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No. ICC-01/14-01/18

Date: 23 May 2019

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

Decision on the Legal Representation of Victims

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

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

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REGISTRY

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Reparations Section**

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Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this decision on the legal representation of victims.

I. PROCEDURAL HISTORY

1. On 11 November 2018, the Chamber issued the ‘Warrant of Arrest for Alfred Yekatom’,¹ who was surrendered to the Court by the authorities of the Central African Republic (the ‘CAR’) on 17 November 2018.

2. On 7 December 2018, the Chamber issued the ‘Warrant of Arrest for Patrice-Edouard Ngaïssona’,² who was surrendered to the Court by the authorities of the French Republic on 23 January 2019.

3. On 20 February 2019, the Chamber issued the ‘Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters’, thereby joining the cases against Yekatom and Ngaïssona.³ The Chamber scheduled the confirmation hearing in the case against Yekatom and Ngaïssona to commence on 18 June 2019.⁴

4. On 5 March 2019, the Chamber issued the ‘Decision Establishing the Principles Applicable to Victims’ Applications for Participation’,⁵ thereby, *inter alia*, ordering the Registry to submit a report regarding the organisation of the system of legal representation on 16 April 2019 at the latest.⁶

5. On 16 April 2019, the Registry transmitted its report on legal representation as Annex I to the ‘Registry’s Report on Legal Representation of Victims’ (the ‘Registry Report’).⁷

6. On 15 May 2019, the Chamber issued the ‘Decision on the “Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure

¹ ICC-01/14-01/18-1-Conf-Exp. A public redacted version is also available, see [ICC-01/14-01/18-1-Red](#).

² ICC-01/14-01/18-89-Conf-Exp. A public redacted version is also available, see [ICC-01/14-01/18-89-Red](#).

³ [ICC-01/14-01/18-87](#); [ICC-01/14-01/18-121](#).

⁴ [ICC-01/14-01/18-87](#), para. 18; [ICC-01/14-01/18-121](#), para. 18.

⁵ [ICC-01/14-01/18-141](#).

⁶ [ICC-01/14-01/18-141](#), paras 50-53.

⁷ [ICC-01/14-01/18-178](#), with three confidential *ex parte* annexes only available to the Registry. On 13 May 2019, the Chamber ordered the Registry *via* email to submit a public redacted version of the Registry Report by 16 May 2019 at the latest. On 16 May 2019, the Chamber received the public redacted version of the Registry Report; see [ICC-01/14-01/18-178-AnxI-Red](#).

Deadlines”⁸, thereby deciding that the confirmation hearing in the case against Yekatom and Ngaïssona shall commence on 19 September 2019.⁹

II. SUBMISSIONS

7. The Registry submits that it ‘has undertaken several activities to support the victim application process and collect information’, including ‘meetings and other communication with a variety of stakeholders’, such as potential victim applicants, legal representatives of those victims, and the Registry’s Counsel Support Section.

8. The Registry further highlights that, during these consultations, it received the following information:

(i) Victims lack ‘knowledge and understanding regarding victims’ rights and judicial proceedings’. Furthermore, in the judicial system in the CAR, there is a lack of ‘personnel and material resources’. In addition, the possibility of accessing the victims is affected by security challenges, massive displacements and the different languages spoken by the victims, such as Sango and French, as well as the victims’ level of knowledge of such languages.

(ii) A number of ‘lawyers are in contact with victims of alleged crimes within the scope of the’ case against Yekatom and Ngaïssona.

(iii) Many victims object ‘to being represented by a lawyer representing also other victims’ in the present case and ‘oppose being represented together with other victims’. In addition, many lawyers consulted by the Registry pointed to a potential conflict of interest between victims of the alleged crime of ‘[...] enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities’ under article 8(2)(e)(vii) of the Rome Statute (the ‘Statute’) (the ‘Former Child Soldiers’) and victims of the other alleged crimes included in the Warrants of Arrest against Yekatom and Ngaïssona (the ‘Victims of Other Crimes’). Other lawyers described ‘a potential conflict of interest based on religious/ethnic grounds’.

(iv) Victims falling in the Former Child Soldiers group indicate that a legal representative should possess the following main characteristics:

⁸ [ICC-01/14-01/18-199](#).

⁹ [ICC-01/14-01/18-199](#), para. 39.

(i) ‘Central African, speak[s] Sango, honest and competent’; (ii) ‘close to victims, is available and accessible’, and (iii) ‘a good listener, and should keep contact with victims and keep them informed’. The Registry also consulted two groups of persons classified as Victims of Other Crimes. The first group specified that a legal representative should have the following main characteristics: (i) ‘Central African (with exceptions), speaks the local languages, and is of Muslim faith’; and (ii) ‘honest, ethical, qualified and competent’. The second group referred to the following main characteristics in relation to a legal representative: ‘competent, trustworthy and committed to the victims’ cause; a lawyer they already know/have met, able to advocate on their behalf with empathy, and who understands the victims’. Furthermore, according to, *inter alia*, the lawyers consulted by the Registry, a legal representative ‘should be someone who is accessible, committed, competent, experienced, close to victims’ daily realities, who knows their situation, and develops a relationship of trust with them’. In addition, while some of these lawyers were in favour of taking the ethnicity or religion of a legal representative into account, others were opposed to doing so.

(v) It is to be expected ‘that victims in CAR cannot afford the cost of legal representation before the Court and will rely on the financial assistance that may be provided by the Court under its legal aid budget’.

(vi) On the basis of the information collected thus far by the Registry, ‘victims have not yet selected common legal representatives’ but, ‘[g]iven the time constraints and its current resources, the Registry has not yet been in a position to conduct further meaningful consultations on this matter’.

9. With regard to rule 90(4) of the Rules of Procedure and Evidence (the ‘Rules’), the Registry notes that the Prosecutor ‘argues that children under the age of 15 years old were enlisted in the forces affiliated to the Anti-Balaka group and participated in crimes committed against the Muslim population and others perceived to support the Seleka group’ and, therefore, asserts that it is ‘doubtful whether a single legal representative could manage to represent fairly and equally the potentially “manifestly opposed” positions or interests of both groups of victims’. However, the Registry considers that the potentially distinct interests of victims residing in the CAR and those currently displaced outside the CAR ‘do not appear to provide substantial

grounds to organise their separate legal representation’ as ‘the work of a team of common legal representatives [...] can be properly addressed by a well-organised team of legal representatives’. The Registry is further of the view that ‘the distinct interests of [sexual and gender based violence] victims can be properly addressed also in a group amongst other victims by a well-organised team of legal representatives’. According to the Registry, this is because the special attention such victims may require does not imply that ‘they require separate counsel’ and, in addition, the information collected to date does not contain ‘conclusive information that separate legal representation’ of such victims is appropriate or necessary.

10. The Registry concludes that, ‘[m]indful of the number of victims that can be safely expected to apply for participation in the proceedings, for the purposes of ensuring the effectiveness of the proceedings, [...] common legal representation will be the most appropriate way forward’. Furthermore, the Registry suggests that ‘two distinct groups of victims may be warranted’, namely the Former Child Soldiers and the Victims of Other Crimes. On this basis, the Registry recommends two options. The first option is to ‘approach each of the legal representatives so far designated by the victims and inquire whether they might be willing to come together under the umbrella of’ the two aforementioned groups of victims pursuant to rule 90(2) of the Rules. The second option is to organise common legal representation under rule 90(3) of the Rules. With regard to this option, the Registry proposes to organise a competitive process either for the legal representatives specifically identified in the Registry Report or for all legal representatives included in the ICC list of counsel. Each process would be conducted on the basis of the aforementioned criteria gathered through the consultations conducted in the field together with other objective criteria applied in previous selection processes.

III. ANALYSIS

11. The Chamber notes articles 67(1) and 68(3) of the Statute, rules 16(1)(c), 22(1), and 90 of the Rules and regulations 67 and 79 to 81 of the Regulations of the Court (the ‘Regulations’).

12. The Chamber recalls that, pursuant to article 68(3) of the Statute and rule 90 of the Rules, it must guarantee the victims’ right to present their views and concerns in a

manner which is not inconsistent with or prejudicial to the rights of the Defence and that such views and concerns may be presented by legal representatives.

13. The Chamber has taken note of the Registry's observations that many victims object 'to being represented by a lawyer representing also other victims' in the present case and 'oppose being represented together with other victims'. However, the Chamber also observes that it may be expected that a large number of victims will apply to participate in the proceedings, which is borne out by the extensive scope of the crimes imputed against Yekatom and Ngaïssona in their respective arrest warrants,¹⁰ and that, as reported by the Registry, victims are expected to 'rely on the financial assistance that may be provided by the Court'. The Chamber is of the view that, as has been the case in other proceedings before the Court,¹¹ the common legal representation of victims strikes an appropriate balance between the resources available to the Court and the duty to allow victims to participate meaningfully in the proceedings before the Chamber. Accordingly, the Chamber considers that, as suggested by the Registry, it is appropriate to proceed by way of common legal representation so as to ensure the effectiveness of the proceedings.

14. The Chamber is further in agreement with the Registry that the victims should be divided into two groups, namely the Former Child Soldiers and the Victims of Other Crimes. Considering that the persons belonging to these groups were, in general, on opposing sides during the events occurring at the relevant time in the CAR and that the Former Child Soldiers could have been implicated in crimes against Victims of Other Crimes, their interests diverge to such an extent that it is not appropriate to require them to be represented by the same common legal representative. In addition, the Chamber notes that other Chambers have made similar

¹⁰ [Warrant of Arrest for Alfred Yekatom](#), ICC-01/14-01/18-1-Red, paras 6-19; [Warrant of Arrest for Patrice-Edouard Ngaïssona](#), ICC-01/14-01/18-89-Red, paras 6-19.

¹¹ See for instance Pre-Trial Chamber III, *The Prosecutor vs. Jean-Pierre Bemba Gombo*, [Fifth Decision on Victims Issues Concerning Common Legal Representation of Victims](#), 16 December 2008, ICC-01/05-01/08-322, para. 7 (the 'Bemba Decision on Common Legal Representation'); Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings](#), 4 June 2012, ICC-02/11-01/11-138, paras 35-45 (the 'Gbagbo Decision on Victims' Participation and Common Legal Representation').

distinctions in relation to groups of victims.¹² The Chamber also accepts that, based on the information received by the Registry to date and subject to any further assessment in the future, it is not necessary to organise the separate legal representation of other groups of victims in the present case.

15. The Chamber turns next to the organisation of the legal representation of the victims. The Chamber is of the view that the first option proposed by the Registry must be adopted vis-à-vis the Victims of Other Crimes. Specifically, the Chamber orders the Registry to enquire whether the legal representatives already designated by the Victims of Other Crimes are willing to jointly act within a single team representing these victims.¹³ This option falls in line with the principle contained in rule 90(1) of the Rules that '[a] victim shall be free to choose a legal representative' as read together with rule 90(2) of the Rules. It also assigns due weight to the victims' views on the characteristics a legal representative should possess. The Chamber further notes that the Registry has underlined that the legal representatives of Victims of Other Crimes 'should have access to the victims located in areas particularly difficult to reach in the current context'. It is the view of the Chamber that the legal representatives already designated by the Victims of Other Crimes are more likely to have such access seeing as the Registry indicates that they have already established contact with victims.

16. However, the Chamber considers it necessary to appoint the Office of Public Counsel for Victims ('OPCV') to represent the Former Child Soldiers.¹⁴ In the view of the Chamber, to do otherwise would have an excessive impact upon the Court's resources. In addition, the OPCV, which is specifically mandated to, *inter alia*, 'represent[...] a victim or victims throughout the proceedings' pursuant to regulation 81(4)(e) of the Regulations, possesses the expertise and experience to allow the Former Child Soldiers to meaningfully express their views and concerns. In this

¹² See for instance Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, [Decision Concerning the Organisation of Common Legal Representation of Victims](#), 2 December 2013, ICC-01/04-02/06-160, paras 10, 23 (the 'Ntaganda Decision on Common Legal Representation').

¹³ The Chamber expects the Registry to indicate that any resources that would be allocated pursuant to the Court's legal aid system would apply to such a team as a whole as opposed to legal representatives individually.

¹⁴ See also for instance [Bemba Decision on Common Legal Representation](#), paras 12-15; [Gbagbo Decision on Victims' Participation and Common Legal Representation](#), para. 42; [Ntaganda Decision on Common Legal Representation](#), para. 25.

regard, the Chamber has paid attention to the fact that the crimes imputed to Yekatom and Ngaïssona in relation to the Former Child Soldiers are more confined in so far as the number and geographical scope of these crimes are concerned as compared to the crimes imputed against them in relation to the Victims of Other Crimes.¹⁵ In addition, so as to ensure that the views of the victims regarding the main characteristics of a legal representative are sufficiently taken into account, the Chamber finds it appropriate to order the OPCV to include in the team one or more persons based in the CAR who possesses adequate knowledge of the situation in the CAR.¹⁶

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **ORDERS** the Registry to enquire whether the legal representatives designated by the Victims of Other Crimes are willing to jointly act within a single team representing these victims and to inform the Chamber of the outcome on 7 June 2019 at the latest; and
- b) **DECIDES** to appoint counsel from the OPCV to act as the common legal representative of the Former Child Soldiers.

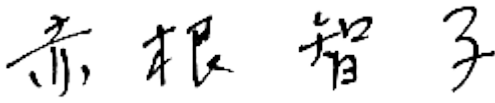
¹⁵ [Warrant of Arrest for Alfred Yekatom](#), ICC-01/14-01/18-1-Red, para. 18; [Warrant of Arrest for Patrice-Edouard Ngaïssona](#), ICC-01/14-01/18-89-Red, para. 16.

¹⁶ *See also* [Gbagbo Decision on Victims' Participation and Common Legal Representation](#), para. 44; Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, [Decision on contested victims' applications for participation, legal representation of victims and their procedural rights](#), 27 November 2015, ICC-02/04-01/15-350, para. 23.

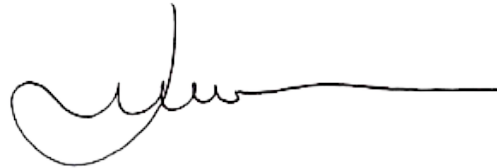
Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua,
Presiding Judge**



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Thursday, 23 May 2019

At The Hague, The Netherlands