



Original: **English**

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

Date: **27 May 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 YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

Public

**Prosecution Request for Leave to Reply to “Defence Response to Prosecution’s
‘Request for Leave to Appeal the Decision on the Prosecution’s Request to Amend
Charges pursuant to Article 61(9) and for Correction of the Decision on the
Confirmation of Charges, and Notice of Intention to Add Additional Charges’”**

Source: Office of the Prosecutor

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

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Submissions

1. On 14 May 2020, Pre-Trial Chamber II denied the Prosecution’s request to re-introduce one factual allegation—a second victim—into the charge of rape against Mr Ngaïssona.¹ On 20 May 2020, the Prosecution sought leave to appeal the Decision.² On 26 May 2020, the two groups of victims and the Defence for Mr Ngaïssona responded to the Prosecution Application.³ While the Victims support the Prosecution Request and urge the Pre-Trial Chamber to grant leave to appeal the Decision, the Defence opposes it.

2. The Prosecution seeks leave to reply to two confined issues arising from the Defence Response. In particular:

- The Defence submission that “[i]t is clear from the Decision that it is the absence of sound justification for the Request, which was only the result of supplemental investigations *launched after* the confirmation of charges, that rendered the re-introduction of the factual allegations in question impermissible, having also due regard to competing interests”.⁴
- The Defence submission that “[a]rticle 61(8) is not applicable in the context of the present Request [because] the charges under which the relevant factual allegation was presented in the Document Containing the Charges were confirmed (counts 40-41). The Pre-Trial Chamber did not decline the charges under which the Prosecution chose to present the relevant factual allegation, it only concluded that the factual allegation of the second instance of rape was not established to the relevant standard. [...]Furthermore, the Prosecution did not make the Request pursuant to article 61(8) or even pursuant to both article 61(8) and 61(9) but pursuant to article 61(9) only”.⁵

3. The Defence made these submissions in response to the Prosecution’s Second Issue, that is “whether, in light of article 61(8), article 61(9) must be read to allow the Prosecutor an effective means by which she may apply to re-introduce, either as an amended or an additional charge, factual allegations which the Pre-Trial Chamber previously declined to confirm due to the insufficiency of the evidence”.

¹ See ICC-01/14-01/18-517 (“Decision”).

² See ICC-01/14-01/18-524 (“Prosecution Application”).

³ ICC-01/14-01/18-530 and ICC-01/14-01/18-531-Red; ICC-01/14-01/18-533 (“Defence Response”).

⁴ Defence Response, para. 14.

⁵ Defence Response, para. 16.

4. A limited and focused reply addressing the two above issues would assist the Pre-Trial Chamber in deciding on the Prosecution Application. The Prosecution would further demonstrate that appealable issues clearly arise from the Decision, and that the intervention of the Appeals Chamber is necessary to settle them, in particular the notion of “charge”.

5. With respect to the first issue above, the Prosecution was already involved in the investigation of these charges before the Confirmation Decision, and even provided the Chamber and Parties and participants notice to that effect in June 2019.⁶ Thus, unless the Chamber missed or discredited this notice altogether—and there is certainly no indication of the latter—the Chamber’s decision to reject the Prosecution Request could not properly rely on the Prosecution “launching” investigations after the Confirmation Decision, as the Defence suggests.

6. With respect to the second issue above, the Prosecution would explain that it relied on article 61(8) in its Application to demonstrate the errors in the Decision. While the Prosecution considered that a “charge” (and a “count”) may be based on more than a factual criminal allegation, the Chamber deemed the incident involving the second victim of rape to be a self-standing “charge”.⁷ Therefore, following the Chamber’s reasoning, the Prosecution Request to re-introduce this victim incident would fall within the terms of article 61(8). However, the Chamber did not construe the Prosecution Request as an application under article 61(8), and it failed to mention this provision altogether.

Conclusion

7. For the reasons above, the Prosecution respectfully seeks leave to reply to the Defence Response.



Fatou Bensouda, Prosecutor

Dated this 27th day of May 2020

At The Hague, The Netherlands

⁶ ICC-01/14-01/18-224-Conf, para. 9.

⁷ Decision, para. 20. The Chamber seems to allow for the possibility that a single count includes several charges.