

Opening of the trial in the Yekatom and Ngaïssona case at the ICC 16 February 2021

WHO ARE MR YEKATOM AND MR NGAÏSSONA AND WHAT ARE THEY ACCUSED BEFORE THE ICC?

[Mr Yekatom and Mr Ngaïssona](#) are both nationals of the Central African Republic (CAR) and are currently detained at the detention centre of the International Criminal Court (ICC), in The Hague (Netherlands). Mr. Yekatom was transferred to the Court by the CAR authorities on 17 November 2018 and Mr. Ngaïssona by the French authorities on 23 January 2019.

Between September 2013 and December 2014, an armed conflict not of an international character was ongoing in the territory of the Central African Republic between the Seleka and the Anti-Balaka, both constituting organised armed groups at that time; and that the Anti-Balaka carried out a widespread attack against the Muslim civilian population, perceived – on the basis of their religious or ethnic affiliation – as complicit with, or supportive of the Seleka and therefore collectively responsible for the crimes allegedly committed by them.

In this context, Mr Yekatom is accused of: (i) the war crimes of murder, cruel treatment, torture, directing attacks against the civilian population, directing attacks against a building dedicated to religion, conscription, enlistment and use of children under the age of 15 years to participate actively in hostilities, and displacement; and (ii) the crimes against humanity of murder, deportation, forcible transfer of population, imprisonment and other forms of severe deprivation of physical liberty, torture, persecution and other inhumane acts. The alleged crimes were committed in various locations in the CAR (Bangui, including Cattin; Boeing; Yamwara School and the PK9-Mbaïki Axis). Mr. Yekatom would have committed these crimes jointly with others or through other persons or, in the alternative, ordered the commission of these crimes.

Mr Ngaïssona is accused of: (i) the war crimes of directing attacks against the civilian population, murder, torture, cruel treatment, rape, directing attacks against buildings dedicated to religion, displacement of the civilian population, destroying the property of an adversary, pillaging; and (ii) the crimes against humanity of murder, deportation, forcible transfer of population, imprisonment and other forms of severe deprivation of physical liberty, torture, rape, persecution and other inhumane acts. The alleged crimes were committed in various locations in the CAR (Bangui, including Cattin; Boeing; Yamwara School; Bossangoa and the PK9-Mbaïki Axis). Mr Ngaïssona would have aided, abetted or otherwise assisted in the commission of the above-mentioned crimes or, in the alternative, contributed in any other way to their commission by a group of persons acting with a common purpose.

WHEN WILL THE TRIAL AGAINST MR YEKATOM AND MR NGAÏSSONA OPEN? WHAT CAN BE EXPECTED AND HOW LONG WILL IT LAST?

The trial in the Yekatom and Ngaïssona case will open before ICC Trial Chamber V on 16 February 2021 at 9:30 a.m. (The Hague local time). Due to the current situation linked to Covid-19, some of the hearings participants will take part via video-link.

The trial will open with the reading of the charges against the two accused persons. The Judges will verify that the accused persons understood the nature of the charges in a language they speak. The Judges will ask them whether they make an admission of guilt or plead not guilty to the charges.

During these hearings, the Prosecution, the Legal Representatives of the Victims and the Defence of Mr Ngaïssona will deliver their opening statements. The Chamber granted six hours to the Prosecution, three hours to the Legal Representatives of the Victims, to be divided between them, and three hours to the Ngaïssona Defence. The Defence of Mr Yekatom will make its opening statements at a later stage of the proceedings, at the beginning of the presentation of its evidence.

The Court's Prosecutor Fatou Bensouda and Senior Trial Lawyer Kweku Vanderpuye will take the floor for opening statements. The Legal Representatives of the Victims Dmytro Suprun, Abdou Dangabo Moussa, Elisabeth Rabesandratana, Yaré Fall, and Marie-Edith Douzima-Lawson will speak on behalf of the victims. Mr Yekatom is represented by Principal Counsel Mylène Dimitri and Mr Ngaïssona by Principal Counsel Geert-Jan Knoops and their respective teams.

The trial is then scheduled to resume on 15 March 2021, when the Prosecution will begin to present its evidence and call its witnesses before the judges. The Prosecution's case is likely to take some time, and after it is finished, the Legal Representatives of Victims may submit observations. Finally, the Defence will have the opportunity to make opening statements, present its case and call witnesses.

While the Prosecution must prove the guilt of the accused, the Trial Chamber will convict someone only if it is satisfied that the charges have been proven beyond reasonable doubt.

At the end of the trial hearings, the Judges will render their judgement within a reasonable period of time. The verdict will be read out in public and will either acquit or convict the accused. If the accused persons are convicted, a sentence will be imposed on them. The Prosecution and the Defence may appeal the judgement and/or the decision on sentencing before the ICC Appeals Chamber.

The trial may last several years, depending on the complexity of the case and challenges that may arise. Judges ensure that the rights of all parties and participants are respected. Cases involving war crimes and crimes against humanity tend to be complex, because of the range of incidents and extended time period involved in the charges, as well as other logistic and linguistic measures that have to be taken to protect the accused rights, protect the witnesses and facilitate the victims' participation. But the Judges are committed to expedite the trial as much as possible.

WHAT ARE THE RIGHTS GRANTED TO THE ACCUSED PERSONS DURING THE TRIAL?

Mr Yekatom and Mr Ngaïssona are presumed innocent and are entitled to several rights during the trial. Any accused person at the ICC benefits from them and they include, to mention a few:

- to be defended by the counsel (lawyer) of his choice, present evidence and witnesses of his own and to use a language which he fully understands and speaks;
- to be informed in detail of the charges in a language which he fully understands and speaks;
- to have adequate time and facilities for the preparation of his defence and to communicate freely and in confidence with his Counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecutor disclose to the Defence evidence in her possession to the defence or control which he believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

IF MR YEKATOM AND MR NGAÏSSONA, OR ONE OF THEM, ARE FOUND GUILTY AFTER THE TRIAL, WHAT PENALTIES MAY BE IMPOSED BY THE COURT?

When an accused person is declared guilty at the end of a trial, the ICC Judges may impose a prison sentence, to which may be added a fine or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime committed. The maximum sentence is 30 years. However, in extreme cases, such as the specific circumstances of the accused conviction, the Court may impose a term of life imprisonment. There is no death penalty at the ICC. The Prosecution and the Defence can appeal the sentencing decision to the ICC Appeals Chamber.

Persons convicted of crimes under the jurisdiction of the ICC do not serve their sentence at the ICC Detention Centre in The Hague as the facility is not designed for long-term imprisonment. Convicted persons are therefore transferred to a prison in a State designated by the Court from a list of States which have indicated their willingness to allow convicted persons to serve their sentence there.

ARE VICTIMS PARTICIPATING IN THIS TRIAL AND HOW?

Yes, the judges allowed 325 victims to participate in the trial. However, this number will continue to evolve as the judges have allowed victims to submit requests to participate until the OTP presentation of evidence is completed. Throughout this period, the Court's Victims Participation and Reparations Section (VPRS) will continue to assess and transmit victims' requests to the judges. The Section is also reassessing the requests of victims authorized to participate at the pre-trial phase in the light of the confirmation of charges decision. Ultimately, the judges will decide who can be allowed to participate in the trial.

In this case, the judges appointed two separate teams of lawyers to represent two groups of victims authorized to participate: the group of former child soldiers, on the one hand, and the victims of other crimes on the other. The judges indeed noted that the persons belonging to these two groups were, in general, on opposing sides during the events which took place at the relevant time in CAR. Therefore their interests diverge to such an extent that they are represented by different lawyers:

- The group of victims of former child soldiers is represented by Counsel Dmytro Suprun
- The group of victims of other crimes is represented by five lawyers working in one single team: Counsels Marie-Edith Douzima Lawson, Abdou Dangabo, Paolina Massidda, Yaré Fall and Elisabeth Rabesandratana.

These lawyers only represent victims who are already authorized to participate in the proceedings. They are therefore victims who have suffered from the crimes being prosecuted in this case i) who wish to have a voice in the proceedings, ii) who requested it, and iii) whose request was accepted by the judges. Other victims who may also wish to participate in the proceedings in this case should contact the Victims Participation and Reparations Section by email at: VPRS.Information@icc-cpi.int or the ICC Office in Bangui: info.cpi-rca@icc-cpi.int and + 236 72 30 34 02.

Subject to certain reservations, victims participating in the proceedings may exercise the following rights through their legal representatives:

- Access the case file, including decisions of the Chamber, written submissions from the parties, participants and the Registrar, transcripts and evidence communicated by the parties and forwarded to the Chamber;
- Receive notification of the documents filed;
- Attend hearings before the Chamber and ask to intervene if necessary;
- Submit written submissions on any legal or procedural issues concerning their personal interests;
- Ask questions of witnesses or experts who testify in court.

CAN VICTIMS RECEIVE REPARATIONS?

At the end of a trial, the ICC Trial Chamber may then order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty.

Reparations are measures ordered by judges to attempt to address - to the extent possible and within the limits of available funds - the suffering caused by serious crimes that have been committed and recognized in the judgments of the ICC Chambers. Reparations aim to recognize the suffering caused to the victims and the responsibility of those who caused such suffering.

Reparation measures can take different forms before the ICC, such as return of property, rehabilitation measures (such as care, support for housing, or vocational training), measures to promote reconciliation within divided communities or symbolic measures such as apologies or commemorations, or monetary compensation. This wide range gives the Court the opportunity to identify the most suitable form of reparation while taking into account the wishes of the victims and the impact of these measures on the affected communities. The Court may request the [Trust Fund for Victims](#) to participate in the implementation of reparations orders, including when the convicted person does not have sufficient financial resources for this purpose.

The proceedings before the International Criminal Court take place over several years, in particular because of their complexity and the scale of the crimes before it. It is important to note that it is only at the end of a trial, if the accused person is convicted by the judges, that the reparations phase can be initiated. The judges then issue a reparation order against the person convicted of the crime(s). There can only be reparations for crimes recognized in the Court's judgment convicting the accused.

WHAT ARE THE CONDITIONS OF DETENTION AT THE ICC DETENTION CENTRE?

The ICC Detention Centre is located within a Dutch prison complex in Scheveningen - on the outskirts of The Hague, in the Netherlands. It functions to hold in safe, secure and humane custody those persons detained under the authority of the ICC.

The Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated.

Detained persons are presumed innocent until proven guilty. If convicted of crimes under the ICC's jurisdiction, they do not serve their sentences at the ICC Detention Centre as it is not a facility made for the purposes of managing a regime of convicted prisoners; they are transferred to a prison outside of The Netherlands to serve their time, subject to an agreement between the ICC and the State of enforcement.

WHO ARE THE JUDGES SITTING IN THIS CASE?

ICC Trial Chamber V is composed of Judge Bertram Schmitt (Presiding judge), Judge Péter Kovács, and Judge Chang-ho Chung. The ICC Judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity. The Judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights.

WHAT IS THE STATUS OF AND WHAT IS THE FOCUS OF THE INVESTIGATIONS OF THE ICC OFFICE OF THE PROSECUTOR IN CAR?

On 30 May 2014, in the wake of a violent conflict between the Séléka and the anti-Balaka armed groups, the authorities of the Central African Republic (CAR) referred the situation in the country to the ICC Office of the Prosecutor, requesting an investigation into all crimes committed on its territory since 1 August 2012. On 24 September 2014, the Prosecutor announced the opening of an investigation – the ICC's second investigation in CAR.

The Prosecutor's Office has been focusing on allegations of ICC crimes committed by both sides of the conflict - meaning by the armed groups known as, or linked to, the Séléka and the anti-Balaka.

On the basis of evidence collected during the Prosecution's investigation, three persons have been arrested thus far, facing charges of alleged atrocity crimes. It concerns:

- Mr Alfred Yekatom, member of the anti-Balaka, arrested in November 2018, allegedly responsible for crimes against humanity and war crimes committed in the Central African Republic between December 2013 and August 2014; and

- Mr Patrice-Edouard Ngaïssona, member of the anti-Balaka, arrested in December 2018 allegedly responsible for crimes against humanity and war crimes committed in the Central African Republic between September 2013 and December 2014. The trial against Mr Yekatom and Mr Ngaïssona is starting on 16 February 2021.
- Mr Mahamat Saïd Abdel Kani, member of the Séléka, arrested on 20 January 2021, suspected of war crimes and crimes against humanity in CAR, between April and November 2013. The confirmation of charges hearing for Mr Saïd has been scheduled for 5 October 2021.

Beyond these cases, the investigations of the ICC Prosecutor in CAR continue. The ICC Office of the Prosecutor recognizes that it will not prosecute everyone responsible for crimes in the CAR. The Office of the Prosecutor of the ICC therefore aims to complement the work of the national authorities and by the Special Criminal Court in CAR.