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

Date: 10 December 2020

APPEALS CHAMBER

Before: Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. ALFRED ROMBHOT YEKATOM***

Public

Request for leave to reply to “Common Legal Representatives’ Joint Response to the “Yekatom Defence appeal Brief – Notice of Co-Perpetration” (ICC-01/14-01/18-742)”, (ICC-01/14-01/18-754) and “Prosecution Response Prosecution Response to “Yekatom Defence Appeal Brief – Notice of Co-Perpetration” and request for an expedited decision”, (ICC-01/14-01/18-756)

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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INTRODUCTION

1. Pursuant to Regulation 24(5) of the Regulations of the Court ("RoC"), Counsel representing Mr. Alfred Rombhot Yekatom ("Defence"), respectfully seeks leave to reply to the *Common Legal Representatives' Joint Response to the "Yekatom Defence appeal Brief – Notice of Co-Perpetration"*¹ ("CLRv's Response") and *Prosecution Response to "Yekatom Defence Appeal Brief – Notice of Co-Perpetration" and request for an expedited decision*² ("Prosecution's Response") both filed on 7 December 2020 to the following three issues which have been raised by the Common Legal Representatives of the Victims (CLRv) and the Prosecution:
 - a. the Prosecution Trial Brief provides curing notice of the constituent elements of Article 25(3)(a);
 - b. the Appeals Chamber should create a self-contained Document Containing the Charges ("DCC") or amend the Decision on the Confirmation of Charges against Alfred Yekatom and Patrice-Edouard Ngaïssona ("Confirmation Decision");
 - c. the Defence should have sought leave to appeal the Confirmation Decision.
2. These three issues are demonstrably new, could not have been foreseen, are contested by the Defence, and merit the granting of a reply in the interests of Justice.

PROCEDURAL BACKGROUND

3. On 4 November 2020, the Defence sought leave to appeal the *Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial*³ and

¹ [ICC-01/14-01/18-754](#).

² [ICC-01/14-01-756](#).

³ [ICC-01/14-01-18-703-Conf](#). Public redacted version: [ICC-01/14-01-18-703-Red](#).

dismiss the allegations of co-perpetration under Article 25(3)(a) in the confirmed charges.⁴

4. On 13 November 2020, the Trial Chamber granted leave to appeal on the following two issues:
 - (i) Whether the Chamber erred in law when finding that, for the purpose of providing notice, as far as the legal characterisation of the facts is concerned, it is not necessary for the charges to set out the constituent legal elements of the alleged mode(s) of liability under Article 25(3)(a); and
 - (ii) [W]hether the Chamber erred in finding that Mr Yekatom was sufficiently informed of the contours of the “common plan” and his alleged “essential contribution” although PTC II had not used this terminology established in the jurisprudence of the Court to characterise the relevant facts.⁵
5. On 26 November 2020, the Defence submitted its Appeal Brief.⁶
6. On 7 December 2020, the Prosecution and the CLRV responded to the Defence Appeal Brief.⁷

APPLICABLE LAW

Regulation 24(5) of the Regulations of the Court

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

SUBMISSIONS

A) First Issue : The Prosecution Trial Brief provides curing notice of the constituent elements of Article 25(3)(a)

⁴ [ICC-01/14-01/18-713](#).

⁵ [ICC-01/14-01/18-730](#), para. 14.

⁶ [ICC-01/14-01/18-742](#).

⁷ [ICC-01/14-01/18-754](#); [ICC-01/14-01-756](#).

7. The Defence hereby seeks leave to reply to the Prosecution⁸ and the CLR⁹ Responses as to whether or not the Prosecution Trial Brief provides curing notice of the constituent elements of Article 25(3)(a).
8. If leave is granted, the Defence will demonstrate how the Trial Brief – which is not a statutory document – cannot cure such a fundamental defect as non-confirmed constituent elements of the charged mode of liability. A Trial Brief, post-confirmation, cannot circumvent the clear requirements of Regulation 52(c) of the RoC and Article 67(1)(a), that require notice of the legal characterization of facts – which should necessarily include the constituent elements to be specified and linked to the facts and circumstances, which the Pre-Trial Chamber failed to do.
9. If the Prosecution and CLR are right, that the Defence is not entitled to notice of the constituent elements of the mode the Prosecution charges,¹⁰ then there would be no need to plead the common plan and essential contribution in the DCC and 15 years of jurisprudence that has developed the constituent elements of Article 25(3)(a) is legally irrelevant. However, linking the constituent elements of the pleaded mode with the confirmed facts is an essential part of providing notice to the accused during the confirmation stage. It is not optional. In the same vein, a Trial Brief cannot stipulate, as suggested by the Prosecution¹¹ and the CLR,¹² which variant of Article 25(3)(a) liability is legally in play, when none of them were expressly discussed or confirmed by the Pre-Trial Chamber.
10. In any event, the Trial Brief is not properly before the Appeals Chamber, and was not in the record of the case at the time of the Impugned Decision as the

⁸ [ICC-01/14-01-756](#), para. 32.

⁹ [ICC-01/14-01/18-754](#), paras. 30-33 and 49-51.

¹⁰ [ICC-01/14-01-756](#), paras. 12 to 16; [ICC-01/14-01/18-754](#), paras. 27-28.

¹¹ [ICC-01/14-01-756](#), paras. 17 and 32.

¹² [ICC-01/14-01/18-754](#), paras. 32-33.

Trial Brief was notified on the 10th November 2020, while the Impugned Decision was issued on 29 October 2020. The Defence will argue that it should be disregarded for the purposes of deciding the present appeal as exceeding its scope.

B) Second Issue : The Appeals Chamber should create a self-contained DCC or amend the Confirmation Decision

11. The Defence hereby seeks leave to reply to the Prosecution's Response as to whether or not the Appeals Chamber should create a self-contained DCC or amend the Confirmation Decision.¹³
12. If leave to reply is granted, the Defence will argue that such drastic remedies are without legal foundation in the Statute, and would usurp the powers and role of the Pre-Trial Chamber *alone* to confirm the facts and circumstances, including their legal characterization. A new "self-contained charging document" – again, something which has no statutory foundation – cannot legally set the parameters for trial. The Defence will argue that directly amending the Confirmation Decision is without precedent at this Court and has no legal basis.

C) Third Issue : The Defence should have sought leave to appeal the Confirmation Decision

13. The Defence seeks leave to reply to the Prosecution's Response¹⁴ and the CLRV's Response¹⁵ as to whether or not the Defence should have sought leave to appeal the Confirmation Decision.
14. If leave is granted, the Defence will argue that these submissions ignore the fact that the Defence was procedurally entitled to seek a ruling pursuant to rule 134

¹³ [ICC-01/14-01-756](#), paras. 38-39.

¹⁴ [ICC-01/14-01-756](#), paras. 6-11.

¹⁵ [ICC-01/14-01/18-754](#), para. 4.

of the Rules of Procedure and Evidence. The Defence will demonstrate that whether leave was sought or not at the Pre-Trial stage is irrelevant, and does not deprive the Defence of its procedural rights at trial or in the present appeal.

RELIEF SOUGHT

15. In light of the above observations, the Defence respectfully requests the Appeals Chamber to:

GRANT the Defence leave to reply.

RESPECTFULLY SUBMITTED ON THIS 10th DAY OF DECEMBER 2020



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Mr. Thomas Hannis
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