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**International
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Court**

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Date: **16 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 ROMBHOT YEKATOM***

Public

**Request on behalf of Mr. Yekatom seeking leave to appeal
“Decision on Language Proficiency of Alfred Yekatom
for the Purposes of the Proceedings”**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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Further to the “Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings” issued by the Single Judge acting on behalf of Pre-Trial Chamber II (“Pre-Trial Chamber”) on 11 January 2019 (“Impugned Decision”), Counsel representing Mr. Alfred Rombhot Yekatom (“Mr. Yekatom” or “Defence”) hereby submit this:

Request on behalf of Mr. Yekatom seeking leave to appeal

“Decision on Language Proficiency of Alfred Yekatom

for the Purposes of the Proceedings”

(“Defence Leave to Appeal Request”).

INTRODUCTION

1. The Defence hereby seeks leave to appeal the Impugned Decision pursuant to Article 82(1)(d) of the Rome Statute (“Statute”).
2. This Defence Leave to Appeal Request raises three appealable issues arising from the Impugned Decision that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which immediate resolution by the Appeals Chamber, may materially advance the proceedings.
3. The first appealable issue is the Single Judge’s determination that Mr. Yekatom is proficient in French for the purpose of Articles 67(1)(a) and (f) of the Statute.¹
4. The second appealable issue 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

¹ Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings, 11 January 2019, ICC-01/14-01/18-56-Conf (“Impugned Decision”), para. 17 and disposition paragraph a). Public redacted version (ICC-01/14-01/18-56-Red) filed on the same day.

requested by the Defence² – the assistance of a French-Sango interpreter, when reading the witness statements (rule 76(3) of the Rules), if he so wishes.³

5. The third appealable issue is the Single Judge’s rejection that all court records / filings be translated into French as a matter of course.⁴

PROCEDURAL BACKGROUND

6. On 17 December 2018, the Prosecutor submitted its Request for an Order on YEKATOM’s French Proficiency Level.⁵

7. On 19 December 2018, the Single Judge ordered the Registry’s Language Services Section (“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

8. On 24 December 2018, the Registry transmitted the result of the French Language Proficiency Assessment (“Registry Report”).⁷

9. On 7 January 2019, the Defence submitted its observations on the Prosecution request and the Registry Report,⁸ which was followed by the filing of the Prosecutor’s observations on the Registry Report.⁹

10. On 11 January 2019, the Single Judge issued the Impugned Decision.

² Cf. Defence’s Observations on the Registry French language proficiency assessment of Mr. Yekatom (ICC-01/14-01/18-42-Conf-Anx) and response to the Prosecution’s 17 December 2018 Request for an Order on YEKATOM’s French Proficiency Level (ICC-01/14-01/18-34), 7 January 2019, ICC-01/14-01/18-48-Conf (“Defence Observations”), paras. 7, 25-27, 31.

³ Impugned Decision, para. 18 and disposition b).

⁴ Impugned Decision, para. 19 and disposition d).

⁵ Prosecution’s Request for an Order on YEKATOM’s French Proficiency Level, 17 December 2018, ICC-01/14-01/18-34.

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

⁷ Registry Transmission of French Language Proficiency Assessment of Alfred Yekatom, 21 December 2018, ICC-01/14-01/18-42; Annex, 21 December 2018, ICC-01/14-01/18-42-Conf-Anx (“Registry Report”).

⁸ Defence Observations. Public redacted version (ICC-01/14-01/18-48-Red) filed on 14 January 2019.

⁹ Prosecution’s Observations on the Registry’s French Language Proficiency Assessment of Alfred YEKATOM, 7 January 2019, ICC-01/14-01/18-50 (“Prosecution Observations”).

APPLICABLE LAW

11. This Defence Leave to Appeal Request is submitted pursuant to Article 82(1)(d) of the Statute; Rule 155 of the Rules of Procedure and Evidence (“Rules”); and Regulation 65 of the Regulations of the Court (“RoC”).

12. Pursuant to Article 82(1)(d) of the Statute, either party may appeal a decision, which: (i) involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and for which, in the opinion of the Pre-Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

13. Regarding the notion of appealable issue, the Appeals Chamber has previously held that:

“[A]n appealable issue must be “an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion”. An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination. The issue may be legal or factual or a mixed one.”¹⁰

14. Mr. Yekatom’s language related rights are found in Articles 67(1)(a) and (f) of the Rome Statute, which provide in relevant part:

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

¹⁰ *Situation in the Democratic Republic of Congo*, Judgement on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168, para. 19.

[...]

- (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language, which the accused fully understands and speaks.

ARGUMENT

15. The three issues arising from the Impugned Decision: (i) constitute appealable issues; (ii) significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (iii) immediate resolution of which by the Appeals Chamber may materially advance the proceedings.

I. The three issues arising from the Impugned Decision constitute appealable issues

16. **First issue.** The Defence respectfully submits that the Single Judge's determination that Mr. Yekatom is proficient in French for the purpose of Articles 67(1)(a) and (f) of the Statute constitutes a mixed error of law and fact. The Single Judge's determination is not merely a question over which there is disagreement or conflicting opinion; it is an issue constituted by a subject – *i.e.* whether Mr. Yekatom is proficient in French pursuant to Articles 67(1)(a) and (f) of the Statute – the resolution of which is essential for the purpose of the proceedings and the determination of matters arising in the judicial cause under examination, such as *inter alia*, whether or not Mr. Yekatom's right to be informed promptly and in detail of the nature, cause and content of the charge, in a language which he fully understands and speaks, was respected at all stages of the proceedings. If granted leave to appeal, the Defence will: (i) demonstrate the Single Judge's erroneous interpretation of Articles 67(1)(a) and (f) of the Statute, in relation to the language rights of Mr. Yekatom; (ii) set out the correct standard pursuant Articles 67(1)(a) and (f); and (iii) explain why no Single Judge / Pre-Trial Chamber could have come to the

conclusion that Mr. Yekatom is proficient in French for the purpose of Articles 67(1)(a) and (f) of the Statute.

17. **Second issue.** The Defence respectfully submits that 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 Defence¹¹ – the assistance of a French-Sango interpreter when reading witness statements (Rule 76(3)), if he so wishes, constitutes a mixed error of law and fact. The Single Judge's decision is not merely a question over which there is disagreement or conflicting opinion; it is an issue: (i) independent from the first issue, *i.e.* whether Mr. Yekatom is proficient in French pursuant to Articles 67(1)(a) and (f) of the Statute; (ii) constituted by a subject – *i.e.* whether access to the assistance of a French-Sango interpreter on an *ad hoc* basis and *not* on a permanent basis, solely for the purpose of reading witness statements disclosed pursuant to Rule 76(3), meets the requirements of Article 67 of the Statute in relation to, *inter alia*, the fairness of the proceedings; and (iii) the resolution of which is essential for the purpose of the proceedings and the determination of matters arising in the judicial cause under examination, such as whether or not Mr. Yekatom's right to be informed promptly and in detail of the nature, cause and content of the charge, in a language which he fully understands and speaks, was respected at all stages of the proceedings.

18. If granted leave to appeal, the Defence will: (i) demonstrate the Single Judge's erroneous interpretation of Articles 67(1)(a) and (f) of the Statute and Rule 76(3) in relation to the language related rights of Mr. Yekatom; and (ii) explain why no Single Judge / Pre-Trial Chamber could have come to the conclusion that access to an interpreter on an *ad hoc* basis, is sufficient, in the particular circumstances of this case, to ensure the fairness of the proceedings and full respect for Mr. Yekatom's language related rights for the purpose of Articles 67(1)(a) and (f) of the Statute.

¹¹ Cf. Defence Observations, paras. 7, 25-27, 31.

19. **Third issue.** The Defence respectfully submits that the Single Judge's rejection that all court records / filings be translated into French as a matter of course constitutes an error of law. The Single Judge's holding is not merely a question over which there is disagreement or conflicting opinion; it is an issue: (i) independent from the first two appealable issues; (ii) constituted by a subject – *i.e.* whether (i) court records such as decisions rendered by the Pre-Trial Chamber must be translated into French – one of the two working languages of the Court – considering that Mr. Yekatom neither speaks nor understands English, the other working language of the Court; and (iii) the resolution of which is essential for the purpose of the proceedings and the determination of matters arising in the judicial cause under examination, such as whether or not Mr. Yekatom's rights to be informed promptly and in detail of the nature, cause and content of the charges, in a language which he fully understands and speaks, and to receive such translations as are necessary to meet the requirement of fairness, were respected at all stages of the proceedings.

20. If granted leave to appeal, the Defence will: (i) demonstrate the Single Judge's erroneous interpretation of Articles 67(1)(a) and (f) of the Statute in relation to the language related rights of Mr. Yekatom; and (ii) provide the proper interpretation of Articles 67(1)(a) and (f) of the Statute, including the need for decisions / court records rendered by the Pre-Trial Chamber to be translated into French, in particular, taking into consideration that Mr. Yekatom neither speaks nor understands English.

II. The three issues arising from the Impugned Decision significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial

21. **First issue.** Articles 67(1)(a) and (f) of the Statute are intended to ensure not only that suspects or accused will be informed promptly and in detail of the nature, cause and content of the charges against them but also to ensure that suspects or accused *understand* the same such that they are in a position to effectively participate

in mounting their defence.¹² Articles 67(1)(a) and (f) are thus a core component of the rights of suspects or accused and consequently, of the fair conduct of the proceedings.¹³

22. The Single Judge's determination that Mr. Yekatom is proficient in French for the purpose of Articles 67(1)(a) and (f) of the Statute would inevitably have significant repercussions for Mr. Yekatom, the conduct of proceedings and respect for his rights in all phases of the proceedings, beginning with the Prosecution disclosure of information and Mr. Yekatom's preparations for the confirmation hearing. Taking into consideration the results of Mr. Yekatom's French language proficiency assessment performed by LSS, in particular the conclusion that Mr. Yekatom is not able, *inter alia*, to read and understand simple texts drafted in French,¹⁴ the Single Judge's determination will significantly impact both the fair and the expeditious conduct of the proceedings.

23. The time that will be required for Mr. Yekatom to go through the anticipated Prosecution disclosure, trying to understand the same and the resulting burden for the Defence, having to spend much more time with Mr. Yekatom to explain to him the content of various documents, are but examples of how the fair and expeditious conduct of the proceedings will be impacted, resulting very likely in lengthy litigation and requests for additional time.

24. Notably, the Single Judge's determination is also very likely to significantly impact the outcome of the trial as well as the security of the trial judgement, if it is later determined that Mr. Yekatom was *not* proficient in French for the purpose of Articles 67(1)(a) and (f) of the Statute.

¹² Cf. Defence Observations, para. 19.

¹³ *Katanga*, Decision on the Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages, 18 January 2008, ICC-01/04-01/07-149, p. 5.

¹⁴ Registry Report, p. 2.

25. **Second issue.** The Single Judge's decision that Mr. Yekatom is only entitled to have – on an *ad hoc* basis and *not* on a permanent basis as requested by the Defence – the assistance of a French-Sango interpreter, solely for the purpose of reading witness statements disclosed pursuant to Rule 76(3) will significantly affect the fair and expeditious conduct of the proceedings.

26. Whether the permanent assistance of a Sango-French interpreter is necessary, in the particular circumstances of this case; and/or whether the *ad hoc* assistance intended to be provided pursuant to the Impugned Decision is sufficient to alleviate Mr. Yekatom's difficulties in reading French and understanding the information disclosed, are issues that would significantly impact the fair and expeditious conduct of the proceedings.

27. In the same vein, whether the assistance of a permanent interpreter is indispensable to Mr. Yekatom's ability to effectively participate in preparations for the confirmation hearing and/or shaping the case for the Defence and safeguarding his right to full answer and defence, which is a core component of his fair trial rights is an issue which may significantly impact the fair and expeditious conduct of the proceedings.¹⁵ Indeed, issues affecting Mr. Yekatom's comprehension of information disclosed to him would necessarily result in delaying instructions to his counsel, impeding the effectiveness of investigations and, in turn, the expeditiousness of the proceedings.

28. In this regard, the Defence deems necessary that this issue concerns the need for Mr. Yekatom to be provided with the services of a permanent interpreter. Whereas providing a permanent interpreter to Mr. Yekatom would indirectly assist Mr. Yekatom's Defence team – by *inter alia*, allowing its members to focus on their duties and responsibilities rather than on the translation of documents – the Defence

¹⁵ *Katanga*, Decision on the Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages, 18 January 2008, ICC-01/04-01/07-149, p. 5.

Observations did not envisage that the permanent interpreter requested would actually assist Mr. Yekatom's Defence team directly.

29. Whether the requirement to "liaise with the Registry sufficiently in advance for the proper organization"¹⁶ of the *ad hoc* interpretation assistance intended to be provided pursuant to the Impugned Decision – which will inevitably entail administrative hurdles that will be time consuming – is impractical and cumbersome also constitutes an issue that will significantly affect the fair and expeditious conduct of the proceedings.

30. Lastly, not only is the Single Judge's determination that Mr. Yekatom is entitled to the assistance of an *ad hoc* interpreter solely for the purpose of reading statements disclosed pursuant to Rule 76(3) wrong in law, it would also significantly impact both the fairness of the proceedings as well as the outcome of the trial.

31. **Third issue.** The Single Judge's rejection that all court records / filings be translated into French as a matter of course, would inevitably significantly affect the fair and expeditious conduct of the proceedings.

32. The Single Judge's decision impacts Mr. Yekatom's right to translation contained in Articles 50 (1), 67(1) (a), (b), and (f) of the Statute as well as Rules 40, 42, 76(3), 117(1), 144(2)(b), and 187 of the Rules. These provisions are intended to safeguard the principle of fairness. The fair and expeditious conduct of the proceedings and the outcome of the trial will necessarily be affected if Court decisions, including decisions rendered by the Pre-Trial Chamber are distributed to Mr. Yekatom, who neither speaks nor understands English, solely in English.

33. Imposing the burden on Mr. Yekatom's Defence team to translate for him and/or to provide him summaries of Court decisions in French would necessarily impact significantly the fair and expeditious conduct of the proceedings

¹⁶ Impugned Decision, para. 18 and disposition paragraph c).

34. What is more, the Single Judge's determination is also likely to significantly affect the outcome of the trial as well as the security of the trial judgement if it is later determined that Mr. Yekatom's was not provided with the required and necessary translations of Court decisions to meet the requirement of fairness.

III. Immediate resolution of the three issues arising from the Impugned Decision may materially advance the Proceedings

35. **First issue.** Immediate resolution by the Appeals Chamber of the first issue, *i.e.* whether Mr. Yekatom is proficient in French for the purpose of Articles 67(1)(a) and (f) of the Statute will materially advance the proceedings.

36. An issue of such importance, directly linked to the fundamental rights of Mr. Yekatom, which will significantly impact the fair and expeditious conduct of the proceedings during all phases of the proceedings without exception, must be adjudicated at the earliest opportunity. Considering, *inter alia*, (i) the early stage of the proceedings; (ii) the fact that disclosure of both inculpatory and exculpatory evidence has not yet begun; and (iii) the Prosecution's intent to join its case against Ngaïssona to the proceedings against Mr. Yekatom, which will inevitably delay the proceedings, the time to resolve the issue is now.

37. Immediate resolution of this issue by the Appeals Chamber will materially advance the proceedings by allowing the proceedings against Mr. Yekatom to be conducted on a sound base. Immediate resolution of this issue will materially advance the proceedings by allowing the Prosecution to fulfil its disclosure obligations and present its case from the beginning with full knowledge of what is expected in order to ensure full respect for the language related rights of Mr. Yekatom. Immediate resolution of this issue will avoid time and resource consuming litigation related to the language related rights of Mr. Yekatom. Immediate resolution of this issue will not unduly delay the proceedings against Mr. Yekatom. On the

other hand, it will materially advance the proceedings by allowing the parties to focus on preparations for the upcoming confirmation hearing.

38. **Second issue.** Immediate resolution by the Appeals Chamber of the second issue, whether providing Mr. Yekatom with the assistance of an *ad hoc* interpreter is sufficient to alleviate his language difficulties – and not that of the Defence team¹⁷ – and ensure the fairness of the proceedings, will materially advance the proceedings.

39. As previously mentioned, the second appealable issue is distinct from the first. Whether the Single Judge's determination that Mr. Yekatom is proficient in French for the purposes of Articles 67(1)(a) and (f) is affirmed or quashed, the requirement for Mr. Yekatom to have the assistance of an *ad hoc* or permanent interpreter remains.

40. Moreover, immediate resolution is required on the basis that in the event it is later determined that Mr. Yekatom does require the assistance of a permanent interpreter, the fairness of the proceedings will already have been affected and the resulting prejudice will already have materialized; rendering necessary the implementation of a remedy likely to delay the proceedings and be costly. Conversely, immediate resolution of this issue, either by affirming the Single Judge's determination or by granting Mr. Yekatom the assistance of a permanent interpreter at this stage, will materially advance the proceedings by avoiding the need for a costly remedy likely to delay the proceedings at a later stage. It is also significant, that providing Mr. Yekatom with the assistance of a permanent interpreter at this stage can be undone later without prejudice to Mr. Yekatom.

41. Immediate resolution of this issue will not unduly delay the proceedings and the advantages of doing so far outweigh the disadvantages. Whether Mr. Yekatom requires the assistance of a permanent interpreter at this stage, before the beginning of the disclosure process, is such a fundamental issue that immediate resolution of

¹⁷ See *supra* para. 28.

this issue is necessary to ensure the fairness of the proceedings. It is also in the interest of justice.

42. Lastly, immediate resolution of the issue whether the assistance of an interpreter is only required to allow Mr. Yekatom to read statements disclosed pursuant to Rule 76(3), as held by the Single Judge, will necessarily materially advance the proceedings due to the legal character and fundamental importance of the issue.

43. **Third issue.** Similarly, immediate resolution by the Appeals Chamber of the third issue, whether Court decisions, including decisions rendered by the Pre-Trial Chamber, should be distributed in English only, will materially advance the proceedings.

44. Mr. Yekatom neither speaks nor understands English. Whether distributing Court decisions to him solely in English respects his rights pursuant to the Statute and meets the requirements of fairness is such a fundamental issue that it must be resolved without delay.

45. Immediate resolution by the Appeals Chamber will not unduly delay the proceedings. Yet, it will materially advance the proceedings by providing legal certainty to the upcoming proceedings. It will also enhance the fair and expeditious conduct of the proceedings by avoiding time consuming and resource intensive litigation.

46. Taking into consideration that only a few weeks remain before the scheduled confirmation hearing, there is an urgent need to obtain the ruling by the Appeals Chamber on the issue of translation. Immediate resolution of this issue will therefore materially advance the proceedings.¹⁸

¹⁸ See *Katanga*, Decision on the Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages, 18 January 2008, ICC-01/04-01/07-149, p. 6.

CONCLUSION

47. In light of the above submissions and arguments (i) setting out three appealable issues arising from the Impugned Decision; (ii) demonstrating that the three appealable issues raised will significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (iii) explaining why immediate resolution of the three issues will materially advance the proceedings, the Defence respectfully submits that all criteria are met pursuant to Article 81(2) of the Statute to grant the Defence leave to appeal the Impugned Decision in relation to the three appealable issues raised.

RELIEF SOUGHT

48. In light of the above submissions and arguments, the Defence respectfully requests the Single Judge to:

GRANT this Defence Leave to Appeal Request; and

GRANT the Defence leave to appeal the Impugned Decision in relation to the three appealable issues set out herein.

RESPECTFULLY SUBMITTED ON THIS 16TH DAY OF JANUARY 2019



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