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Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR *v.* MAXIME JEOFFROY ELI MOKOM GAWAKA**

**Public
With Confidential Annex**

Fifth Registry Assessment Report on Victim Applications for 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. On 27 June 2022, Pre-Trial Chamber II (“Chamber”) issued its “Order on the conduct of the confirmation of charges proceedings” (“27 June 2022 Order”),¹ in the case of *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka* case (“Case”), in which it *inter alia* adopted the “A-B-C” victim application procedure² and endorsed the guidance on the legal assessment of victim applications adopted by the Pre-Trial Chamber in the case of *The Prosecutor v. Yekatom and Ngaïssona* (“Y/N Case”).³ Specifically, in its 27 June 2022 Order, the Chamber instructed the Registry to:
 - a. Classify 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”);⁴ and
 - b. Prepare reports that accompany each transmission. These reports should list the applications for participation and the group they are classified in.⁵
2. The Registry hereby transmits its fifth assessment report (“Report”), on 72 complete applications (“Applications”) to participate in the Case. The Report includes a brief description of the assessment criteria applied in relation to the 72 applicants who clearly, in the Registry’s assessment, qualify as victims falling within the scope of the Case (Group A).

¹ Pre-Trial Chamber II, “Order on the conduct of the confirmation of charges proceedings”, 27 June 2022, ICC-01/14-01/22-62.

² *Id.*, para. 40.

³ *Id.*, para. 44.

⁴ *Id.*, para. 40 (iv).

⁵ *Id.*, para. 40 (vii).

3. The applications falling in Group A are listed in the annex to the present submission (“Annex”) and are being transmitted separately to the Chamber, in accordance with paragraph 40 (v) of the 27 June 2022 Order.

II. Procedural History

4. On 22 March 2022, the Warrant of Arrest against Mr Mokom was made public.⁶ On the same date, Mr Mokom made his first appearance before the Chamber.⁷ At that occasion, the Chamber scheduled the opening of the confirmation of charges hearing provisionally for 31 January 2023.⁸
5. On 27 June 2022, the Chamber issued its Order setting out *inter alia* the admission procedure for victims’ participation in the Case⁹ and endorsing the guidance on the legal assessment of victim applications adopted by the Pre-Trial Chamber in the Y/N Case.¹⁰
6. Between 14 September 2022 and 15 December 2022, the Registry transmitted 351 applications categorised in Group A,¹¹ together with reports thereon.¹²

III. Classification

7. The Annex is classified as confidential, in accordance with the 27 June 2022 Order.¹³

⁶ Pre-Trial Chamber II, “Public Redacted Version of ‘Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka’ (ICC-01/14-01/22-2-US-Exp)” (“Warrant of Arrest”), dated 10 December 2018 and registered on 22 March 2022, ICC-01/14-01/22-2-Red2.

⁷ See Pre-Trial Chamber II, “Order convening a hearing for the first appearance of Mr Mokom”, 16 March 2022, ICC-01/14-01/22-21.

⁸ ICC-01/14-01/22-T-001-Red-ENG WT 22-03-2022, p.11, lines 20-22.

⁹ 27 June 2022 Order, paras. 40-41.

¹⁰ *Id.*, para. 44.

¹¹ Last Registry transmission: “Fourth Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings”, 15 December 2022, ICC-01/14-01/22-122.

¹² Last Registry report: “Fourth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, 15 December 2022, ICC-01/14-01/22-121.

¹³ 27 June 2022 Order, para. 40(vii).

IV. Applicable Law

8. 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

9. Applying the criteria set out in paragraph 40(ii) of the 27 June 2022 Order, the Registry has assessed each of the 72 Applications presently transmitted under Group A as complete. In conducting its assessment, in accordance with paragraph 40(ii) of the 27 June 2022 Order, the Registry confirms that each of the 72 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 established¹⁴;
 - 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.

Observations in relation to criterion (i)

10. Certain Applications¹⁵ falling under Group A contain minor discrepancies, pertaining to *inter alia*: the applicant's date of birth or age; the inversion of the

¹⁴ The Registry notes that some applications have been submitted by a minor, applying on her or his own behalf (a/71053/22 and a/71055/22). For these applications, the Registry has assessed the maturity of the applicant based on the information contained in the form in accordance with the Chamber's endorsement of the Pre-Trial Chamber's instructions in the Y/N Case (email from Pre-Trial Chamber in the Y/N Case to VPRS, 11 July 2019 at 11:24). This includes personal information such as current occupation, marital status, number of children and dependants. The Registry also took into consideration the fact that the applicants have turned 18 since the time of the submission of their Applications.

¹⁵ The applications with minor discrepancies include: a/70397/22, a/70399/22, a/70774/22, a/70776/22, a/70928/22, a/70929/22, a/70966/22, a/70980/22, a/70982/22, a/71000/22, a/71001/22, a/71002/22, a/71003/22, a/71007/22, a/71008/22, a/71009/22, a/71010/22, a/71011/22, a/71012/22, a/71087/22,

applicant's first and last name; the partial illegibility of the applicant's last name on the identity document while the other elements of the applicant's identity like the date of birth, the place of birth and the first name as well as the father's last name are consistent; the spelling of the applicant's name or the person acting on her/his behalf; or other minor inconsistencies in the information provided which appear to be the result of inadvertent errors or the deterioration of hard-copy documentation over time. In these cases, the Registry took note of the Chamber's endorsement¹⁶ of the guidance on the legal assessment adopted by the Pre-Trial Chamber in the *Y/N* Case that "a certain degree of flexibility must be shown"¹⁷ and considers that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]".¹⁸

11. Some applicants or persons acting on their behalf have submitted as identification document a card delivered by relevant camp management agencies following a registration process ("Registration card").¹⁹ In accordance with paragraph 43 of the 27 June 2022 Order, the Registry is implementing in the Case the Pre-Trial Chamber's approval in the *Y/N* Case, to consider such document as sufficiently establishing the identity of applicants in the Case.²⁰

a/71097/22, a/71101/22, a/71102/22, a/71104/22, a/71106/22, a/71110/22, a/71113/22, a/71131/22, a/71132/22, a/71162/22, a/71163/22, a/71165/22, a/71214/22 and a/71231/22.

¹⁶ 27 June Order, para. 44.

¹⁷ Pre-Trial Chamber II, *The Prosecutor v. Yekatom and Ngaïssona*, "Decision Establishing the Principles Applicable to Victims' Applications for Participation" ("5 March 2019 Decision"), 5 March 2019, ICC-01/14-01/18-141, para. 34.

¹⁸ *Ibid.*

¹⁹ The Registry found – in the context of the *Y/N* case - that in many instances, displaced applicants 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 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. The applications concerned are: a/71011/22, a/71131/22 and a/71163/22.

²⁰ Email from Pre-Trial Chamber II in the *Y/N* Case to Registry on 2 August 2019 at 15:20.

Observations in relation to criterion (iii)

12. 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.²¹
13. Specifically on the material scope of forced displacement, the Registry notes paragraph 44 of the 27 June 2022 Order as well as the guidance provided by Pre-Trial Chamber II in the *Y/N* Case that “applications submitted by persons who have fled either because they feared the approach of the Anti-Balaka or because they have knowledge of crimes committed by the Anti-Balaka against Muslims in other locations may be accepted on the basis of the wording of the elements of crimes, which specify that “[t]he term “forcibly” is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence [...]”.²²
14. On the geographical scope of the Case, the Registry notes paragraph 44 of the 27 June 2022 Order as well as the guidance provided by Pre-Trial Chamber II in the *Y/N* Case that “a not too rigid approach should be adopted by the Registry in the assessment of such scope; accordingly, the Chamber is of the view that the geographical scope should be understood as covering: (i) areas commonly considered to be part of Bangui or those neighbouring Bangui; (ii) areas which are located on, or in the proximity of roads between Boda, Carnot or Yaloke, which could have been used by Anti-Balaka forces during the relevant period and (iii) the town of Zawa.”²³

²¹ As a result, the Registry considers 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.

²² Elements of Crimes, Article 7(1)(d), Element no. 1, fn. 12.

²³ Email from Pre-Trial Chamber II in the *Y/N* Case to Registry on 2 August 2019 at 15:20.

15. On the temporal scope of the Case, the Registry notes as well paragraph 44 of the 27 June 2022 Order and the guidance provided by Pre-Trial Chamber II in the *Y/N* Case²⁴ that “the scope of the case may be considered to be provisionally delimited by the [Y/N] DCC,²⁵ pending the Chamber’s confirmation decision”.
16. Lastly, the Registry notes that certain applications²⁶ appear to provide an erroneous date of the alleged events sometimes contradicting other dates in the narrative or do not explicitly state specific dates. However, they also refer to publicly known events (such as the resignation of former President of the Central African Republic Michel Djotodia), or provide any other sufficiently detailed contextual descriptions that date the events. In these cases, in accordance with paragraph 44 of the 27 June 2022 Order, the Registry has applied the Pre-Trial Chamber’s guidance in the *Y/N* Case “to adopt a flexible approach in assessing victim applications with regard to the temporal and territorial scope of the present case at this stage of the proceedings”.²⁷
17. The Registry will continue to assess all applications in its possession according to the criteria established by the Chamber and will transmit all complete

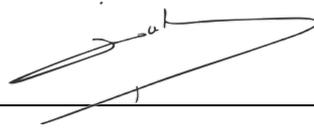
²⁴ Email from Pre-Trial Chamber II in the *Y/N* Case to Registry on 29 August 2019 at 11:17.

²⁵ Office of the Prosecutor, *The Prosecutor v. Yekatom and Ngaïssona*, “Public lesser redacted version of “Public redacted version of “Document Containing the Charges”” ICC-01-14/01-18-282-Conf-AnxB1, 19 August 2019”, 19 March 2021, ICC-01/14-01/18-282-AnxB1-Red2. As a result, the Registry considers within Group A applicants who mention crimes committed by Anti-Balaka groups in areas of Bangui or Boeïng during the month of December 2013 and that are clearly related to the alleged attack in Bangui on 5 December 2013.

²⁶ These applications include: a/70399/22, a/70427/22, a/70651/22, a/70669/22, a/71025/22 and a/71076/22.

²⁷ Pre Trial Chamber II, *The Prosecutor v. Yekatom and Ngaïssona*, “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-Red, para. 24. Accordingly, the Registry has considered as falling within Group A “applications that are internally coherent, clearly relate to the events described in the Warrants of Arrest and/or, where appropriate, the information in other victim applications, and clearly establish that the alleged perpetrators were part of the Anti-Balaka.”

applications on a rolling basis in accordance with the deadlines set out in the 27 June 2022 Order.²⁸



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

Dated this 20 January 2023

At The Hague, The Netherlands

²⁸ 27 June 2022 Order, para 41. “The Registry shall transmit the Group A and B applications to the Chamber no later than 15 days before the confirmation hearing, and the Group C applications to the Chamber and the parties no later than 30 days before the confirmation hearing [...].”