

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **12 June 2020**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

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

Public

Public redacted version of “Yekatom Defence Response to Request for Leave to Appeal the Decision on the Prosecutor’s Request to Amend the Charges against Alfred Yekatom”, 12 June 2020

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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1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully oppose the Prosecution’s *Request for Leave to Appeal the Decision on the Decision on the Prosecutor’s Request to Amend the Charges Against Alfred Yekatom*.¹ The criteria for an interlocutory appeal is not met, as the issues are not significant and an appeal, would retard, rather than advance the proceedings.

RELEVANT PROCEDURAL HISTORY

2. On 11 November 2018, the Pre-Trial Chamber (“Chamber”) issued its *Warrant of Arrest for Alfred Yekatom*.² Mr. Yekatom made his initial appearance before this Court on 23 November 2018.³ His hearing on the confirmation of charges was set for 30 April 2019.
3. On 20 February 2019, over Mr. Yekatom’s objection,⁴ the Chamber joined the case of Mr. Yekatom with that of Patrice-Edouard Ngaïssona, who had been recently arrested and transferred to the Court. Both Mr. Yekatom and Mr. Ngaïssona requested that the date of 30 April 2019 for the confirmation hearing be maintained.⁵ The Prosecution, on the other hand, asked that the confirmation hearing be postponed to 18 June 2019.⁶ The Chamber granted the Prosecution’s request.⁷
4. On 1 May 2019, the Prosecution requested yet another postponement of the confirmation hearing until September 2019,⁸ over the objection of Mr. Yekatom, who contended that a postponement would result in

¹ [ICC-01/14-01/18-545](#).

² [ICC-01/14-01/18-1-Conf-Exp](#), Public redacted version: [ICC-01/14-01/18-1-Red](#).

³ [ICC-01/14-01/18-T-001-ENG](#).

⁴ [ICC-01/14-01/18-82](#).

⁵ [ICC-01/14-01/18-82](#), paras. 6, 22, 35, 39; [ICC-01/14-01/18-118](#), para. 8.

⁶ [ICC-01/14-01/18-76](#), para. 11.

⁷ [ICC-01/14-01/18-87](#). Leave to appeal this decision was denied on 21 March 2019 ([ICC-01/14-01/18-154](#)).

⁸ [ICC-01/14-01/18-186-Conf-Red-Corr](#), Public redacted version: [ICC-01/14-01/18-186-Red2](#).

unreasonable delay.⁹ The Chamber again granted the Prosecution's request and postponed the hearing until 19 September 2019.¹⁰

5. The hearing began on 19 September 2019, ten months after Mr. Yekatom's arrival at the Court.¹¹ It concluded on 11 October 2019.¹²
6. On 11 December 2019, the Chamber issued its *Decision on the Confirmation of Charges Against Alfred Yekatom and Patrice-Edouard Ngaïssona* in which it confirmed some of the charges. The Chamber suspended, *proprio motu*, the time limit for seeking leave to appeal the decision until a French translation was provided.¹³
7. It took more than two months for a French translation to be prepared. Then, at the very last possible moment, on 2 March 2020, the Prosecution, which works in both languages, sought reconsideration or leave to appeal the confirmation decision.¹⁴ The Defence opposed reconsideration and leave to appeal.¹⁵
8. On 11 March 2020, the Pre-Trial Chamber denied reconsideration and leave to appeal and ordered that the Registry transmit the case file to the Presidency.¹⁶
9. On 16 March 2020, the Presidency assigned the case to Trial Chamber V.¹⁷ Three days later the Trial Chamber scheduled a status conference and invited submissions on various issues, including the commencement date for the trial.¹⁸

⁹ [ICC-01/14-01/18-194-Conf](#), paras. 28-31; Public redacted version: [ICC-01/14-01/18-194-Red](#).

¹⁰ [ICC-01/14-01/18-199](#).

¹¹ [ICC-01/14-01/18-T-004-Conf](#), Public redacted version: [ICC-01/14-01/18-T-004-Red2-ENG](#). The *Chamber's Practice Manual* provides that "the typical target date for the confirmation hearing should be around four to six months from the first appearance" (p. 3).

¹² [ICC-01/14-01/18-T-011-CONF-ENG](#); Public redacted version: [ICC-01/14-01/18-T-011-Red-ENG](#).

¹³ [ICC-01/14-01/18-403-Conf](#), para. 240; Public redacted version: [ICC-01/14-01/18-403-Red](#).

¹⁴ [ICC-01/14-01/18-437](#).

¹⁵ [ICC-01/14-01/18-443](#).

¹⁶ [ICC-01/14-01/18-447](#).

¹⁷ [ICC-01/14-01/18-451](#).

¹⁸ [ICC-01/14-01/18-459](#).

10. In status conference submissions filed on 8 April 2020, the Yekatom¹⁹ and Ngaïssona²⁰ Defence requested that the trial be scheduled without further delay. In its submissions filed the same day, the Prosecution claimed that its operations, particularly in the Central African Republic, were interrupted as a result of the COVID-19 pandemic and that it would not be able to even fulfil its disclosure obligations in the near future, let alone commence the trial.²¹ The Prosecution added that it would not be in a position to file a Pre-Trial Brief until all further proceedings on amendment of charges before the Pre-Trial Chamber were concluded.²²
11. On 31 March 2020, the Prosecution requested the Pre-Trial Chamber to amend the charges by adding a charge of rape against Ngaïssona and gave notice that it would seek to add rape and sexual slavery charges against Yekatom at some time in the future.²³ The Ngaïssona Defence opposed the proposed amendment.²⁴ The Yekatom Defence said it would file a response if and when the Prosecution sought to amend the charges against Mr. Yekatom.²⁵
12. On 30 April 2020, the Prosecution moved the Trial Chamber to reinstate, via Regulation 55 of the Regulations of the Court, the modes of liability for which the Pre-Trial Chamber found had not been proven during the confirmation process.²⁶ The Yekatom Defence filed its opposition on 14 May 2020.²⁷ On 2 June 2020, the Trial Chamber denied the Prosecution's motion.²⁸

¹⁹ [ICC-01/14-01/18-472](#), para. 3.

²⁰ [ICC-01/14-01/18-473-Conf](#), para. 8; Public redacted version: [ICC-01/14-01/18-473-Red](#).

²¹ [ICC-01/14-01/18-474-Conf](#), paras. 8-11; Public redacted version: [ICC-01/14-01/18-474-Red](#).

²² *Id.*, para. 13.

²³ [ICC-01/14-01/18-468-Conf](#), Public redacted version: [ICC-01/14-01/18-468-Red](#).

²⁴ [ICC-01/14-01/18-477-Conf](#), Public redacted version: [ICC-01/14-01/18-477-Red](#).

²⁵ [ICC-01/14-01/18-517](#), para. 5.

²⁶ [ICC-01/14-01/18-503-Conf](#), Public redacted version: [ICC-01/14-01/18-503-Red](#).

²⁷ [ICC-01/14-01/18-515](#).

²⁸ [ICC-01/14-01/18-542](#).

13. On 14 May 2020, the Pre-Trial Chamber rejected the Prosecution's motion to amend the charges as to Mr. Ngaïssona.²⁹ The Prosecution sought leave to appeal,³⁰ which was opposed by the Ngaïssona defence,³¹ and sought leave to reply,³² which was also opposed by the Ngaïssona defence.³³ No decision has yet been rendered on these issues.
14. On 14 May 2020, the Prosecution filed its motion to amend the charges against Mr. Yekatom.³⁴ The Defence responded on 27 May 2020.³⁵ On 1 June 2020, in the "Impugned Decision", the Pre-Trial Chamber denied the Prosecution's motion.³⁶
15. The Prosecution sought leave to appeal on 8 June 2020.³⁷
16. A Status Conference has been scheduled before the Trial Chamber on 9 July 2020.³⁸

RELEVANT PROVISION

17. Article 82(1)(d) of the Statute

Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(...)

(d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

²⁹ [ICC-01/14-01/18-517](#), para. 5.

³⁰ [ICC-01/14-01/18-524-Corr.](#)

³¹ [ICC-01/14-01/18-533.](#)

³² [ICC-01/14-01/18-534.](#)

³³ [ICC-01/14-01/18-537.](#)

³⁴ [ICC-01-14-01/18-518-Conf](#); Public redacted version: [ICC-01/14-01/18-518-Red.](#)

³⁵ [ICC-01-14-01/18-532-Conf](#); Public redacted version: [ICC-01/14-01/18-532-Red-Corr.](#)

³⁶ [ICC-01/14-01/18-538.](#)

³⁷ [ICC-01/14-01/18-545.](#)

³⁸ [ICC-01/14-01/18-543.](#)

ARGUMENT

18. Even if the issues identified by the Prosecution arise from the Impugned Decision³⁹--a matter of some doubt--adding two more charges to the 20 counts confirmed against Mr. Yekatom, including murder, torture, cruel treatment, and other inhumane acts, will not significantly affect the fairness or expeditiousness of the proceedings or the outcome of the trial.
19. Mr. Yekatom faces a significant potential sentence if convicted on the charges already confirmed by the Pre-Trial Chamber. The Prosecution has failed to establish that, absent the additional charges, its prospects of convicting Mr. Yekatom on the existing charges would be diminished. [REDACTED].⁴⁰ Therefore, the impact of adding the two new charges is minimal. The issues that the Prosecution seeks to appeal will not significantly affect the fairness or expeditiousness of the trial, or its outcome. Nor will a denial of leave to appeal deprive the alleged victims of their day in court.
20. As stated by the Pre-Trial Chamber in the Impugned Decision:

The Prosecutor explicitly acknowledges that the inclusion of the additional charges ‘would have only a minimal impact on the size and duration of the Prosecution’s case’, which ‘would be marginal, at most’. In the view of the Chamber, the ‘marginal’ nature of the requested addition strengthens the conclusion that granting the Request cannot be regarded as necessary with a view to honouring the Court’s obligation to determine the truth.⁴¹
21. An interlocutory appeal of these issues will also adversely affect the fair and expeditious conduct of the proceedings. An interlocutory appeal would delay the filing of the Prosecution’s Pre-Trial Brief, which it has conditioned on

³⁹ The Appeals Chamber has held that “an issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion.”, *Situation in the Democratic Republic of Congo*, [Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal](#), 13 July 2006, ICC-01/04-168, para. 9.

⁴⁰ [ICC-01-14-01/18-518-Conf](#), para. 5; Public redacted version: [ICC-01/14-01/18-518-Red](#).

⁴¹ [ICC-01/14-01/18-538](#), para. 19.

resolution of the proposed new charges,⁴² as well as the trial itself. Should the Pre-Trial Chamber's decision be reversed, a new confirmation hearing would be required and the trial delayed even further.

22. Such a scenario would defeat the very purpose of the Impugned Decision, which was based on preventing disruption to the Defence, delay in the commencement of the trial and unnecessary prolongation of the accused's pre-trial custody.⁴³
23. Therefore, the first criterion for leave to appeal is not met.
24. Although the failure to meet any one of the criteria of Article 82(1)(d) is fatal to a request for leave to appeal,⁴⁴ the proposed appeal also fails to meet the second criterion.
25. An immediate resolution by the Appeals Chamber will not materially advance the proceedings. The Appeals Chamber has explained that the term "advance" in the latter part of sub-paragraph (d) does not relate to the expeditiousness of the proceedings, which is already considered in the first part of that sub-paragraph, but, in context, means to "move forward by ensuring that the proceedings follow the right course."⁴⁵
26. Given that the Impugned Decision involved the exercise of the Pre-Trial Chamber's discretion and "the requirement to balance the competing interests at stake",⁴⁶ that decision would be reviewed under a highly deferential "abuse

⁴² [ICC-01/14-01/18-474-Conf](#), para.10; Public redacted version : [ICC-01/14-01/18-474-Red](#).

⁴³ [ICC-01/14-01/18-538](#), para. 19.

⁴⁴ [ICC-01/14-01/18-215-Conf](#), para. 11.

⁴⁵ *Situation in the Democratic Republic of Congo*, [Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal](#), 13 July 2006, ICC-01/04-168, para. 15.

⁴⁶ [ICC-01/14-01/18-545](#), para. 9.

of discretion” standard.⁴⁷ The likelihood of the Appeals Chamber reversing the Pre-Trial Chamber’s decision is low.

27. Moreover, even if the decision were reversed, considerable discretion would reside in the Pre-Trial Chamber as to whether to allow the proposed amendment or confirm the new charges. It can thus not be said that an immediate resolution by the Appeals Chamber would materially advance the proceedings within the meaning of Article 82(1)(d).

28. Therefore, the second criterion for leave to appeal is not met.

CONFIDENTIALITY

29. This Response is classified as confidential because it quotes from a portion of a confidential filing that was redacted when its public version was filed. A public redacted version of this Response is being filed simultaneously.

CONCLUSION

30. It is respectfully requested that the Prosecution’s request for leave to appeal be denied.

RESPECTFULLY SUBMITTED ON THIS 12th DAY OF JUNE 2020



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⁴⁷ *Prosecutor v. Al Hassan*, [Judgment on the Appeal of Mr. Al Hassan against the Decision of Pre-Trial Chamber I entitled « Decision relative a l’exception d’irrecevabilite pour insuffisance de gravite de l’affaire soulevee par la Defense](#), 19 February 2020, ICC-01/12-01/18-601-Red, para. 39.