

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

**No. ICC-01/14-01/18
Date: 13 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-EDOUARD NGAÏSSONA***

Public

Decision on Motion for Disclosure of Witnesses with Dual Status

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for the Defence

Mylène Dimitri
Peter Robinson

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoop

Legal Representatives of the Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Christine Priso Ouamballo
Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Dmytro Suprun

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this Decision on Motion for Disclosure of Witnesses with Dual Status.

I. Procedural history

1. On 5 March 2019, the Chamber issued the ‘Decision Establishing the Principles Applicable to Victims’ Applications for Participation’ thereby deciding, *inter alia*: (i) that the Registry shall classify all applicants who wish to participate in the proceedings into three categories: (a) applicants who clearly qualify as victims (Group A); (b) applicants who clearly do not qualify as victims (Group B); and (c) applicants for whom the Registry could not make a clear determination for any reason (Group C); and (ii) that the Chamber will to assess Group C applications individually and ratify the Registry’s assessment of Group A and B applications, ‘barring a clear, material error in the Registry’s assessment’.¹
2. On 14 May 2019, the Registry transmitted to the Chamber and the parties 15 Group C applications.² On 21 June 2019, the Chamber authorised all 15 applicants to participate in the proceedings.³
3. Between 14 June 2019 and 4 September 2019, the Registry transmitted to the parties and/or the Chamber a total of 1062 Group A applications, 11 Group B applications and 8 Group C applications.⁴

¹ [ICC-01/14-01/18-141](#), para. 41.

² [Registry’s First Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings](#), ICC-01/14-01/18-197 (together with 15 confidential *ex parte* annexes, only available to the Registry, and 15 confidential redacted versions of the annexes available to the parties).

³ [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-Red, para. 31, p. 14.

⁴ [Registry’s First Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings](#), 14 June 2019, ICC-01/14-01/18-222 (together with 74 confidential *ex parte* annexes, only available to the Registry); [Registry’s Second Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings](#), 12 July 2019, ICC-01/14-01/18-245 (together with 161 confidential *ex parte* annexes, only available to the Registry); [Registry’s Third Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings](#), 30 July 2019, ICC-01/14-01/18-258 (together with 150 confidential *ex parte* annexes, only available to the Registry); [Registry’s Fourth Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings](#), 19 August 2019, ICC-01/14-01/18-279 (together with 301 confidential *ex parte* annexes, only available to the Registry); [Registry’s Second Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings](#), 19 August 2019, ICC-01/14-01/18-280 (together with 8 confidential *ex parte* annexes, only available to the Registry, and 8 confidential redacted versions of the annexes available to the parties); [Registry’s Fifth Transmission of Group A and First Transmission of Group B Victims’ Applications for Participation in Pre-Trial Proceedings](#), 4 September 2019, ICC-01/14-01/18-320 (together with 387 confidential *ex parte* annexes, only available to the Registry).

4. On 2 September 2019, the Yekatom Defence submitted the ‘Motion for Disclosure of Witnesses with Dual Status’ (the ‘Request’).⁵

5. On 6 September 2019, the Chamber received the ‘Common Legal Representatives’ Joint Response to the Yekatom Defence’s “Motion for Disclosure of Witnesses with Dual Status”⁶ and the ‘Prosecution’s Observations regarding the YEKATOM Defence’s “Motion for Disclosure of Witnesses with Dual Status” (ICC-01/14-01/18-308)’.⁷

6. On 13 September 2019, the Chamber issued the ‘Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation’.⁸

II. The Request and the responses

7. The Yekatom Defence requests that the Chamber order the Registry: (i) to inform the Defence whether any of the witnesses relied upon by the Prosecutor in the Document Containing the Charges (‘DCC’) have been granted participation as victims in this case (‘dual status victim-witness individuals’); and if so, (ii) to provide the parties with their applications to participate in the proceedings. The Yekatom Defence submits that the information is material to its preparation as a witness’ expectation of reparations may be relevant to his/her credibility and the victim application may include information on the events which the witness is relied upon in the DCC.⁹

8. The LRVs make the following submissions: (i) they do not oppose the Request to the extent that it relates to the 15 victims who, at the time of the filing of the Request, were admitted to participate in the proceedings, provided that their identity is known to the Defence; (ii) they oppose the disclosure of any information related to the remaining applicants, not yet granted the formal status of victims, as being premature; (iii) the identification of dual status victim-witness individuals should be performed by the LRVs – in consultation with the Prosecutor – not by the Registry; and (iv) the Prosecutor and the Defence should be provided with redacted versions of the applications of dual status individuals.¹⁰

⁵ [ICC-01/14-01/18-308](#).

⁶ [ICC-01/14-01/18-323](#).

⁷ [ICC-01/14-01/18-325](#).

⁸ ICC-01/14-01/18-338

⁹ [ICC-01/14-01/18-308](#).

¹⁰ [ICC-01/14-01/18-323](#).

9. The Prosecutor confirms her willingness to consult and/or assist in the identification of any dual status individuals. She further submits, concurring with the LRVs, that the Request concerns, in effect, only the 15 victims who, at the time of the filing of the Request, were admitted to participate in the proceedings.¹¹

III. The Chamber's determination

10. At the outset, the Chamber notes the Prosecutor's and the LRVs' submission that the Request concerns, in effect, only the 15 victims whom the Chamber authorised to participate in the proceedings on 21 June 2019. Contrary to their submissions, the Chamber finds that nothing in the Request suggests such a limitation. While at the time the Request and the responses were filed only 15 victims had indeed been admitted to participate in the proceedings, the Chamber understands the Request to extend to all victims eventually granted participation in this case. Following the issuance by the Chamber of the 'Decision regarding the Registry's Outstanding Transmissions of Applications for Victim Participation',¹² nothing prevents the Defence receiving the victim application forms of all dual status victim-witness individuals.

11. Turning to the merits of the Request, the Chamber notes articles 54(1), 61(6), 67(2) and 68 of the Rome Statute (the 'Statute') and rule 77 of the Rules of Procedure and Evidence. The Chamber considers that victim application forms of dual status victim-witness individuals may contain exculpatory information or information material for the preparation of the Defence. The Chamber recalls that, pursuant to article 54(1)(a) of the Statute, the Prosecutor has an obligation to investigate incriminating and exonerating circumstances equally. In the context of the present Request, this means that, in order to properly discharge her statutory obligations, the Prosecutor must obtain and provide the Defence with the victim application forms of dual status victim-witness individuals.¹³ In light of the above, the Chamber:

- (i) directs the Prosecutor, the Registry and the LRVs to liaise in order to identify the dual status victim-witness individuals;

¹¹ [ICC-01/14-01/18-325](#).

¹² 13 September 2019, ICC-01/14-01/18-338.

¹³ See also Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, [Order on the provision of victim application forms of dual status witnesses](#), 17 December 2015, ICC-01/04-02/06-1060, para. 3.

- (ii) instructs the Registry to transmit to the Prosecutor all victim application forms of dual status victim-witness individuals, together with the supporting documents; and
- (iii) instructs the Prosecutor to apply redactions, as necessary and in consultation with the LRVs, and disclose said application forms and supporting documents to the Yekatom Defence no later than 17 September 2019. Redactions shall follow the redaction regime adopted by the Chamber.¹⁴ The Prosecutor shall ensure that redactions applied to the victim application forms are consistent with the ones applied to the witness statements disclosed to the Defence. To that end, and in order to ensure the efficiency and expeditiousness of the proceedings, the Chamber's authorisation for the non-disclosure of information granted in relation to evidence provided by an individual in his/her capacity as witness extends, where applicable, to his/her victim application form.¹⁵

12. The Chamber notes the LRVs' submission that both the Defence and the Prosecutor should be provided with the victim application forms in redacted form and that they, the LRVs, undertake to transmit to the parties less redacted versions of said application forms.¹⁶ As indicated above, the Chamber considers that the Prosecutor should receive unreacted versions of the application forms. The Chamber finds that the Prosecutor is best placed to ensure that the same information is redacted in both the victim application form and the evidence provided by the witness, so that information already revealed to the suspects in the course of the disclosure process is equally available to them in the victim application forms. The Chamber recalls that the Prosecutor is under an obligation, pursuant to articles 54(1)(b) and 68(1) of the Statute, to 'respect the interests and personal circumstances of victims' and to protect

¹⁴ [Decision on Disclosure and Related Matters](#), 23 January 2019, ICC-01/14-01/18-64-Red, para. 23 *et seq.*

¹⁵ See First Decision on the Prosecutor's Request for Authorisation to Withhold the Identities of Witnesses and Apply Non Standard Redactions, ICC-01/14-01/18-232-Conf-Exp (a confidential redacted version is also available, *see* ICC-01/14-01/18-232-Conf-Red); Second Decision on the Prosecutor's Request for the Non-Disclosure of Witness Identities and Non-Standard Redactions, ICC-01/14-01/18-249-Conf-Exp (a confidential redacted version is also available, *see* ICC-01/14-01/18-249-Conf-Red); Decision on the Prosecutor's Request to Use Anonymised Summaries of Witness Statements, ICC-01/14-01/18-261-Conf-Exp (a confidential redacted version is also available, *see* ICC-01/14-01/18-261-Conf-Red); Decision on the 'Prosecution's Urgent Request for the Non-Disclosure of Witness Identities', 14 August 2019, ICC-01/14-01/18-273-Conf-Exp (a confidential redacted version is also available, *see* ICC-01/14-01/18-273-Conf-Red).

¹⁶ [ICC-01/14-01/18-323, paras 15-16.](#)

their safety, physical and psychological well-being, dignity and privacy. To this end, the Chamber instructs the Prosecutor to liaise with the LRVs before applying redactions.

13. Lastly, the Chamber notes that the Ngaïssona Defence has not joined the Yekatom Defence Request. Nonetheless, for reasons of fairness, the Chamber considers that the victim application forms of dual status victim-witness individuals and supporting documents shall be disclosed to the Ngaïssona Defence as well.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

DIRECTS the Prosecutor, the Registry and the LRVs to liaise in order to identify the dual status victim-witness individuals;

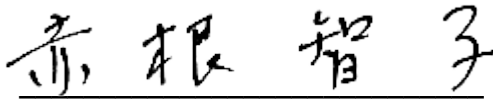
ORDERS the Registry to transmit to the Prosecutor all victim application forms of dual status victim-witness individuals, together with the supporting documents; and

ORDERS the Prosecutor to apply redactions, as necessary and in consultation with the LRVs, and disclose the victim application forms of dual status victim-witness individuals and supporting documents to the Yekatom Defence and the Ngaïssona Defence no later than 17 September 2019.

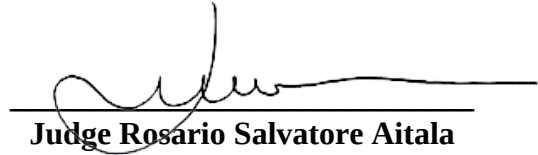
Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Friday, 13 September 2019

At The Hague, The Netherlands