



Original: English

No. ICC-01/14-01/18 OA2

Date: 4 January 2021

THE APPEALS CHAMBER

Before:

**Judge Solomy Balungi Bossa, Presiding
Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF THE PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA**

Public document

Decision on Mr Yekatom's request for leave to reply

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for Mr Alfred Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis

Legal Representatives of Victims

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda
Mr Dmytro Suprun

**Counsel for Mr Patrice-Edouard
Ngaïssona**

Mr Geert-Jan Alexander Knoops

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Alfred Yekatom against the decision of Trial Chamber V entitled ‘Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial’ of 29 October 2020 (ICC-01/14-01/18-703-Conf; public redacted version: ICC-01/14-01/18-703-Red, dated 30 October 2020 and registered on 2 November 2020),

Having before it the ‘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)’ of 10 December 2020 (ICC-01/14-01/18-763),

Pursuant to regulation 24(5) read with regulation 34(c) of the Regulations of the Court,

Renders unanimously the following

DECISION

Mr Alfred Yekatom is granted leave to file, by 16h00 on 11 January 2021, a written reply not exceeding ten pages addressing the issues specified in paragraph 9 of this decision.

REASONS

I. PROCEDURAL HISTORY

1. On 11 December 2019, Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) issued the confirmation decision against Mr Alfred Yekatom (‘Mr Yekatom’).¹

¹ [Decision on the confirmation of the charges against Alfred Yekatom and Patrice-Edouard Ngaïssona](#), ICC-01/14-01/18-403-Conf. A public redacted version was filed on 20 December 2019, and a corrected version was filed on 14 May 2020 (ICC-01/14-01/18-403-Red-Corr).

2. On 22 June 2020, Mr Yekatom filed a motion requesting that Trial Chamber V (the ‘Trial Chamber’) dismiss the mode of liability of co-perpetration confirmed against him and try him solely under the mode of liability of ordering pursuant to article 25(3)(b) of the Statute (‘Motion to Dismiss’).²
3. On 29 October 2020, the Trial Chamber issued the decision on the Motion to Dismiss (the ‘Impugned Decision’).³ Mr Yekatom filed a request for leave to appeal the Impugned Decision,⁴ and the Trial Chamber granted his request.⁵
4. On 26 November 2020, Mr Yekatom filed his appeal brief (‘Appeal Brief’).⁶
5. On 7 December 2020, the Common Legal Representatives of Victims filed a joint response to the Appeal Brief (‘Victims’ Response’),⁷ and the Prosecutor filed a response to the Appeal Brief (‘Prosecutor’s Response’).⁸
6. On 10 December 2020, Mr Yekatom filed a request for leave to reply (‘Request for Leave to Reply’).⁹
7. On 14 December, the Common Legal Representatives of Victims filed a joint response and the Prosecutor filed a response to the Request for Leave to Reply.¹⁰

² [Motion to Dismiss Co-Perpetration Mode of Liability](#), ICC-01/14-01/18-565-Red.

³ [Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial](#), ICC-01/14-01/18-703-Conf. Public redacted version: ICC-01/14-01/18-703-Red, dated 30 October 2020 and registered on 2 November 2020.

⁴ [Request for leave to appeal “Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial”](#), 4 November 2020, ICC-01/14-01/18-713.

⁵ [Decision on the Yekatom Defence Request for Leave to Appeal the Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial](#), 13 November 2020, ICC-01/14-01/18-730.

⁶ [Yekatom Defence Appeal Brief – Notice of Co-Perpetration](#), ICC-01/14-01/18-742.

⁷ [Common Legal Representatives’ Joint Response to the “Yekatom Defence Appeal Brief – Notice of Co-Perpetration”](#), ICC-01/14-01/18-754.

⁸ [Prosecution Response to “Yekatom Defence Appeal Brief – Notice of Co-Perpetration” and request for an expedited decision](#), ICC-01/14-01/18-756.

⁹ [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”, \(ICC-01/14-01/18-756\), ICC-01/14-01/18-763.](#)

¹⁰ [Common Legal Representatives’ Joint Response to Mr Yekatom’s Request for Leave to Reply](#), ICC-01/14-01/18-766 (‘Victims’ Response to Request for Leave to Reply’); [Prosecution Response to Yekatom’s Request to Reply](#), ICC-01/14-01/18-769 (‘Prosecutor’s Response to Request for Leave to Reply’).

II. MERITS

8. The Appeals Chamber notes that the granting of leave to reply is a discretionary decision. Regulation 24(5) of the Regulations of the Court provides that '[u]nless 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'. Thus, the Appeals Chamber would consider granting a request for leave to reply if these conditions are met, unless it considers that a reply would otherwise be necessary for the adjudication of the appeal.¹¹

9. Mr Yekatom seeks leave to reply concerning three issues. The first, arising from both the Victims' Response and the Prosecutor's Response, is the issue of whether the Prosecutor's pre-trial brief provides curing notice of the constituent elements of article 25(3)(a) of the Statute.¹² The second, arising from the Prosecutor's Response, is whether the Appeals Chamber should create a self-contained document containing the charges or amend the confirmation decision.¹³ The third, arising from the Victims' Response and the Prosecutor's Response, is whether Mr Yekatom should have sought leave to appeal the confirmation decision.¹⁴

10. The Prosecutor submits that the request for leave to reply should be dismissed in respect of the first and third issues, but leaves it to the Appeals Chamber's discretion whether it should seek submissions on the second issue.¹⁵ The Common Legal Representatives of Victims submit that the request for leave to reply should be rejected in its totality.¹⁶

11. The Appeals Chamber considers that the Request for Leave to Reply meets the above-mentioned criteria and a reply is warranted given the new issues presented in the response briefs. Therefore, the Request for Leave to Reply is granted. Finally, the Appeals Chamber considers it appropriate to limit Mr Yekatom's reply to ten pages and to require that it be filed no later than 11 January 2021.

¹¹ See [Decision on Mr Ntaganda's request for leave to reply](#), 3 March 2017, ICC-01/04-02/06-1813, para. 8.

¹² [Request for Leave to Reply](#), paras 7-10.

¹³ [Request for Leave to Reply](#), paras 11-12.

¹⁴ [Request for Leave to Reply](#), paras 13-14.

¹⁵ [Prosecutor's Response to Request for Leave to Reply](#), para. 12.

¹⁶ [Victims' Response to Request for Leave to Reply](#), para. 19.

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



Judge Solomy Balungi Bossa
Presiding

Dated this 4th day of January 2021

At The Hague, The Netherlands