

1 International Criminal Court
2 Appeals Chamber
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard
5 Ngaïssona - ICC-01/14-01/18
6 Presiding Judge Solomy Balungi Bossa
7 Appeals Judgment - Courtroom 1/Interactio
8 Friday, 5 February 2021
9 (The hearing starts in open session at 3.31 p.m.)
10 THE COURT USHER: The International Criminal Court is now in session.
11 PRESIDING JUDGE BOSSA: Good afternoon, everyone.
12 Would the court officer please call the case.
13 THE COURT OFFICER: Thank you, your Honour.
14 The situation in Central African Republic II, in the case The Prosecutor versus Alfred
15 Rombhot Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
16 And we are in open session.
17 PRESIDING JUDGE BOSSA: Thank you.
18 My name is Judge Solomy Balungi Bossa, presiding in this appeal arising from
19 the case of the Prosecutor v Alfred Yekatom and Patrice-Edouard Ngaïssona.
20 My fellow judges in this appeal are Judge Chile Eboe-Osuji, Judge Howard Morrison,
21 Judge Piotr Hofmański, and Judge Luz del Carmen Ibáñez Carranza.
22 Due to the COVID-19 restrictions this hearing is conducted on a virtual basis, with
23 myself and all parties and participants -- with myself and some parties and
24 participants attending remotely in the Interactio system.
25 May I now ask the parties to introduce themselves for the record, please, starting with

1 the Defence.

2 MS DIMITRI: Good afternoon, Madam President.

3 Mr Yekatom, who's following from the detention centre, is represented this afternoon
4 by myself Myléne Dimitri, lead counsel, and our case manager Sabine Bayssat.

5 Thank you very much.

6 PRESIDING JUDGE BOSSA: Thank you, counsel.

7 Office of the Prosecutor.

8 MS REGUE: Good afternoon, your Honours. The Prosecution is represented today
9 by Ms Nivedha Thiru, appeals counsel, and by myself Meritxell Regue, also appeals
10 counsel. Thank you.

11 PRESIDING JUDGE BOSSA: Thank you.

12 Can we now have the victims' legal representatives introducing themselves. Thank
13 you.

14 MS MASSIDDA: Good afternoon, Madam President. For the team of the victims of
15 the attacks, I am Paolina Massidda representing the victims, together with four other
16 lawyers. I understand that there are some technical issues, so I will present them.

17 Maître Abdou Dangabo Moussa, Maître Marie-Edith Douzima-Lawson,

18 Maître Yaré Fall and Elizabeth Rabesandratana. We are all following the hearing
19 remotely, either in the --

20 PRESIDING JUDGE BOSSA: Thank you, counsel.

21 For the record, I note that Mr Yekatom participates via Interactio from a remote
22 location.

23 Today, the Appeals Chamber will deliver its judgment in the appeal of Mr Yekatom
24 against the decision of Trial Chamber V of 29 October 2020 entitled "Decision on
25 Motions on the Scope of the Charges and the Scope of the Evidence at Trial".

1 This is a non-authoritative summary of the Appeals Chamber's written judgment in
2 the appeal. The latter will be notified after this hearing.

3 I will now briefly explain the context of this appeal.

4 On 11 December 2019, Pre-Trial Chamber II confirmed the charges against
5 Mr Yekatom. In particular, in the confirmation decision, the Pre-Trial Chamber
6 confirmed the modes of individual criminal responsibility associated with
7 Mr Yekatom's participation in the alleged crimes. It found that there was sufficient
8 evidence to establish substantial grounds to believe that Mr Yekatom had committed
9 crimes jointly with another or through another person under Article 25(3)(a)
10 of the Statute. On 22 June 2020, Mr Yekatom filed a motion before Trial Chamber V
11 requesting that it dismiss the mode of responsibility of co-perpetration under
12 Article 25(3)(a) of the Statute.

13 In support of this request, he argued that the confirmation decision had failed to
14 provide adequate notice of the constituent elements of the constituent legal -- of the
15 constituent legal elements of co-perpetration, as well as of the facts underpinning it.

16 The Trial Chamber rejected Mr Yekatom's request, finding that Mr Yekatom had been
17 sufficiently informed of the modes of responsibility in question.

18 The Trial Chamber then granted leave for Mr Yekatom to appeal its decision. In
19 particular, it granted leave to appeal the impugned decision in respect of two issues.

20 Mr Yekatom has raised two grounds of appeal in which he requests that
21 the Appeals Chamber reverse the impugned decision and dismiss the allegations
22 relating to the mode of responsibility of co-perpetration.

23 I shall now turn to the Appeals Chamber's ruling on Mr Yekatom's appeal.

24 I will begin with the first ground of appeal. At the heart of this ground of appeal is
25 the precise scope of an accused person's right to be informed of the legal

1 characterisation of the facts alleged against him or her. Regulation 52(c) of the
2 Regulations of the Court requires that the Document Containing the Charges include
3 a legal characterisation of the facts to accord both with the crimes under Articles 6, 7
4 or 8 and the precise form of participation under Articles 25 and 28.

5 Mr Yekatom submits that in order to comply with his right to a fair trial,
6 the Regulations of the Court must be read expansively so as to also mandate that
7 the charges include notice of the legal elements of individual criminal responsibility,
8 in this case co-perpetration.

9 The Appeals Chamber notes that it is Article 67(1)(a) of the Statute that ultimately
10 governs the scope and extent of the notice provided in the charges confirmed after
11 a confirmation hearing. The language of that provision has its origin in international
12 human rights instruments, including the International Covenant on Civil and Political
13 Rights and the regional human rights conventions. These instruments have been
14 interpreted by courts in a way that requires that a person facing criminal charges be
15 informed not only of the acts he or she is alleged to have committed, but also of
16 the legal characterisation given to the acts in question.

17 However, the Appeals Chamber finds that human rights law does not prescribe what
18 level of detail is required in the legal characterisation of facts as a general rule.

19 Rather, the Courts have taken a case-by-case approach, ensuring that the information
20 provided is adequate in each case so as to enable the accused to prepare his or her
21 defence.

22 The Appeals Chamber considers that such a case-by-case approach is appropriate in
23 this Court and in this case. But the Appeals Chamber also notes that this Court's
24 jurisdiction over crimes committed indirectly and collectively has given rise to a body
25 of jurisprudence interpreting and elaborating upon various forms of participation in

1 Article 25 of the Statute. The question remains:

2 Does the nature of the Court and the crimes under its jurisdiction call for a broad
3 interpretation of what constitutes the legal characterisation of facts? Does this
4 interpretation include all of the legal elements associated with a particular form of
5 responsibility?

6 For the reasons explained more fully in today's written judgment,
7 the Appeals Chamber finds only that, while greater specificity in a charging
8 document is desirable, the question of whether the charges include sufficient notice of
9 the legal characterisation of the facts should turn on the particular circumstances of
10 the case, taking into account the nature of the charges and the ability of the accused
11 to prepare a meaningful defence. In particular, the Appeals Chamber finds that
12 there is no rule requiring notice of the legal elements of co-perpetration in all cases.
13 Therefore, the Appeals Chamber finds Mr Yekatom's argument that, as a matter of
14 law, the failure to set out the constituent elements of co-perpetration responsibility in
15 a confirmation decision results in a defective charging document and violates an
16 accused's right to a fair trial to be unpersuasive.

17 In so finding, the Appeals Chamber observes that the drafters of the modes of
18 criminal responsibility in Article 25 aimed for specificity and detail, and the modes
19 enumerated therein are more particularised than counterparts at the ad hoc
20 tribunals. The Appeals Chamber concurs with the Trial Chamber that, for
21 the purposes of sufficient notice, the charges must set out the exact sub-provision
22 applicable in Article 25 of the Statute and the specific form of participation within that
23 sub-provision.

24 The Appeals Chamber further notes that, as discussed under Mr Yekatom's second
25 ground of appeal, the charges must also give notice to an accused of the material facts

1 associated with his or her particular form of participation. This practice fully
2 comports with the spirit of internationally recognised human rights principles on
3 the matter and takes on board the experience of the ad hoc tribunals in its complex
4 proceedings.

5 For these reasons - and the reasons more fully explained in today's
6 judgment - the Appeals Chamber rejects Mr Yekatom's first ground of appeal.

7 I shall now turn to the second ground of appeal.

8 The Appeals Chamber notes that the crux of Mr Yekatom's argument under his
9 second ground of appeal is that the Trial Chamber erred in concluding that

10 Mr Yekatom has sufficient notice of the factual allegations against him concerning
11 the common plan -- concerning, quote, the "common plan" and his contribution
12 thereto, despite the fact that the Pre-Trial Chamber did not explicitly use language to
13 that effect in the confirmation decision.

14 The Appeals Chamber understands this ground of appeal to challenge how
15 the material facts were organised in the confirmation decision so as to provide notice
16 of the charges. That is, Mr Yekatom alleges that his right to be informed has been
17 violated because, as they were presented in the confirmation decision, the factual
18 allegations (i) were not linked to the confirmed mode of responsibility of
19 co-perpetration; and (ii) were not explicitly labelled with the terms, quote, "common
20 plan", close quote, and, quote, "essential contribution", end of quote.

21 The Appeals Chamber finds that the statutory provisions governing notice of the
22 charges portray important normative requirements about the content of the
23 Document Containing the Charges and the subsequent confirmation decision. As
24 a whole, the Document Containing the Charges should provide a detailed description
25 of the charges. Moreover, it must assist an accused of his or her understanding of

1 the nature, cause and content of the charges so as to ensure that he or she receives
2 a fair trial.

3 The statement of facts must provide a sufficient legal and factual basis to bring
4 the person or persons to trial, and the legal characterisation of facts must identify
5 the form of participation with precision. However, whether the details provided in
6 the Document Containing the Charges constitute sufficient notice to an accused will
7 depend upon the particular circumstances of the case.

8 Importantly, the right to be informed does not impose any special formal requirement
9 as to the manner in which an accused is to be informed of the nature and cause of
10 the charges against him or her.

11 In the present case, the operative part of the confirmation decision does not provide
12 sufficient information of the facts and circumstances linked to the confirmed modes of
13 responsibility. However, this is not fatal, and the Appeals Chamber finds that
14 the operative part of the confirmation decision largely corresponds to the sections of
15 the Document Containing the Charges containing more detail about the alleged
16 individual criminal responsibility of Mr Yekatom.

17 The Appeals Chamber also notes that the Trial Chamber examined the confirmation
18 decision as a whole and determined that it contains factual findings that directly
19 relate to Mr Yekatom's contribution to a common plan.

20 Therefore, having considered the confirmation decision as a whole together with
21 the relevant parts of the Document Containing the Charges, the Appeals Chamber
22 rejects Mr Yekatom's arguments that he lacks sufficient notice because the confirmed
23 modes of responsibility are not expressly linked to the alleged facts.

24 Finally, the Appeals Chamber is not persuaded that the confirmation decision
25 provides insufficient notice to Mr Yekatom on the basis that it does not employ

1 certain terminology in describing his role in the alleged crimes.

2 Indeed, the Appeals Chamber recalls that criminal responsibility under Article 25(3)(a)
3 of the Statute can take a number of forms and, where it is alleged that an accused
4 committed a crime jointly with another person, it has to be established that two or
5 more individuals worked together in the commission of the crime.

6 However, the Appeals Chamber notes that there is no formal requirement that certain
7 terminology be used in a charging document aside from the language of the Statute.
8 Here, the Appeals Chamber observes that the Prosecutor has used specific language
9 in describing Mr Yekatom's alleged role under Article 25(3)(a) of the Statute.

10 The Appeals Chamber finds that it is irrelevant that the Pre-Trial Chamber did not
11 also use this specific terminology in the confirmation decision. The argument that
12 this inherently vitiates proper notice to Mr Yekatom favours form over substance, and
13 the Appeals Chamber finds it to be unpersuasive.

14 Therefore, the Appeals Chamber rejects Mr Yekatom's second ground of appeal.
15 For these reasons, and for the reasons explained more fully in today's written
16 judgment, the Appeals Chamber finds it appropriate to confirm the impugned
17 decision.

18 This brings to the end -- this brings us to the end of the summary of the
19 Appeals Chamber's judgment.

20 I would like to thank the Chamber staff, court reporters, interpreters, courtroom
21 officers and other Registry staff for their valuable assistance today in holding this
22 hearing.

23 The hearing is adjourned.

24 THE COURT OFFICER: I'm informed that the legal representative of the former
25 child soldier would like to introduce themselves, and I put on the record they were

- 1 present, Ms Ludovica Vetrucchio and Nadia Galinier.
- 2 PRESIDING JUDGE BOSSA: Yes, they can go ahead.
- 3 MS GALINIER: Good afternoon, Madam President, thank you very much.
- 4 The former child soldiers were represented today by Ms Ludovica Vetrucchio and
- 5 myself, Nadia Galinier, associate legal officers at the Office of Public Counsel for
- 6 Victims. Thank you very much.
- 7 PRESIDING JUDGE BOSSA: Thank you.
- 8 That brings today's proceedings to an end. Thank you.
- 9 (The hearing ends in open session at 3.51 p.m.)