

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/14-01/18**

Date: **27 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

Confidential

Prosecution's Observations on "Registry's First Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings" (ICC-01/14-01/18-198)

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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(Participation/Reparation)**

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I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") hereby provides its observations regarding the Registry's First Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings¹ ("Observations").

2. In advance of the decision on the confirmation of charges, the issues raised both by the Registry and the Defence in their joint observation,² are largely premature. While the Warrants of Arrest certainly provide an indication of the prospective formal charges in the case, neither the Warrant of Arrest nor the Document Containing the Charges is dispositive of victim participation determinations. Neither ultimately defines their scope.³

II. CONFIDENTIALITY

3. These Observations are filed "Confidential" as they are in part responsive and refer to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Warrants of Arrest issued by Pre-Trial Chamber II against NGAISSONA and YEKATOM should not be dispositive of victim participation applications.

5. *First*, warrants of arrest are neither binding nor dispositive of the charges ultimately brought for the purposes of a confirmation proceeding or a trial. The relationship of victims to the case should thus be predicated on the confirmation

¹ ICC-01/14-01/18-198.

² ICC-01/14-01/18-208-Conf.

³ See Rule 85(a) of the Rules of Procedure and Evidence

decision which defines the scope of the charges in the case. The Court's jurisprudence in this respect is well established.

6. *Second*, it would be incongruous for the Chamber to limit victim participation to the scope of the Warrant of Arrest where other procedural aspects of the statutory framework expressly allow the Court to consider factors regarding the impact of an Accused's conduct beyond the charges, as such.⁴ For instance, it is entirely probable that the effect of a crime may materialise long after its commission. Thus, the purported victim may have an indirect or secondary relationship to the crime, both temporally and proximately in a manner which is not expressly set out in the warrant, nor need it be.

7. A Chamber may properly consider the harm caused to victims and their families directly, indirectly or less immediately, by an Accused's conduct, and the nature of the unlawful behaviour and means employed to execute the crime(s). All of this may reasonably encompass circumstances and *victims* extrinsic to the charged incidents or events, though related. Delimiting the scope of victimisation narrowly to the terms of the Warrants of Arrest in this case would unfairly infringe the statutory right of victims to have their particular circumstances duly considered by the Court.

8. In respect of the particular circumstances, a broad construction of the relevant victimisation should normatively be inferred from the facts and circumstances described in the Warrants of Arrest. A *causal* relationship need be demonstrated in respect of victim participation determinations, even more so at this early stage (*i.e.*, in advance of formal charges). A plausible inferential nexus between the victim and the alleged conduct of the Suspects is enough.⁵ An inclusive approach would best

⁴ See *e.g.*, Rule 145(1)(c) and (2)(b).

⁵ See Article 68(3) (concerning the "personal interests of the victims") and ICC-01/04-01/06-1432, para. 58 (requiring that victims be "*linked* to the charges") (emphasis added).

approximate the statutory intent. Neither the specific charges nor the time frame alleged in the Warrants of Arrest should be a preclusive determinant at this stage.

9. For instance, to the extent NGAISSONA is alleged to have contributed to an organisation which enlisted and used children under the age of 15 unlawfully, it is immaterial that the purported victim may fall outside of YEKATOM's group. What may be dispositive is that the perpetrators were Anti-Balaka. However, the fact that the victim may not know this or refers to the perpetrators by another name, does not mean *a priori* they are not Anti-Balaka, where other circumstances related by the victim show this or make it reasonably likely.⁶ Similarly, to the extent YEKATOM is alleged to have recruited children who were found at his bases, *including* Sekia and Pissa, does not mean that victims of his recruitment at other bases should be denied victim status, as the scope of YEKATOM's conduct in unlawfully recruiting children is reflected in the breadth of their victimisation itself, even if it occurs in other areas under his control. Similarly, the scope of victimisation concerning the 5 December 2013 attack should not be so delimited, irrespective of the affected areas in Bangui indicated in the Warrant of Arrest, as long as there is a *prima facie* connection to the perpetrator group and location of the alleged crimes.

10. The Prosecution considers that, to the extent that the applications are supported by an inferential nexus to the crimes as appear in the Warrants of Arrest, the applications are appropriate for inclusion. That said, their rejection should not be predicated solely on their relationship to the charges and incidents set out therein, irrespective of the nature of the crimes.⁷

⁶ See, eg., ICC-01/12-01/18-146-tENG, paras. 20-22.

⁷ *Contra*, ICC-01/14-01/18-208-Conf, para. 23.

IV. CONCLUSION

11. For the above reasons, the Prosecution considers that the exclusion of any proposed witness on the basis of the Warrants of Arrest is unfounded and would be premature. Alternatively, the proposed applications reasonably fall within the ambit of the applicable rules.



Fatou Bensouda, Prosecutor

Dated this 27th day of May 2019
At The Hague, The Netherlands