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**International  
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Court**

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No.: ICC-01/14-01/18

Date: 13 December 2022

**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-ÉDOUARD NGAÏSSONA**

**Public**

**Common Legal Representatives' request to establish a procedure for informing  
crime-based witnesses about the possibility to apply to participate in the  
proceedings as victims**

**Source:** Common Legal Representatives of Victims

**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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## I. INTRODUCTION

1. The Common Legal Representatives of the Victims of Other Crimes (the “CLR V2”) and the Common Legal Representative of the Victims Former Child Soldiers (the “CLR V1”, together the “CLR V”) request Trial Chamber V (the “Chamber”) to adopt a procedure whereby crime-based witnesses who have already testified and those who will be called to testify are informed of the possibility to apply to participate as victims in the proceedings, after completing their testimony.

2. In particular, the CLR V suggest establishing a procedure akin to the one adopted by Trial Chamber X in the *Al Hassan* case and Trial Chamber I in the *Abd-Al-Rahman* case for informing witnesses of the possibility to submit an application to participate in the proceedings as victims. Accordingly, for crime-based witnesses who have already testified, the Victims and Witnesses Section (the “VWS”), in coordination with the Victims Participation and Reparation Section (the “VPRS”), should inform them about the possibility to apply to participate as victims in the proceedings. If the procedure is adopted, the CLR V will transmit to the VWS the list of the concerned individuals. For witnesses who are due to testify, the Presiding Judge of the Chamber should instead inform the person upon conclusion of his or her testimony about such possibility, and instruct the VPRS to contact the concerned individual for this purpose.

3. The adoption of such procedure will contribute to the effective exercise of the victims’ right to participate, as enshrined in article 68(3) of the Rome Statute (the “Statute”). It will provide an opportunity to apply to participate as victims to individuals who, prior to their testimony, may have been either unaware of such an opportunity or unable to apply to participate for any other reasons. In fact, several witnesses already testified in court about the harm suffered in connection with the crimes as charged, and while giving testimony, some requested compensation.<sup>1</sup> None

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<sup>1</sup> See, *inter alia*, Witness P-2419, P-1528, and P-1823.

of said witnesses had applied to participate as victims in the proceedings prior to their testimony.

## II. PROCEDURAL BACKGROUND

4. On 5 March 2019, Pre-Trial Chamber II issued the “Decision establishing the principles applicable to victims’ applications for participation”,<sup>2</sup> whereby it, *inter alia*, established a system for the VPRS to transmit applications to the Chamber classified in 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”).<sup>3</sup>

5. On 21 June 2019, Pre-Trial Chamber II issued a decision whereby it, *inter alia*, authorised 15 victims to participate at the confirmation hearing in this case.<sup>4</sup>

6. On 13 September 2019, Pre-Trial Chamber II authorised an additional 1,070 victims to participate in the proceedings.<sup>5</sup>

7. On 11 December 2019, Pre-Trial Chamber II issued a decision partially confirming the charges against the Accused (the “Confirmation Decision”).<sup>6</sup>

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<sup>2</sup> 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.

<sup>3</sup> *Idem*, para. 41.

<sup>4</sup> 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. A public redacted version was filed on the same day as [No. ICC-01/14-01/18-227-Red](#).

<sup>5</sup> See the “Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation” (Pre Trial Chamber II), [No. ICC-01/14-01/18-338](#), 13 September 2019.

<sup>6</sup> See the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona” (Pre Trial Chamber II), No. ICC-01/14-01/18-403-Conf, 11 December 2019. A public redacted version was filed on 20 December 2019. A corrected public redacted version was filed on 14 May 2020 as [No. ICC-01/14-01/18-403-Red-Corr](#) (the “Confirmation Decision”).

8. On 19 March 2020, the Chamber issued its “Order Scheduling First Status Conference”, whereby it, *inter alia*, confirmed that the victim application procedure adopted by the Pre-Trial Chamber II would remain in place.<sup>7</sup>

9. Between 23 November 2020 and 21 November 2022, the Chamber issued 17 decisions on 1,615 victim applications in Group A, 843 victim applications in Group B, and 43 victim applications in Group C.<sup>8</sup>

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”.<sup>9</sup> The start of the trial was later postponed to 16 February 2021.<sup>10</sup>

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<sup>7</sup> See the “Order Scheduling First Status Conference” (Trial Chamber V), [No. ICC-01/14-01/18-459](#), 19 March 2020, para. 8(iv).

<sup>8</sup> See the “Decision on Victims’ Participation in Trial Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-738](#), 23 November 2020; “Second Decision on Victims’ Participation in Trial Proceedings (Group A)” (Trial Chamber V), [No. ICC-01/14-01/18-765](#), 11 December 2020; “Third Decision on Victims’ Participation in Trial Proceedings (Group A)” (Trial Chamber V), [No. ICC-01/14-01/18-798](#), 29 December 2020; “Fourth Decision on Victims’ Participation in Trial Proceedings (Group A)” (Trial Chamber V), [No. ICC-01/14-01/18-858](#), 29 January 2021; “Fifth Decision on Victims’ Participation in Trial Proceedings (Group A)” (Trial Chamber V), [No. ICC-01/14-01/18-943](#), 1 April 2021; “Sixth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)” (Trial Chamber V), [No. ICC-01/14-01/18-980](#), 4 May 2021; “Seventh Decision on Victims’ Participation in Trial Proceedings (Groups A and B)” (Trial Chamber V), [No. ICC-01/14-01/18-1009](#), 1 June 2021; “Eighth Decision on Victims’ Participation in Trial Proceedings (Group A)” (Trial Chamber V), [No. ICC-01/14-01/18-1028](#), 16 June 2021; “Ninth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)” (Trial Chamber V), [No. ICC-01/14-01/18-1075](#), 27 July 2021; “Tenth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)” (Trial Chamber V), [No. ICC-01/14-01/18-1092](#), 24 August 2021; “Eleventh Decision on Victims’ Participation in Trial Proceedings (Group C)” (Trial Chamber V), [No. ICC-01/14-01/18-1104](#), 8 September 2021; “Twelfth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)” (Trial Chamber V), [No. ICC-01/14-01/18-1153](#), 29 October 2021; “Thirteenth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)” (Trial Chamber V), [No. ICC-01/14-01/18-1180](#), 19 November 2021; “Fourteenth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)” (Trial Chamber V), [No. ICC-01/14-01/18-1274](#), 9 February 2022; “Fifteenth Decision on Victims’ Participation in Trial Proceedings (Group A)” (Trial Chamber V), [No. ICC-01/14-01/18-1391](#), 5 May 2022; “Sixteenth Decision on Victims’ Participation in Trial Proceedings (Group A)” (Trial Chamber V), [No. ICC-01/14-01/18-1526](#), 26 July 2022; and “Seventeenth Decision on Victims’ Participation in Trial Proceedings (Groups A, B and C)” (Trial Chamber V), [No. ICC-01/14-01/18-1672-Red](#), 21 November 2022.

<sup>9</sup> See the “Decision Setting the Commencement Date of the Trial” (Trial Chamber V), [No. ICC-01/14-01/18-589](#), 16 July 2020, para. 20.

<sup>10</sup> See the “Order Rescheduling the Commencement Date of the Trial” (Trial Chamber V), [No. ICC-01/14-01/18-875](#), 8 February 2021.

11. On 2 March 2022, Witness P-2049 testified before the Chamber, *inter alia*, on his victimisation.<sup>11</sup> On the same day, upon request by the CLRV2,<sup>12</sup> the Single Judge considered that the VPRS was best placed to assist Witness P-2049 with the application process to participate as a victim in the proceedings.<sup>13</sup>

12. On 21 and 22 November 2022, Witness P-2419 testified before the Chamber, *inter alia*, on his victimisation.<sup>14</sup>

13. On 23 November 2022, Witness P-1528 testified before the Chamber, *inter alia*, on his victimisation<sup>15</sup>

14. On 29 November 2022, upon request by the CLRV2,<sup>16</sup> the Chamber instructed the VPRS to contact Witness P-2419 to explain him the process of applying to participate as a victim in the proceedings and, if necessary, to provide him with an application form for this purpose.<sup>17</sup>

15. On 2 December 2022, Witness P-1823 testified before the Chamber, *inter alia*, on his victimisation.<sup>18</sup> On the same day, upon request by the CLRV2,<sup>19</sup> the Chamber instructed the VPRS to contact Witness P-1823 to explain him the process of applying to participate as a victim in the proceedings and, if necessary, to provide him with an application form for this purpose.<sup>20</sup>

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<sup>11</sup> See the transcript of the hearing held on 2 March 2022, [No. ICC-01/14-01/18-T-103-CONF-ENG ET](#), pp. 20-21 (private session).

<sup>12</sup> See the Email correspondence from the CLRV2 on 2 March 2022 at 14:57.

<sup>13</sup> See the Email correspondence from the Chamber on 2 March 2022 at 15:21.

<sup>14</sup> See the transcripts of the hearings held on 21 and 22 November 2022, [No. ICC-01/14-01/18-T-176-CONF-ENG ET](#), pp. 26-28 (open session) and [No. ICC-01/14-01/18-T-177-CONF-ENG ET](#), pp. 3-6 (open session) and pp. 7-9 (private session).

<sup>15</sup> See the transcript of the hearing held on 23 November 2022, [No. ICC-01/14-01/18-T-178-CONF-ENG ET](#), pp. 50-56 (open session).

<sup>16</sup> See the Email correspondence from the CLRV2 on 22 November 2022 at 12:06.

<sup>17</sup> See the Email correspondence from the Chamber on 29 November 2022 at 10:48.

<sup>18</sup> See the transcript of the hearing held on 2 December 2022, No. ICC-01/14-01/18-T-183-ENG RT, pp. 21, 29, 31, 36-37, 40-42, 44, 46, 50-52, 56-57 (open session).

<sup>19</sup> See the Email correspondence from the CLRV2 on 2 December 2022 at 13:40.

<sup>20</sup> See the Email correspondence from the Chamber on 2 December 2022 at 14:41.

16. On 5 December 2022, the Chamber instructed the CLRV to submit by way of a formal filing their request, originally submitted by email,<sup>21</sup> to establish a general procedure aiming at informing crime-based witnesses about the possibility to apply to participate in the proceedings as victims.<sup>22</sup>

### III. SUBMISSIONS

#### **1. The establishment of a procedure whereby crime-based witnesses are informed of the possibility to apply to participate in the proceedings as victims is necessary**

17. Article 68(3) of the Statute provides for the right of victims to participate in proceedings before the Court when their personal interests are affected. To enable victims to effectively exercise this right, they should be informed accordingly and provided with an opportunity to apply to participate if they so wish. Not all crime-based witnesses called to testify before the Court may be aware of their participatory rights as victims, or were able to apply in the context of the application process established by the relevant Chamber. The CLRV submit that the establishment of a distinct procedure whereby crime-based witnesses are informed of the possibility to apply to participate in the proceedings as victims is necessary to ensure the effective exercise by all victims of their rights, as enshrined in the Statute.

18. The establishment of such procedure in the present case would be in line with the Chamber's decision allowing victims to apply to participate in the proceedings until the end of the presentation of evidence by the Prosecution.<sup>23</sup>

19. While the harm personally suffered by crime-based witnesses can be already anticipated from the account provided in their written statements, the extent of victimisation suffered only becomes fully apparent when they are asked specific

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<sup>21</sup> See the Email correspondence from the CLRV on 30 November 2022 at 11:41.

<sup>22</sup> See the Email correspondence from the Chamber on 5 December 2022 at 14:24.

<sup>23</sup> See *supra* note 9.

questions during their testimony, as it has been the case for Witnesses P-2049, P-2419, and P-1823.<sup>24</sup>

20. In these circumstances, if a *witness who is not a participating victim* indicates that he or she personally suffered harm in relation to any of the charges confirmed against the Accused, he or she must be afforded the possibility to apply to participate as a victim in this case. The setting of a standard procedure to inform crime-based witnesses who testify about the harm suffered of the possibility to apply to participate as victims will ensure that the right of every victim to apply for participation in the proceedings is not inadvertently denied and promote the efficiency of the proceedings.

21. The example of Witness P-1528 suffices to illustrate this point. Similarly to Witnesses P-2049, P-2419, and P-1823, he testified about the harm he and his family personally suffered.<sup>25</sup> Upon questions by the CLRV2, Witness P-1528 even explained what he understood as justice being done by the Court.<sup>26</sup> However, by contrast with Witnesses P-2049, P-2419, and P-1823 – for whom the Chamber instructed the VPRS to explain the process of applying to be authorised to participate as victims in the proceedings, upon request of CLRV2<sup>27</sup> – Witness P-1528 has still not been provided the same information by the VPRS, lacking a request to the Chamber to issue an order to this effect.

22. Lastly, the CLRV submit that the establishment of a procedure whereby witnesses who personally suffered harm may apply to participate as victims will not be prejudicial to the Prosecution or the Defence. Since these witnesses will testify before the Chamber, the Prosecution and the Defence will have a chance to examine them.

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<sup>24</sup> See *supra* paras. 11, 12 and 15.

<sup>25</sup> See *supra* para. 13.

<sup>26</sup> See the transcript of the hearing held on 23 November 2022, [No. ICC-01/14-01/18-T-178-CONF-ENG ET](#), pp. 52-53 (open session).

<sup>27</sup> See *supra* paras. 11, 14 and 15.

## 2. The suggested standard procedure to inform crime-based witnesses of the possibility to apply to participate in the proceedings as victims

23. The CLRV note that Trial Chamber X in the *Al Hassan* case<sup>28</sup> and Trial Chamber I in the *Abd-Al-Rahman* case<sup>29</sup> have already established procedures regarding crime-based witnesses who have provided testimony about their victimisation or the one of their family.

24. The CLRV suggest to adopt a similar procedure for informing (i) crime-based witnesses who have already testified before the Chamber; and a distinct procedure for informing (ii) upcoming crime-based witnesses.

### *i) Procedure for crime-based witnesses who have already testified before the Chamber*

25. For persons who have already testified, the CLRV suggest that the Chamber adopt the procedure followed in the *Al Hassan* and in the *Abd-Al-Rahman* cases.<sup>30</sup> The Chambers in these cases instructed the VWS, in coordination with the VPRS, to contact the concerned witnesses to make them aware about and offer the possibility to submit an application to participate in the proceedings.

26. The VWS facilitates the contact between the concerned witnesses and the VPRS. The VWS would first consult with the witnesses, and should they consent to such contact, make the necessary arrangements for them to meet with a representative of the VPRS.

27. Should the procedure be adopted, the CLRV will provide the VWS with the list of crime-based witnesses concerned in the present case.

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<sup>28</sup> See the "Annex 23 to the Public redacted version of "Registry Quarterly Report on Email Decisions for the month of November 2020", 31 March 2021, ICC-01/12-01/18-1404-Conf" (Trial Chamber X), [No. ICC-01/12-01/18-1404-Anx23-Red](#), 22 September 2021.

<sup>29</sup> See the "Annex 3 to the Third Registry Quarterly Report on Decisions issued by way of e-mail from May to July 2022" (Trial Chamber I), [No. ICC-02/05-01/20-738-Anx3-Red](#), 2 September 2022.

<sup>30</sup> See *supra* notes 28 and 29.

*ii) Procedure for upcoming crime-based witnesses who may qualify as victims*

28. For upcoming crime-based witnesses who may qualify as victims, the CLRV suggest that the Presiding Judge inform them, immediately after completion of their testimony, of the possibility to apply to participate as victims in the proceedings. The Presiding Judge proceeds to inform the witnesses *proprio motu* or upon an oral or written request by any of the participants.

29. In order to expedite the proceedings, the CLRV further suggest that the participants may make such a request to the Chamber by e-mail at any time during the witness' testimony, when it relates to a harm personally suffered in the context of the charges as confirmed.

30. Moreover, as provided for in the *Al Hassan* and in the *Abd-Al-Rahman* cases,<sup>31</sup> the CLRV suggest that the Chamber instruct the VWS to facilitate the contact between the VPRS and the concerned witnesses before they leave the Court or the video-link location. This would mitigate potential challenges in establishing contact with the concerned individuals in the Central African Republic or elsewhere at a later stage.

31. As a result, the VPRS would be able to verify the witnesses' willingness to apply to participate as victims in the proceedings before they leave the place from where they have provided testimony. Should the witness wish to apply for participation, the VPRS will then provide a victim participation form and assist with filling-in said form.

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<sup>31</sup> *Ibid.*

#### IV. CONCLUSIONS

32. For the foregoing reasons, the CLRV respectfully request the Chamber to adopt the procedure suggested in paragraphs 25 to 31 of the present submissions, whereby crime-based witnesses who have already testified and those who will be called to testify are informed of the possibility and assisted to apply to participate as victims in the proceedings.



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Dated this 13<sup>th</sup> day of December 2022

At The Hague (The Netherlands)