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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR *v.* ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA**

Public

**With Confidential Annex 1 and Confidential *EX PARTE* Annex 2 only available to
the Registry**

**Twenty-Fifth Registry Assessment Report on Victim Applications for Participation
in 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. On 19 March 2020, Trial Chamber V ("Chamber") issued its "Order Scheduling First Status Conference" ("Scheduling Order") in which it *inter alia* endorsed the victim application procedure previously adopted by Pre-Trial Chamber II ("PTC").¹ During the pre-trial stage, the latter had instructed the Registry in its "Decision establishing the principles applicable to victims' applications for participation" of 5 March 2019 ("Decision")² to:
 - i. Classify victim 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");³ and
 - ii. Prepare "regular reports that list the applications for participation and classify them according to the three groups".⁴

2. The Registry hereby transmits its twenty-fifth assessment report ("Twenty-Fifth Registry Assessment Report"), on 40 complete applications ("Applications") to participate in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngāïssona* ("Case"), which includes:
 - A brief description of the assessment criteria applied in relation to the 30 applicants who clearly, in the Registry's assessment, qualify as victims falling within the scope of the Case (Group A);

¹ Trial Chamber V, "Order Scheduling First Status Conference", 19 March 2020, ICC-01/14-01/18-459, para. 8 (iv).

² Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141.

³ *Id.*, para. 41 (i). In paragraph 41 (ii) of the Decision, the PTC ordered the Registry to transmit to the Chamber on a rolling basis and in unredacted form all complete applications and any supporting documentation in its possession. In paragraph 41 (iv) of the Decision the PTC also ordered the Registry to disclose to the Prosecution and the Defence all Group C applications, redacted as needed.

⁴ *Id.*, para. 41(iii).

- A brief description of the assessment criteria applied in relation to the 10 applications who, in the Registry's assessment, clearly fall outside of the scope of the Case (Group B).
3. The applications falling in Group A and Group B are listed in annex 1 to the present submission ("Annex 1") and are being transmitted separately to the Chamber, in accordance with paragraph 41(ii) of the Decision. Annex 2 to the present submission ("Annex 2") contains a brief description of the assessment criteria applied in relation to Group B applications.

II. Procedural History

4. On 5 March 2019, the PTC issued the Decision, setting out *inter alia* the admission procedure for victims' participation in the Case.⁵
5. On 21 June 2019, the PTC authorised 15 victims to participate at the confirmation hearing in the Case ("First Decision on Victims' Applications").⁶
6. On 13 September 2019, the PTC authorised an additional 1,070 victims to participate in the proceedings ("Second Decision on Victims' Applications").⁷
7. On 11 December 2019, the PTC issued a decision partially confirming the charges against the accused ("Decision on the Confirmation of Charges").⁸
8. On 19 March 2020, the Chamber issued its Scheduling Order, in which it *inter alia*: i) endorsed the victim application procedure set out in the Decision;⁹ and

⁵ See *supra*, footnote 2.

⁶ Pre Trial Chamber II, "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", 21 June 2019, ICC-01/14-01/18-227-Conf. A public redacted version was filed on the same day (ICC-01/14-01/18-227-Red).

⁷ Pre Trial Chamber II, "Decision regarding the Registry's Outstanding Transmissions of Applications for Victim Participation", 13 September 2019, ICC-01/14-01/18-338.

⁸ Pre Trial Chamber II, "Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona", 11 December 2019, ICC-01/14-01/18-403-Conf. A public redacted version was filed on 20 December 2019. A corrected public redacted version was filed on 14 May 2020 (ICC-01/14-01/18-403-Red-Corr).

⁹ Scheduling Order, para. 8 (iv).

- ii) requested the Registry to provide an update and forecast on (additional) applications by victims to participate in the proceedings.¹⁰
9. On 22 May 2020, the Registry provided its update on victim participation.¹¹
10. On 16 July 2020, the Chamber set the start of the trial on 9 February 2021 and the “end of the Prosecution’s presentation of evidence as the deadline for the transmission of victim applications by the Registry” (“16 July 2020 Decision”).¹² The start of the trial was later postponed to 16 February 2021.¹³
11. Between 19 October 2020 and 24 October 2022, the Registry transmitted 1,615 applications categorised in Group A,¹⁴ 843 applications in Group B¹⁵ and 43 applications categorised in Group C¹⁶ together with reports thereon.¹⁷
12. Between 23 November 2020 and 21 November 2022, the Chamber issued seventeen decisions on the merits of those applications.¹⁸

¹⁰ *Id.*, para. 3 (I).

¹¹ Registry, “Update on Victim Applications for Participation”, 8 April 2020, ICC-01/14-01/18-470-Conf-Exp-AnxIII. A confidential redacted version was filed on the same day (ICC-01/14-01/18-470-Conf-AnxIII-Red). A public redacted version was filed on 22 May 2020 (ICC-01/14-01/18-470-AnxIII-Red2).

¹² Trial Chamber V, “Decision Setting the Commencement Date of the Trial”, 16 July 2020, ICC-01/14-01/18-589.

¹³ Trial Chamber V, “Order Rescheduling the Commencement Date of the Trial”, 8 February 2021, ICC-01/14-01/18-875.

¹⁴ See last Registry, “Twenty-Second Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings”, 24 October 2022, ICC-01/14-01/18-1630.

¹⁵ See last Registry, “Thirteenth Registry Transmission of Group B Applications for Victim Participation in Trial Proceedings”, 24 October 2022, ICC-01/14-01/18-1631.

¹⁶ See last Registry, “Third Registry Transmission of Group C Applications for Victim Participation in Trial Proceedings”, 27 July 2022, ICC-01/14-01/18-1529.

¹⁷ See last Registry, “Twenty-fourth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 24 October 2022, ICC-01/14-01/18-1629.

¹⁸ See Trial Chamber V, “Decision on Victims’ Participation in Trial Proceedings”, 23 November 2020, ICC-01/14-01/18-738 (“23 November 2020 Decision”); “Second Decision on Victims’ Participation in Trial Proceedings (Group A)”, 11 December 2020, ICC-01/14-01/18-765; “Third Decision on Victims’ Participation in Trial Proceedings (Group A)”, 29 December 2020, ICC-01/14-01/18-798; “Fourth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 29 January 2021, ICC-01/14-01/18-858; “Fifth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 1 April 2021, ICC-01/14-01/18-943; “Sixth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)”, 4 May 2021, ICC-01/14-01/18-980; “Seventh Decision on Victims’ Participation in Trial Proceedings (Groups A and B)”, 1 June 2021, ICC-01/14-01/18-1009; “Eighth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 16 June 2021, ICC-01/14-01/18-1028; “Ninth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)”, 27 July 2021, ICC-01/14-01/18-1075; “Tenth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)”, 24 August 2021, ICC-01/14-01/18-1092; “Eleventh Decision on Victims’ Participation in Trial Proceedings (Group C)”, 8 September 2021, ICC-01/14-01/18-1104 (“8 September 2021 Decision”); “Twelfth Decision on Victims’

13. On 15 and 16 November 2022, the Common Legal Representatives of the Victims (“CLRVS”) confirmed that they agreed with the Registry’s preliminary assessment concerning the three applications of their clients categorised as Group B.¹⁹

III. Classification

14. The annexes to the present submission are classified respectively as confidential (Annex 1) and confidential *ex parte*, only available to the Registry (Annex 2), in accordance with the Decision.²⁰

IV. Applicable Law

15. The present transmission is submitted in accordance with 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, and regulations 107 to 109 of the Regulations of the Registry.

V. Submissions

Details on the Assessment Criteria and List of Applications Falling within Group A

Participation in Trial Proceedings (Groups A and B)”, 29 October 2021, ICC-01/14-01/18-1153; “Thirteenth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)”, 19 November 2021, ICC-01/14-01/18-1180; “Fourteenth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)”, 9 February 2022, ICC-01/14-01/18-1274; “Fifteenth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 5 May 2022, ICC-01/14-01/18-1391; “Sixteenth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 26 July 2022, ICC-01/14-01/18-1526 (“Sixteenth Decision”); and “Seventeenth Decision on Victims’ Participation in Trial Proceedings (Groups A, B and C), 21 November 2022, ICC-01/14-01/18-1672.

¹⁹ Emails from Me Massidda to Registry on 15 November 2022 at 14:27 and on 16 November 2022 at 10:25. The Registry notes that seven additional applications not represented by any lawyer have been added to the list of Group B applications concerned by the present report and related transmission filing.

²⁰ Decision, paras 41(iii) for the lists of applications to be addressed to the Chamber, parties and if applicable to the legal representatives of participating victims, and para. 41(vi) for the assessment reports containing the reasons for rejecting applications in Group B to be provided exclusively to the Chamber.

16. The 30 Applications transmitted in Group A include 4 applications from victims already admitted to participate during the pre-trial stage.²¹
17. Applying the criteria set out in paragraph 31 of the Decision, the Registry has assessed each of the 30 Applications presently transmitted under Group A as complete. In conducting its assessment in accordance with paragraph 38 of the Decision, the Registry confirms that each of the 30 applicants whose applications are being transmitted in Group A have met *prima facie* the following criteria:
- i. Her or his identity as a natural person is established;
 - ii. She or he has suffered harm;
 - iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the Case.²²

Observations in relation to criterion (i)

18. Certain Applications²³ falling under Group A contain minor discrepancies, pertaining to *inter alia*: the date of birth of the applicant or the person acting on her/his behalf ("PAB"); an inversion of the applicant's first and last name; the spelling of the applicant or the PAB's name; or other minor inconsistencies in the information provided which appear to be the result of inadvertent errors. In these cases, the Registry took note of the PTC's instruction – as endorsed by the Chamber²⁴ – that "a certain degree of flexibility must be shown"²⁵ and considered in the present assessment that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]".²⁶

²¹ The victims admitted at pre-trial stage are: a/65080/19, a/65101/19, 65438/19, and a/66169/19. The Registry has reviewed said applications (two were consolidated with supplementary information after the confirmation of charges stage) and concluded that the crimes suffered by these victims remained within the scope of the Case following the Decision on the Confirmation of Charges.

²² *Id.*, para. 37.

²³ The applications with minor discrepancies include: a/65080/19, a/65101/19, a/70593/22, a/70608/22, a/70984/22, a/70985/22, a/70986/22, a/70988/22, a/70992/22, a/70993/22 and a/71127/22.

²⁴ Scheduling Order, para. 8 (iv).

²⁵ Decision, para. 34.

²⁶ *Ibid.*

19. Some applicants have submitted as identification document a card delivered by relevant camp management agencies following a registration process (“Registration card”) as well as identification documents cards delivered by non-governmental organisations in the context of assistance programmes (“Entitlement cards”).²⁷ In accordance with paragraph 25 of the Decision, the Registry had obtained²⁸ the PTC’s approval to consider such document as sufficiently establishing the identity of applicants in the Case.

Observations in relation to criterion (iii)

20. In identifying the crimes falling within the scope of the Case, the Registry looks solely at the alleged acts and - save in the case of alleged persecution - does not make any assessment as to the potential underlying grounds for their commission.²⁹

21. In accordance with the Decision on the Confirmation of Charges,³⁰ the Registry categorises within Group A applicants who mention the crime of imprisonment and other forms of severe deprivation of physical liberty in relation to their forced stay at the *Ecole de la Liberté* in Bossangoa during December 2013.

²⁷ The Registry found that in many instances displaced applicants and/or persons acting on their behalf had lost their identification document and had difficulties to access local authorities. However, they often possessed cards delivered by UN agencies, refugee camp management agencies or NGOs in a similar role, which they used in lieu of any other type of identification (See, ICC-01/14-01/18-133-AnxI, para. 21. A sample of such documents is available in annex II to the Registry’s report, see ICC-01/14-01/18-133-AnxII-Red2, pp. 78-80). The Registry further found that Registration cards and Entitlement cards were used outside of the context of internally displaced persons camps/sites for identification purposes. These applications are a/65080/19, a/70985/22, a/70986/22 and a/70993/22.

²⁸ Email from PTC to Registry on 2 August 2019 at 15:20, in response to an email from Registry to PTC on 1 August 2019 at 18:33. The Registry noted (i) that both documents contained similar features to the ones considered to be valid by the PTC in the instant Case; and (ii) that many displaced victims had lost their identification documents (see *supra.*, fn. 26).

²⁹ As a result, the Registry assesses within Group A applicants who have suffered harm from at least one of the crimes charged against the accused. The Registry assesses whether relevant victim applicants were “perceived as collectively responsible for, complicit with, or supportive of the Seleka” only in cases where the applicant appears to have suffered from the charged crime of persecution.

³⁰ Decision on the Confirmation of Charges, p. 106 at (v)(b).

22. In accordance with the 23 November 2020 Decision and the 8 September 2021 Decision,³¹ the Registry categorises within Group A applicants who mention crimes committed by Anti-Balaka groups in areas neighbouring the borders of Cattin or Boeing and clearly related to the alleged attack in Bangui on 5 December 2013. In accordance with the 8 September 2021 Decision, the Registry categories within Group A applicants who mention crimes committed by Anti-Balaka groups along the PK9-Mbaiki axis and clearly related to the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaiki axis, notably within a short distance of the villages of Sekia, Ndangala, Bimon, Kapou, Bossongo, Pissa and Mbaiki.³²
23. Lastly, the Registry notes that certain applications provide an erroneous date of the alleged events or do not explicitly state specific dates. However, they refer to publicly known events (such as, in Mbaiki, the evacuation of the Muslim community to Bangui by the Chadian forces³³ and the murder of Deputy Mayor Saleh³⁴), or provide other sufficiently detailed contextual descriptions that date the events.³⁵ In these cases, the Registry has applied the Chamber's instruction to assess applications "holistically by assessing their internal coherence and the overall context of the alleged acts".³⁶

³¹ Respectively, 23 November 2020 Decision, paras 27-33 and 8 September Decision, paras 17-29.

³² 8 September Decision, paras 36 and 39.

³³ This event occurred on or around 6 February 2014. See TCV Single Judge, "Public redacted version of Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona'", 29 June 2021, ICC-01/14-01/18-403-Corr-Red, para. 134 or also Human Rights Watch, "Central African Republic: Muslims forced to flee", 12 February 2014, at Central African Republic: Muslims Forced to Flee | Human Rights Watch (hrw.org).

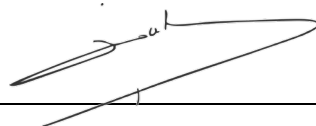
³⁴ This event occurred on 28 February 2014. See ICC-01/14-01/18-403-Red, paras. 136-137.

³⁵ These applications include: a/15017/20, a/71119/22, a/71123/22 and a/71127/22.

³⁶ Email from the Chamber to the Registry of 30 July 2020 at 17:29. The Registry notes that relevant instructions were provided where applications contained discrepancies with regards to the date. The Registry respectfully submits that the same logic should apply to those instances where an applicant did not provide an exact date but where the applicant's submission clearly relates to the events described in the Decision on the Confirmation of Charges. The Registry respectfully submits that such interpretation is consistent with the guidance provided by the Chamber in the 23 November 2020 Decision.

Details on the Assessment Criteria and List of Applications Falling within Group B

24. The 10 Applications transmitted under Group B include 3 applications from victims already admitted to participate during the pre-trial stage.³⁷
25. Applying the criteria set out in paragraph 31 of the Decision, the Registry has assessed each of the 10 Applications transmitted under Group B as complete.
26. In conducting its *prima facie* assessment in accordance with paragraph 38 of the Decision, the Registry has concluded that the persons whose applications have been transmitted under Group B clearly do not qualify as victims in the Case because the harm alleged has resulted from the indication of perpetrators and events falling outside the territorial, temporal, and/or material parameters of the Case.
27. Pursuant to paragraph 41(vi) of the Decision, the Registry has provided an assessment report for the Chamber in Annex 2 setting out the specific reasons for rejecting the applications, in order to assist the Chamber to take a decision on such applications.



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

Dated this 29 November 2022

At The Hague, The Netherlands

³⁷ The victims admitted at pre-trial stage are: a/66191/19, a/66194/19 and a/66213/19. The Registry recalls that when applicants or victims are represented, the transmission of their applications to the Chamber in Group B follows a process of verification with the CLRV to ensure that no additional information is available that could impact the Registry's assessment. See also *supra*, para. 10.