



**Original: English**

**No. ICC-01/14-01/22**

**Date: 7 August 2023**

**Date of public redacted version: 9 August 2023**

**PRE-TRIAL CHAMBER II**

**Before:**

**Judge Rosario Salvatore Aitala, Presiding**

**Judge Tomoko Akane**

**Judge Sergio Gerardo Ugalde Godínez**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF**

***THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA***

**Public**

Public redacted version of ‘Decision on victim applications for participation in the proceedings’

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

**The Office of the Prosecutor**

Mr Karim A. A. Khan  
Mr Mame Mandiaye Niang  
Ms Leonie von Braun

**Counsel for Mr Mokom**

Mr Philippe Larochelle

**Legal Representatives of Victims**

Mr Abdou Dangabo Moussa  
Ms Marie-Edith Douzima-Lawson  
Mr Yaré Fall  
Ms Elisabeth Rabesandratana

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

---

**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

**PRE-TRIAL CHAMBER II** of the International Criminal Court issues this ‘Decision on victim applications for participation in the proceedings’.

## **I. PROCEDURAL HISTORY**

1. On 27 June 2022, the Chamber, *inter alia*, adopted the principles and procedure governing victim participation, including the procedure for admission of victims to participate in the proceedings in accordance with rule 89 of the Rules of Procedure and Evidence (the ‘Rules’).<sup>1</sup> In particular, the Chamber adopted the system for transmission and admission of victim applications pursuant to which the Registry was directed to, *inter alia*, classify applicants into three categories: (i) applicants who clearly qualify as victims (‘Group A’); (ii) applicants who clearly do not qualify as victims (‘Group B’); and (iii) applicants for whom the Registry could not make a clear determination for any reason (‘Group C’). In this respect, it instructed the Registry to transmit on a rolling basis all complete applications. The Chamber also endorsed the guidance on the legal assessment of victim applications adopted by the Chamber in the case of *The Prosecutor v. Yekatom and Ngaïssona* (the ‘*Yekatom and Ngaïssona* case’) (the ‘Victim Application Procedure’).

2. On 13 February 2023, the Chamber, *inter alia*, instructed the Registry to transmit the final Group A, B and C applications by no later than 28 June 2023, and the parties to file their observations, if any, on the Group C applications by no later than 5 July 2023.<sup>2</sup>

3. On 16 February 2023, the Chamber ordered the Registry to include the application forms submitted by three categories of victims from the *Yekatom and Ngaïssona* case in the present case so as to integrate them into the Victim Application Procedure, and to assess the applications submitted by the victims from the *Yekatom and Ngaïssona* case falling into the aforementioned categories and all remaining victim applications previously assessed, including those previously transmitted to the

---

<sup>1</sup> [Order on the conduct of the confirmation of charges proceedings](#), ICC-01/14-01/22-62, public, (the ‘27 June 2022 Order’).

<sup>2</sup> [Second order on the conduct of the confirmation of charges proceedings](#), ICC-01/14-01/22-157, public, paras 38-39.

Chamber, on the basis of the parameters as defined in the Document Containing the Charges (the ‘DCC’) once submitted (the ‘16 February 2023 Order’).<sup>3</sup>

4. On 9 March 2023, the Prosecution submitted the DCC.<sup>4</sup>

5. On 27 March 2023, the Chamber designated Mr Abdou Dangabo Moussa, Ms Marie Edith Douzima-Lawson, Mr Yaré Fall and Ms Elisabeth Rabesandratana as the common legal representatives for any admitted victims (the ‘Common Legal Representatives of Victims’), and ordered the Registry to consult the applicants seeking to have other legal representatives appointed on whether they wish to be represented by the Common Legal Representatives of Victims.<sup>5</sup>

6. On 31 May 2023, the Registry submitted a report on its consultations with the applicants who initially sought to be represented by legal representatives other than those appointed in the present proceedings. The Registry reported that: (i) 11 applicants refuse to continue with their applications at the present stage of the proceedings; (ii) 55 applicants initially refused to continue with their applications but now wish to continue to be represented by the Common Legal Representatives of Victims as indicated by a third-party acting on their behalf; and (iii) 71 applicants wish to continue with their applications and be represented by the Common Legal Representatives of Victims (the ‘Victims Legal Representation Report’).<sup>6</sup>

7. On 25 May 2023 and 28 June 2023, the Registry submitted two assessment reports on victim applications for participation in the pre-trial proceedings,<sup>7</sup> and

---

<sup>3</sup> Order in relation to the ‘Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jeffroy [sic] Eli Mokom Gawaka* to the victims participating in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*’, ICC-01/14-01/22-163, public (a corrected version was filed on 17 February 2023, [ICC-01/14-01/22-163-Corr](#)).

<sup>4</sup> [Prosecution’s Submission of the Document Containing the Charges](#), ICC-01/14-01/22-174, public, with Annexes, confidential (public redacted versions of Annexes A and B were filed on 13 March 2023, [ICC-01/14-01/22-174-AnxA-Red](#) and [ICC-01/14-01/22-174-AnxB-Red](#)).

<sup>5</sup> [Decision on the legal representation of victims](#), ICC-01/14-01/22-182, public (the ‘Decision on Victims Legal Representation’).

<sup>6</sup> [Registry Report pursuant to Pre-Trial Chamber II’s “Decision on the legal representation of victims” \(ICC-01/14-01/22-182\)](#), ICC-01/14-01/22-215, public, with confidential and *ex parte* Annex, only available to the Registry (the ‘Victims Legal Representation Report’).

<sup>7</sup> [Sixth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), ICC-01/14-01/22-209, public (the ‘Sixth Assessment Report’), with Annexes 1 and 2, confidential and Annex 3, confidential and *ex parte*, only available to the Registry; [Seventh Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), ICC-01/14-01/22-236, public (the ‘Seventh Assessment Report’), with Annexes 1, 2, and 4, confidential; Annexes 3 and 5, confidential and *ex parte*, only available to the Registry (a confidential redacted version of annex 5 was also submitted).

transmitted 732 applications under Group A (the ‘Group A Applications’),<sup>8</sup> 162 applications under Group B (the ‘Group B Applications’),<sup>9</sup> and one application under Group C (the ‘Group C Application’).<sup>10</sup> These two assessment reports include the applications that had been previously transmitted to the Chamber and that were subsequently reassessed following the submission of the DCC, pursuant to the 16 February 2023 Order.<sup>11</sup> The Registry further indicated that, out of the total number of applications received prior and subsequent to the submission of the DCC, 333 applications are pending confirmation by their respective legal representatives to be transmitted as Group B Applications, or were assessed as incomplete in light of the new scope of the case and require supplementary information.<sup>12</sup>

---

<sup>8</sup> [Sixth Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings](#), 25 May 2023, ICC-01/14-01/22-207, public, with 101 confidential and *ex parte* annexes, only available to the Registry (the ‘Sixth Group A Transmission’); [Seventh Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings](#), ICC-01/14-01/22-235, public, with 439 confidential and *ex parte* Annexes, only available to the Registry (the ‘Seventh Group A Transmission’); Annex 2 of the Seventh Assessment Report, 01/14-01/22-236-Conf-Anx2, confidential (listing 192 applications reassessed as falling under Group A but not retransmitted after the issuance of the DCC) (the ‘Annex 2 of the Seventh Assessment Report’). For a detailed account of the applications transmitted under Group A, see [Seventh Assessment Report](#), paras 13-15.

<sup>9</sup> [First Registry Transmission of Group B Applications for Victim Participation in Pre-Trial Proceedings](#), 25 May 2023, ICC-01/14-01/22-208, public (the ‘First Group B Transmission’), with 58 confidential and *ex parte* annexes, only available to the Registry; [Second Registry Transmission of Group B Applications for Victim Participation in Pre-Trial Proceedings](#), 28 June 2023, ICC-01/14-01/22-234, public (the ‘Second Group B Transmission’), with 104 Confidential and *ex parte* annexes, only available to the Registry. For a detailed account of the applications transmitted under Group B, see [Seventh Assessment Report](#), paras 13-15.

<sup>10</sup> See [Seventh Assessment Report](#), para. 15; Annexes 4 and 5 to the Seventh Assessment Report.

<sup>11</sup> Before the submission of the DCC, the Registry filed the following assessment reports and transmissions: [First Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), 13 September 2022, ICC-01/14-01/22-86, public; [Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), 13 October 2022, ICC-01/14-01/22-101, public; [Third Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), 21 October 2022 ICC-01/14-01/22-114, public; [Fourth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), 15 December 2022, ICC-01/14-01/22-121, public; [Fifth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings](#), 20 January 2023, ICC-01/14-01/22-133, public. See also [First Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings](#), 13 September 2022, ICC-01/14-01/22-87, public, with 70 confidential and *ex parte* annexes only available to the Registry; [Second Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings](#), 13 October 2022, ICC-01/14-01/22-102, public, with 71 confidential and *ex parte* annexes, only available to the Registry; [Third Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings](#), 21 November 2022, ICC-01/14-01/22-113, public, with 140 confidential and *ex parte* annexes, only available to the Registry; [Fourth Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings](#), 15 December 2022, ICC-01/14-01/22-122, public, with 70 confidential and *ex parte* annexes, only available to the Registry; [Fifth Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings](#), 20 January 2023, ICC-01/14-01/22-134, public, with 72 confidential and *ex parte* annexes, only available to the Registry.

<sup>12</sup> [Seventh Assessment Report](#), paras 13-15.

8. On 5 July 2023, the Prosecution filed its observations on the Group C Application (the ‘Prosecution Observations’).<sup>13</sup>

## II. SUBMISSIONS

### A. The Registry’s submissions regarding Group A, B and C applications

#### 1. Group A Applications

9. The Registry submits that the Group A Applications are complete and meet, *prima facie*, the following criteria: (i) the identity of the applicant is established; (ii) the applicant has suffered harm; and (iii) the harm suffered is a result of an incident falling within the temporal, geographic and material scope of the case as contained in the DCC.

10. In relation to the first criterion, the Registry states that certain Group A Applications contain minor discrepancies which appear to be the result of inadvertent errors or deterioration of hard-copy documentation over time, and that, in accordance with the Victim Application Procedure, a certain degree of flexibility needs to be shown in this regard. The Registry submits that these discrepancies do not call into question the overall credibility of the information provided by the applicants. Moreover, it submits that some applicants or persons acting on their behalf have submitted two types of cards delivered by relevant refugee camp management agencies, and that, in accordance with the 27 June 2022 Order, it has considered such documents as sufficiently establishing the identity of applicants.

11. Regarding the third criterion, the Registry submits that it adopted a flexible approach with regard to some applicants who provide no or an erroneous date of the alleged events insofar as they also refer to publicly known events or provide any other sufficiently detailed contextual descriptions that date the events in question.

#### 2. Group B Applications

12. The Registry submits that the Group B Applications are complete, but that upon conducting its *prima facie* assessment, it has determined that these applicants clearly

---

<sup>13</sup> Observations de l’Accusation sur le “Seventh Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, (ICC-01/14-01/22-236), ICC-01/14-01/22-240-Conf, confidential. The Defence and the Office of Public Counsel for Victims did not file observations.

do not qualify as victims because the alleged harm has resulted from the indication of alleged perpetrators and/or events falling outside the territorial, temporal, and/or material parameters as defined in the DCC.

### 3. *Group C Application*

13. The Registry transmits a single application bearing number a/40126/23, which it has assessed as falling under Group C. Although the application is complete, the Registry indicates that it is not ‘in a position to make a clear determination as to the applicant’s status because it remains unclear whether or not the personal harm reported by the applicant – who was born in a refugee camp following the forced displacement of her pregnant mother in the aftermath of the 5 December 2013 attack on Bangui – resulted from an incident falling within the material parameters of the Case’. The Registry, therefore, seeks clarification on whether a child born after the forced displacement of his/her parents in a refugee camp may also be considered a (direct or indirect) victim of forced displacement in the present case.

#### **B. Prosecution Observations**

14. The Prosecution does not object to the Group C applicant being admitted as a victim on the basis that the application: (i) contains sufficient details on the applicant’s identity and date of birth; (ii) describes the material and psychological harm suffered resulting from the forced transfer; (iii) falls within the geographical and temporal scope of the case; and (iv) the applicant’s harm is the direct consequence of the crime of deportation, and forcible transfer and displacement of the civilian population committed against her then pregnant mother. The Prosecution further submits that, [REDACTED].

### III. DETERMINATION BY THE CHAMBER

#### A. Preliminary matters

15. First, the Chamber notes the Victims Legal Representation Report and recalls in this regard that the Chamber deemed appropriate to appoint common legal representatives for participating victims so as to ensure the effectiveness of the proceedings.<sup>14</sup> Considering that they refused to continue with their applications and that their lawyer requested their withdrawal,<sup>15</sup> the Chamber observes that the 11 applicants who refused to continue with their applications do not require to be considered for the purposes of the present decision. Concerning the 55 applicants, the Chamber notes that the third-party acting on their behalf has been mandated by at least 45 of them. These 45 applicants have signed a declaration to this effect. It is also noted that the lawyer initially designated by them did not object to the possible change of legal representation.<sup>16</sup> Therefore, the Chamber considers that they demonstrated their wish to continue with their applications and be represented by the Common Legal Representatives of Victims. Accordingly, the Chamber will take into account the applications of these 55 applicants, together with the applications of the 71 applicants who agreed to be represented by the Common Legal Representatives of Victims, for the purposes of the present decision, on the basis of the Registry's assessment of their applications in accordance with the Victim Application Procedure.

16. Second, the Chamber has only considered those applications transmitted and/or reassessed following the submission of the DCC pursuant to the 16 February 2023 Order,<sup>17</sup> since the Registry's assessment of these applications is based on the current scope of the case.

---

<sup>14</sup> [Decision on Victims Legal Representation](#), para. 29.

<sup>15</sup> [Victims Legal Representation Report](#), para. 5, footnote 4.

<sup>16</sup> [Victims Legal Representation Report](#), paras 5-6, footnotes 8-9.

<sup>17</sup> Namely, the applications transmitted or identified in the Sixth Group A Transmission, the Seventh Group A Transmission, Annex 2 of the Seventh Assessment Report (Group A only), the First Group B Transmission, the Second Group B Transmission, and in Annexes 4 and 5 of the Seventh Assessment Report. The Chamber did not consider the 333 applications that are pending confirmation by their respective legal representatives to be transmitted as Group B applications or require supplementary information.



## B. Groups A, B and C applications of victims

### 1. Group A Applications

17. The Chamber recalls the criteria for an applicant to qualify as a victim,<sup>18</sup> and the procedure for the admission of Group A and B applications, namely that ‘[b]arring a clear, material error in the Registry’s assessment of Groups A and B, the Chamber, taking into account the Registry’s assessment [...], will decide. While the Registry’s conclusions may be of assistance, it is for the Chamber to ultimately authorise or reject an applicant to participate in the proceedings’.<sup>19</sup>

18. The Registry submits that, upon its initial assessment, 732 applications are complete and fall under Group A. The Chamber has not identified any clear, material error in the Registry’s assessment and concurs with it. The Chamber considers that the minor discrepancies identified by the Registry in certain applications<sup>20</sup> do not affect the overall credibility of the information provided by the concerned applicants. Furthermore, in relation to cards delivered by camp management agencies which are used in lieu of other identification documents, the Chamber considers that the Registry properly assessed that such documents sufficiently establish the identity of the concerned applicants. The Chamber also finds no error in the Registry’s adoption of a flexible approach with regard to the temporal and territorial scope of the present case, and in particular in respect of applications which provide no specific dates or an erroneous date of the alleged events but refer to publicly known events or provide other sufficiently detailed contextual descriptions.

19. In light of the above, the Chamber decides to authorise the 732 applicants concerned<sup>21</sup> to participate as victims in the present proceedings.

---

<sup>18</sup> See Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, [Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing](#), 18 January 2021, ICC-02/05-01/20-259, public, para. 17; Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, [Decision Establishing the Principles Applicable to Victims’ Applications for Participation](#), 5 March 2019, ICC-01/14-01/18-141, para. 21.

<sup>19</sup> [27 June 2022 Order](#), para. 40(x).

<sup>20</sup> The discrepancies concern the legibility, spelling or consistency of the name or date of birth of some applicants, the applicant’s signature location on the form or the date.

<sup>21</sup> As enumerated in the Sixth Group A Transmission, the Seventh Group A Transmission, and the Annex 2 of the Seventh Assessment Report (group A only).

## 2. *Group B Applications*

20. The Chamber notes that the Registry has determined that, for the Group B Applications, the relevant applicants clearly do not qualify as victims because the alleged harm resulted from the indication of alleged perpetrators and/or events falling outside the territorial, temporal, and/or material scope of the case. The Chamber has not identified any clear, material error in the Registry's assessment. Therefore, the Chamber decides not to authorise the 162 applicants concerned<sup>22</sup> to participate as victims in the present proceedings.

## 3. *Group C Application*

21. At the outset, the Chamber recalls that victim applications are assessed to determine whether the requirements for participation in the proceedings have been satisfied *prima facie*.<sup>23</sup> Pursuant to rule 85 of the Rules, it must be demonstrated for each applicant that: (i) the identity of the applicant as a natural person is established; (ii) the applicant has suffered harm; and (iii) the harm suffered is a result of an incident falling within the temporal, geographic and material scope of the case in light of the allegations contained in the DCC.

22. Regarding the Group C Application, the Chamber finds that the applicant's identity and relationship with the mother is sufficiently established by a birth certificate and certified by two witnesses. In relation to the applicant's date of birth, the Chamber notes that, whilst the applicant indicates that she was born on [REDACTED], her mother, the applicant's birth certificate as well as the statements of two other persons, clarify that the applicant was in fact born in [REDACTED]. In addition, the Chamber notes the statement of the applicant's mother that [REDACTED]. The applicant's location of birth is also confirmed by the statement of two other persons. Therefore, the Chamber finds that the applicant's date and location of birth are sufficiently established for the purpose of her application to participate in the proceedings.

---

<sup>22</sup> As enumerated in the First Group B Transmission and the Second Group B Transmission.

<sup>23</sup> See Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona, Decision regarding the Registry's Outstanding Transmissions of Applications for Victim Participation*, 13 September 2019, ICC-01/14-01/18-338, public, para. 28.

23. Furthermore, the Chamber considers that the existence of a prejudice is demonstrated *prima facie* by [REDACTED].

24. Lastly, the Chamber considers that the link between the harm and the charged crimes of deportation, and forcible transfer and displacement of the civilian population (counts 5-6 of the DCC) is established.<sup>24</sup> The applicant mentions that [REDACTED].

25. Consequently, the Chamber finds that the applicant meets the requirements set forth in rule 85 of the Rules and, therefore, decides to authorise participation as a victim in the present proceedings.

### C. Legal representation of victims

26. Noting that the Common Legal Representatives of Victims will take on their duties immediately upon the issuance of the present decision, the Chamber, pursuant to rule 121(10) of the Rules: (i) grants the Common Legal Representatives of Victims access to the record of the proceedings containing all filings, decisions, transcripts of hearing, and items of evidence disclosed or made available, with the exception of those classified as *ex parte*, only available to or held in the presence of the Prosecution, the Defence, another participant and/or the Registry; and (ii) instructs the Registry to notify the Common Legal Representatives of Victims of all public and confidential documents, decisions, and transcripts contained in the record, with the exception of those classified as *ex parte*, only available to or held in the presence of the Prosecution, the Defence, another participant and/or the Registry.

27. Moreover, the Chamber will assess on a case-by-case basis whether the victims shall be allowed to participate in respect of matters other than the confirmation of charges hearing and shall issue separate instructions where applicable.

---

<sup>24</sup> See also Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Nineteenth Decision on Victims' Participation in Trial Proceedings \(Groups B and C\)](#), 13 March 2023, ICC-01/14-01/18-1795, public, paras 9-12.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**AUTHORISES** the participation in the present proceedings of the 732 Group A victims having submitted the applications enumerated in transmissions ICC-01/14-01/22-236-Conf-Anx2, ICC-01/14-01/22-207 and ICC-01/14-01/22-235;

**AUTHORISES** the participation in the present proceedings of the Group C applicant having submitted application a/40126/23;

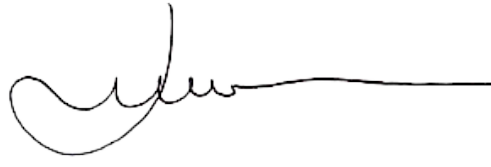
**DECIDES** to reject the applications of the 162 Group B victims having submitted the applications enumerated in transmissions ICC-01/14-01/22-208 and ICC-01/14-01/22-234;

**GRANTS** the Common Legal Representatives of Victims access to the record of the proceedings containing all filings, decisions, transcripts of hearing, and items of evidence disclosed or made available, with the exception of those classified as *ex parte*, only available to or held in the presence of the Prosecution, the Defence, another participant and/or the Registry;

**INSTRUCTS** the Registry to notify the Common Legal Representatives of Victims of all public and confidential documents, decisions, and transcripts contained in the record, with the exception of those classified as *ex parte*, only available to or held in the presence of the Prosecution, the Defence, another participant and/or the Registry; and

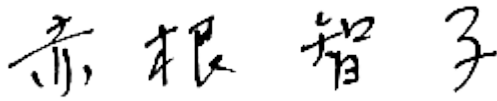
**ORDERS** the Prosecution to file a public redacted version of ICC-01/14-01/22-240-Conf by no later than 9 August 2023.

Done in English. A French translation will follow. The English version remains authoritative.



---

**Judge Rosario Salvatore Aitala**  
**Presiding**



---

**Judge Tomoko Akane**



---

**Judge Sergio Gerardo Ugalde**  
**Godínez**

Dated this Monday, 7 August 2023

At The Hague, The Netherlands