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No. ICC-01/14-01/18

Date: 18 July 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 YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Sentencing Procedure and Amended Directions on the Conduct
of the Proceedings**

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 and 76 of the Rome Statute (the ‘Statute’), and Rules 140-143 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Sentencing Procedure and Amended Directions on the Conduct of the Proceedings’.

1. The Chamber takes note of the *ad hoc* Presidency’s decision of 28 June 2024.¹ It particularly notes the conclusions in paragraphs 5 and 10² and their impact on the future composition of this Chamber,³ in the event of a conviction.
2. Noting Article 76(1) of the Statute,⁴ the Chamber considers it to be in the interests of justice and expeditiousness in this case that the judges who assess the evidence and submissions relevant to any potential sentencing in the event of a conviction, are the same as those present during the trial and the deliberations pursuant to Article 74(1) of the Statute. Therefore, the Chamber hereby decides to render any potential decision on sentencing pursuant to Article 76 of the Statute simultaneously with its judgment under Article 74 of the Statute.⁵
3. In light of the above, and in order to give the participants as much notice as possible, the Chamber considers it prudent to set a procedural calendar for the

¹ *Ad hoc* Presidency, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision Replacing Judges in Trial Chamber X, ICC-01/12-01/18-2596.

² Notably, the *ad hoc* Presidency found that there is ‘no explicit requirement that [a] trial chamber addressing sentencing be identical in composition to that which handed down the article 74 decision’ and may thus ‘be recomposed between the article 74 decision and the article 76 decision where those decisions are rendered separately’. The *ad hoc* Presidency also held that ‘[o]f course, article 76 of the Rome Statute does not exclude the possibility of article 74 and 76 decisions being handed down simultaneously, so long as all requirements for the hearing of evidence and submissions relevant to the sentence have been met, in which case the Trial Chamber will necessarily have an identical composition’ and that ‘in circumstances where a trial chamber decides to render the article 74 and article 76 decision simultaneously, [...] this timing of the article 74 and article 76 decisions would necessarily coincide’.

³ The Chamber notes that the regular mandates of Judge Schmitt, Judge Kovács and Judge Chung expired on 11 March 2024, but that the judges are still hearing evidence in this case and are yet to deliberate on the judgment pursuant to Article 74 of the Statute, in accordance with Article 36(10) of the Statute.

⁴ Article 76(1) of the Statute stipulates that ‘[i]n the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence’.

⁵ The Chamber notes in this context that the Appeals Chamber explicitly accepted this possibility under the legal framework of the Court, see Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled “Sentence”, 15 December 2022, ICC-02/04-01/15-2023, para. 56: ‘The Appeals Chamber observes that by stipulating that a trial chamber “may [...] hold a further hearing”, article 76(2) allows for either a bifurcated system or the possibility of the sentence being pronounced together with the conviction decision. Although in practice, separate sentencing proceedings have been preferred, joint proceedings with one decision are also possible’.

potential sentencing proceedings at this juncture. The Chamber emphasises that this is without prejudice to the outcome of its decision pursuant to Article 74 of the Statute.

4. During these proceedings, the Chamber will take into account the evidence presented and submissions made during the trial that are relevant to any potential sentence, as provided for in Article 76(1) of the Statute. In addition, the Chamber considers it appropriate to afford the participants an opportunity to make further submissions and to request the submission of additional evidence relevant to the potential sentence to be imposed on the accused, in the event of a conviction. Accordingly, the Chamber hereby informs the participants of its intention to hold a hearing pursuant to Article 76(2) of the Statute (the ‘Article 76 Hearing’), and sets the following time limits to file any requests and submissions related to potential sentencing.
5. First, the participants may file any requests to present additional evidence for potential sentencing at the latest by **6 September 2024**. Such requests shall include the following information:
 - a. ***Viva voce witness testimony:*** (i) the identity of the witness; (ii) the topic(s) on which they are expected to testify and their anticipated relevance to the sentence; (iii) the estimated length of examination; (iv) whether any protective measures are requested and on what grounds; (v) the witness’s availability and possibility of testifying via video-link; and (vi) in the event that a request under Rule 68(3) of the Rules is made, a copy of their prior recorded testimony or hyperlink thereto.
 - b. ***Introduction of a prior recorded testimony under Rule 68(2) of the Rules:*** (i) a copy of the same or hyperlink thereto; (ii) indication of any need to keep the identity of the relevant witness confidential; and (iii) in the event of a request under Rule 68(2)(b) of the Rules, an indication regarding the arrangements to secure the accompanying declaration in a timely manner.
 - c. ***Non-testimonial evidence:*** (i) a copy of, or hyperlink to the item(s), and (ii) submissions regarding their relevance and probative value.

6. In addition to the above, the participants shall indicate how their proposed additional evidence relates to the factors under Article 78 of the Statute and Rule 145 of the Rules.
7. Given the abundance of evidence already on the record, the Chamber will intervene in the selection and presentation of such evidence in order to ensure the fair and expeditious conduct of the present proceedings. Thus, any additional evidence authorised by the Chamber, especially oral evidence, will be limited.
8. Any responses to the requests to present additional evidence shall be filed by **13 September 2024**.
9. Second, and at the latest by **13 December 2024**, the participants may file written submissions relevant to potential sentencing. Should they choose to do so, the participants are directed to include any arguments they wish to bring to the Chamber's attention in relation to the factors to be taken into account pursuant to Article 78 of the Statute and Rule 145 of the Rules. Any responses to these written submissions, as well as any replies authorised by the Chamber, will be heard at the Article 76 Hearing.
10. Third, the Chamber schedules the Article 76 Hearing for **8 to 10 January 2025**. As indicated above, during this hearing, the Chamber will hear any additional evidence granted by the Chamber, followed by the participants' oral submissions relevant to potential sentencing, including responses to the written submissions and any authorised replies thereto. A precise schedule of the hearing will be rendered in due course after the deadline for the requests for additional evidence has expired. The Article 76 Hearing will be the last procedural step before the delivery of any potential sentence. Accordingly, no written submissions on sentencing will be allowed thereafter.
11. In light of the above procedural calendar and in the interests of expeditiousness, the Chamber further considers it appropriate to amend its previous direction that the closing statements will be held 'two weeks after the filing of the closing

briefs’.⁶ Consequently, it hereby informs the participants that the closing statements will be held between **9 and 12 December 2024**.

12. Having considered the scope of the case, the Chamber considers it appropriate to afford 6 hours (4 sessions) to the Prosecution, 4.5 hours (3 sessions) each to the Yekatom Defence and the Ngaïssona Defence, as well as 3 hours (two sessions) to the Common Legal Representatives of the Victims (the ‘CLRV’) to be divided between them as they see fit, to present their closing statements. The Chamber will hear the Prosecution’s closing statement first, followed by the CLRV and the Defence. Both the CLRV and the Defence teams are expected to decide on the order of their respective presentations amongst themselves and to inform the Chamber thereof one week before the commencement of the closing statements.
13. The participants are further directed to indicate by email, any material they intend to use in the course of their closing statements to the Chamber and other participants one week in advance. Any objections thereto shall be made within two days. Ideally, the closing statements shall be presented entirely in public session.
14. Lastly, and in order to further expedite the proceedings, the Chamber shortens the deadline to respond to the last bar table motions (which are to be filed at the latest within one week after the testimony of the last witness called by the Defence is concluded)⁷ to five days.

FOR THESE REASONS, THE CHAMBER HEREBY

AMENDS the timing previously set for the closing statements;

DECIDES to hold a hearing under Article 76(2) of the Statute;

⁶ See Further Directions on the Conduct of the Proceedings (End of Defence Presentation of Evidence and Closure of Evidence), 2 February 2024, ICC-01/14-01/18-2342 (the ‘Further Directions’), para. 13.

⁷ Order Amending the Deadline for Bar Table Motions by the Defence and Instruction regarding Rule 68(2)(b) Declarations, email from the Chamber, 15 May 2024, at 10:30; Further Directions, ICC-01/14-01/18-2342, para. 6.

ADOPTS the following procedural calendar:

- **by 6 September 2024:** any requests to present additional evidence;
- **by 13 September 2024:** any responses to the requests to present additional evidence;
- **9 to 12 December 2024:** closing statements;
- **by 13 December 2024:** any written submissions relevant to sentencing;
- **8 to 10 January 2025:** hearing under Article 76(2) of the Statute to hear (i) any additional evidence; (ii) any submissions on potential sentencing; and (iii) any responses and replies authorised by the Chamber to the written submissions;

ORDERS the CLRV and Defence to inform the Chamber of the order of their closing statements one week before they commence, as set out above in paragraph 12;

DIRECTS the participants to indicate by email, any material they intend to use in the course of their closing statements one week in advance, and to make any objections thereto within two days; and

ORDERS the participants to respond to the last bar table motions within five days of the filing of such motions, as set out above in paragraph 14.

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

 Judge Péter Kovács	 Judge Bertram Schmitt Presiding Judge	 Judge Chang-ho Chung
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Dated 18 July 2024

At The Hague, The Netherlands