



Original: English

No.: ICC-01/14-01/18
Date: 11 February 2026

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

Public redacted version of "Prosecution's Response to the Ngaissona Defence Request for Leave to Appeal the "Decision regarding the Registry's First Assessment Report on Applications for Victim Participation, the Registry's First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims' procedural position" (ICC-01/14-01/18-227-Conf)", 2 July 2019, ICC-01/14-01/18-236-Conf

Source: Office of the Prosecutor

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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Counsel for Alfred Yekatom

[REDACTED]

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

[REDACTED]

Counsel Support Section

Victims and Witnesses Unit

[REDACTED]

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Pre-Trial Chamber II (“Chamber”) should reject the NGAISSONA Defence’s request for leave to appeal¹ the “Decision regarding the Registry’s First Assessment Report on Applications for Victim Participation, the Registry’s First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims’ procedural position.”² *First*, the issue alleged does not arise from the Decision; *second*, even if this were the case, it does not constitute an appealable issue³; and *third* the Request does not otherwise meet the cumulative requirements of article 82(1)(d).⁴

II. CONFIDENTIALITY

2. This Response is filed as “Confidential” pursuant to regulation 23*bis* of the Regulations of the Court as it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A. The sole Issue the Request identifies does not arise from the Decision

3. The sole issue identified in the Request — “whether the Chamber erred by issuing the Impugned Decision without allowing the Defence the opportunity to present a response to the Prosecution Request”⁵ — does not arise from the Decision.

4. By its terms, the Decision disposes only of the discrete matter of accepting or rejecting certain victims’ applications at this stage of the proceedings. Whether

¹ ICC-01/14-01/18-233-Conf (“Request”).

² ICC-01/14-01/18-227-Conf (“Decision”).

³ ICC-01/14-01/18-65-Conf, para. 13 (internal citations omitted).

⁴ ICC-01/14-01/18-65-Conf, para. 12 (internal citations omitted).

⁵ ICC-01/14-01/18-233-Conf, para. 16 (“Issue”).

“regulation 86(7) of the Regulations of the Court [...] does not allow for a response by the Defence”⁶, as set out in a Chamber email to the Defence and effectively what the Request seeks to challenge here, is *not* the subject of the Decision.⁷

5. On this basis alone, the Chamber should reject the Request.

B. The Request does not identify an ‘appealable issue’

6. Assuming the Issue arises from the Decision — which it does not — the Request fails to establish that it is an ‘appealable issue’ within the contemplation of article 82(1)(b). The Request asserts that the Decision fails adequately to “take into account the rights of the Defence” contrary to the principle of “*audi alteram partem*”, despite purporting to do so.⁸ However, this merely disagrees with the Decision on a collateral question of whether the Chamber indeed took appropriate account of the rights of the Defence – bearing in mind that the Defence had *already* provided substantive observations on the victims’ applications in question.⁹

7. Alternatively, the Request simply argues with the procedure the Chamber applied in arriving at a determination on the victims’ applications. Neither transforms the matter into an appealable issue. Accordingly, the Request must fail.

C. The Request fails to meet the remaining article 82(1)(d) criteria

8. Even if the Request identifies an appealable issue, it does not meet the cumulative requirements of article 82(1)(d).

⁶ See ICC-01/14-01/18-208- Conf.

⁷ See ICC-01/14-01/18-233-Conf, para. 28 (referencing an ‘[e]mail sent to the Defence on 28 June 2019, at 10:14, by [REDACTED] on behalf of the Chamber’).

⁸ ICC-01/14-01/18-233-Conf, paras. 20, 21.

⁹ ICC-01/14-01/18-208-Conf, paras. 22-23 (raising issues of which the Chamber properly sought further observations from the Prosecution).

a. The fair and expeditious conduct of the proceedings are not affected

9. The Request is conclusory and does not substantiate that the Decision (*i.e.*, the determination of the victims' applications and guidance issued by the Chamber to the Registry concerning its identification of the proper scope of prospective victim participants¹⁰) will inevitably, or even reasonably affect the fairness or the outcome of the confirmation proceedings, much less a trial.¹¹

b. The immediate resolution by the Appeals Chamber is unwarranted

10. The immediate resolution by the Appeals Chamber is not warranted. The Defence seeks effectively to require the Chamber's consideration of the matters raised in the Defence Response.¹² However, this would not materially advance the proceedings, but instead only work to delay them since the substantive arguments raised therein are legally incorrect.¹³

11. Contrary to the Defence Response¹⁴, the Court's jurisprudence does not preclude consideration of the *actus reus* of one crime under article 7(1) as *evidence* of the commission of another under that provision. For example, conduct comprising the torture of one victim, if also intended to coerce the displacement of their family or even community, could comprise proof of their forcible transfer. Similarly, the regulatory framework does not bar the use of conduct comprising rape or sexual violence to substantiate persecutory crimes under article 7(1)(h).

¹⁰ ICC-01/14-01/18-227-Conf, para. 24, 31, and pp. 14-15 (instructing the Registry to adopt a flexible approach in assessing victims applications ; and disposing of the 15 victims applications as falling within the scope of the case).

¹¹ ICC-01/14-01/18-233-Conf, paras. 25, 26.

¹² ICC-01/14-01/18-231-Conf ("Defence Response").

¹³ ICC-01/14-01/18-231-Conf, paras. 12-17 and 22-23 (arguing that "in the instant case, it is clear that the drafters intended the crime of rape to be a distinct war crime and/or crime against humanity, as opposed to the other crimes mentioned in articles 7 and 8 of the Statute"; and "pursuant to the Chamber's jurisprudence, it should not be permissible to charge an alleged conduct other than as the specific crime designed under these provisions").

¹⁴ ICC-01/14-01/18-231-Conf, para. 11, *et seq.*

12. Moreover, by its terms article 7(1)(h) requires only proof of conduct committed “*in connection with*”¹⁵ an underlying article 7(1) act or a crime within the Court’s jurisdiction, together with the requisite discriminatory intent¹⁶, and other contextual elements.¹⁷ Proof of a course of conduct bearing a nexus to the underlying article 7(1) act or a crime within the Court’s jurisdiction crime will sufficiently show the requisite “connection.” Thus, violent conduct — beatings, assaults, threats — or the deprivation of liberty committed ‘*in connection with*’ carrying out ‘rape’, ‘sexual slavery’, ‘sexual violence’, etc. under article (7)(1)¹⁸, will make out persecution under the Statute.

IV. RELIEF SOUGHT

13. For the reasons set out above, the Request should be rejected.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 11th day of February 2026

At The Hague, The Netherlands

¹⁵ See Article 7(1)(h)(4) of the Elements of Crimes (“EoC”) (“emphasis added”).

¹⁶ See Article 7(1)(h)(3) of the EoC; *see also* ICTY, *Prosecutor v. Kvočka et al.*, “Judgement”, IT-98-30/1-T, 2 November 2001, para. 200; ICTY, *Prosecutor v. Krnojelac*, “Judgement”, IT-97-25-T, 15 March 2002, para. 431.

¹⁷ See Article 7(1)(h)(1)-(6) of the EoC.

¹⁸ See Article 7(1)(h)(4) of the EoC.