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**No. ICC-01/14-01/18
Date: 17 October 2023**

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 Annexes A and B**

**Twenty-First Decision on Victims' Participation in Trial Proceedings
(Groups A and B) and Decision on Requests for Extension of Time to Transmit
Applications**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona*, having regard to Article 68(3) of the Rome Statute, Rules 85 and 89 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulations 35 and 86 of the Regulations of the Court (the ‘Regulations’), issues this ‘Twenty-First Decision on Victims’ Participation in Trial Proceedings (Groups A and B) and Decision on Requests for Extension of Time to Transmit Applications’.

I. Procedural history

1. The Chamber recalls the procedural history as set out in its previous decisions concerning victim participation.¹ In particular, the Chamber recalls the criteria for an applicant to qualify as a victim and the procedure established for the admission of Group A and B applications, namely that, ‘barring a clear, material error’, it would ratify the Registry’s assessment of the applications.² The Chamber further recalls that Group A applications correspond to ‘applicants who clearly qualify as victims’ and Group B applications correspond to ‘applicants who clearly do not qualify as victims’.³
2. The Chamber also recalls that it initially set the time limit for transmission of victim applications at the end of the Prosecution’s presentation of evidence.⁴
3. On 7 September 2023, the Chamber received a total of 209 Group A victims’ applications (the ‘Group A Applications’),⁵ and 60 Group B victims’ applications (the ‘Group B Applications’).⁶ Additionally, the Registry filed accompanying

¹ See, in particular, Decision on Victims’ Participation in Trial Proceedings, 23 November 2020, ICC-01/14-01/18-738 (the ‘First Decision on Victim Participation’), paras 1-5.

² Pre-Trial Chamber II, Decision Establishing the Principles Applicable to Victims’ Applications for Participation, 5 March 2019, ICC-01/14-01/18-141 (the ‘5 March 2019 Decision’), paras 29-41.

³ 5 March 2019 Decision, ICC-01/14-01/18-141, para. 41(i).

⁴ Decision Setting the Commencement Date of the Trial, 16 July 2020, ICC-01/14-01/18-589 (the ‘Decision Setting Commencement Date of Trial’), para. 20.

⁵ Twenty-Fifth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, ICC-01/14-01/18-2082 (with confidential *ex parte* Annexes 1 to 209, only available to the Registry).

⁶ Sixteenth Registry Transmission of Group B Applications for Victim Participation in Trial Proceedings, ICC-01/14-01/18-2083 (with confidential *ex parte* Annexes 1 to 60, only available to the Registry).

assessment reports, containing a brief description of the criteria applied in its transmissions of the Group A and Group B Applications.⁷

4. The Registry also requests an extension of time to transmit all applications presently in the Registry's possession, once duly completed (the 'First Request'), as well as an extension of time for the transmission of any future victim applications to the end of trial (the 'Second Request', together the 'Request').⁸
5. On 18 September 2023, the Common Legal Representative of the Victims Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (together, the 'CLR') submitted joint observations, supporting the Request and noting similar difficulties to the Registry in reaching some of their clients due to the prevailing security situation in the Central African Republic (the 'CAR').⁹
6. On the same day, the Yekatom Defence submitted its observations, opposing the Second Request and deferring to the Chamber's discretion for the First Request.¹⁰

II. Analysis

A. First Request

1. Submissions

7. The Registry proposes to transmit the applications presently in its possession in batches and on a rolling basis, as soon as possible after their completion. The Registry submits that 'extending the deadline would afford victim applicants [...]

⁷ Twenty-Eighth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 7 September 2023, ICC-01/14-01/18-2081 (with confidential Annex 1 and confidential *ex parte* Annex 2, only available to the Registry) (the 'Twenty-Eighth Registry Report').

⁸ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, paras 4, 44.

⁹ Common Legal Representatives of Victims' Joint Observations on the "Twenty-Eighth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings", ICC-01/14-01/18-2101 (the 'CLR Joint Observations'), paras 8, 11-12.

¹⁰ Yekatom Defence Observations on the "Twenty-Eighth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings", 18 September 2023, ICC-01/14-01/18-2103 (the 'Yekatom Defence Observations').

certainty about the processing of their applications, without affecting the expeditiousness of the proceedings or the rights of the Defence'.¹¹

8. The Yekatom Defence submits that should the extension be granted, a cut-off date and parameters should be set.¹²

2. *Chamber's determination*

9. The Chamber notes that the 337 applications in question are presently in the possession of the Registry and require either supplementary information or final confirmation from respective legal representatives of victims. Furthermore, the Chamber notes the difficulties the Registry faces, in reaching out to certain victims and the challenges these victims face in providing the required information or documentation. The Chamber further notes the Registry's assessment that the necessary determinations per application and the subsequent transmissions to the Chamber will be possible in the coming months.¹³
10. The Chamber notes the difficulties faced by the Registry in completing the applications and the fact that they may be outside its control. Furthermore, the Chamber considers that those difficulties should not prevent victims from having their applications fully assessed by the Registry, nor should it prevent their participation in the proceedings, should they eventually be admitted. In the Chamber's view, the extension of the deadline for the transmission of said applications also does not unduly affect the expeditiousness of the proceedings or the accused's right to a fair trial.
11. In light of the above, the Chamber grants the First Request.
12. The Chamber considers it appropriate to set the deadline for the transmission of victim applications presently in possession of the Registry to **29 February 2024**. By this date, the Registry is expected to transmit all completed applications in its possession in batches on a rolling basis, as soon as possible after their completion.

¹¹ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 38.

¹² Yekatom Defence Observations, ICC-01/14-01/18-2103, para. 20.

¹³ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 37.

B. Second Request

1. Submissions

13. In relation to the Second Request, the Registry refers to the operational and logistical challenges it faces in finding and reaching victim communities in the current volatile security situation in the CAR.¹⁴ The Registry further submits that victims continue to have a legitimate interest to ‘obtain participatory status in the trial proceedings beyond the Prosecution case’.¹⁵
14. The Yekatom Defence submits that this request for extension amounts to a request for reconsideration of the Chamber’s initial decision on the cut-off date and that the Registry does not raise new information which would warrant such reconsideration.¹⁶ Therefore, the Yekatom Defence is of the view that ‘further extension of the cut-off date would go against the fair and expeditious conduct of the proceedings’.¹⁷

2. Chamber’s determination

15. The Chamber notes that according to Regulation 35 of the Regulations, it ‘may extend or reduce a time limit if good cause is shown’. Further, after the lapse of a time limit, ‘an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control’.
16. The Chamber recalls that it considered the end of the Prosecution’s presentation of evidence as an appropriate time limit for the transmission of victim applications in order to facilitate the fair and expeditious conduct of the proceedings.¹⁸

¹⁴ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 40.

¹⁵ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 41.

¹⁶ Yekatom Defence Observations, ICC-01/14-01/18-2103, para. 11.

¹⁷ Yekatom Defence Observations, ICC-01/14-01/18-2103, para. 13.

¹⁸ Decision Setting Commencement Date of Trial, ICC-01/14-01/18-589, paras 19-20. *See also* Chambers Practice Manual (2023), 7th Edition, para. 97.

17. The Chamber considers that the Second Request is not warranted, neither as an extension of time nor as a reconsideration of its initial decision. First, the Chamber notes that the Registry does not provide submissions relating to the prevalent security situation and operational problems that were not foreseeable or already considered by the Chamber at the start of the trial.¹⁹ Similarly, the Registry does not advance any facts or circumstances showing that it was prevented from filing the Second Request within the initial deadline for reasons outside its control. Furthermore, the Chamber is of the view that the situation in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ('Ali Kushayb') (the '*Abd-Al-Rahman* case') needs to be distinguished from the case at hand. In particular, in the *Abd-Al-Rahman* case, the Registry requested a shorter extension period and the Chamber found that (i) limited translation capacities within the Registry should not disadvantage victims; and (ii) the outbreak of the conflict in Sudan could not have been anticipated by the Registry.²⁰
18. The Chamber further considers that the Registry may continue collecting applications and/or relevant information from victims for the purposes of potential reparations proceedings.²¹ In the view of the Chamber, the mapping of potentially eligible beneficiaries of reparations presents another opportunity for victims to make themselves known to the Court once the deadline for victim applications has expired.²²
19. In light of the above, the Chamber rejects the Second Request.

III. Victim's Participation in Trial Proceedings (Group A and B)

20. The Registry notes that, pursuant to the Chamber's previous decisions, it categorised under Group A applicants who describe (i) 'crimes committed by Anti-Balaka groups in areas neighbouring the borders of Cattin or Boeing and

¹⁹ See also Yekatom Defence Observations, ICC-01/14-01/18-2103, para. 17.

²⁰ Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ('Ali Kushayb'), Decision on the Second Registry's Request to Extend the Time Limit to Submit Victim Applications for Participation, 16 May 2023, ICC-02/05-01/20-943, paras 7-8, 12.

²¹ See Chambers Practice Manual (2023), 7th Edition, para. 97.

²² See Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ('Ali Kushayb'), Decision on the Registry's request for extension of time limit to submit victims' applications for participation, 9 February 2023, ICC-02/05-01/20-868, para. 21. See also Chambers Practice Manual (2023), 7th Edition, para. 97.

clearly related to the alleged attack in Bangui on 5 December 2013'; (ii) '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'; and (iii) 'crime[s] 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'.²³

21. Furthermore, the Registry notes that certain Group A Applications contained minor discrepancies, pertaining *inter alia* to '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 [...] which appear to be the result of inadvertent errors'.²⁴ In this regard, the Registry submits that it took note of the previous Pre-Trial Chamber II instructions, *i.e.* that 'a certain degree of flexibility must be shown', considering that the discrepancies mentioned above 'do not call into question the overall credibility of the information provided by the applicant'.²⁵
22. Additionally, the Registry notes that certain Group A Applications 'provide[d] an erroneous date of the alleged events or [did] not explicitly state specific dates' while, at the same time, 'refer[red] to publicly known events [...] or provide[d] other sufficiently detailed contextual descriptions that date the events'.²⁶ With regard to these applications, the Registry submits that it applied the Chamber's instruction to examine applications 'holistically by assessing their internal coherence and the overall context of the alleged acts'.²⁷
23. With regard to the Group B Applications, the Registry notes that, in conducting its *prima facie* assessment, it concluded that the applicants therein 'clearly do not qualify as victims', due to the fact that 'the harm alleged has resulted from the

²³ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, paras 29-30.

²⁴ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 25.

²⁵ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 25 *citing* 5 March 2019 Decision, ICC-01/14-01/18-141, para. 34.

²⁶ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 31.

²⁷ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 31 *citing* email from the Chamber to the Registry, 30 July 2020, at 17:29.

indication of perpetrators and events falling outside the territorial, temporal, and/or material parameters of the [c]ase'.²⁸

24. The Chamber recalls the applicable law set out in its 'Decision on Victims' Participation in Trial Proceedings'.²⁹
25. The Group A Applications were individually assessed by the Registry, which determined that the applicants meet, on a *prima facie* basis, the requirements of Rule 85(a) of the Rules for the granting of victim status.³⁰ The Group B Applications were also individually assessed by the Registry, which determined that, on a *prima facie* basis, the applicants clearly do not qualify as victims.³¹
26. The Chamber has not identified any clear, material errors in the Registry's assessment and therefore authorises the participation as victims of the 209 applicants whose applications were transmitted under Group A, and rejects the 60 applicants whose applications were transmitted under Group B.

²⁸ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 34.

²⁹ First Decision on Victim Participation, ICC-01/14-01/18-738, paras 11-12.

³⁰ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 24.

³¹ Twenty-Eighth Registry Report, ICC-01/14-01/18-2081, para. 34.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the First Request;

SETS the deadline for said transmission in batches on a rolling basis, until **29 February 2024**;

REJECTS the Second Request;

ADMITS the 209 applicants whose applications were transmitted under Group A, listed in Annex A to the present decision, as participating victims for the purpose of the trial proceedings; and

REJECTS the 60 applicants whose applications were transmitted under Group B, listed in Annex B to the present decision, as participating victims for the purpose of the trial proceedings.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 17 October 2023

At The Hague, The Netherlands