

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **31 March 2020**

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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public Redacted with Confidential Annex

**Public Redacted Version of "Prosecution's Request to Amend Charges pursuant to
Article 61(9) and for Correction of the Decision on the Confirmation of Charges,
and Notice of Intention to Add Additional Charges
(ICC-01/14-01/18-468-Conf)", 31 March 2020**

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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I. INTRODUCTION

1. The Prosecution requests Pre-Trial Chamber II (“Chamber”) to amend the charges of rape confirmed against the Accused NGAISSONA,¹ pursuant to article 61(9) and rule 128 of the Rules of Procedure and Evidence (“Rules”). In particular, the Prosecution requests that the Chamber include and confirm a second instance of rape under counts 40 and 41 of the Document Containing the Charges.²

2. Although the facts and circumstances concerning this second instance were previously charged, the Chamber determined that the supporting evidence did not meet the relevant threshold at confirmation. However, the Prosecution has now obtained additional evidence in the form of a detailed Witness Statement from the victim [REDACTED],³ which meets the requisite standard. The statement, along with its translation in French,⁴ is annexed to this filing.

3. The Prosecution additionally requests a correction of the article number cited in respect of Count 40 as referred to in the Confirmation Decision⁵ to clarify that this count pertains to crimes against humanity, and not to war crimes.

4. Finally, the Prosecution hereby notifies the Chamber, Parties, and Participants of its intention to seek to add additional charges against the Accused YEKATOM, pursuant to article 61(9). These comprise the Accused’s criminal responsibility for the war crimes of rape, in violation of article 8(2)(e)(vi)-1, and sexual slavery, in violation of article 8(2)(e)(vi)-2.⁶

¹ ICC-01/14-01/18-403-Red, pp. 105-106 (“Confirmation Decision”).

² ICC-01/14-01/18-282-AnxB1-Red (“DCC”).

³ CAR-OTP-2126-0058.

⁴ CAR-OTP-2118-6148.

⁵ See ICC-01/14-01/18-403-Red, p. 106.

⁶ An application to this effect is forthcoming, setting out the applicable grounds for the additional charges and their evidentiary basis.

II. CONFIDENTIALITY

5. This filing and its annex are classified as confidential because they consist of, or contain references to the confidential statements of Prosecution witnesses. A public redacted version of the filing is filed concurrently.

III. SUBMISSIONS

A. Amendment of Charge

6. The Chamber should amend the charges pursuant to article 61(9) and rule 128 of the Rules to include the rape of [REDACTED], the second victim previously charged in the DCC.⁷ The Confirmation Decision observed that the factual allegation of the second victim's rape was not established to the relevant standard "[a]bsent any information as to the identity of the victim and/or the perpetrators, and in light of the fact that the evidence regarding the second rape [was] indirect and too vague".⁸ The Prosecution has now obtained a Statement from [REDACTED] which provides a first-hand account of the crime, and dispels these apparent weaknesses. The Statement was obtained between 12 and 14 February 2020.

a. Timeliness

7. The Prosecution's reliance on [REDACTED]'s statement in support of this application is reasonable and justified in the circumstances. The Prosecution only received lead information on [REDACTED] in June 2019, [REDACTED]⁹ [REDACTED].¹⁰ Prior to these two June 2019 interviews, the Prosecution did not

⁷ See ICC-01/14-01/18-282-AnxB1-Red, para. 386, and p. 147 (description of Counts 40 and 41).

⁸ ICC-01/14-01/18-403-Red, para. 107.

⁹ See [REDACTED].

¹⁰ See [REDACTED].

have any direct leads on victims of sexual violence from the Anti-Balaka's 5 December 2013 attack on Bossangoa. [REDACTED].¹¹

8. Having become aware in June 2019 that [REDACTED] was a potential second victim of sexual violence, the Prosecution did not have sufficient time to interview her and to perform other necessary steps to be able to integrate her evidence into the DCC ahead of the 19 August 2019 deadline. *Firstly*, it was necessary to make arrangements to interview the witness in [REDACTED]. *Secondly*, [REDACTED]. Additionally, it was necessary for the Prosecution to translate the witness's Statement into French, in order to be able to rely upon it in the DCC.

b. Relevant Facts and Circumstances

9. [REDACTED].¹² [REDACTED].¹³ [REDACTED]¹⁴ [REDACTED].¹⁵
[REDACTED].¹⁶ [REDACTED].¹⁷ [REDACTED].¹⁸

c. Lack of Prejudice

10. Amending the charges now, before the start of trial, is specifically contemplated in article 61(9).¹⁹ Moreover, doing so at the earliest opportunity will cause no appreciable prejudice to the Defence. On the contrary, it would provide the earliest possible notice and clarity in the scope of the charges on which the Accused

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ "After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges." Article 61(11) makes clear that the Presidency's constitution of a Trial Chamber does not impede the operation of article 61(9): "Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings." (emphasis added)

will be tried, as well as advance the expediency and efficiency of the proceedings. As noted, the fact that Anti-Balaka elements raped (at least) a second woman in the 5 December 2013 attack on Bossangoa was pled and charged in the DCC. Thus, the victim's Statement simply further substantiates a material fact of which the Defence has had ample notice.

B. Correction to the Confirmation Decision

11. Additionally, the Prosecution requests the Chamber to correct Count 40, as referenced in the Confirmation Decision. This count currently reads as “**rape**, pursuant to and prohibited by article 8(2)(e)(vi) of the Statute [...]”.²⁰ However, from the preceding paragraphs referring to crimes against humanity,²¹ and from the formulation of Count 40 in the DCC,²² it would seem that the Chamber intended to refer instead to article 7(1)(g), rape as a crime against humanity.

C. Notice of Intention to Add Additional Charges

12. The Prosecution provides notice of its intention to seek to add additional charges against the Accused YEKATOM, pursuant to article 61(9). These limited charges comprise the war crimes of rape and sexual slavery, in violation of articles 8(2)(e)(vi)-1 and 8(2)(e)(vi)-2 respectively. The charges relate to two victims and fall within the temporal and geographic scope of the confirmed charges. Further details will be provided in the application itself.²³

13. The Prosecution anticipates being in a position to file its request for the addition of these two charges and to disclose all supporting material promptly, once all necessary security measures are implemented in accordance with article 68(1).

²⁰ ICC-01/14-01/18-403-Red, p. 106. (emphasis added)

²¹ See ICC-01/14-01/18-403-Red, p. 105 (“Ngaïssona is also criminally responsible for the crimes against humanity of: ...”).

²² See ICC-01/14-01/18-282-Anx-B1-Red, p. 91 (“Count 40 – Rape (article 7(1)(g))”, mirrored at p. 147.

²³ The implementation of appropriate security measures for the relevant witnesses are in progress.

IV. CONCLUSION

14. For the above reasons, the Prosecution requests the Chamber to: (1) amend Counts 40 and 41 of the charges against the Accused NGAISSONA to include and confirm the second charged instance of rape (*i.e.* of [REDACTED]), as described in paragraph 9 above; (2) correct count 40 as confirmed, to clarify that the charge consists of rape as a crime against humanity under article 7(1)(g); and (3) take notice of its intention to add additional charges against the Accused YEKATOM.



Fatou Bensouda, Prosecutor

Dated this 31st day of March 2020
At The Hague, The Netherlands