

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **8 August 2024**

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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Request for Leave to Reply to '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: 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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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

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Section**

1. Pursuant to regulation 24(5) of the Regulations of the Court ('RoC'), the Defence for Mr. Yekatom ('Defence') seeks leave to file a brief reply to the '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)'.¹
2. If granted, the Defence intends to file a succinct reply of no more than 5 pages or, if the Chamber is amenable, orally during the next scheduled hearing block. The limited reply would address two discrete issues, both of which warrant a reply as they concern either: (i) a new issue – namely, the Prosecution's proposal for an 'interim verdict' prior to the issuance of the Article 74 judgment² - which could not have been reasonably anticipated by the Defence and/or (ii) require a limited reply which is necessary for the determination of the Defence Request for Partial Reconsideration,³ as the Prosecution's Response is substantively based on a misrepresentation of the Defence's submissions – namely, that the Defence request to submit additional evidence relevant to sentencing after the Article 74 judgment precluded the rendering of any Article 76 decision.⁴
3. These issues are:
 - a. The Prosecution's proposal for an interim verdict prior to the Article 74 judgment would defeat the purpose of providing targeted additional evidence relevant to sentencing as it would deprive parties of the factual and legal basis for any such conviction ('First Issue'); and
 - b. The Prosecution's misrepresentation of the Defence's Request for Partial Reconsideration nullifies the Prosecution's Response in that the Defence is seeking to provide additional evidence relevant to sentencing before the issuance of the Article 76 Decision and not after it ('Second Issue', collectively 'Two Issues').

¹ ICC-01/14-01/18-2618 ('Prosecution Response').

² Prosecution Response, paras. 15-17.

³ [ICC-01/14-01/18-2614](#) ('Defence Request for Partial Reconsideration').

⁴ See Defence Request for Partial Reconsideration, paras. 2-3, 5-8, 15, 18-24, 26-27 *contra* Prosecution's Response, paras. 1-2, 5 to 10.

4. A focused reply on the identified two issues would provide necessary clarification of the limited scope of the Defence's Request for Partial Reconsideration and assuage the apparent concerns as set out in the Prosecution Response.
5. The Defence has proposed a reasonable solution which would ensure that Mr. Yekatom's rights are effected in that he is able to provide any additional evidence relevant to sentencing in a shortened timeframe (i.e. ten working days) AFTER the issuance of the article 74 judgment BUT BEFORE the issuance of the article 76 decision. Out of an abundance of caution, the Defence makes clear that it does not request an opportunity to present additional evidence after the simultaneous issuance of the Article 74 judgment and the Article 76 decision – but rather that it allows a small window for the provision of additional evidence following any finding of guilt which are targeted to the specific factual and legal findings of the Article 74 judgment should parties avail themselves of the opportunity to do so. It is only after this 10 (ten) working day window that the Article 76 decision would be rendered – and in this regard, that a bifurcated issuance of the Article 74 judgment and Article 76 is followed.
6. In the event that the Chamber grants leave to reply, the Defence will substantiate the identified Two Issues and set out: (i) the Prosecution's proposal for an interim verdict undermines the core purpose of the Defence's request in that additional material can only be both limited and targeted once the full factual and legal findings of guilt are made clear to the parties; (ii) Mr. Yekatom's rights pursuant to article 61(7)(g) are not adequately safeguarded by the Prosecution's claim that the right of direct appeal is sufficient as he will have been denied an effective and real opportunity to present relevant information directed against any specific findings of guilt before the Trial Chamber prior to the issuance of the Article 76 decision without comprising his right to remain silent and the fundamental protections against self-incrimination,⁵ and (iii) the Prosecution's foreshadowing of undue

⁵ Prosecution Response, paras. 3 and 11-12.

delays,⁶ mischaracterises the core of the Defence's request in that the requested 10 (ten) working day period is modest in duration,⁷ intended as a safeguard only,⁸ and is applicable to all parties with the necessary modalities for the submission of such material to be subject to the Trial Chamber's supervisory powers.⁹

7. Having exercised its rights under article 76(1) and 76(2), the Defence is not asking for anything more than a considerably short time frame after the issuance of the Article 74 judgment to present additional evidence, if necessary, to target any findings of guilt which would then be followed by the rendering of the Article 76 decision. The Defence accepts and is fully on board with the Chamber's efforts to ensure that the bulk of sentencing submissions has been considered by 10 January 2025 so that the Chamber is well seized of the sentencing phase by the time that it renders the Article 74 judgment. The Defence's Request for Partial Reconsideration is therefore fully consistent with such efforts whilst also preserving the statutory rights of Mr. Yekatom and indeed other parties to these proceedings.

RELIEF SOUGHT

8. For the foregoing reasons, the Defence respectfully requests the Trial Chamber to grant the request for leave to reply in respect of the Two Issues.

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF AUGUST 2024



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

⁶ Prosecution Response, paras. 13-14.

⁷ Noting further that the proposed time period is no more than the time limit for responses set out under regulation 34 of the Regulations of the Court.

⁸ See also Defence Request for Partial Reconsideration, para. 3 as well as fn. 30 (namely that the provision of additional evidence is only **where necessary** i.e. dependent on any outcome of an acquittal, which would render the request moot, and moreover, dependent on the actual findings of the Chamber in the event of a conviction).

⁹ Defence Request for Partial Reconsideration, para. 26.