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**International
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Court**

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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Prosecution's Response to the 'Yekatom Defence Request for Partial
Reconsideration of 'Decision on the Sentencing Procedure and Amended
Directions on the Conduct of the Proceedings (ICC-01/14-01/18-2600)' (ICC-01/14-
01/18-2614)**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Prosecution defers to Trial Chamber V's ("Chamber") discretion regarding the Yekatom Defence's request for reconsideration¹ of the 18 July 2024 Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings ("Decision"),² as such. However, the specific request that the Accused be permitted to submit additional evidence *after* the rendition of the consolidated articles 74 and 76 decision, should be rejected.

2. *First*, there is no basis in law or the Court's practice for the Defence proposal. Article 76(1) and (2) do not specify that the Parties' submissions and evidence on sentencing must be provided only after a decision on the merits is rendered. They require that the Chamber consider such submissions and evidence made *during* the trial,³ and to hear any additional submissions *before* the trial's completion.⁴ The Decision is not inconsistent with this.

3. *Second*, the 10-day period proposed in the Request for the Defence to provide further evidence and submissions on the specific bases of conviction after the consolidated decision has been issued is unnecessary and does not efficiently address the issue. Any matter that the Parties consider relevant to sentencing which they believe the Chamber has not duly taken account of in its consolidated decision may be addressed in a direct appeal. The proposed further submissions would moreover needlessly obligate the Chamber to issue yet a further decision.

4. *Third*, allowing the submission of "*any* additional evidence"⁵ on "*any* specific findings against [Yekatom]"⁶ is overbroad and — as it would apply equally to NGAISSONA — could potentially open the proceedings to further delay, defeating

¹ ICC-01/14-01/18-2614.

² ICC-01/14-01/18-2600.

³ *See* Article 76(1).

⁴ *See* Article 76(2).

⁵ ICC-01/14-01/18-2614, para. 3.

⁶ ICC-01/14-01/18-2614, para. 3.

one of the purposes of the Chamber's determination to render a consolidated decision in the first place.

II. SUBMISSIONS

5. As noted, the Prosecution defers to the Chamber's discretion in respect of the broad question of reconsideration of the Decision. However, the specific request for YEKATOM to make further submissions upon the rendition of the Chamber's consolidated articles 74 and 76 decision is not tenable.

A. The Decision adequately accommodates article 76(1) and (2) interests

6. The Request relies on a prescriptive interpretation of the Court's statutory framework. As such, the Defence erroneously contends that YEKATOM should be allowed to present "any additional evidence targeted to any precise findings of guilt"⁷ under articles 76(1) and (2). However, in the context of a simultaneous pronouncement on guilt and sentencing (as opposed to bifurcated proceedings) these provisions do not provide for any such entitlement.

7. Similarly, the Defence errs in asserting that providing additional submissions and evidence *after* the consolidated articles 74 and 76 decision has been rendered is 'critical' to the Accused's preservation of his article 67(1)(g) right against self-incrimination.⁸ Such a reading unnecessarily pits articles 67 and 76 against one another, whereas they are in fact consistent within the Statute's framework, and should be read in accordance with the general principles of treaty interpretation in any event.⁹

8. Article 76(1) and (2) respectively provide:

⁷ ICC-01/14-01/18-2614 (internal citations omitted).

⁸ ICC-01/14-01/18-2614 (internal citations omitted).

⁹ See Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31(1); normatively understood to require the reading of a treaty "as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions", *see e.g., Saadi v. The United Kingdom* [GC] 13229/03 (29 January 2008), ECHR 2008-I 31, para. 62 (internal citations omitted).

“1. In the event of a conviction, the Trial Chamber shall [...] take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.”¹⁰

The provisions direct that a Chamber must consider evidence and submissions provided *during* and *before the completion of trial* on the issue of sentence. They require nothing more.¹¹

9. Their express qualification also presents no inherent conflict or tension with the Accused’s right to present evidence relevant to sentencing. Indeed, by imposing no requirement that a Chamber implement a bifurcated process, article 76 implicitly defines the scope of that right. Nor, is a consolidated procedure inconsistent with the right against self-incrimination, as the Statute does not compel or otherwise require that a defendant make submissions or provide evidence of any kind at any point during the proceedings. Neither article 76 nor the Decision changes this. Contrary to the Request, article 67(1)(g) is not adversely affected by the procedure set out in the Decision.¹²

10. The request to provide further submissions and evidence *after* the issuance of the consolidated decision is therefore unavailing, barring an exceptional circumstance.¹³ However, it does not appear that the Defence has yet established one.

B. The right to a direct appeal on sentencing is sufficient

¹⁰ See Article 76(1) and (2) (emphasis added).

¹¹ Note, Rule 143 of the Rules similarly provides no express indication as to when “the Presiding Judge shall set the date of the further hearing”, notwithstanding the possibility that “[t]his hearing can be postponed, in exceptional circumstances”).

¹² See e.g., ICC-01/14-01/18-2614, para. 8, 9, 25.

¹³ See Rule 143 of the Rules.

11. As noted, a further hearing and the submission of any additional evidence under article 76(2) on matters relevant to sentencing after the issuance of the Chamber's consolidated decision¹⁴ is unnecessary. *First*, the Parties and Participants can reasonably prepare submissions based upon their highly experienced professional assessments and evaluation of the evidence before the Chamber in respect of the crimes charged and the Accused's individual criminal responsibility. *Second*, any matter that the Parties consider the Chamber has failed to duly take account of in its consolidated decision can be appealed as of right.¹⁵ Thus, the Court's framework already provides adequate protections. Given that the Defence retains the possibility to seek (a) an extension of time to comply with the deadlines established in the Decision, as may become necessary; (b) reconsideration of the eventual consolidated decision; and (c) an appeal as of right, there is no need for the additional recourse sought — and, in any case, none justifying the grounds advanced for the partial reconsideration sought.

12. The Request altogether overlooks the available regulatory safeguards. Indeed, the scope and applicability of article 81(2) is not referenced to any extent. Notwithstanding, its availability nullifies the contention that the further presentation of evidence *after* the rendition of the consolidated decision is critical to preserve YEKATOM's rights. Those rights are already fully preserved under the Statute, given that the Accused's recourse to appeal with Counsel's assistance vests upon the rendition of the consolidated decision. Thus, contrary to the Request, YEKATOM's understanding of the complexity of the factual and legal qualification of his individual criminal responsibility for the charged crimes and his role, is of no moment in this regard.¹⁶ The Statute guarantees him well-qualified Counsel to manage an appeal of

¹⁴ ICC-01/14-01/18-2614, para. 26.

¹⁵ Article 81(2)(a)-(c).

¹⁶ See ICC-01/14-01/18-2614, paras. 8, 9.

any sentence to the same extent to which he has benefitted from such representation throughout trial.

C. The 10-day request may delay the proceedings

13. Although the Request seeks only a period of 10 days after the issuance of the consolidated decision to provide additional submissions and evidence, it is unlikely that the period will be so limited. Instead, the proceedings would be open to delay.

14. *First*, to the extent that any Party may make additional submissions (not the least of which, the other Accused in this case), the Chamber would be obliged to provide a meaningful period and opportunity for the other Parties and Participants to provide responsive submissions and evidence pursuant to article 76(2) and 64(2), to ensure that the proceedings remain fair. *Second*, the dilatory impact of such a process on the pace of the proceedings would substantially undermine the purpose of the Decision in balancing significant competing interests, among them the expeditious conduct of the trial – now well into its fourth year.

D. Rendition of an interim verdict

15. Taking account of the thrust of the Request and the concerns raised by both Accused,¹⁷ the Chamber may consider issuing an interim ‘verdict’ in the exercise of its discretion.¹⁸ In the particular circumstances of this case, setting out the charges and/or counts on which the Chamber finds the Accused’s guilt has been established *before* receiving the Parties’ and Participant’s submissions and/or evidence relative to sentencing may be helpful to their preparation¹⁹ — even if not strictly required.

¹⁷ See ICC-01/14-01/18-2614, para. 20 (asserting that “without the benefit of an Article 74 decision, such considerations and/or submissions may be unnecessary or uninformed, which will negatively affect the fair and expeditious conduct of the proceedings”) (internal citation omitted); *see also* ICC-01/14-01/18-2608, paras. 20, 37 (asserting then need to provide submissions and evidence “focused on the specific charges and modes of responsibility found by the Trial Chamber to be proved beyond a reasonable doubt”; and concern about “submissions by the parties on issues that may not be of relevance at all depending on the Chamber’s Article 74 decision).

¹⁸ ICC-02/11-01/15-1400, para. 165 (noting “[t]he separation of verdict and reasons does not entail a violation of article 74(5) of the Statute. There may, on the contrary, be clear justification for such separation in the particular circumstances of a case”).

¹⁹ See ICC-01/14-01/18-2614, para. 19 (internal citation omitted).

16. The Chamber may appropriately issue an interim verdict without undue prejudice to the Parties and Participants, observing three key safeguards: (1) that it has reached all relevant findings on the evidence necessary thereto at the time it is rendered; (2) the verdict is accompanied by a substantive summary filed in or read into the Court record setting out the main findings and conclusions with sufficient clarity; and (3) that it is issued pursuant to a clear and short schedule.²⁰

17. Providing a verdict in this manner may assist in informing the Parties and Participants of the charges and modes underpinning any prospective convictions, streamline sentencing submissions, and advance the expedition of the proceedings. While this would depend on the duration of the Chamber's deliberations, significantly the Chamber would not need to produce a fully-fledged written judgement contemporaneously. In this way, it may also obviate the need for any substantial modification of the Decision for which reconsideration is sought.

III. REQUESTED RELIEF

18. For the above reasons, the Prosecution respectfully defers to the Chamber's discretion. However, the specific request that the Accused be permitted to submit additional evidence after the rendition of the consolidated articles 74 and 76 decision, should be rejected.



Karim A. A. Khan KC, Prosecutor

Dated this 7th day of August 2024
At The Hague, The Netherlands

²⁰ See ICC-02/11-01/15-1277-Red2, para. 113 (ii) (internal citations omitted).