

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/18
Date: 6 September 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-ÉDOUARD NGAÏSSONA***

Public Document

**Common Legal Representatives' Joint Response to the Yekatom Defence's
"Motion for Disclosure of Witnesses with Dual Status"**

Source: Common Legal Representatives of Victims

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly the “Legal Representatives”)¹ hereby file their joint response to the “Motion for Disclosure of Witnesses with Dual Status” filed by the Defence for Mr Yekatom on 2 September 2019 (the “Defence Motion”).²

2. As a matter of principle, the Legal Representatives do not oppose the Defence Motion, to the extent that *“it simply seeks to know if any of the witnesses whose identity has already been disclosed to the Defence also has the status of a victim”*.³ To date only 15 victims have been admitted to participate in the proceedings. Should it become apparent that some among these victims are also Prosecution’s witnesses, the Legal Representatives do not oppose the eventual disclosure to the parties of less redacted versions of the applications already in their possession in accordance with the applicable redactions regime and practice of the Court; and provided that the identity of the victims concerned is already known to the Defence. Insofar as the status of all other applications for participation is yet to be determined by the Chamber, the Legal Representatives oppose the disclosure of any information on the concerned individuals at this stage of the proceedings as being premature and regardless of whether they have been placed by the Registry into Group A category.

3. Moreover, the identification of dual status individuals should only be performed, in consultation with the Prosecution, by the relevant Legal Representative of the victims concerned, and not by the Registry.

¹ See the “Decision on the Legal Representation of Victims” (Pre-Trial Chamber II), No. [ICC-01/14-01/18-205](#), 23 May 2019, p. 9 and 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” (Pre-Trial Chamber II), No. [ICC-01/14-01/18-227-Conf](#), 21 June 2019, p. 14.

² See the “Motion for Disclosure of Witnesses with Dual Status”, No. [ICC-01/14-01/18-308](#), 2 September 2019 (the “Defence Motion”).

³ *Idem*, para. 7.

II. PROCEDURAL BACKGROUND

4. On 23 January 2019, the Single Judge of Pre-Trial Chamber II (the “Chamber”) issued the “Decision on Disclosure and Related Matters”.⁴

5. On 20 February 2019, the Chamber joined the case of Mr Yekatom with that of Mr Ngaïssona.⁵

6. On 5 March 2019, the Chamber issued the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”.⁶

7. On 4 April 2019, the Chamber issued its “Second Decision on Disclosure and Related Matters”.⁷

8. On 23 May 2019, the Chamber issued the “Decision on the Legal Representation of Victims” deciding, *inter alia*, to appoint counsel from the OPCV to act as the Common Legal Representative of the Former Child Soldiers.⁸ On 21 June 2019, the Chamber appointed the Common Legal Representatives of Victims of Other Crimes than the former child soldiers and authorised the participation of 15 victims in the proceedings.⁹

9. On 2 September 2019, the Defence filed its Motion requesting the Chamber “to order the Registry to inform the parties of which witnesses that the Prosecution relies upon in

⁴ See the “Public Redacted Version of ‘Decision on Disclosure and Related Matters’” (Pre-Trial Chamber II, Single Judge), No. [ICC-01/14-01/18-64-Red](#), 23 January 2019.

⁵ See the “Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters” (Pre-Trial Chamber II), No. [ICC-01/14-01/18-87](#), 20 February 2019.

⁶ See the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (Pre-Trial Chamber II), No. [ICC-01/14-01/18-141](#), 5 March 2019.

⁷ See the “Second Decision on Disclosure and Related Matters” (Pre-Trial Chamber II), No. [ICC-01/14-01/18-163](#), 4 April 2019.

⁸ See the “Decision on the Legal Representation of Victims” (Pre-Trial Chamber II), No. [ICC-01/14-01/18-205](#), 23 May 2019, p. 9.

⁹ See 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” (Pre-Trial Chamber II), No. [ICC-01/14-01/18-227-Conf](#), 21 June 2019.

the DCC also have the status of victim in this case and to provide the parties with the victim application for that witness".¹⁰

10. On 4 September 2019, the Chamber shortened the deadline for responses to the Defence Motion to 6 September 2019.¹¹

III. SUBMISSIONS

11. As a matter of principle, the Legal Representatives do not oppose the Defence Motion, to the extent that *"it simply seeks to know if any of the witnesses whose identity has already been disclosed to the Defence also has the status of a victim".¹²*

12. However, the Legal Representatives note, first, that as to date only 15 victims have been formally admitted to participate in the present proceedings¹³ and the redacted applications of said victims were transmitted for observations to both the Defence and the Prosecution under Group C category.¹⁴ The status of the other applications for participation transmitted by the Registry to the Chamber is currently under consideration. In this regard, the Chamber clarified that, *"while VPRS's conclusions may be of assistance, it is for the Chamber to ultimately authorise or reject an applicant to participate in the proceedings".¹⁵*

13. Accordingly, none of the applications placed by the Registry into Group A category and to which the Defence Motion expressly refers,¹⁶ has been the object of a decision of the Chamber authorising the participation of any of the concerned applicants in these proceedings. As such, since none of said applicants have been so

¹⁰ See the Defence Motion, *supra* note 2, para. 10.

¹¹ See the e-mail sent by Pre-Trial Chamber II on 4 September 2019 at 12:56.

¹² See the Defence Motion, *supra* note 2, para. 7.

¹³ See 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" (Pre-Trial Chamber II), No. ICC-01/14-01/18-227-Red, 21 June 2019.

¹⁴ See the "Registry's First Transmission of Group C Applications for Victims' Participation in Pre-Trial Proceedings", No. ICC-01/14-01/18-197, 15 May 2019.

¹⁵ See the "Decision Establishing the Principles Applicable to Victims' Applications for Participation", *supra* note 6, para. 41(ix).

¹⁶ See the Defence Motion, *supra* note 2, paras. 2-4.

far granted the formal status of victim, the Legal Representatives oppose the disclosure of any information related to the concerned individuals as being premature.

14. Moreover, the Legal Representatives posit that the Defence Motion is based on erroneous premise that the identification of dual status individuals lies with the Registry. Indeed, while having access to victims' applications, the Registry is not meant to identify dual status individuals as it is not supposed to have access to the identity of the Prosecution's witnesses. Such identification can only be performed, in consultation with the Prosecution, by the relevant Legal Representative of the victims concerned.¹⁷

15. Furthermore, the Legal Representatives submit that the Defence and the Prosecution should be provided with applications of dual status individuals, if any, in redacted form in accordance with the applicable redactions regime - which is consistent with the relevant jurisprudence of the Court, including the one referred to in the Defence Motion.¹⁸

16. In light of the above, and as far as it concerns the 15 applications of the individuals already formally admitted to participate, the Legal Representatives undertake (i) to consult with the Prosecution in order to identify any participating victim they represent who might also be a witness in this case; and eventually (ii) to transmit to the Defence and the Prosecution a less redacted version of said applications already in their possession in accordance with the applicable redactions regime and the practice of the Court.

¹⁷ See the "Decision Establishing the Principles Applicable to Victims' Applications for Participation" (Pre-Trial Chamber II), No. [ICC-01/14-01/18-141](#), 5 March 2019, paras. 39 *et seq.*

¹⁸ See the Defence Motion, *supra* note 2, paras. 7 and 9.

17. In this regard, the Chamber has recently directed the parties to consult with the Legal Representatives regarding disputed redactions that relate to dual status individuals and/or victims participating in the proceedings.¹⁹

18. In the same vein, and in the absence of an agreed Protocol on mechanisms for exchange of information and communications in relation to dual status individuals, the Legal Representatives submit that, should any matter in relation to said individuals arise, the constant relevant practice of the Court²⁰ should apply. Accordingly, and consistent with said practice, the Legal Representatives further submit that, *inter alia*, notice shall be provided as soon as possible to the relevant Legal Representative when a party wish to contact a person who has dual status.²¹

19. Lastly, the Legal Representatives further undertake to consult with the Prosecution in relation to victims' applications in Group A category and, should the need arise, to proceed with the relevant disclosure of redacted applications as soon as possible after the issuance of a decision of the Chamber on their status.

¹⁹ See the "Decision on the Defence Motion for an Extension of Time to File List of Evidence and Related Matters", No. [ICC-01/14-01/18-315-Conf](#), 3 September 2019, p. 26.

²⁰ See, *inter alia*, the "Decision on Protocols to be Adopted at Trial" (Trial Chamber IX), No. [ICC-02/04-01/15-504](#), 22 July 2016; see also the "Decision adopting mechanisms for exchange of information on individuals enjoying dual status" (Trial Chamber I), No. [ICC-02/11-01/15-199](#), 31 August 2015 and the "Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses" (Trial Chamber VI), No. [ICC-01/04-02/06-464](#), 18 February 2015. See also the "Chambers Practice Manual", May 2017, p. 22, available at https://www.icc-cpi.int/iccdocs/other/170512-icc-chambers-practice-manual_May_2017_ENG.pdf (Last accessed on 4 September 2019).

²¹ See, *inter alia*, the "Mechanisms for exchange of information on individuals enjoying dual status ('Protocol')" (Trial Chamber IX), No. [ICC-02/04-01/15-504-Anx2](#), 22 July 2016, p. 3, section 5; see also the "Mechanisms for exchange of information on individuals enjoying dual status ('Protocol')" (Trial Chamber I), No. [ICC-02/11-01/15-199-Anx](#), 1 September 2015, p. 3, section 5 and the "Proposed mechanisms for exchange of information on individuals enjoying dual status" (Trial Chamber VI), No. [ICC-01/04-02/06-430-Anx1](#), 18 February 2015, pp. 2-3 as adopted by the Trial Chamber Decision No. [ICC-01/04-02/06-464](#).

RESPECTFULLY SUBMITTED



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Paolina Massidda
for the team of Common Legal
Representatives representing Victims of
Other Crimes

Dated this 6th day of September 2019

At The Hague (The Netherlands) and Bangui (CAR)