

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **30 October 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Defence Observations on the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (ICC-01/14-01/18-688)

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

Ms. Fatou Bensouda

Mr. James Stewart

Mr. Kweku Vanderpuye

Counsel for Mr. Yekatom

Me Mylène Dimitri

Mr. Thomas Hannis

Counsel for Mr. Ngaissona

Me Geert-Jan Alexander Knoops

Legal Representatives of Victims

Mr. Dmytro Suprun

Mr. Abdou Dangabo Moussa

Ms. Elisabeth Rabesandratana

Mr. Yaré Fall

Ms. Marie-Edith Douzima-Lawson

Ms. Paolina Massidda

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**

INTRODUCTION

1. Counsel representing Mr. Alfred Rombhot Yekatom (the “Defence”) respectfully submit their observations on the *First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings (“Report”)*¹ and request twelve (12) applications be dismissed.
2. The personal harms reported therein are resulted from an incident outside the temporal, geographical and/or material parameters of the present case. Accepting these applications would amount to an impermissible expansion of the parameters set out in the Confirmation Decision and a violation of Mr. Yekatom’s rights to a fair trial.

PROCEDURAL BACKGROUND

3. On 5 March 2019, the Pre-Trial Chamber set out the admission procedure for victims’ participation in the present case.² Where the Registry could not make a clear determination for any reasons on an applicant’s eligibility to participate, the application is classified as Group C.³ The Registry shall disclose the applications and prepare assessment reports, highlighting the difficulties encountered.⁴ The Defence may submit any observations within 10 days of receiving the applications.⁵
4. On 19 August 2019, the Prosecution notified its *Document Containing the Charges (“DCC”)*.⁶
5. On 11 December 2019, following the confirmation hearing between 19 September and 11 October 2019,⁷ and additional submissions provided by the

¹ [ICC-01/14-01/18-688](#).

² [ICC-01/14-01/18-141](#).

³ [ICC-01/14-01/18-141](#), para. 41(i)

⁴ [ICC-01/14-01/18-141](#), para. 41(iv) and 41(iii).

⁵ [ICC-01/14-01/18-141](#), para. 41(viii).

⁶ [ICC-01/14-01/18-282-Conf-AnxB1](#). Public redacted version: [ICC-01/14-01/18-282-AnxB1-Red](#).

parties, the Pre-Trial Chamber issued its *Decision on the Confirmation of Charges Against Alfred Yekatom and Patrice-Edouard Ngaissona* (“Confirmation Decision”), confirming some of the charges.⁸

6. On 19 March 2020, the Trial Chamber endorsed the victim application procedure adopted by the Pre-Trial Chamber.⁹
7. On 16 July 2020, after receiving the Registry’s update on the victim application for participation,¹⁰ the Trial Chamber set the end of the Prosecution’s presentation of evidence as the deadline for the transmission of victim applications by the Registry.¹¹
8. On 19 October 2020, fifteen (15) Group C applications were transmitted to the Chamber and the parties.¹² Except for a/65196/19, all applications were previously admitted by the Pre-Trial Chamber for participation purposes.¹³ They are (re)classified to Group C because it is unclear whether the reported personal harm was resulted from an incident falling within the temporal, geographical and material parameters of the case as confirmed by the Pre-Trial Chamber.¹⁴

SUBMISSIONS

9. The Defence submits that the Confirmation Decision shall be interpreted with an expansive approach in the present case. Therefore, fourteen out of the fifteen Group C applications should be rejected for the reasons set out below.

A. Geographical scope of the case

i. Boeing and Cattin (Category 1)

⁷ [ICC-01/14-01/18-T-011-CONF-ENG](#). Public redacted version: [ICC-01/14-01/18-T-011-Red-ENG](#).

⁸ [ICC-01/14-01/18-403-Conf-Corr](#), para. 240. Public redacted version: [ICC-01/14-01/18-403-Red-Corr](#).

⁹ Scheduling order, para. 8(iv).

¹⁰ ICC-01/14-01/18-470-AnxIII-Red2.

¹¹ [ICC-01/14-01/18-589](#), para. 20.

¹² ICC-01/14-01/18-687 with Annexes 1 to 15.

¹³ [ICC-01/14-01/18-688](#), fn. 19.

¹⁴ [ICC-01/14-01/18-688](#), paras. 15-16.

10. The Registry seeks clarification as to whether the geographical scope of the 5 December 2013 events mentioned in the Confirmation Decision comprises arrondissements of Bangui and areas neighboring Bangui.¹⁵
11. The Defence concurs with the Registry that the factual findings developed by the Pre-Trial Chamber in the section of the 5 December 2013 attack only refer to two locations, namely Cattin and Boeing.¹⁶ The term of “Bangui and adjacent neighbourhoods” previously used in the arrest warrant against Mr. Yekatom¹⁷ is removed from the Confirmation Decision. For the trial stage, no findings in the Confirmation Decision would allow for the interpretation that the geographical scope of Counts 1-8 may include “all areas commonly considered to be part of Bangui or those neighbouring Bangui”¹⁸ beside Boeing and Cattin.
12. As the Registry pointed out, the six applications in Category 1 claim harms that are not suffered in Boeing or Cattin.¹⁹ Notably, the Taretara, Combatant, Boy Rabe, Gobongo, and PK12 areas do not share any boarder with Cattin or Boeing and are on the other side of Bangui.
13. Further, the applicants made no reference to Mr. Yekatom or his elements as the alleged culprits. There simply is no link between the prejudice described and the charges against Mr. Yekatom.
14. The Defence therefore requests the Chamber reject applications a/65061/19, a/65082/19, a/65107/19, a/65137/19, a/66228/19 and a/65035/19.²⁰
15. In this regard, the Defence also notes that the applicant in a/65035/19 claims to have been raped. Whereas neither rape nor any form of sexual violence are part

¹⁵ [ICC-01/14-01/18-688](#), para. 22.

¹⁶ [ICC-01/14-01/18-403-Red-Corr](#), paras. 245-267.

¹⁷ [ICC-01/14-01/18-1-Red](#), para. 18(a).

¹⁸ [ICC-01/14-01/18-227-Red](#), para. 26 setting out the geographical scope for the pre-trial stage.

¹⁹ [ICC-01/14-01/18-688](#), fn. 21.

²⁰ [ICC-01/14-01/18-687-Conf-Anx2-Red](#); [ICC-01/14-01/18-687-Conf-Anx3-Red](#); [ICC-01/14-01/18-687-Conf-Anx4-Red](#); [ICC-01/14-01/18-687-Conf-Anx5-Red](#); [ICC-01/14-01/18-687-Conf-Anx15-Red](#); [ICC-01/14-01/18-687-Conf-Anx1-Red](#).

of the charges against Mr. Yekatom, the Defence submits that any victim application referring to such crimes, including that of a/65035/19 should be rejected on the ground of exceeding the material scope of the case alone.

ii. PK9-Mbaïki axis (Category 2)

26. The Registry requests clarification regarding the PK9-Mbaïki axis and suggests to include *“within the parameters of the Case all those locations in the Mbaïki sous-préfecture which are not along the PK9-Mbaïki axis but in its vicinity such as Boukoko or Mbata”*.²¹
27. Such expansion would render moot the geographical scope set out by the Confirmation Decision.
28. When defining the PK9-Mbaïki axis, the DCC specifically refers to “the approximately 110 km stretch of road” between the PK9 bridge and Mbaïki,²² and lists the villages of Sekia, Ndangala, Bimon, Kapou, Bossongo and Pissa,²³ all of which scattered on the said stretch of road.
29. Further, “Mbaïki” referred to by the Confirmation Decision in this context is exclusively the capital city of Lobaye,²⁴ not the *sous-préfecture*. The Registry’s proposal to expand the meaning of “Mbaïki” to also cover the larger administrative area of the same name would add unnecessary vagueness to the charges.
30. In light of this, the Defence submits that the geographical scope of the PK9-Mbaïki axis should be limited to the stretch of the road connecting two locations and the villages located thereon, and exclude any locations past the city of Mbaïki.

²¹ [ICC-01/14-01/18-688](#), para. 26.

²² DCC, para. 336.

²³ DCC, para. 337, incorporated by reference in Confirmation Decision, operative paragraph (iii)(b) in relation to Count 25.

²⁴ Confirmation Decision, para. 131. See also DCC, para. 335.

31. The Defence therefore requests the Chamber reject application a/66138/19 which pertains to a location past the Mbaïki town,²⁵ and takes no position as to a/66150/19.²⁶

B. Temporal scope concerning child soldiers (Category 3)

32. The Registry proposes to expand the temporal scope of Count 29 so as to grant the application of any former child soldier who claims to have been used or recruited between September 2013 and December 2014.

33. The temporal scope of the confirmed charge pertaining to the enlistment and use of child soldiers is between December 2013 and August 2014.²⁷ When enumerating the charges, the Confirmation Decision specifies the timeframe of “at least December 2013 and August 2014” and refers to the DCC which sets the same.²⁸

34. This timeframe clearly excludes any period beyond August 2014.²⁹ Hence, any applications reporting recruitment and use of child soldiers after August 2014 and up to December 2014 should not be admitted.

35. The Defence therefore requests the Chamber rejects a/65196/19.³⁰

C. Temporal and geographical scope of the case (Category 4)

36. The Registry seeks the Chamber’s guidance regarding the timeframe it should apply with regard to the scope of the 5 December 2013 attack in Bangui.

37. The Defence submits that the 5 December 2013 attack as described in the Confirmation Decision lasted for one day.

²⁵ [ICC-01/14-01/18-687-Conf-Anx10-Red.](#)

²⁶ [ICC-01/14-01/18-687-Conf-Anx12-Red.](#)

²⁷ [ICC-01/14-01/18- 403-Red-Corr](#), para 144.

²⁸ [ICC-01/14-01/18- 403-Red-Corr](#), p. 105 referring to [ICC-01/14-01/18-282-AnxB1-Red](#), paras. 359 and 360.

²⁹ [ICC-01/14-01/18- 403-Red-Corr](#), para. 144 and. p. 105

³⁰ [ICC-01/14-01/18-687-Conf-Anx7-Red.](#)

38. Even though the arrest warrant lacked a specific end dates of the alleged criminal conduct associated with the 5 December 2013 attack, the Confirmation Decision has clarified the matter for the purpose of the trial proceedings:

Hostilities between the Anti-balaka and the Seleka culminated on 5 December 2013 in a coordinated attack on the capital Bangui (“the 5 December 2013 attack”).

39. The Pre-Trial Chamber does not mention a time period but refers specifically to the date of 5 December 2013. This accuracy is also illustrated by the abbreviation attributed to the Pre-Trial Chamber. Had the Pre-Trial Chamber intended to extend the timeframe beyond 5 December 2013, there would have been indication to that effect.
40. The Defences therefore requests the Chamber rejects applications a/66140/19, a/65138/19, a/66217/19 and a/66171/19, the temporal and geographical scope of which fall entirely outside the scope of the case.³¹

D. Confinement of civilians in the PK5 enclave of Bangui (Category 5)

41. This category concerns Yaloké and Berberati. Since neither location concerns Mr. Yekatom and the charges related to these locations were not confirmed, the Yekatom Defence takes no position on applications a/65742/19 or a/65958/19.³²

E. Mr. Yekatom’s rights to be informed

42. In principle, the Defence submits that the material, temporal and geographical scope of the case as defined in the Confirmation Decision should be strictly interpreted for the assessment of the victim applications. This is in line with Mr. Yekatom’s right to be promptly and in detail informed of the nature, cause and content of the charges against him.

³¹ [ICC-01/14-01/18-687-Conf-Anx11-Red](#); [ICC-01/14-01/18-687-Conf-Anx6-Red](#); [ICC-01/14-01/18-687-Conf-Anx14-Red](#); [ICC-01/14-01/18-687-Conf-Anx13-Red](#).

³² [ICC-01/14-01/18-687-Conf-Anx8-Red](#); [ICC-01/14-01/18-687-Conf-Anx9-Red](#).

43. A broad and expansive approach to the interpretation of the material, temporal and geographical parameters of the confirmed charges contravenes the principal of legal certainty.³³ It undermines the clarity and detail of the factual allegations which would support the legal element of the crimes charged.³⁴ Whereas Mr. Yekatom takes notice of the allegations against him from any interpretation of the confirmed charges, the adoption such approach will inevitably and impermissibly jeopardise Mr. Yekatom's ability to efficiently prepare his defence.
44. Thus, a victim should only be allowed to participate in the proceedings if the material, temporal and geographical details described in a victim application precisely match the parameters set in the Confirmation Decision as this is the framework for the trial to come.

RELIEF SOUGHT

45. In light of the above, the Defence respectfully requests Trial Chamber V to:

DISMISS the victim applications a/65061/19, a/65082/19, a/65107/19, a/65137/19, a/66228/19, a/65035/19, a/66138/19, a/65196/19, a/66140/19, a/65138/19, a/66217/19, and a/66171/19; and

REJECT the expansion of the geographical and temporal scope in categories 1, 3, 4 and 5 as set out in paragraph 17 of the *Report*.

³³ This principle is enshrined in Articles 67(1)(a), 67(1)(b) and 61(3)(a) of the Statute, and further guaranteed by Rule 121(3) of the Rules, and Regulation 52(b) of the Regulation of the Court.

³⁴ [ICC-01/14-01/18-585](#), para. 18 referring to *Prosecutor v. Lubanga*, [Judgement on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision on trial Chamber I of 14 July 2009](#) entitled "Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court", 8 December 2009, ICC-01/04-01/06-2205, para. 90.

RESPECTFULLY SUBMITTED ON THIS 30th DAY OF OCTOBER 2020³⁵



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom



Mr. Thomas Hannis
Associate Counsel for Mr. Yekatom

The Hague, the Netherlands

³⁵ The assistance of Legal Interns Ms. Camille Gillain of France and Ms. Audrey Gagne Breton of Canada in the preparation of this response is gratefully acknowledged.