

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/18
Date: 7 February 2025

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács, Judge
Judge Chang-ho Chung, Judge
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 Redacted Version of 'Urgent Request for Review of 'Registrar decision on the "Request for review of CSS Decision of 14 January 2025" submitted by the Yekatom Defence on 16 January 2025', 3 February 2025, ICC-01/14-01/18-2756-Conf-Exp

Source: Defence for Mr. Alfred Rombhot Yekatom

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

D29

D30

☒ **Legal Representatives of the Victims**

V44

V45

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☐ **The Office of Public Counsel for
Victims**

☒ **The Office of Public Counsel for the
Defence**

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☒ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

INTRODUCTION

1. Counsel for Mr Alfred Rombhot Yekatom ('Counsel') hereby respectfully requests that Trial Chamber V review the 'Registrar decision on the "Request for review of CSS Decision of 14 January 2025" submitted by the Yekatom Defence on 16 January 2025' ('Impugned Decision').¹
2. Counsel seeks review of the Impugned Decision's erroneous interpretation and overly rigid application of paragraph 73 of the Legal Aid Policy ('LAP') related to the reduced activity phase.
3. The Registrar and CSS's interpretation of the LAP dictates that Counsel must either:
 - Retain all 11 team members at 50% contracts ('Option 1'), or
 - Limit the team to 5 members at 100% and 1 member at 75% ('Option 2').
4. In contrast, Counsel's proposed team composition seeks to retain 9 team members by combining 100%, 75%, and 50% contracts in a more flexible and efficient structure ('Proposed Team Composition'). This approach would allow Counsel to retain both Associate Counsels, Case Managers, and the Linguistic Assistant, ensuring continuity and institutional memory.
5. The Registrar and CSS's rigid interpretation would either force the loss of core team members or require the retention of individuals whose trial-phase assignments cannot be efficiently transposed to the appeal. This would compromise the Defence's ability to function effectively during the reduced activity phase and in preparation for potential appellate proceedings. Counsel's proposed composition better aligns with the evolving needs of the case, ensuring an optimized use of resources without exceeding the allocated legal aid budget.
6. Counsel's request fully complies with this requirement. Her proposal preserves institutional continuity and ensures the necessary expertise to meet Mr. Yekatom's legal needs while adhering to the allotted budget provided for under paragraph 73 of the LAP. In simple terms, Counsel's Proposed Team Composition equates to 50% of the trial composition (5.75) and does not exceed or come at any extra cost or resources than the two options pushed by the Registry.

¹ Registrar decision on the "Request for review of CSS Decision of 14 January 2025" submitted by the Yekatom Defence on 16 January 2025 (IOR/2025/0017), dated 30 January 2025 (Annex A).

7. Moreover, the Registrar's refusal to consult with Counsel, despite the clear language of the LAP requiring such consultation, constitutes an abuse of discretion. By disregarding the Defence's needs and rejecting a proposal that uses equal or slightly fewer public funds, in favor of an approach that ultimately is less cost effective and slightly increases the use of public funds, the Registrar has acted unreasonably and arbitrarily in the impugned decision.

PROCEDURAL HISTORY

8. On 15 December 2023, CSS informed the Defence that in the context of the new LAP the complexity level for Yekatom Defence Team was set at complexity level 3.² Accordingly, the Defence had made available to it 11.5 positions at full time for the duration of the trial stage.
9. On 9 December 2024, during the closing statement hearings, CSS sent a letter to the Defence Lead Counsel, in which it requested information as to the composition of the Defence Team during the reduced activity period pursuant to paragraph 73 of the LAP by 31 December 2024 ('Reduced activity letter').³
10. On 17 December 2024, following the closing arguments and sentencing brief, Counsel met with CSS to request its interpretation of paragraph 73 of the LAP in light of the Reduced activity letter ('CSS meeting'). During the CSS meeting, Counsel asked CSS's Legal Officer/Advisor for further clarification with respect to Option 2 under paragraph 73 and in particular, CSS's interpretation of the phrase "*half of the team members under full-time commitments for the duration of the reduced activity period*". CSS's Legal Officer/Advisor did not provide any information on its interpretation of the provision and indicated that it would revert back to Counsel.⁴ To date, CSS never reverted back to Counsel.
11. On 31 December 2024, the Defence informed CSS that it intended to keep "*half of the team members under full-time commitments for the duration of the reduced activity period*" i.e. Option 2 under paragraph 73 of the LAP.⁵

² Email from CSS to the Defence dated 15 December 2023 at 16:14.

³ Letter from CSS sent by email dated 9 December 2024 at 10:07 (Annex B).

⁴ Email from CSS to Defence Counsel dated 17 December 2024 at 14:51 (Annex C).

⁵ Email from the Defence to CSS dated 31 December 2024 at 15:51 (Annex D).

12. On 2 January 2025, CSS requested the names of the team members leaving the Defence team,⁶ which was complied with by Counsel on the same day.⁷

13. On 8 & 9 January 2025, during the sentencing arguments, CSS asserted that “*the requested team composition exceed(ed) half of your current team members and some positions are requested at 50%*”, and as such, requested the provision of a revised team composition “*taking into account a maximum of 5 positions at full time and 0.75 position for part-time, equivalent to 50% of the trial phase composition*”.⁸

14. On 10 January 2025, the Defence provided an amended team composition corresponding to 5.75 full time positions as follows (i.e. the Proposed Team Composition):⁹

Name	Position	Time commitment	Number of positions
Mylène Dimitri	Lead Counsel	100%	1
Anta Guissé	Associate Counsel	50%	1
Sarah Bafadhel	Associate Counsel	50%	
[REDACTED]	Assistant to Counsel	75%	1.5
[REDACTED]	Legal Assistant	75%	
[REDACTED]	Legal Assistant	75%	1.5
[REDACTED]	Case Manager	75%	
[REDACTED]	Case Manager	50%	0.75
[REDACTED]	Linguistic Assistant	25%	
TOTAL			5.75

15. On 14 January 2025, CSS rejected the Proposed Team Composition on the basis that the “*request to maintain several positions at 75% does not correspond with one of the two options provided by par. 73 of the LAP, we can, at this stage, not accept your proposed team composition for the current period of reduced activity*”, and requested a new team composition by 15 January 2025.¹⁰ The Defence sought reconsideration of the CSS decision later that day,¹¹ which was rejected by CSS on 15 January.¹²

16. On 16 January 2025, the Defence submitted to the Registrar a request for review of the decision taken by CSS on 14 January 2025 (‘Request’).

⁶ Email from CSS to the Defence dated 2 January 2025 at 09:52 (Annex D).

⁷ Email from the Defence to CSS dated 2 January 2025 at 20:51 (Annex D).

⁸ Email from CSS to the Defence dated 8 January 2025 at 11:01 (Annex D).

⁹ Email from the Defence to CSS dated 10 January 2025 at 16:17 (Annex D).

¹⁰ Email from CSS to the Defence dated 14 January 2025 at 13:48 (Annex D).

¹¹ Email from the Defence to CSS dated 14 January 2025 at 16:06 (Annex D): the Defence requested CSS to “*reconsider (its) position or in the alternative, deem the proposed composition as a ‘necessary measure’ in accordance with paragraph 73, line 2 given the specific circumstances of these proceedings [emphasis added]*”

¹² Email from CSS to the Defence dated 15 January 2025 at 15:50 (Annex D).

17. On 17 January 2025 at 10:41, CSS requested that, notwithstanding the Request before the Registrar, an amended team composition be provided by midday (i.e. within 90 minutes) to avoid delays in the disbursement of payments and ‘further procedural and administrative implications’.¹³ No further information was provided by CSS as to the procedural or statutory basis for its position.
18. Later that day the Registrar circulated an email regarding [REDACTED] measures that would be taken.¹⁴
19. In response to CSS email, the Defence requested clarifications on the ‘procedural and administrative implications’ and requested CSS to escalate the matter to the Registrar for an urgent decision on the Request (‘Request for clarification on the ‘procedural and administrative implications’).¹⁵
20. On 17 January 2025, CSS responded to the Request for clarification on the procedural and administrative implications and indicated that [REDACTED]¹⁶ and that, without the required details on the Yekatom Defence team composition, it would not be able to process the payments to the Defence team.¹⁷
21. The Defence contacted the Registrar’s office on the same day by email and by phone to request a short meeting of 10 minutes with the Registrar himself or his Legal Officer.¹⁸ The Office of the Registrar declined the request.¹⁹ Following this response, the Defence sent queries to the Registrar, pending the formal decision to be issued, and requested a response by Monday 20 January given that the matter had become more urgent following [REDACTED]. The Defence also indicated its intent to file an urgent request before the Chamber on that date.²⁰
22. At the close of business on Monday 20 January 2025, in the absence of response by the Registrar, the Defence requested the urgent intervention of the Chamber for an

¹³ Email from CSS to the Defence dated 17 January 2025 at 10:41 (Annex D).

¹⁴ Email from the Registrar to all ICC and External personnel dated 17 January 2025 at 10:57 (Annex E). In his email the Registrar indicates [REDACTED].

¹⁵ Email from the Defence to CSS dated 17 January 2025 at 11:29 (Annex D).

¹⁶ CSS referred to the Email from the Registrar to all ICC and External personnel dated 17 January 2025 at 10:57 (Annex E). In his email the Registrar indicates [REDACTED].

¹⁷ Email from CSS to the Defence dated 17 January 2025 at 13:51 (Annex D).

¹⁸ Email from the Defence to the Registrar dated 17 January 2025 at 14:14 (Annex F).

¹⁹ Email from the Registrar to the Defence dated 17 January 2025 at 16 :37 (Annex F)

²⁰ Email from the Defence to the Registrar dated 17 January 2025 at 17 :11 (Annex F)

expedited calendar for the issuance of a decision by the Registrar on the Request²¹ which was rejected.²²

23. On 24 January 2025, despite the Defence Request for clarification on the ‘procedural and administrative implications and contrary to CSS information that it would not be able to process the payments to the Defence team, several members of the team who had checked out and were no longer part of the team received payments for a period after the reduced activity, i.e. for a period where they were no longer working for the Defence team.
24. On 24 January 2025, the Defence communicated an interim team composition (‘Interim Team Composition’) pending litigation to avoid any delays in the payments given the situation and without prejudice to the Request nor any further requests.²³
25. In the same email, the Defence informed CSS that advance payments had been processed for all team members including for team members who had never been submitted to be part of the reduced activity team composition in the ongoing litigation and who had already checked out.
26. On 27 January 2025, after the Defence called and emailed the Registrar’s Legal Office to follow up on its request and with the intention to highlight that payments had already been made to former team members, no response was received. Instead, 2 days later, CSS—using the same email chain sent to the Registrar’s Legal Officer—responded, stating it would serve as the channel of communication with the Registrar’s Legal Office. CSS did not address the Defence’s concerns or provide a timeline, merely stating that “the [Registrar’s] decision was being prepared” without further clarification.²⁴
27. On 29 January 2025, the Defence requested an acknowledgment of receipt of the Interim Team Composition and the issues of payments of departed team members as indicated in its 24 January 2025 email, as it had not received a response.²⁵ To date, the Defence has not received a response nor an acknowledgment of receipt.

²¹ Email from the Defense to the Chamber dated 20 January 2025 at 17:21.

²² Email from the Chamber to the Defence dated 21 January 2025 at 12:24.

²³ Email from the Defence to CSS dated 24 January 2025 at 12:23 (Annex G).

²⁴ Email from CSS to the Defence dated 27 January 2025 at 14:48 (Annex H).

²⁵ Email from the Defence to CSS dated 29 January 2025 at 10:59 (Annex G).

28. On 31 January 2025, CSS sent to the Defence ‘on behalf of the Registrar’ the Impugned Decision dismissing the Request and reaffirming CSS’s decision.²⁶

RELEVANT PROVISIONS

29. Regulation 83 Regulation of the Court provides:

1. Legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances. Upon request, associate counsel may also be covered by legal assistance paid by the Court after the first appearance pursuant to rule 121 of a person subject to a warrant of arrest or a summons to appear under article 58.
2. The scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate.
3. A person receiving legal assistance paid by the Court may apply to the Registrar for additional means which may be granted depending on the nature of the case.
4. Decisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance.

30. Paragraphs 101 to 103 of the LAP provide:

101. A person receiving legal aid by the Court may submit a request to the Registrar for review of a decision on the scope of legal aid resources provided to a team.

102. The Registrar’s final decision on legal aid resources taken pursuant to Regulation 83 of the RoC may be reviewed by the relevant Chamber on application by the person receiving legal aid pursuant to Regulation 83(4) of the RoC.

103. The standard of judicial review of the Registrar’s decisions concerns the propriety of the outcome of the decision and of the procedure by which it was reached. Without prejudice to the decision making of the Chamber, the judicial review procedure shall take into account the scope of the resources allocated under the Court’s Legal Aid Policy. The review involves an assessment of (a) whether the Registrar has acted without jurisdiction; (b) whether the Registrar’s decision is affected by a material error of law or fact; (c) whether the Registrar abused his or her discretion, for example, by failing to act with procedural fairness, acting in a disproportionate manner, making a decision based on irrelevant factors or failing to take into account relevant factors; or (d) whether the Registrar’s decision is manifestly unreasonable by reaching a conclusion which no reasonable person who has properly applied the legal basis and circumstances of the case to the issue could have reached.

31. Article 67 of the Rome Statute provides that:

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

[...]

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused’s choosing in confidence;

[...]

(d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused’s choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it[.]

²⁶ Email from CSS to the Defence dated 30 January 2025 at 18 :43 (Annex I).

URGENT BASIS

32. The Defence respectfully submits that its Request for Review is urgent, warranting shortened deadlines for resolution. First, the Defence sought CSS's interpretation as early as 17 December 2024. Second, the Registrar has been formally seized since 16 January 2025, and the Request contains no new arguments and addresses issues that the Registry is familiar with and informed of. Third, despite CSS's claim that it could not process payments, it proceeded to pay former team members, highlighting contradictions and the need for immediate clarification.

33. Finally, the Defence has already operated for nearly a month under reduced activity without resolution. Expedited deadlines are essential to prevent further uncertainty and ensure the effective team functioning.

CONFIDENTIALITY

34. This request and its annexes are filed *ex parte* only available to the Yekatom Defence and Registry due to the personal information contained on team members in the Request, which has always been *ex parte* between Counsel and the Registry. A redacted version will be filed shortly.

SUBMISSIONS

A) The Proposed Team Composition falls within the budgetary scope of LAP

35. The LAP stipulates that during periods of reduced activity in the proceedings, 'the team composition shall be reduced by 50 %.'²⁷ In other words, the overarching factor under paragraph 73 of the LAP is that during the reduced activity period, the team does not exceed 50% of the trial phase composition and is within the 5.75 positions allotted to the Defence.

36. The Proposed Team Composition falls squarely within the budgetary parameters—an undisputed fact that the Registrar neither addresses nor challenges. Instead of applying paragraph 73 flexibly, as required by the LAP, the Registrar raises a series of irrelevant issues. At best, these serve as a red herring; at worst, they indicate a clear abuse of discretion in handling this matter.

²⁷ LAP, para. 73.

37. For example, the Impugned Decision, refers to the fact that 'periods of reduced activity in particular largely surpass the resources provided under the previous policy.'²⁸ The Proposed Team Composition has nothing to do with the former policy and in any case, the former legal aid framework operated on a Full-Time Equivalent (FTE) system that considered various factors, including the number of pages disclosed.²⁹ The Registrar's comparasion is innaposite for the determination of the Request.
38. Similiarly, the Registrar stated that during the design and consultation process of the LAP, the Registry's proposal to the States Parties of an option for Counsel and team members to become staff of the Court granting them benefits was rejected by the States Parties,³⁰ which has no bearing on whether the LAP, as it stands, permits Counsel's Proposed Team Composition. This is particularly the case when the Proposed Team Composition **does not** cost the State Parties any more funds. The Registrar's reference to this argument is beside the point and irrelevant to the core issue.
39. CSS instructed Counsel to reduce her team composition from 11 members to 5 full-time positions and 0.75 part-time position, totaling 5.75 positions—equivalent to 50% of the trial phase composition.
40. Counsel therefore requested to reduce her team composition from 11 members to 5.75 by proposing the following composition:

Name	Position	Time committment	Number of positions
Mylène Dimitri	Lead Counsel	100%	1
Anta Guissé	Associate Counsel	50%	1
Sarah Bafadhel	Associate Counsel	50%	
[REDACTED]	Assistant to Counsel	75%	1.5
[REDACTED]	Legal Assistant	75%	
[REDACTED]	Legal Assistant	75%	1.5
[REDACTED]	Case Manager	75%	
[REDACTED]	Case Manager	50%	0.75
[REDACTED]	Linguistic Assistant	25%	
TOTAL			5.75

²⁸ Impugned Decision, para. 33, see also paras. 34, 40.

²⁹ ICC-ASP/12/3, p. 15.

³⁰ Impugned Decision, para. 40.

B) Proposed Team Composition is more cost effective

41. As demonstrated in the table below, while CSS and the Registrar did ‘not accept [Counsel’s] proposed team composition’’ they both failed to address the fact that Counsel’s proposal is more cost-effective and, requires slightly fewer public funds.

Table 1 : Proposed Team Composition³¹

Name	Position	Time commitment	Number of positions	Salary
Mylène Dimitri	Lead Counsel	100%	1	[REDACTED]
Anta Guissé	Associate Counsel	50%	1	[REDACTED]
Sarah Bafadhel	Associate Counsel	50%		[REDACTED]
[REDACTED]	Assistant to Counsel	75%	1.5	[REDACTED]
[REDACTED]	Legal Assistant	75%		[REDACTED]
[REDACTED]	Legal Assistant	75%	1.5	[REDACTED]
[REDACTED]	Case Manager	75%		[REDACTED]
[REDACTED]	Case Manager	50%	0.75	[REDACTED]
[REDACTED]	Linguistic Assistant	25%		[REDACTED]
TOTAL			5.75	[REDACTED]

Table 2 : Registrar and CSS - Interim Team Composition³²

Name	Position	Time commitment	Number of positions	Salary
Mylène Dimitri	Lead Counsel	100%	1	[REDACTED]
Anta Guissé	Associate Counsel	100%	1	[REDACTED]
[REDACTED]	Assistant to Counsel	75%	0.75	[REDACTED]
[REDACTED]	Legal Assistant	100%	1	[REDACTED]
[REDACTED]	Legal Assistant	100%	1	[REDACTED]
[REDACTED]	Case Manager	100%	1	[REDACTED]
TOTAL			5.75	[REDACTED]

42. In addition, there are no hidden costs associated with Defence team remuneration, making financial comparaisn straightforward. Counsel’s Proposed Team Composition is demonstrably more cost-effective than the Registrar’s approach.³³

³¹ The salaries indicated represent the total monthly amount based on their remuneration and a living cost lump sum amounting to 20% of their remuneration, considering the current step level of each team member. This calculation is notwithstanding litigation regarding team members' step levels, nor the additional 10% compensation for taxes.

³² The salaries indicated represent the total monthly amount based on their remuneration and a living cost lump sum amounting to 20% of their remuneration, considering the current step level of each team member. This calculation is notwithstanding litigation regarding team members' step levels, nor the additional 10% compensation for taxes.

³³ Under the LAP, the remuneration of Defence team members does not include ancillary costs. Unlike other Court personnel, Counsel and support staff do not receive benefits such as insurance, pensions, or education

C) The Proposed Team Composition protects Mr. Yekatom's rights under Article 67 of the Rome Statute during the Reduced Activity Phase

43. Counsel's Proposed Team Composition is tailored to meet the specific legal needs of Mr. Yekatom while ensuring full respect for his fundamental rights under Article 67 of the Rome Statute. The reduced activity phase does not diminish the Court's obligation to guarantee these rights, including the right to adequate time and facilities for the preparation of the defence and the right to effective legal assistance.

i. Option 2 (half of the team 100%) would result in the loss of three core team members

44. The Proposed Team Composition aligns with the concluding remarks of the Independent Expert Review, which emphasizes the need to improve institutional efficiency and cost-effectiveness to enhance the Court's impact.³⁴ Counsel's proposal reflects these priorities by optimizing resources while maintaining operational effectiveness, in line with the recommendations aimed at assisting the ASP and the Court in achieving these goals.

45. In particular, the Registrar's Decision would lead to the loss of **Associate Counsel Ms. Bafadhel, Case Manager [REDACTED], and Linguistic Assistant [REDACTED]**, with the latter two likely returning to their home countries during the reduced activity phase, as neither of whom have EU residency rights. If rehired for the Appeal phase, this would incur additional expenses, including relocation costs under Article 95 of the LAP.

46. Beyond financial inefficiency, replacing them during any Appeal stage would require significant time for new hires to familiarize themselves with the case post-Trial Judgment. This would inevitably divert valuable time and resources towards training, ensuring that the new team members are sufficiently acquainted with the case before they can contribute meaningfully. In contrast, Counsel's Proposed Composition avoids these unnecessary expenditures, maintains continuity, and upholds Mr. Yekatom's fundamental rights—all without requiring additional public funds.

grants. They must personally cover taxes, transportation, insurance, pensions, and education expenses from their earnings.

³⁴ Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report, 30 September 2020, para. 988.

a. Associate Counsel Ms Bafadhel

47. Counsel's proposal was not only more cost effective but also crucial to safeguarding Mr. Yekatom's rights, as it allowed him to retain both Associate Counsel as opposed to the Registrar's rigid application of the LAP under Option 2 which would have led to Associate Counsel Sarah Bafadhel's withdrawal or limited involvement in the event that any pro-bono position is accepted by CSS.

48. Furthermore, the tight deadlines imposed by the Trial Chamber following the conclusion of the trial reinforce the necessity of maintaining Counsel's Proposed Team Composition. Given that the bench's mandate ended in March 2024, the Chamber expedited the proceedings. This was explicitly acknowledged at the Assembly of States Parties, who highlighted *"the Chambers' efforts to expedite the proceedings given that the extension of judges' terms represents a substantial portion of the Chambers' budget."*³⁵

49. While the Yekatom Defence has fully adhered to these stringent deadlines, it must now ensure that Mr. Yekatom fully comprehends the legal arguments presented by various parties—including the Ngaïssona Defence, the Prosecution, the Victims of Other Crimes, and the Victims of Former Alleged Child Soldiers. This involves reviewing thousands of pages of submissions and transcripts of closing arguments. Since the start of the reduced activity phase, all three Counsel have continued to meet with Mr. Yekatom on a weekly basis to facilitate this essential review and ensure his informed participation in his defence. In addition, Associate Counsel is also a position where a relationship of trust has and had to be built with Mr. Yekatom.³⁶

b. Linguistic Assistant [REDACTED]

50. Additionally, Mr. Yekatom's continued access to a Sango-French Linguistic Assistant is essential to ensure his full comprehension of all procedural and legal matters. Counsel's Proposed Composition allows her to retain Linguistic Assistant, [REDACTED].

c. Case Manager [REDACTED]

³⁵ Japan Statement by H.E. Mr. MINAMI Hiroshi Ambassador of Japan to the Kingdom of the Netherlands at the Twenty-Third Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, [ASP23-GD-JPN-3-12-ENG](#), 2 December 2024.

³⁶ Code of professional conduct for counsel, article 14.

51. Counsel's proposal allows for the retention of two case managers, essential given the unprecedented volume of filings, transcripts, and submitted items requiring archiving, organization, and review for lesser-redacted versions.

52. A core aspect of Mr. Yekatom's rights is the principle of a public trial. Since trial proceedings concluded and the reduced activity phase began, extensive interparty correspondence and engagement with VWS have taken place to prepare lesser-redacted trial transcripts. This complex process involves a meticulous review of confidential information to assess which redactions should be lifted. Retaining two case managers, without additional funding, is crucial to ensuring efficiency, continuity, and effective disclosure management in a case of this scale.

53. Consequently, any decision regarding legal assistance must be guided by the fundamental rights enshrined in Article 67 of the Statute, as well as the overarching principle of fairness. The Registrar failed to provide adequate reasons in support of his decision not to grant Counsel's Proposed Team Composition which uses equal or slightly fewer public funds and therefore "failed to act with procedural fairness" as underlined by previous Chambers. This error materially affected his assessment in the Impugned Decision on the adequacy of the resources needed by the Yekatom Defence.³⁷

54. Retaining key defence team members during this period is crucial to preserving institutional knowledge and ensuring the continuity of an effective defence. Counsel's Proposed Team Composition does not exceed the allotted resources and remains the most effective, fair, and equitable means of safeguarding Mr. Yekatom's rights during this critical phase.

ii. Option 1 (All Positions at 50%) would result in keeping team members who no longer have any assigned tasks during reduced activity – inefficient use of public funds

55. In the same vein the Registrar and CSS proposition to opt for Option 1 - all positions under part-time commitments up to 50%³⁸ would result in the following composition:

Table 3 : Reduced activity Option 1 – all positions under part-time commitment

³⁷ The Prosecutor v. Al Hassan, Decision on the Defence's urgent request for judicial review of the Registrar's decision on funding during the reduced activity phase, [ICC-01/12-01/18-2516](#), 5 June 2023, para. 30.

³⁸ Impugned Decision, para. 29.

Name	Position	Time commitment	Number of position
Mylène Dimitri	Lead Counsel	50%	0.5
Anta Guissé	Associate Counsel	50%	0.5
Sarah Bafadhel	Associate Counsel	50%	0.5
[REDACTED]	Assistant to Counsel	50%	0.5
[REDACTED]	Legal Assistant	50%	0.5
[REDACTED]	Legal Assistant	50%	0.5
[REDACTED]	Legal Assistant	50%	0.5
[REDACTED]	Legal Assistant	50%	0.5
[REDACTED]	Case Manager	50%	0.5
[REDACTED]	Case Manager	50%	0.5
[REDACTED]	Case Manager	50%	0.5
[REDACTED]	Linguistic Assistant	25%	0.25
TOTAL			5.75

56. The Registrar and CSS's proposal to implement Option 1, is inadequate in meeting Mr. Yekatom's rights and defence needs. As illustrated in Table 3, this approach would lead to an ineffective team composition that does not align with the requirements of the reduced activity phase for Mr. Yekatom.

57. A significant flaw in this model is the retention of personnel whose roles are no longer aligned with the current stage of the proceedings. For instance, [REDACTED], while instrumental during the investigative phase, has never been part of the legal drafting team. With investigations now concluded, Mr. Yekatom's defence needs have shifted to preparing for the Trial Judgment, reviewing redactions to ensure the publicity of the trial, organizing legal arguments, and meeting with Mr. Yekatom to ensure his full understanding of the legal issues.

58. The same applies to [REDACTED] and [REDACTED], who provided critical support during the closing arguments and briefs after being recruited as emergency replacements for departing team members, [REDACTED] and [REDACTED].

59. Maintaining 1.5 positions hired specifically for the trial and closing stage (investigations, trial brief, and closing arguments) would come at the expense of allocating paid time to personnel whose expertise, institutional knowledge, and roles are more suited to the appeal preparation and post-trial administration.

60. Option 1 threatens the stability of the Defence team itself. Reducing all positions to 50% could drive key team members to resign, [REDACTED]. Counsel's priority is to

maintain institutional continuity throughout the reduced activity phase to prevent losing experienced team members, which would necessitate costly re-hiring and re-training.

61. This concern is reinforced by the Lubanga precedent, and reiterated in Bemba et al., in which the Chamber explicitly warned against dismantling a Defence team following the closing submissions, stating:

*“It would in all likelihood be wholly unfair to the accused to dissolve his defence team following the closing submissions, [...] who would—depending on the outcome of the Article 74 Decision—have to recruit a new team and file the accused’s appeal in 30 days. It is of note that the Prosecution will inevitably be in a far more advantageous position in this regard, since the Prosecutor is not under any obligation to lay off staff following the concluding submissions.”*³⁹

62. Disrupting the Defence team structure at this stage would severely disadvantage Mr. Yekatom, particularly given the short timeframe available for a potential appeal. Unlike the Prosecution, which retains a stable workforce throughout the proceedings, the Defence should not be subjected to a policy that jeopardizes its preparedness and effectiveness.

63. By rigidly imposing an equal reduction across all positions, the Registrar and CSS ignore the practical requirements of the Defence at this stage. A more strategic and needs-based approach, such as the one proposed by Counsel, is essential to uphold Mr. Yekatom’s rights under Article 67 of the Rome Statute while ensuring financial prudence.

D) Registrar failed to appreciate fairness and needs of Mr Yekatom because he failed to consult Counsel

64. The Registrar not only failed to properly apply the LAP principles but also refused to engage in **any** consultation with Counsel, despite the clear language of the LAP requiring such discussions.⁴⁰ This failure amounts to an abuse of discretion, as it demonstrates a lack of reasoned consideration of how Counsel’s Proposed Team Composition fully satisfies the LAP’s guiding principles. A genuine consultation would have allowed the Registrar to understand how Counsel’s Proposed Team Composition

³⁹ *Prosecutor v. Bemba et al.*, Decision on Bemba Defence Request for Provisional Legal Assistance, [ICC-01/05-01/13-1977](#), 30 August 2016, para. 11 ; *The Prosecutor v. Thomas Lubanga Dyilo*, Decision reviewing the Registry’s decision on legal assistance for Mr Thomas Lubanga Dyilo pursuant to Regulation 135 of the Regulations of the Registry, [ICC-01/04-01/06-2800](#), 31 August 2011, para. 57.

⁴⁰ On paragraph 73 of the LAP: Given Counsel’s consistent insistence on the necessity of her proposed team composition, the Registrar had an obligation to consult with her before making a determination. The LAP explicitly provides that adjustments should be made “unless otherwise deemed necessary by the Registrar in consultation with Counsel”, underscoring the requirement for meaningful dialogue rather than a unilateral decision.

upholds objectivity, economy, and continuity while remaining within the allocated budget.

65. In the Impugned Decision, under the section titled Applicable Legal Framework, the Registrar merely copies and pastes Paragraph 23 of the LAP without any meaningful application or analysis of how these principles should be interpreted in the present case.⁴¹ This mechanical reproduction of legal provisions does not constitute a reasoned decision, nor does it justify the rejection of Counsel's proposal, which fully complies with all three guiding principles outlined in Paragraph 23.

i. Counsel's Proposal Meets the Principle of Objectivity

66. **Principle 3 – Objectivity** requires that legal aid resources be allocated based on the objective complexity of the work and the stage of the proceedings, rather than subjective considerations. As set out above, the Proposed Team Composition aligns perfectly with these criteria. Counsel must retain both Co-Counsel to handle the extensive legal and procedural tasks that remain to be addressed with client and after trial judgment. Due to the accused's limited proficiency in French,⁴² and his complete inability to understand English, retaining his Linguistic Assistant is an objective necessity, not a discretionary luxury. The same applies for the reasons outlined above as to the sound reasons for retaining both Associate Counsels (paras. 47-49) and Case managers (paras. 51-54).

ii. Counsel's Proposal Upholds the Principle of Economy

67. **Principle 6 – Economy** mandates that the legal aid system cover only costs that are reasonably necessary for an effective and efficient defence. Contrary to the Registrar's rigid approach, Counsel's proposal is the most cost-effective solution. By requesting equal or slightly fewer public funds than the Registrar's alternative, this approach minimizes, although marginally, financial burdens on States while ensuring that the Defence has the essential resources required to function effectively.

68. The Registrar's rejection, is both illogical and inconsistent with the Court's legal aid framework. The same holds true with option 1 which would lead to cost of revenue to team members that are not reasonably necessary for an effective and efficient defence.

iii. Counsel's Proposal Guarantees Continuity and Flexibility

⁴¹ Impugned Decision, paragraph 20.

⁴² ICC-01/14-01/18-56-Conf.

69. **Principle 5 – Continuity and Flexibility** ensures that the legal aid system provides mechanisms to maintain team composition while allowing sufficient flexibility to adapt as needed, thereby avoiding disruptions that could prejudice the fair administration of justice. Counsel’s proposed team structure embodies both continuity and flexibility; allowing for a 75% workload adjustment, rather than a rigid 50% reduction, ensuring a balanced and adaptable approach that accommodates the case’s specific needs.

iv. The Registrar’s Failure to Consult Counsel Undermines the Purpose of the LAP

70. The Registrar’s failure to recognize these fundamental needs constitutes an arbitrary and rigid misapplication of the LAP. The LAP explicitly requires consultation with Counsel, recognizing that each case presents unique demands that must be addressed on an individualized basis.

71. This provision reflects the intent of the States Parties, who envisioned a case-by-case assessment of resource allocation, acknowledging that Counsel is best positioned to assess the needs of both the case and the client.

72. The Registrar’s rigid approach contradicts the principle of flexibility, which is a cornerstone of the LAP. Paragraph 73 of the LAP reinforces the need for a flexible interpretation, allowing for adaptability in response to the realities of each case. Similarly, paragraph 23 explicitly recognizes flexibility as a fundamental principle in ensuring the continuity and efficiency of Defence representation. By disregarding these key provisions and refusing to engage in a meaningful discussion with Counsel, the Registrar has failed to uphold the very principles that underpin the legal aid system as envisioned by the States Parties.

E) Misrepresentation in the Registrar’s Impugned Decision

73. Counsel regrets the misleading and unfounded allegations made throughout the Registrar’s response, which attempt to portray Counsel’s actions as being in bad faith.

74. In reality, the Registrar has repeatedly misrepresented the facts, ignored key procedural safeguards, and failed to engage in meaningful consultation with the Defence, leaving CSS—a support service meant to assist Counsel—entirely silent, and refusing even to acknowledge or respond to emails.

i. Misrepresentation of the Defence's Request to the Trial Chamber

75. In paragraph 14 of the Impugned Decision, the Registrar falsely claims that: "On 20 January, without waiting for the Registry's response to the questions, the Defence [requested] the Trial Chamber to establish a strict procedural calendar for the Registrar to issue a decision [...]."

76. This characterization is misleading for several reasons:

77. First, the Defence submitted its request to the Registrar on 17 January, providing his office—until Monday, 20 January—to respond. At no point during this period did the Registrar or his team acknowledge receipt or indicate that a response was forthcoming or that they would need more time. Counsel also requested CSS to escalate the matter urgently with CSS,⁴³ to no avail. The Defence sought an expedited decision with reasons to follow, yet the Registrar's office remained silent.

78. Second, contrary to the Registrar's assertion, the Defence did not act prematurely. The request to the Trial Chamber was only submitted at the close of business on 20 January, after allowing the Registrar ample time to reply or to request an extension.

79. Third, Counsel was fully within her rights to seek the Trial Chamber's intervention. In a similar situation, the *Al Hassan* Trial Chamber recognized the urgency of such requests by refusing to remand for further reconsideration by the Registrar.⁴⁴

ii. Misrepresentation Regarding the Interpretation of Paragraph 73 of the LAP

80. The Registrar also distorts the facts when he states that the Defence: "...only raised concerns with the interpretation of paragraph 73 of the LAP on **14 January**, after the commencement of the reduced activity phase on 11 January, and that by challenging the interpretation at such a late stage, Counsel delayed the administration of payments."⁴⁵

81. This assertion is both factually incorrect and misleading. First, the Registrar had an entire year to familiarize himself with the LAP, as he acknowledges in paragraph 25 of the Impugned Decision. Yet, he waited until the Defence was in the courtroom, listening

⁴³ Email from the Defence to CSS dated 17 January 2025 at 11:29 (Annex D).

⁴⁴ The Prosecutor v. Al Hassan, Decision on the Defence's urgent request for judicial review of the Registrar's decision on funding during the reduced activity phase, [ICC-01/12-01/18-2516](#), 5 June 2023, para. 31.

⁴⁵ Impugned Decision, paragraph 26.

to the Prosecution's closing arguments, to notify Counsel of the date of the reduced activity phase setting her deadline to the 31 December.⁴⁶

82. Second, given the critical nature of closing arguments, the Defence had no opportunity to respond immediately. However, immediately following the closing argument and sentencing brief, Counsel proactively sought clarification well before the reduced activity phase began, set for the 11 January.⁴⁷ Counsel personally visited the CSS office on 17 December and discussed the interpretation of paragraph 73 with the Legal Officer/Advisor in charge.

83. During the CSS meeting, Counsel explained that she did not foresee Option 1 as a viable solution but was considering a 50% reduction of positions and inquired about the various positions she could retain. The Legal Officer/Advisor admitted that CSS had not yet fully appraised the interpretation of the LAP, took notes of Counsel's questions, and promised to follow up.

84. Later that same day, the Legal Officer/Advisor emailed Counsel,⁴⁸ requesting that she submit her questions in writing although they were noted down during the meeting—which she did on her return from home leave.

85. Despite these proactive efforts, CSS never responded to Counsel's inquiries that day nor at any point in time after the CSS meeting. CSS simply sent on 31 December 2024 an email referring textually to three paragraphs of the LAP including paragraph 73. It offered no interpretation neither did it respond to Counsel's queries, rather, they merely reproduced in brackets the sentence for which Counsel was seeking interpretation of.⁴⁹

86. In fact, it is only on 15 January that CSS offered its interpretation, i.e. that a combination of option 1 and 2 was impossible and that the proper application of paragraph 73 of the LAP is either via all team members at 50% or half of the team at 100%, and that Counsel was allowed to retain 5 positions at full time and 0.75 position for part-time.⁵⁰ At no point was this explained to Counsel during the CSS meeting, nor following her exchange with CSS in December 2024.

⁴⁶ Email from CSS to the Defence dated 9 December 2024 at 13:07 (Annex D).

⁴⁷ Impugned Decision, paragraph 26.

⁴⁸ Email CSS dated 17 December and refereing to an email

⁴⁹ Email form CSS to the Defence dated 31 December 2024 at 10 :35 (Annex C).

⁵⁰ Email from CSS to the Defence dated 15 January 2025 at 15 :51 (Annex D).

87. The Registrar's claim that Counsel only raised concerns after the reduced activity phase began in mid-January is wholly incorrect.

iii. Misrepresentation Regarding Precarious Working Conditions

88. The Registrar suggests implicitly that Counsel's proposed composition does not avoid precarious working conditions for legal team members.⁵¹

89. This statement is demonstrably false. In fact, Counsel's proposed composition offers higher remuneration to the team members who remain during the reduced activity phase. Rather than imposing a blanket 50% salary reduction⁵² on all team members, including those who are fully engaged, Counsel's proposal ensures that essential staff receive 25% more than under the Registrar's rigid model.

iv. Failure to Engage with the Defence and Abuse of Discretion

90. Beyond the misrepresentations outlined above, the Registrar failed to engage in any meaningful consultation with the Defence, in direct violation of the LAP's principles.

91. First, Counsel formally requested a meeting with the Registrar, which was denied. Second, attempts to follow up with the Registrar's Legal Office were obstructed. Instead of engaging directly, the Defence was informed—via CSS—that it was not permitted to communicate with the Registry's Legal Office.⁵³ In addition, CSS failed to respond to multiple Defence inquiries for weeks, refusing even to acknowledge receipt of requests.⁵⁴

92. Third, and more concerning, the Impugned Decision was issued to Counsel by CSS itself, despite the Defence having explicitly requested a review of CSS's decision by the Registrar. On its face, this constitutes a clear procedural irregularity, as there was no justifiable reason for CSS to remain involved in the process at this stage as CSS effectively became a party to the process, akin to the Defence.

⁵¹ Impugned Decision, paragraph 31.

⁵² Counsel's proposed composition does not create further precariousness for the Linguistic Assistant, [REDACTED]. Under both Option 1 and Counsel's proposal, his position remains at 25%, meaning his situation remains unchanged regardless of the approach taken.

⁵³ See Annex H.

⁵⁴ See Annex C and G.

CONCLUSION

93. The Defence's proposed composition remains the most cost-effective, fair, and legally sound approach—one that respects both the LAP and the fundamental rights of the accused.

94. During the Bemba and al. dispute on LAP the Registrar held the position that 'the LAP is a 'reference document' which does not apply automatically.'⁵⁵ This was endorsed by Trial Chamber VII which was 'not of the view that the Registrar was bound to follow the LAP in what may be an over-rigid manner, without taking into account the individual circumstances of the case'.⁵⁶ In this instance, the Registrar failed to uphold this principle. While Counsel complied with the LAP guidance by reducing the Defence team's overall resource usage to 50%, as acknowledged by CSS, it neglected to account for Counsel's explicit indications of Mr. Yekatom's legal needs.

95. For the foregoing reasons, Counsel respectfully requests the Chamber to :

REVIEW and **REVERSE** the Impugned Decision taken by the Registrar and allow her to opt for her Proposed Team Composition; and

SHORTEN the deadlines to respond to the Request.



Me Mylène Dimitri

Lead Counsel for Mr. Yekatom

Dated this 7 February 2025

At the Hague, the Netherlands.

⁵⁵ *The Prosecutor v. Bemba et al.*, Decision on the Defence applications for judicial review of the decision of the Registrar on the allocation of resources during the trial phase, 21 May 2015, [ICC-01/05-01/13-955](#), para. 25.

⁵⁶ *The Prosecutor v. Bemba et al.*, Decision on the Defence applications for judicial review of the decision of the Registrar on the allocation of resources during the trial phase, 21 May 2015, [ICC-01/05-01/13-955](#), para. 37.