortunately, the two Defence teams have been unable to reach an agreement on the timing of the opening statements. The Ngaïssona Defence insists on presenting its opening statement at the start of the Trial while the Yekatom Defence is just as insistent about giving its opening statement after the Prosecution has completed its case-in-chief.
9. The Yekatom Defence believes that the Chamber should reconsider its prior decision based on the need to prevent an injustice to Mr. Yekatom's rights to a fair trial and the effective assistance of counsel. Since the date of the *Decision*

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<sup>7</sup> See also [ICC-01/14-01/18-206](#), para. 20; *Prosecutor v. Ntaganda*, [Decision on Defence request seeking partial reconsideration of the 'Decision on Defence request for admission of evidence from the bar table'](#), 22 February 2018, ICC-01/14-02/06-2241, par. 4; *Prosecutor v. Ruto, Kosgey and Sang*, [Decision on the 'Defence Request for Leave to Appeal the 'Urgent Decision on the 'Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence' \(ICC-01/09-01/11-260\)'](#), 29 August 2011 ICC-01/09-01/11-301, paras. 19-20; *Prosecutor v. Ongwen*, [Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance](#), 15 June 2016, ICC-02/04-01/15-468, para. 4; *Prosecutor v. Ruto and Sang*, [Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits](#), 10 February 2015, ICC-01/09-01/11-1813, para. 19.

<sup>8</sup> *Ibid.*

on the *Initial Instructions on the Conduct of the Proceedings* the Yekatom Defence's ability to fully investigate the charges has been severely hampered by circumstances beyond its control: (1) travel restrictions and other related measures due to the Covid-19 crisis; (2) delayed disclosure and redaction lifts by the Prosecution related to witness protection measures; (3) inability to have in-person meetings with Mr. Yekatom to fully discuss evidence and trial strategy.

10. To support the collective nature of the Defence teams opening statements, the Trial Chamber refers to the *Directions of the conduct of the proceedings* issued in the *Bemba et al* case in its Decision.<sup>9</sup> The Yekatom Defence stresses that the circumstances in *Bemba et al* was very different from those in this case.
11. Indeed, on 29 April 2016, the Trial Chamber VII, in *Bemba et al*, closed the submission of evidence in the case and the closing oral statements took place on 31 May 2016. In the course of 46 days of hearings, Trial Chamber VII heard 13 witnesses and expert witnesses called by the Prosecution, and 6 called by the defence teams for the five accused. Compare this, to the current case where the Prosecution has listed 151 witnesses that it intends to rely upon during the trial, with an estimated time of direct testimony only set at some 400 hours. The *Bemba et al* Trial was on offences against administration of justice related to false testimonies.<sup>10</sup> It was relatively straightforward and limited to a very specific time frame, and only a handful of participants and locations.
12. In this case, Mr. Yekatom is charged with crimes that were allegedly committed over a longer time frame, involving many more locations and participants, and a much greater variety and quantity of evidential material.

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<sup>9</sup> [ICC-01/14-01/18-631](#), para. 11 referring to *Prosecutor v. Bemba et al.*, [Directions on the conduct of the proceedings](#), 2 September 2015, ICC-01/05-01/13-1209, para. 5.

<sup>10</sup> *Prosecutor v. Bemba et al.*, [Case Information Sheet](#), ICC-PIDS-CIS-CAR-02-014/18\_Eng, September 2018.

These charges need a huge amount of preparation for the Defence to be able to respond to the Prosecutor's charges adequately.

13. Moreover, the Defence would like to underline the fact that significant differences are also present between the two Defendants in respect of the charges brought against them. The Pre-Trial Chamber in the Decision on the confirmation of charges, have differentiated the involvement of the two defendants by the concepts of *strategic common plan* and *operational common plan*.<sup>11</sup> Mr. Yekatom was supposedly implicated in the *operational common plan* by acting directly on the ground as opposed to Mr. Ngaïssona who would have, according to the Prosecutor, acted more at the overall organisational level.<sup>12</sup>
14. This difference in the charges justifies the fact that the Yekatom Defence needs to do a more specific investigation of events on the ground. In order to be in a position to prepare a meaningful opening statement, the Yekatom Defence needs additional time to investigate on the specific allegations presented by the Prosecution. Due to the ongoing logistical difficulties related to the COVID-19 crisis and the unsettled security situation in Central Africa, coupled with the very recently disclosed OTP witnesses whose identities and statements had been withheld from the Defence, the Yekatom Defence's investigations are still ongoing to the extent possible during these times of limited travel, social distancing, etc.
15. The Yekatom Defence submits that the impasse encountered in discussions with the Ngaïssona Defence, the recently disclosed witness statements covering a wide range of locations (see for ex. P-2582), and the prevailing

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<sup>11</sup> [ICC-01/14-01/18-723-Conf](#), paras. 70, 98-99; *see also* [ICC-01/14-01/18-403-Conf-Corr](#), para. 56, 60; [ICC-01/14-01/18-403-Red-Corr](#), paras 56,60; Public redacted version : [ICC-01/14-01/18-403-Red-Corr](#).

<sup>12</sup> [ICC-01/14-01/18-723-Conf](#), paras. 70, 98-99; *see also* [ICC-01/14-01/18-403-Conf-Corr](#), para. 56, 60; [ICC-01/14-01/18-403-Red-Corr](#), paras. 56,60; Public redacted version : [ICC-01/14-01/18-403-Red-Corr](#).

circumstances impacting the speed of the Defence investigations, considered together, represent significant changes in circumstances and new and compelling reasons that justify reconsideration of the Chamber's Decision to prevent an injustice.

16. The Yekatom Defence respectfully submits that it will be prejudiced and unjust if it were forced to proceed with an opening statement as early as February 2021 as it will be unable at that time to fully and accurately describe our anticipated evidence in order for the Chamber to know what to expect and to be easily able to understand the evidence when it is later presented.
17. In addition, given the Prosecution's estimated timetable it seems likely that their case-in-chief will not be finished before early 2022. The Defence firmly believes that Mr. Yekatom's interest is best served if it can present its opening statement after the Prosecution closes its case since, as often happens during Trial, the actual evidence produced varies significantly from what is originally expected. At the end of the Prosecution's case-in-chief the Defence can make a more informed and more concise opening statement about what its evidence will be. Besides, if presented at that stage, it will be easier for the Trial Chamber to recall its specifics, underlining their purposes and usefulness.
18. Forcing the Yekatom Defence to make its opening statement at the beginning of the trial without being in a position to substantiate on the nature of the Defence case, the factual matters it intends to raise, and the evidence to be presented, due to the strategic choice of an another party, with different interest, would be unjust and prejudicial to Mr. Yekatom.

### **RELIEF SOUGHT**

19. To prevent such injustice, the Yekatom Defence respectfully requests the Trial Chamber to reconsider its *Decision on the Initial Directions on the Conduct of the*

*Proceedings* on the limited aspect of the timing of the Defence opening statement and to permit the Yekatom Defence to present its opening statement just prior to the presentation of its evidence, regardless of the timing of the Ngaiissona Defence opening statement.

**RESPECTFULLY SUBMITTED ON THIS 6th DAY OF JANUARY 2021**



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