

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 September 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 ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Motion for Disclosure of Witnesses with Dual Status

Source: Defence for Mr. Alfred Rombhot Yekatom

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

The Office of the Prosecutor

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Mr. Abdou Dangabo Moussa

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

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

Me Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

1. Counsel representing Mr. Alfred Rombhot Yekatom (“Defence” and “Mr. Yekatom”, respectively) respectfully move for an order directing the Registry to inform the Defence if any of the witnesses relied upon by the Prosecution in the Document Containing the Charges (“DCC”) have been granted participation as a victim in this case, and if so, to provide the parties with the witness’ application.

RELEVANT PROCEDURAL HISTORY

2. On 5 March 2019, the Pre-Trial Chamber issued its *Decision Establishing the Principles Applicable to Victims’ Applications for Participants*. Under the regime established by this Decision, the applications of those persons who clearly qualify as victims (Group A) are not made available to the parties.¹
3. The Registry subsequently transmitted 74 Group A victim applications to the Chamber on 14 June 2019,² and another 161 applications on 12 July 2019,³ and a third group of 150 applications on 30 July 2019.⁴
4. On 19 August 2019, the Prosecution filed its DCC, identifying the witnesses it is relying on for the confirmation hearing.⁵

ARGUMENT

5. Prior to the confirmation hearing, the Defence wishes to be informed if any of the Prosecution witnesses have the status of victims in this case and if so, to obtain a copy of their application to participate. This information is material to the preparation of the Defence as the witness’ expectation of reparations from Mr. Yekatom may be relevant to the witness’ credibility and the information in

¹ [ICC-01/04-01/18-141](#), para. 41.

² [ICC-01/14-01/18-222](#).

³ [ICC-01/04-01/18-245](#).

⁴ [ICC-01/04-01/18-258](#).

⁵ [ICC-01/04-01/18-282-ConfAnxB1](#).

the application may include some information on the events upon which the witness is relied upon in the DCC.

6. In the *Katanga* case, the dual status of a Prosecution witness relied upon by the Prosecution in the DCC was disclosed to the Defence.⁶ The Chamber went on to find that nothing about the witness' status as victim disqualified the witness from testifying or affected the probative value of the witness' evidence.⁷ The Defence has no objection whatsoever to the participation of dual status victims in his case, or to the Prosecution relying on such an individual as a witness. The Defence simply wants to be informed of such status and receive copy of their application form.
7. In the *Ongwen* case, the Single Judge held that where the Prosecution intends to call a participating victim as a witness, its disclosure should be in accordance with the disclosure and redaction regime in place.⁸ The Defence does not seek to know the identity of a witness, it simply seeks to know if any of the witnesses whose identity has already been disclosed to the Defence also has the status of a victim. Such disclosure would be consistent with the disclosure regime in place in this case.
8. In the *Gbagbo* case, the Prosecutor acknowledged on appeal that her disclosure obligations include victims' application forms for "dual status" individuals.⁹ Here, it appears that the application forms are in the possession of the Registry, rather than the Prosecution. The Registry should therefore be ordered to disclose the application forms of dual status victims to the Defence.

⁶ *Prosecutor v. Katanga & Ngudjolo*, [Decision on the Application for Participation of Witness 166](#), ICC-01/04-01/17-632, 23 June 2008.

⁷ *Prosecutor v. Katanga & Ngudjolo*, [Decision on the Confirmation of Charges](#), 30 September 2008, ICC-01/04-01/17-717, para. 209.

⁸ *Prosecutor v. Ongwen*, [Decision on Disclosure of Victims' Identities](#), ICC-02/04-01/15-471, 17 June 2016, para. 13.

⁹ *Prosecutor v. Gbagbo & Blé Goudé*, [Judgment on the Appeal of Mr. Laurent Gbagbo against the Oral Decision on Redactions of 29 November 2016](#), ICC-02/11-01/15-915-Red, 31 July 2017, para. 56.

9. In the *Ntaganda* case, the Trial Chamber underlined in relation to dual status witnesses that the Prosecution “must obtain and provide the Defence with all the disclosable information in a dual status witness’s application, subject to any applicable disclosure restrictions”.¹⁰ The Chamber directed the Registry to provide access to the Prosecution of all complete victim application forms for dual status witnesses, including supporting documents and, in turn, ordered the Prosecution to then “disclose copies of those forms and supporting documents, redacted as applicable, to the [Defence], in accordance with its disclosure obligations”.¹¹

CONCLUSION

10. The Chamber is respectfully requested to order the Registry to inform the parties of which witnesses that the Prosecution relies upon in the DCC also have the status of victim in this case and to provide the parties with the victim application for that witness.

RESPECTFULLY SUBMITTED ON THIS 2ND DAY OF SEPTEMBER 2019



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¹⁰ *Prosecutor v. Ntaganda*, [Order on the provision of victim application forms of dual status witnesses](#), ICC-01/04-02/06-1060, 17 December 2015, para. 3, quoting *Prosecutor v. Ntaganda*, [Decision on victims’ participation in trial proceedings](#), ICC-01/04-02/06-449, 6 February 2015, para. 40.

¹¹ *Prosecutor v. Ntaganda*, [Order on the provision of victim application forms of dual status witnesses](#), ICC-01/04-02/06-1060, 17 December 2015, para. 3.