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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
With Confidential Annex**

**Registry's First Assessment Report on Applications for Victims' Participation in
Pre-Trial Proceedings**

Source: Registry

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

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I. Introduction

1. In paragraph 41 of the Decision Establishing the Principles Applicable to Victims' Applications for Participation ("Decision")¹, Pre-Trial Chamber II ("Chamber") established an admission system whereby the Registry should *inter alia* "classif[y] the applicants 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")."²
2. Additionally, the Chamber ordered the Registry to prepare "regular reports that list the applications for participation and classify them according to the three groups";³ and "assessment reports for the attention of the Chamber and the parties, highlighting the difficulties encountered regarding Group C applications."⁴
3. The Registry hereby transmits its first report on 15 complete applications received to date in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona* ("Case"). This includes, for 15 applicants falling in Group C, a brief overview of the reasons why the Registry was not in a position to make a clear determination on each of the applications.
4. The applications falling in Group C have been listed and classified in the annex to the present submission ("Annex") and separately transmitted to the Chamber and the parties, in accordance with paragraph 41(ii) and (iv) of the Decision.

¹ Pre-Trial Chamber I, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141.

² Decision, para. 41(i).

³ Decision, para. 41(iii).

⁴ Decision, para. 41(v).

I. Procedural History

5. On 17 November 2018, Mr Alfred Yekatom (“Mr Yekatom”) was surrendered to the Court by the authorities of the Central African Republic (“CAR”), following the Chamber’s warrant of arrest of 11 November 2018.⁵
6. On 23 November 2018, Mr Yekatom had his initial appearance before the Chamber.⁶
7. On 7 December 2018, the Chamber issued a warrant of arrest against Mr Patrice-Edouard Ngaïssona⁷ (“Mr Ngaïssona”) who was surrendered to the Court by the authorities of the French Republic on 23 January 2019.
8. On 25 January 2019, Mr Ngaïssona had his initial appearance before the Chamber.⁸
9. On 20 February 2019, the Chamber joined the cases against Mr Yekatom and Mr Ngaïssona and retained the date of 18 June 2019 as the date for the confirmation of charges hearing to commence.⁹
10. On 5 March 2019, the Chamber issued the Decision, setting out *inter alia* the admission procedure for victims’ participation in the Case.¹⁰

II. Applicable Law

11. The present report is submitted on the basis of article 68(1) and (3) of the Rome Statute, rules 85 to 89 and 92 of the Rules of Procedure and Evidence, regulation 86 of the Regulations of the Court (“RoC”), and regulations 107 to 109 of the Regulations of the Registry.

⁵ Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 11 November 2018, ICC-01/14-01/18-1-Red.

⁶ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG.

⁷ Pre-Trial Chamber II, “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 7 December 2018, ICC-01/14-02/18-2-Red.

⁸ Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-02/18-T-1-ENG.

⁹ Pre-Trial Chamber II, “Decision on the joinder of the cases against Alfred Yekatom and Patrice-Edouard Ngaïssona and other related matters”, 20 February 2019, ICC-01/14-01/18-87, para. 18; ICC-01/14-02/18-34, para. 18.

¹⁰ See *supra*, footnote one.

III. Submissions

12. The Registry recalls the Chamber's clarification that the Registry may raise with it "any issue which may arise regarding the collection and processing of the applications so that it may be considered and resolved before the applications are transmitted to the Chamber."¹¹ Consequently, the Registry seeks clarification from the parties and the Chamber on the issues raised below. Such clarification will greatly facilitate the work of the Registry in the field (in the training of intermediaries and the collection of applications) and in the assessment of applications.

Description of Issues Encountered and List of Applications Falling in Group C

13. The Victims Participation and Reparations Section ("VPRS") notes that the 15 applications listed in Group C have been assessed as complete in accordance with the criteria set out in paragraph 31 of the Decision. It is also noted that the reason why the VPRS was not in a position to make a clear determination is the lack of clarity whether or not the personal harm reported by the applicants resulted from an incident falling within the temporal or geographic parameters of the Case.
14. The VPRS has broadly categorised the topics to be addressed into two main issues:
-) Territorial Scope (Issue 1); and
 -) Temporal Scope (Issue 2).
15. A table is provided in the Annex with an extract from unclear application(s) illustrating the issues raised below. The unredacted applications themselves are also transmitted to the Chamber and redacted versions of the applications to the parties in accordance with paragraph 41(ii) and (iv) of the Decision, respectively.

¹¹ Decision, para. 38.

Issue 1: Territorial Scope

A. The Bangui Area

16. In assessing the applications received thus far, the VPRS has encountered difficulties on an issue pertaining to the territorial scope of the Case. Specifically, this pertains to the question whether the “5 December 2013 Bangui Attack” and following events which occurred in the “Bangui area”¹² are strictly limited to the specific locations mentioned in the warrants of arrest against Mr Yekatom and Mr Ngaïssona (“Warrants of arrest”) – ie. Boeing, Cattin crossroads and Yamwara school in Boeing - or could be interpreted to also include certain neighbourhoods within Bangui town listed in the Annex.¹³

B. Enlistment and Use of Child Soldiers

17. In assessing the applications received thus far, the VPRS has also encountered difficulties assessing the territorial scope of the crime of enlistment and use of children under the age of 15. The Warrants of arrest state that “boys under the age of 15 were stationed at the Yamwara school and other bases and checkpoints controlled by Yekatom, including Sekia and Pissa.”¹⁴ The VPRS understands that where a child soldier is stationed may not necessarily be where he or she was enlisted or used. Indeed, the VPRS has received a number of applications from children under the age of 15 at the time of the events that allege enlistment in and/or use by the Anti-Balaka forces in various areas not mentioned in the Warrants of arrest.¹⁵

¹² See Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 11 November 2018, ICC-01/14-01/18-1-Red, p. 12, para. a; Pre-Trial Chamber II, “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 7 December 2018, ICC-01/14-02/18-2-Red, p. 11, para. a and p. 13., para. c, referring to “Bangui and adjacent neighbourhoods” or to “various neighbourhoods in and around southwest Bangui”.

¹³ See Annex, pp. 1-3, listing the following locations: *3rd Arrondissement*, *5e Arrondissement*, *8e Arrondissement* and *4e Arrondissement*.

¹⁴ See Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 11 November 2018, ICC-01/14-01/18-1-Red, p. 17, para. b; Pre-Trial Chamber II, “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 7 December 2018, ICC-01/14-02/18-2-Red, p. 18, para. c.

¹⁵ See Annex, p. 3.

18. The VPRS is therefore seeking guidance as to whether it can infer from the Warrants of arrest that enlistment and/or use of children under the age of 15 was committed in all crime sites mentioned in the Warrants of arrest, or only where Anti-Balaka forces controlled by Mr Yekatom were stationed.

Issue 2: Temporal Scope

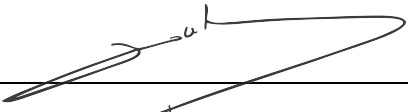
18. For some incidents,¹⁶ the end date of the time frame of alleged crimes is not clearly indicated in the event-specific description.¹⁷ It is thus difficult for the VPRS to make a determination for applicants who allege to have suffered crimes that occurred in relation to those incidents that occurred any time after the commencement dates cited in the Warrants of arrest. The VPRS however notes the consolidated timeframe set out on page 37 of the Warrant of arrest of Mr Ngaïssona that frames all charges between “at least 5 December 2013 and at least December 2014”.¹⁸ The VPRS is thus seeking guidance as to whether it may apply this consolidated timeframe for those incidents where a clear end date of the commission timeframe is not provided in the event-specific description.
19. To illustrate the above with an example, the VPRS mentioned in the Annex the case of a victim who claims to have suffered harm on 28 February 2014 as a result of the events in Mbaiki which started “on or about 30 January 2014” when “Yekatom and his subordinates entered Mbaiki”.

¹⁶ Incidents in Bossangoa and Mbaiki.

¹⁷ In relation to the Bossangoa incident, see Pre-Trial Chamber II, “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 7 December 2018, ICC-01/14-02/18-2-Red, p. 14 para. a (“on 5 December 2013” and “as of 6 December 2013”). In relation to the Mbaiki incident, see Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 11 November 2018, ICC-01/14-01/18-1-Red, p. 16, para. f; Pre-Trial Chamber II, “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 7 December 2018, ICC-01/14-02/18-2-Red, pp. 17-18, para. b (“on or about 30 January 2014” and “starting from at least 6 February 2014”). The VPRS has provided one example of application raising this issue in relation to the Mbaiki incident in the Annex, p. 4.

¹⁸ The VPRS also notes that the Chamber provided a consolidated timeframe on page 21 of the Warrant of arrest of Mr. Yekatom.

20. The Registry will continue to assess all applications in its possession according to the criteria established by the Chamber and will transmit all complete applications on a rolling basis in accordance with the deadlines set out in the Decision.



Marc Dubuisson, Director, Division of Judicial Services,
on behalf of Peter Lewis, Registrar

Dated this 14 May 2019

At The Hague, The Netherlands