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**International
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Court**

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Date: **22 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

**Public Redacted,
with
Confidential, *EX PARTE*, Annexes A to D, only available to the Prosecution
Public Redacted Version of “Prosecution Motion to Amend the Charges against
Alfred YEKATOM”
14 May 2020, (ICC-01/14-01/18-518-Conf)**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests permission from Pre-Trial Chamber II (“Chamber”) to amend the charges against Alfred YEKATOM under article 61(9) to add charges of rape and sexual slavery as war crimes, in violation of article 8(2)(e)(vi) (“Additional Charges”).

2. The Additional Charges are fully substantiated and more fully reflect the alleged culpability of the Accused in the context of the case, as confirmed by the Chamber. Moreover, the requested amendment is timely, justified, and entails no unfair prejudice to the Accused.

3. During the course of finalising its investigation into the conscription, enlistment, and use of children under the age of 15 years, the Prosecution uncovered credible evidence of rape and sexual slavery allegedly committed by Anti-Balaka elements subordinate to YEKATOM. Further investigation yielded evidence providing reasonable grounds to believe that YEKATOM is responsible for the crimes. Considering the seriousness and importance of these allegations, and that the supporting evidence further *prima facie* meets the requisite legal threshold for their confirmation, the Prosecution is compelled to seek the amendment of charges accordingly.

4. The Prosecution acknowledges that the YEKATOM Defence will likely elect to undertake further investigation if the Chamber grants the request and confirms the Additional Charges. However, no trial date has as yet been set and, although possibly imminent, an actual trial is unlikely to commence soon. As such, the amendment of charges will not unduly delay the trial or abridge any rights under article 67. In any case, in deciding whether to allow the amendment, the Chamber should defer to the Trial Chamber to determine whether and to what extent the Defence may require additional time to conduct further investigations post-confirmation, and not deprive the Trial Chamber of making that determination.

5. The proposed amendment is in the interests of justice. The Additional Charges are serious and warrant a full evaluation by the Chamber and, if confirmed, by the Trial Chamber. Their inclusion will allow the Court to more accurately consider the totality of YEKATOM's criminal responsibility. Further, the Prosecution has an interest in ensuring that justice is sought for crimes of sexual violence, especially when committed against the vulnerable [REDACTED]. The witnesses that the Prosecution intends to rely on to establish the crimes of rape and sexual slavery [REDACTED]. Thus, [REDACTED] would be needed to establish the Additional Charges, their inclusion would have only a minimal impact on the size and duration of the Prosecution's case. By contrast, without the Additional Charges, YEKATOM would benefit from impunity, contravening the Court's most fundamental tenet.

6. Should the Chamber grant this application, the Prosecution further requests that the Chamber schedule a date for the confirmation hearing on the Additional Charges for as soon as practicable, in consultation with the Victims and Witnesses Section of the Registry ("VWS"), as may be necessary.

II. CONFIDENTIALITY

7. In accordance with regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this filing is classified as "confidential" since it contains sensitive information bearing on witness protection issues not known to the public. Annexes A-D are classified as "EX PARTE – only available to the Prosecution" [REDACTED]. The evidence contained in Annexes A-D will be disclosed to the Parties and Participants [REDACTED].

III. SUBMISSIONS

A. Legal standard for additional charges under article 61(9)

8. Article 61(9) governs the amendment of charges once confirmed. It provides:

“After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.”

9. The Chamber must determine whether permission under article 61(9) is warranted in this case. In prior cases, Chambers have considered granting permission to amend charges under article 61(9) in the context of further particularising existing charges, but not in the context of adding new ones.¹

10. In the *Kenyatta* case, Pre-Trial Chamber II granted a Prosecution request to amend particulars within the Document Containing the Charges (“DCC”).² Pre-Trial Chamber II held “that a request for an amendment of charges [...] needs to be supported and justified,” and that the Court’s assessment will consider “all relevant circumstances surrounding the case at this stage of the proceedings.”³ Additionally, Pre-Trial Chambers have considered the diligence of the Prosecution in seeking the amendment in a timely manner.⁴ But, no Chamber has yet considered an amendment to “add additional charges” under article 61(9).

11. As the issue of adding charges is one of first impression for the Court, the Chamber should consider, in accordance with article 21, the following factors identified in other similar international courts in making its decision, namely: the

¹ ICC-01/09-02/11-700-Corr; ICC-01/09-01/11-859; ICC-01/12-01/18-608-Red; ICC-01/12-01/18-767-Corr-Red.

² ICC-01/09-02/11-700-Corr.

³ ICC-01/09-02/11-700-Corr, para. 21.

⁴ See ICC-01/12-01/18-767-Corr-Red, para. 19 (following the *Kenyatta* reasoning (ICC-01/09-02/11-700-Corr) Pre-Trial Chamber I, in granting a request under article 61(9), articulated the following standard of what could be termed reasonable diligence: “[...] the continued investigation should be related only to such essential pieces of evidence which were not known or available to the Office of the Prosecutor prior to the confirmation hearing or could not have been collected for any other reason, except at a later stage”). See also ICC-01/09-01/11-859, para. 42 (denying a Prosecution request one month before the commencement of trial for an amendment of dates of allegations “in the absence of any justification as to the belated nature of the Prosecutor’s Request...”).

importance and seriousness of the allegations to a complete understanding of the Prosecution's case, the reasonable diligence of the Prosecution in laying the additional charges, and whether the adjudication of the additional charges causes unfair prejudice to the accused. Taking these factors into account, the Additional Charges are warranted, as discussed below.

12. Bearing in mind the differences⁵ between the confirmation process at the *ad hoc* tribunals and the Court, the jurisprudence of the *ad hoc* tribunals is instructive. Importantly, the procedure for amending an indictment⁶ under the ICTY, ICTR and MICT Rules of Procedure and Evidence requires judicial consideration of similar criteria. Judges of the *ad hoc* tribunals routinely granted leave to amend indictments under these criteria.⁷

13. The standards set out in the *ad hoc* tribunals specifically pertinent to amendments comprising additional charges entail consideration of the following factors:

- a. that the amendment "helps ensure a full consideration of the relevant issues, even if it results in some prejudice to the accused"⁸

⁵ See e.g. ICTY Rule 50(A) of the Rules of Procedure and Evidence, while not identical, it is similar to article 61(9) in that it provides for an amendment to an indictment pre-confirmation without leave; and post-confirmation only with leave from the relevant chamber. See also ICTY Rule 47(F) of the Rules of Procedure and Evidence providing that "[t]he reviewing Judge may: (i) request the Prosecutor to present additional material in support of any or all counts; (ii) confirm each count; (iii) dismiss each count; or (iv) adjourn the review so as to give the Prosecutor the opportunity to modify the indictment."

⁶ "The indictment is the document containing the charges against the defendant for trial in the Crown Court" <https://www.cps.gov.uk/legal-guidance/drafting-indictment>

⁷ See e.g. *Prosecutor v. Tolimir*, ICTY Case No. IT-05-88/2-PT, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment, 16 December 2009; *Prosecutor v. Naletilić et al.*, ICTY Case No. IT-98-34-PT, "Decision on Vinko Martinović's Objection to the Amended Indictment and Mladen Naletilić's Preliminary Motion to the Amended Indictment," 14 February 2001; *Prosecutor v. Slobodan Milošević*, ICTY Case No. IT-02-54-T, "Order Granting Leave to Amend the Croatia Indictment," 4 November 2002; *Prosecutor v. Popović et al.*, ICTY Case No. IT-05-88, "Decision on Further Amendments and Challenges to the Indictment," 13 July 2006; *Prosecutor v. Turinabo et al.*, MICT Case No. MICT-18-116-PT, "Decision on the Prosecution Motion to Amend the Indictment," 17 October 2019.

⁸ *Prosecutor v. Turinabo et al.*, MICT Case No. MICT-18-116-PT, "Decision on the Prosecution Motion to Amend the Indictment," 17 October 2019, para. 10 (citing *Prosecutor v. Hadžić*, Case No. IT-04-75-I, Decision on Prosecution Motion for Leave to Amend the Indictment, 19 July 2011, para. 14; *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended

- b. “the diligence of the Prosecution in making the amendment in a timely manner that avoids creating an unfair tactical advantage;”
- c. “the likely delay or other possible prejudice to the Defence, if any, caused by the amendment.”⁹

B. The allegations are seriousness and important to the full consideration of the Prosecution’s case

14. The Additional Charges are among the Rome Statute’s most serious. The Court’s legal texts underscore the grave nature and consequences of crimes of sexual violence, [REDACTED].¹⁰ Trial Chamber VI in the *Ntaganda* case recognised the crime of rape to be “one of the worst sufferings a human being can inflict upon another,”¹¹ and found that “[t]he rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity.”¹² The sentences adjudged for crimes of rape and sexual slavery, for which Ntaganda received 17 and 14 years imprisonment respectively, further underscore their seriousness.¹³ In the *Bemba* case, Trial Chamber III imposed a sentence of 18 years based on Bemba’s criminal responsibility as a commander for rape as a war crime.¹⁴

15. The Additional Charges are important to the Court’s duty to establish the truth and to ensure the Trial Chamber’s “full consideration of the relevant issues”,¹⁵

Indictment, 16 December 2009, paras. 23, 30, 37 (an additional factor considered is “the ameliorating effect of the changes on the clarity and precision of the case to be met,” which would be an appropriate factor to consider in the context of amending the particulars of an indictment.)

⁹ *Prosecutor v. Turinabo et al.*, MICT Case No. MICT-18-116-PT, “Decision on the Prosecution Motion to Amend the Indictment,” 17 October 2019, para. 6.

¹⁰ See ICC-01/04-02/06-2442, para. 95, referring to articles 36(8)(b), 42(9), 43(6), 54(1)(b) and 68(1) and (2) of the Statute; and rules 16(1)(d), 17(2)(a)(iv), 17(2)(b)(iii), 17(3), 19(f), 63(4), 70, 72(1), 86, 88(1), 88(5) and 112(4) of the Rules; *see also* OTP Policy Paper on Sexual and Gender-Based Crimes [REDACTED].

¹¹ ICC-01/04-02/06-2442, para. 96 citing ICTY, *Kunarac et al.*, Trial Judgment, para. 655.

¹² ICC-01/04-02/06-2442, para. 96 citing ICTY, *Mucić et al.*, Trial Judgment, para. 495.

¹³ ICC-01/04-02/06-2442, para. 246.

¹⁴ ICC-01/05-01/08-3399, para. 94.

¹⁵ *Prosecutor v. Turinabo et al.*, MICT Case No. MICT-18-116-PT, “Decision on the Prosecution Motion to Amend the Indictment,” 17 October 2019, para. 10 (citing *Prosecutor v. Hadžić*, Case No. IT-04-75-I, Decision on Prosecution Motion for Leave to Amend the Indictment, 19 July 2011, para. 14; *Prosecutor v. Tolimir*, Case

especially given that the alleged sexual violence here [REDACTED].¹⁶ In this respect, the Prosecution bears the responsibility to effectively contribute to accountability for “the most serious crimes of concern to the international community as a whole [...]”¹⁷ Part of that responsibility is to seek justice for the complete range of the crimes committed by an accused, even (as article 61(9) anticipates will occur on occasion) if the allegations came to light after the initial confirmation proceedings.

i. The Additional Charges are predicated on sufficient evidence

16. As noted, the Additional Charges are adequately substantiated. *First*, the facts revealed through the Prosecution’s investigation establish reasonable grounds to believe that YEKATOM is responsible for the Additional Charges – sufficient to seek the Chamber’s amendment of charges. *Second*, beyond this, the evidence establishes substantial grounds to confirm YEKATOM’s criminal responsibility and bind the matter over for trial.

17. The evidence demonstrates that YEKATOM’s subordinates committed the crimes comprising the Additional Charges in the context of an armed conflict, as set out below.

18. [REDACTED],¹⁸ a victim of rape and sexual slavery, [REDACTED].¹⁹ [REDACTED]. The direct perpetrator was intermittently armed and raped the victim under threat of death. [REDACTED] was deprived of her liberty while with the Anti-

No. IT-05-88/2-PT, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment, 16 December 2009, paras. 23, 30, 37.

¹⁶ ICC-01/14-01/18-282-AnxB1-Red, [REDACTED].

¹⁷ Preamble to the Rome Statute.

¹⁸ [REDACTED].

¹⁹ ICC-01/04-02/06-1962, para. 2 (“Having regard to the established framework of international law, members of an armed force or group are not categorically excluded from protection against the war crimes of rape and sexual slavery under article 8 (2) (b) (xxii) and (2) (e) (vi) of the Statute when committed by members of the same armed force or group.”)

Balaka, and told that she “had to do anything they ordered [her] to do”.²⁰
[REDACTED].

19. [REDACTED],²¹ another victim of rape and sexual slavery, [REDACTED]. The victim was threatened by the direct perpetrator and deprived of her liberty.
[REDACTED].

C. The Prosecution has exercised reasonable diligence

20. The Prosecution acted with reasonable diligence in pursuing the investigation and the Additional Charges, particularly given the volume and complexity of the evidence and issues in the case, as well as the practical and logistical constraints faced in carrying it out.

21. In a similar context in the *Popović* case, an ICTY trial chamber found that “[r]easonable diligence must be understood with regard to the realities facing the parties, not measured by what a party with infinite time and limitless investigative resources might have discovered or understood.”²²

22. Reasonable diligence further includes the time necessary to consider the viability of the prospective charges. In the *Muvunyi* case, the ICTR appeals chamber held that Rule 50 of the ICTR Rules of Procedure and Evidence did not require the Prosecution to seek the immediate amendment of an indictment, but rather that, “[u]nder some circumstances, the Prosecution might justifiably wait to file an amendment while it continues its investigation so as to determine whether further evidence either strengthens its case or weakens it.”²³

²⁰ CAR-OTP-2117-0605, at 0610, para.28, *Ex parte* Annex A.

²¹ [REDACTED].

²² *Prosecutor v. Popović et al.*, ICTY Case No. IT-05-88-T, Decision on Motion to Reopen the Prosecution Case, 9 May 2008, para. 31 (finding in the context of “fresh evidence” that the Prosecution exercised reasonable diligence).

²³ *Prosecutor v. Muvunyi*, ICTR Case No. 00-55A-AR73, Decision on Prosecution Interlocutory Appeal against Trial Chamber II Decision of 23 February 2005, 12 May 2005, para. 51.

i. Obtaining the evidence

23. Here, the Prosecution's reliance on [REDACTED] statements in support of its application is reasonable and justified under the circumstances. The Prosecution received lead information [REDACTED], in mid-July 2019. Having obtained limited information [REDACTED] potential relevance to the case, the Prosecution incorporated and prioritised their interviews in its further investigation plans. Given the timing of the lead information, the Prosecution did not have sufficient time to interview the witnesses and perform all other necessary steps to integrate their evidence into the DCC ahead of the 19 August 2019 deadline. As previously stated,²⁴ missions (involving travel arrangements for all participants, including the witnesses) needed to be organised; on obtaining the statements, the Prosecution needed to assess any risks to the witnesses based on the evidence provided and their personal circumstances before disclosure could take place, in fulfilment of its obligations under article 68; and the statements needed to be translated into French for the purposes of rule 76 and regulation 39 of the RoC, such that they could be relied on as evidence at the confirmation hearing.²⁵

ii. Obtaining [REDACTED] evidence

24. After obtaining [REDACTED] lead information in mid-July, the Witness was screened [REDACTED].²⁶ Her interview was integrated into the Prosecution's investigation plan [REDACTED]. In addition, the presence of a Psychosocial Expert had to be ensured during her interviews, as required for vulnerable witnesses.²⁷

²⁴ ICC-01/14-01/18-468, para. 8.

²⁵ See also, article 61(5).

²⁶ CAR-OTP-2117-0060, *Ex parte* Annex B.

²⁷ Regulation 36(3) of the Regulations of the Office of the Prosecutor; OTP Policy Paper on Sexual and Gender-based Crimes, para. 61.

[REDACTED] was thus promptly interviewed within three weeks of her screening [REDACTED].²⁸

iii. Obtaining [REDACTED] evidence

25. As explained below, [REDACTED] was first interviewed [REDACTED]²⁹ and a second interview, organised to seek a number of clarifications and additional details, [REDACTED].³⁰

26. The Prosecution faced considerable difficulties in initially contacting [REDACTED]. Several unsuccessful attempts to contact the Witness were made [REDACTED]. Finally, because a qualified Psychosocial Expert was unavailable [REDACTED], the date of [REDACTED] first interview had to be pushed back [REDACTED].

27. To expedite the interview process, the Prosecution proceeded with [REDACTED]. Nevertheless, given the potential impact of the information [REDACTED] provided, the Prosecution considered it critical to obtain additional details and clarifications in order to determine whether to seek the amendment of charges. Accordingly, the Prosecution promptly scheduled and organised a second interview with the Witness, which took place in [REDACTED].

28. It bears noting, that the Prosecution conducted [REDACTED] under considerable budget constraints which, as is well known, affected the entirety of the Court in the last quarter of 2019. This resulted, *inter alia*, in only one investigative team being able to conduct field work in the Central African Republic [REDACTED]. As with [REDACTED] interviews had to be integrated into the Prosecution's

²⁸ CAR-OTP-2117-0605, *Ex parte* Annex A.

²⁹ CAR-OTP-2123-0057, *Ex parte* Annex C.

³⁰ CAR-OTP-2121-2567, *Ex parte* Annex D.

investigation plan [REDACTED] and, the presence of a Psychosocial Expert also had to be ensured during the conduct her interviews.³¹

iv. Assessment and determination on the evidence

29. Given the circumstances and the potential impact of adding charges to the case, the Prosecution took reasonable and necessary steps to investigate and verify the information provided by [REDACTED] carefully before taking a decision to seek the amendment of charges. These steps included an extensive internal evidence review conducted in March 2020 involving several senior Prosecution staff members in accordance with the Prosecution standardised practice,³² to ensure the viability of the underlying evidence, the prospective charges, and the applicable modes of liability.³³

30. Following the conclusion of the internal evidence review process on 27 March 2020, the Prosecution filed its Notice of intention to add additional charges on 31 March 2020.³⁴

D. Amendment of the charges causes no unfair prejudice

31. The amendment of charges in this case would not unfairly prejudice YEKATOM, nor would the Prosecution gain any tactical advantage. The jurisprudence of the *ad hoc* tribunals is persuasive in considering the issue of prejudice to the accused and should be applied here.

32. For example, in assessing unfair prejudice to an accused, an ICTY Trial Chamber in the *Tolimir* case considered whether an amendment of charges would “deprive the accused of an adequate opportunity to prepare an effective defence,”

³¹ Regulation 36(3) of the Regulations of the Office of the Prosecutor; OTP Policy Paper on Sexual and Gender-based Crimes, para. 61.

³² See OTP Strategic Plan (2016-2018), p. 45-46, para. 21.

³³ This is consistent with the foresight of the ICTR appeals chamber in the *Muvunyi* case: *Prosecutor v. Muvunyi*, ICTR Case No. 00-55A-AR73, Decision on Prosecution Interlocutory Appeal against Trial Chamber II Decision of 23 February 2005, 12 May 2005, para. 51.

³⁴ ICC-01/14-01/18-468, paras. 12-13.

and whether it would “adversely affect the accused’s right to be tried without undue delay.”³⁵ Thus, the two main issues touching on potential prejudice involve the timely preparation of the defence to address the additional charges and the undue delay of the proceedings.

i. The Defence will have ample opportunity to prepare

33. If the Chamber grants the Request and confirms the additional charges, the YEKATOM Defence will likely elect to undertake further investigation to prepare to address the attendant facts and circumstances. However, that preparation should not be difficult or lengthy. The Additional Charges rest primarily [REDACTED].³⁶

34. Thus, the impact on the size and length of the case against YEKATOM would be marginal, at most. Additionally, the underlying supporting evidence and information to be disclosed is minimal, which will assist the Defence to quickly read, analyse, and understand the material.

ii. There is no clear impact on the expeditious conduct of a prospective trial

35. The Chamber’s adjudication of the confirmation of the Additional Charges will not unduly delay the proceedings. In fact, a delay in the proceedings is not inevitable.

36. As of the date of this filing, no trial date has been set — although this may occur soon. Nevertheless, the case is yet in a very early stage of the trial phase. Thus, the Chamber’s adjudication of the Additional Charges could easily proceed while the Parties and Participants prepare for an eventual trial on the charges already confirmed.

³⁵ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment, 16 December 2009, para. 21.

³⁶ ICC-01/14-01/18-403-Conf, Part VII; *See also* ICC-01/14-01/18-282-Conf-AnxB1, para. 114.

37. In the event of a potential delay due to the adjudication of the Additional Charges, the Chamber should balance the substantial interests involved. In the *Tolimir* case for instance, trial chamber held that the prospect of delay should be weighed, *inter alia*, against the benefit of “a more complete understanding of the Prosecution’s case, and the avoidance of possible challenges to the indictment”.³⁷ More pointedly, the Chamber should duly consider the Court’s duty to establish the truth, the importance of accountability, and the interests of judicial economy in avoiding sequential trials on fresh charges. Where an amendment fulfils these important interests, any resulting delay would not be “undue”, but rather necessary and warranted. In any case, as noted above, whether additional time prior to the commencement of trial may be warranted post-confirmation to allow the defence additional time to prepare should not affect the Pre-Trial Chamber’s determination of the Request.

38. In this instance, permitting the requested amendment with Additional Charges would unquestionably provide a more complete understanding of the Prosecution’s case, avoid challenges to evidence discussing uncharged sexual violence at trial, promote judicial economy, and assist in establishing the truth. In weighing the compelling interests inherent to these serious and important Additional Charges against any potential, and likely minimal delay, the balance favours an adjudication of the Additional Charges.

E. The Confirmation Hearing should be set down for a date as soon as practicable

39. As noted above, should the Chamber permit the amendment of charges to include the Additional Charges, the Prosecution requests that a confirmation hearing be set for a date as soon as practicable.

³⁷ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment, 16 December 2009, para. 23.

40. The Additional Charges are substantiated [REDACTED]. This may continue for some period to come given the prevailing circumstances in the midst of the global COVID-19 pandemic, [REDACTED]. To avoid the present situation from forestalling the disposition of the Request however, the Prosecution considers that the Chamber may avail itself of several options. Each is consistent with its broad authority under article 68(1), which authorises “tak[ing] appropriate measures to protect the safety, physical and psychological well-being dignity and privacy of victims and witnesses” that are not “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

41. Further, the following alternatives may substantially mitigate, even possibly eliminate, the prospect of added delay in the prevailing circumstances and allow this matter to progress in accordance with the rights and duties of the Parties and Participants:

42. The Chamber could permit the Prosecution to disclose the relevant statements as “attorney-eyes only”, allowing Defence Counsel to best assess the full extent of the evidence against the Accused and to best prepare, bearing in mind “the limited scope and purpose of the confirmation proceedings.”³⁸ In that circumstance, the witnesses’ statements, including their identities, would be made available to the Suspects’ Counsel and legal staff on condition that no putative identifying information be revealed to the Accused or others, pending the implementation of necessary security measures, including by VWS if necessary. This alternative carries more risk because of the potential for unintentional divulgence within the Defence team of restricted identifying information to the Accused or others.

43. Alternatively, the Chamber could permit the Prosecution’s disclosure of summary evidence of the relevant witness statements in the form of extracts or

³⁸ See e.g., ICC-01/14-01/18-407-Conf, para. 4.

excerpts, to the extent the security situation allows. This process arguably entails the least security risks.

44. The Chamber may also prescribe and authorise a combination of these two options, as appropriate.

45. In any event, the Prosecution considers that these alternatives (obviously non-exclusive of other measures the Chamber may otherwise deem appropriate) present viable alternatives to the Chamber in advancing the proceedings while ensuring an appropriate and fair balance of its countervailing statutory duties.

IV. RELIEF SOUGHT

46. For the above reasons, the Prosecution requests the Chamber to grant permission to amend the charges and to issue a scheduling order for the confirmation hearing for as soon as practicable, in consultation with the VWS, as may be necessary.



Fatou Bensouda, Prosecutor

Dated this 22nd day of May 2020
At The Hague, The Netherlands