



Original: English

No. ICC-01/14-01/18

Date: 23 January 2019

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

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

PUBLIC

Public Redacted Version of "Decision on Defence Leave to Appeal the 'Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings'"

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Stéphane Bourgon

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Other

Appeals Chamber

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “ICC”),¹ issues this decision on the Defence leave to appeal the Chamber’s decision regarding Alfred Yekatom’s language proficiency.

I. Procedural History

1. On 11 November 2018, the Chamber issued a warrant of arrest against Alfred Yekatom (“Yekatom”)² who was surrendered to the Court on 17 November 2018.
2. On 23 November 2018, Yekatom appeared before the Chamber and stated that he spoke Sango “perfectly” while his French was “not very good”.³ The confirmation hearing was scheduled to commence on Tuesday, 30 April 2019.⁴
3. On 17 December 2018, the Prosecutor submitted the “Prosecution’s Request for an Order on YEKATOM’s French Proficiency Level”.⁵
4. On 19 December 2018, the Single Judge ordered the Registry’s Language Services Section (the “LSS”) to conduct a French language proficiency assessment of Yekatom and to submit a report to the Chamber no later than 28 December 2018.⁶
5. On 24 December 2018, the Chamber was notified of the “Registry Transmission of French Language Proficiency Assessment of Alfred Yekatom” (the “Registry Report”).⁷
6. On 7 January 2019, the Defence provided its observations, also on the Registry Report;⁸ and the Prosecutor provided observations on the Registry Report.⁹

¹ Pre-Trial Chamber II, Decision designating a Single Judge, 6 December 2018, ICC-01/14-01/18-27.

² Pre-Trial Chamber II, Warrant of Arrest for Alfred Yekatom, ICC-01/14-01/18-1-US-Exp. A public redacted version of the warrant of arrest was issued on 17 November 2018, *see* ICC-01/14-01/18-1-Red.

³ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG ET, p. 6, lines 20-21.

⁴ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG ET, p. 8, lines 20-25.

⁵ ICC-01/14-01/18-34.

⁶ Pre-Trial Chamber II, Corrigendum of “Order to Conduct a French Language Proficiency Assessment of Alfred Yekatom”, 19 December 2018, ICC-01/14-01/18-36-Corr.

⁷ ICC-01/14-01/18-42 with one confidential annex.

⁸ ICC-01/14-01/18-48-Conf; ICC-01/14-01/18-48-Red (filed on 14 January 2019).

⁹ ICC-01/14-01/18-50.

7. On 11 January 2019, the Single Judge rendered the “Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings” (the “Language Decision”).¹⁰

8. On 16 January 2019, the Defence lodged the “Request on behalf of Mr. Yekatom seeking leave to appeal ‘Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings’” (the “Request”) seeking leave to appeal the Language Decision on the following issues: (i) “the Single Judge’s determination that Mr. Yekatom is proficient in French for the purposes of Articles 67(1)(a) and (f) of the Statute”;¹¹ (ii) “the Single Judge’s decision that Mr. Yekatom has the right to have – on an *ad hoc* basis, as opposed to, on a permanent basis as requested by the Defence[] – the assistance of a French-Sango interpreter, when reading the witness statements (rule 76(3) of the Rules), if he so wishes”;¹² and (iii) “the Single Judge’s rejection that all court records/filings be translated into French as a matter of course”.¹³

9. On 21 January 2019, the Prosecutor responded to the Request, submitting that the Chamber should grant leave to appeal the first issue but dismiss the remainder of the Request.¹⁴

10. On 23 January 2019, the Defence filed the “Request on behalf of Mr. Yekatom Seeking Leave to Reply to ‘Prosecution’s Response to the Defence’s Request Seeking Leave to Appeal the ‘Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings’ (ICC-01/14-01/18-57) and/or Clarification of the Impugned Decision” (the “Request for Leave to Reply”).¹⁵

¹⁰ Pre-Trial Chamber II, ICC-01/14-01/18-56-Conf; a public redacted version was registered the same day, ICC-01/14-01/18-56-Red.

¹¹ Request, ICC-01/14-01/18-57, paras 3, 16, 21-24, 35-37.

¹² Request, ICC-01/14-01/18-57, paras 4, 17-18, 25-30, 38-42.

¹³ Request, ICC-01/14-01/18-57, paras 5, 19-20, 31-34, 43-46.

¹⁴ ICC-01/14-01/18-59.

¹⁵ ICC-01/14-01/18-61.

II. Applicable Law

11. The Single Judge notes article 82(1)(d) of the Rome Statute (the “Statute”), rule 155 of the Rules of Procedure and Evidence and regulations 24(5) and 65 of the Regulations of the Court.

12. The Single Judge, mindful of the exceptional character of the remedy of the interlocutory appeal, recalls that for leave to be granted, the following specific requirements must be met:¹⁶

- (a) the decision must involve an issue that would significantly affect (i) *both* the “fair” and “expeditious” conduct of the proceedings; *or* the outcome of the trial; and
- (b) in the view of the Pre-Trial Chamber, an immediate resolution by the Appeals Chamber is warranted as it may materially advance the proceedings.

13. According to established jurisprudence, an “issue” is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion.¹⁷ Most importantly, the “issue” identified by the appellant must emanate from the relevant decision itself and cannot represent a hypothetical concern or abstract legal question.¹⁸

III. Analysis

1. Request for Leave to Reply

14. The Single Judge considers that he has all information necessary to entertain the Request. Therefore, the Request for Leave to Reply is rejected. The Defence submits also new points in the Request for Leave to Reply that are, at most, only tangentially

¹⁶ Appeals Chamber, *Situation in the Democratic Republic of the Congo*, “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal” (“Article 82(1)(d) Appeals Judgment”), 13 July 2006, ICC-01/04-168.

¹⁷ Article 82(1)(d) Appeals Judgment, ICC-01/04-168, para. 9.

¹⁸ *See*, for example, Pre-Trial Chamber I, *Prosecutor v Laurent Gbagbo*, “Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges”, 31 July 2013, ICC-02/11-01/11-464, para. 8; Pre-Trial Chamber II, *Prosecutor v Bosco Ntaganda*, Decision on the “Requête de la Défense sollicitant l’autorisation d’interjeter appel de la Décision sur la confirmation des charges datée du 9 juin 2014”, 4 July 2014, ICC-01/04-02/06-322.

related to the issues formulated by the Defence in the Request. These points could be the object of a discrete request to the Chamber, if the Defence so wishes.¹⁹

2. Request

15. With regard to the first issue, the Defence alleges that the Single Judge erred since, taking into consideration the Registry's French language proficiency assessment, Yekatom "is not able, *inter alia*, to read and understand simple texts drafted in French".²⁰ According to the Defence, more time will be required for disclosure and for the Defence to explain the content of the documents which will impact negatively the fair and expeditious conduct of the proceedings.²¹ Admitting that the Single Judge's determinations in the Language Decision were correct, the Prosecutor proposes that a resolution by the Appeals Chamber of this issue would be "prudent" considering the "importance of the issue".²²

16. At the outset, the Single Judge recalls that the importance of the issue alone does not justify the granting of leave to appeal this issue.²³ The Single Judge finds that the issue, as presented by the Defence, does not arise from the Language Decision. The Defence erroneously claims that the Single Judge determined that "Mr. Yekatom is proficient in French for the purpose of Articles 67(1)(a) and (f) of the Statute".²⁴ Heed was paid in the Language Decision not to make such a claim; rather, it was clarified that Yekatom is "proficient in French".²⁵ The Single Judge was mindful of the fact that the article 67(1)(a) standard cannot be applied fully in the case of Yekatom, neither for French nor for Sango. The Defence also dissects selectively the proficiency determination from the remedial measure that, *inter alia*, a French-Sango

¹⁹ This concerns, in particular, the Defence request to "clarify whether Mr. Yekatom's right to have, on an *ad hoc* basis, the assistance of a French-Sango interpreter applies beyond the reading of witness statements within the meaning of rule 76(3) of the Rules of Procedure and Evidence", see Request for Leave to Reply, para. 6.

²⁰ Request, ICC-01/14-01/18-57, para. 22.

²¹ Request, ICC-01/14-01/18-57, para. 23.

²² ICC-01/14-01/18-59, paras 3-5.

²³ Similarly, for example, Pre-Trial Chamber II, *Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the Prosecutor's Application for Leave to Appeal the "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo", 18 September 2009, ICC-01/05-01/08-532, para. 12.

²⁴ Request, ICC-01/14-01/18-57, para. 22.

²⁵ Language Decision, ICC-01/14-01/18-56-Red, para. 17 and paragraph (a) of the operative part.

interpreter was provided to Yekatom to overcome the impasse.²⁶ As a result, the issue was framed by the Defence out of context. Moreover, it is worth recalling that the Defence, in its observations leading to the Language Decision, accepted “receiving disclosure in the original with at least a version in French”.²⁷ Accordingly, the Single Judge rejects leave to appeal this issue.

17. With regard to the second issue, the Defence contends that the Single Judge erred since he granted, solely for the purposes of reading rule 76 witness statements,²⁸ the assistance of a French-Sango interpreter on an *ad hoc* basis and not on a permanent basis.²⁹ The Defence argues that, given Yekatom’s difficulties in reading French and understanding the information disclosed, the *ad hoc* assistance is not sufficient for Yekatom to effectively participate in the proceedings.³⁰ In this context, the Defence also contends that the assistance of the interpreter would assist the Defence team indirectly as it would allow “its members to focus on their duties and responsibilities rather than on the translation of documents”.³¹ Lastly, the Defence claims that liaising with the Registry on this matter is “impracticable and cumbersome”.³² The Prosecutor argues that the second issue represents a mere disagreement with the Single Judge’s findings and does not satisfy the article 82(1)(d) requirements.³³

18. The Single Judge finds that the issue represents a hypothetical concern and at best a mere disagreement with the Single Judge’s finding. The Single Judge ordered the assistance of a French-Sango interpreter on an *ad hoc* basis *whenever* Yekatom *actually* requests interpretation, in light of his abilities, as assessed by the Registry. The Single Judge considers it speculative and unreasonable to conclude that this “need-based” assignment impairs Yekatom’s ability to effectively participate in the preparation of the proceedings and, therefore, would significantly impact the fair and expeditious conduct of the proceedings. The argument that a permanent interpreter

²⁶ Language Decision, ICC-01/14-01/18-56-Conf, para. 18.

²⁷ ICC-01/14-01/18-48-Conf, para. 24.

²⁸ *See also* Request, ICC-01/14-01/18-57, para. 30.

²⁹ Request, ICC-01/14-01/18-57, para. 25.

³⁰ Request, ICC-01/14-01/18-57, paras 26-27.

³¹ Request, ICC-01/14-01/18-57, para. 28.

³² Request, ICC-01/14-01/18-57, para. 29.

³³ ICC-01/14-01/18-59, paras 6-10.

would allow members of the Defence team to focus on their duties and responsibilities is misplaced as the interests of the Defence team members – whether affected directly or indirectly – are irrelevant in this regard. The Single Judge also agrees with the Prosecutor in holding that the purported difficulties in the practical implementation of the Language Decision are administrative concerns and do not affect the statutory rights of Yekatom. Accordingly, the Single Judge rejects leave to appeal this issue.

19. With regard to the third issue, the Defence claims that the Single Judge erred since not translating all court records/filings into French as a matter of course impacts Yekatom's right to translation and places an undue burden on the Defence team to translate Court decisions for him.³⁴ The Prosecutor argues that the third issue represent a mere disagreement with the Single Judge's findings and does not satisfy the article 82(1)(d) requirements.³⁵

20. The Single Judge does not consider that the third issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. Contrary to what the Defence alleges, nothing in the Statute obliges the Chamber to order the translation of *all* documents in the case record into French.³⁶ The Single Judge recalls that only those documents must be translated that are *necessary* for the suspect to understand the nature, cause and content of the charges, in particular the warrant of arrest and the document containing the charges.³⁷ Considering the abilities of Yekatom, as assessed by the Registry, - an argument the Defence insists upon - it also would be contradictory to furnish the suspect with documents [REDACTED]. It is telling that the Defence emphasises the burden this finding places purportedly on the Defence. As stated before, the interests of the Defence team members – whether affected directly or indirectly – are irrelevant in this regard. Most importantly, it is part and parcel of the duties of Defence counsel to explain to the suspect the content

³⁴ Request, ICC-01/14-01/18-57, paras 31-34.

³⁵ ICC-01/14-01/18-59, paras 6, 11-14.

³⁶ The Single Judge refers approvingly to the previous decisions of other pre-trial chambers and their analysis of article 67(1)(a) of the Statute in the light of internationally recognised human rights, *see*, for example, Pre-Trial Chamber II, *Prosecutor v Dominic Ongwen*, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 27 February 2015, ICC-02/04-01/15-203, paras 31-33; Pre-Trial Chamber III, *Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the Defence's Request Related to Language Issues in the Proceedings, 4 December 2008, ICC-01/05-01/08-307, paras 10-16.

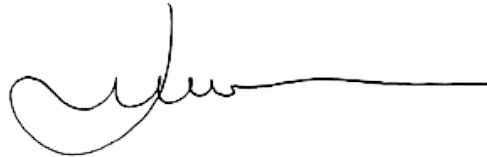
³⁷ Language Decision, ICC-01/14-01/18-56-Red, para. 19.

of filings and documents, including the Defence filings submitted in English. Accordingly, the Single Judge rejects leave to appeal this issue.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **REJECTS** the Request; and
- b) **REJECTS** the Request for Leave to Reply.

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



**Judge Rosario Salvatore Aitala,
Single Judge**

Dated this Wednesday, 23 January 2019

At The Hague, The Netherlands