

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/14-01/18

Date: 11 June 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***

Confidential

Order for the submission of additional observations by the Prosecutor regarding the 'Registry's First Transmission of Group C Applications for Victims' Participation in Pre-Trial Proceedings' and the 'Registry's First Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings'

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

The Office of the Prosecutor
Fatou Bensouda
James Stewart

Counsel for Alfred Yekatom
Stéphane Bourgon
Mylène Dimitri

Counsel for Patrice-Edouard Ngaissona
Geert-Jan Alexander Knoops

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

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**
Philipp Ambach

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this order for the submission of additional observations by the Prosecutor regarding the ‘Registry’s First Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings’ and the ‘Registry’s First Assessment Report on Applications for Victims’ Participation in Pre-Trial Proceedings’.

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 on 17 November 2018.

2. On 7 December 2018, the Chamber issued the ‘Warrant of Arrest for Patrice-Edouard Ngaïssona’ (together with the ‘Warrant of Arrest for Alfred Yekatom’, the ‘Warrants of Arrest’),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

4. On 5 March 2019, the Chamber issued the ‘Decision Establishing the Principles Applicable to Victims’ Applications for Participation’,⁴ thereby instructing the Registry to, *inter alia*, (i) transmit to the Chamber on a rolling basis, and in unredacted form, all complete victims’ applications for participation, including those for which the Registry could not make a clear determination (the ‘Group C Applications’), and (ii) prepare assessment reports highlighting the difficulties encountered in relation to the assessment of the Group C Applications.⁵

5. On 14 May 2019, the Chamber received the ‘Registry’s First Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings’

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-01/14-01/18-141](#).

⁵ [ICC-01/14-01/18-141](#), para. 41.

(the 'First Transmission of Group C Applications')⁶ and the 'Registry's First Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings' (the 'First Assessment 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 Deadlines"', thereby deciding that the confirmation hearing in the case against Yekatom and Ngaïssona shall commence on 19 September 2019.⁸

7. On 23 May 2019, the Chamber issued the 'Decision on the Legal Representation of Victims'.⁹

8. On 24 May 2019, the Chamber received the 'Joint Defence Observations relating to the "Registry's First Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings" (ICC-01/14-01/18-198)' (the 'Joint Defence Observations').¹⁰

9. On 27 May 2019, the Chamber received the 'Prosecution's Observations on "Registry's First Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings" (ICC-01/14-01/18-198)' (the 'Prosecutor's Observations').¹¹

II. ANALYSIS

10. The Chamber notes that three applications transmitted by the Registry in its First Transmission of Group C Applications contain allegations of rape on or around 5 December 2013 in Bangui, namely a/65014/19, a/65031/19, and a/65090/19. The Chamber further observes that, in the Joint Defence Observations, the Yekatom Defence and the Ngaïssona Defence submit that 'neither rape nor any form of sexual violence [...] are part of the crimes charged in the Warrants of Arrest' and that the applications at issue therefore 'should be rejected'. The Prosecutor's Observations, conversely, do not contain any specific submissions on this issue.

⁶ [ICC-01/14-01/18-197](#), together with 15 confidential, *ex parte*, annexes only available to the Registry.

⁷ [ICC-01/14-01/18-198](#), together with a confidential annex.

⁸ [ICC-01/14-01/18-199](#).

⁹ [ICC-01/14-01/18-205](#).

¹⁰ [ICC-01/14-01/18-208-Conf](#). A public redacted version is also available, *see* [ICC-01/14-01/18-208-Red](#).

¹¹ [ICC-01/14-01/18-212-Conf](#).

11. Although the Prosecutor is, strictly speaking, not restrained by the Warrants of Arrest for the purposes of the confirmation of charges hearing, it cannot be said that the Warrants of Arrest are entirely irrelevant with respect to the scope of the case against Yekatom and Ngaïssona considering that, on the basis of the crimes contained in these warrants, the suspects have been deprived of their liberty on an exceptional basis. While the Prosecutor may still refine and/or expand the exact remit of the case against Yekatom and Ngaïssona in relation to the confirmation of charges hearing, the Chamber notes that, at this stage, the scope of this case is provisionally delimited in a sufficiently precise manner by the Warrants of Arrest.

12. At this stage of the proceedings, the Chamber only has at its disposal the application of the Prosecutor for the issuance of warrants of arrest and the evidence submitted by the Prosecutor in support of that application. The Chamber notes that neither the application nor the supporting evidence refer to the aforementioned allegations of rape on or around 5 December 2013 in Bangui.

13. In this regard, the Chamber considers that it must duly take into account the rights of the Defence. In addition, the Chamber is mindful of the need to avoid raising the expectations of persons who may have suffered terribly, by first admitting them as victims for the purposes of the confirmation of charges hearing, only for these individuals to be possibly excluded at a later stage. While such an outcome is to some extent inherent in the nature and purpose of the confirmation of charges proceedings, it is not desirable and must be avoided or limited to a minimum as much as possible.

14. Therefore, the Chamber is of the view that, for the purposes of its forthcoming decision on Group C Applications as well as its guidance to the Registry in light of its First Assessment Report, it would be assisted by receiving further observations from the Prosecutor on the scope of her case to the extent that she is in a position to do so. More specifically, it would assist the Chamber to know whether it is foreseeable that the Document Containing the Charges in relation to Yekatom and/or Ngaïssona will include allegations of: (i) rape on or around 5 December 2013 in Bangui and (ii) any other crimes not included in the Warrants of Arrest. The Chamber is of the view that, by this stage and in light of the time elapsed since the application for warrants of arrest, the Prosecutor should have established the parameters of the case with sufficient precision and thus be able to provide the requested information.

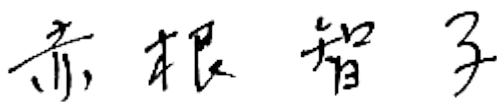
FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Prosecutor to submit further observations as specified in paragraph 14 of the present order by 14 June 2019 at the latest.

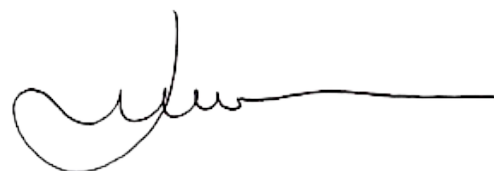
Done in both English and French, the English version being authoritative.



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



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Tuesday, 11 June 2019

At The Hague, The Netherlands