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**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-01/14-01/18  
Date: 19 October 2020

**TRIAL CHAMBER V**

**Before:** Judge Bertrand 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**

**First 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 adopted by Pre-Trial Chamber II ("PTC").<sup>1</sup> 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")<sup>2</sup> 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");<sup>3</sup>
  - ii. prepare "regular reports that list the applications for participation and classify them according to the three groups";<sup>4</sup> and
  - iii. prepare "assessment reports for the attention of the PTC and the parties, highlighting the difficulties encountered regarding Group C applications."<sup>5</sup>
  
2. The Registry hereby transmits its first report on 15 complete applications to participate ("Applications") in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* ("Case"). The Registry has assessed all of these Applications to fall in Group C. The report includes an overview of the reasons why the Registry was not in a position to make a clear determination on each of the Applications.

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

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

<sup>3</sup> *Ibid.*, para. 41 (i). In paragraph 41 (iv) of the decision, the PTC ordered the Registry to "disclose to the Prosecutor and the Defence all Group C applications, redacted as needed".

<sup>4</sup> *Ibid.*, para. 41(iii).

<sup>5</sup> *Ibid.*, para. 41(v).

3. The Applications have been listed in the annex to the present submission (“Annex”) and separately transmitted to the Chamber in original version and to the parties in redacted version, in accordance with paragraph 41(ii) and (iv) of the Decision. The Annex also contains excerpts of the relevant Applications illustrating the difficulties encountered.

## 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.<sup>6</sup>
5. On 21 June 2019, the PTC authorised 15 victims to participate at the confirmation hearing in the Case (“First Decision on Victims’ Applications”).<sup>7</sup>
6. On 13 September 2019, the PTC authorised 1,070 additional victims to participate in the proceedings (“Second Decision on Victims’ Applications”).<sup>8</sup>
7. On 11 December 2019, the PTC issued a decision partially confirming the charges against the accused (“Decision on the Confirmation of Charges”).<sup>9</sup>
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;<sup>10</sup> and ii) requested the Registry to provide an update and forecast on applications by victims to participate in the proceedings.<sup>11</sup>
9. On 22 May 2020, the Registry provided its Update on Victim Participation (“Update”).<sup>12</sup>

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<sup>6</sup> See *supra*, footnote 2.

<sup>7</sup> 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-Red.

<sup>8</sup> 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.

<sup>9</sup> 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 redaction version was filed on 14 May 2020 (ICC-01/14-01/18-403-Red-Corr).

<sup>10</sup> Scheduling Order, para. 8 (iv).

<sup>11</sup> *Ibid.*, para. 3 (I).

<sup>12</sup> Registry, “Public redacted version of Update on Victim Applications for Participation”, 22 May 2020, 01/14-01/18-470-AnxIII-Red2.

10. On 16 July 2020, the Chamber set the start of the trial on 9 February 2020 and the “end of the Prosecution’s presentation of evidence as the deadline for the transmission of victim applications by the Registry”.<sup>13</sup>
11. On 17 July 2020, the Registry sought by way of email the Chamber’s guidance on issues raised during its assessment of victim applications.<sup>14</sup>
12. On 30 July 2020, the Chamber directed the Registry to seek the Chamber’s guidance on the record for a number of the issues raised.<sup>15</sup>

### **III. Classification**

13. The annex to the present submission is classified as confidential in accordance with the Decision.<sup>16</sup>

### **IV. Applicable Law**

14. 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**

15. As reported in its Update,<sup>17</sup> the Registry has undertaken a comprehensive review of all applications for participation received to date in order to assess whether the crimes suffered by victims admitted to participate during the pre-trial stage have remained within the scope of the Case following the

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<sup>13</sup> Trial Chamber V, “Decision Setting the Commencement Date of the Trial”, 16 July 2020, ICC-01/14-01/18-589.

<sup>14</sup> Email from Registry to Trial Chamber V on 17 July 2020 at 13:41. The Registry notes that on 9 October 2020 it received supplementary information regarding three applications (a/65204/19, a/65241/19 and a/65391/19) presented to the Chamber in this correspondence. The Registry is reassessing these applications in light of this new information.

<sup>15</sup> Email from Trial Chamber V to Registry on 30 July 2020 at 17:29.

<sup>16</sup> Decision, para. 41(iii).

<sup>17</sup> ICC-01/14-01/18-470- AnxIII-Red2, paras 6-9.

Decision on the Confirmation of Charges. The VPRS has conducted this review on the basis of instructions previously provided by the PTC.<sup>18</sup>

16. The Registry notes that the 15 applications categorised as Group C applications have been assessed as complete in accordance with the criteria set out in paragraph 31 of the Decision.<sup>19</sup> However, the Registry is not in a position to make a clear determination as to the applicants' status because it remains unclear whether or not the personal harm reported by the applicants resulted from an incident falling within the temporal, territorial and material parameters of the Case.
17. The Registry notes that the issues raised by these applications can be divided into the following categories:
  - i. Issues pertaining to the geographical scope of :
    - the 5 December 2013 attack in Bangui (category 1);
    - the crimes committed along the PK9- Mbaïki axis (category 2);
  - ii. Issues pertaining to the temporal scope of the crime of enlistment and use of child soldiers (category 3);
  - iii. Issues pertaining to both the temporal and geographical scopes of the Case (category 4);
  - iv. Issue pertaining to the confinement of civilians in the PK5 enclave of Bangui (category 5).
18. The Chamber's guidance on the issues presented below will greatly facilitate the finalization of the processing of victim application forms, and relevant training of intermediaries in the field.

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<sup>18</sup> The PTC instructed the Registry to adopt a flexible approach in assessing victims' applications with regard to the temporal and territorial scope of the Case, "[n]oting in particular the time that has elapsed since the events and the personal circumstances of the victim [...]" (*see* PTC, "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.

<sup>19</sup> The Registry notes that all these applications, except application a/65196/19, were previously admitted by the PTC for participation purposes.

**i. Issues pertaining to the geographical scope of the Case**

**J) Events linked to the 5 December 2013 attack in Bangui (including Cattin) and Boeing (category 1)**

19. In the Decision on Confirmation of Charges, the PTC confirmed the charges against Mr. Yekatom and Mr. Ngaïssona in relation to the 5 December 2013 Bangui attack.<sup>20</sup> Those charges are developed in section IV B of that decision under the sub-title “Bangui (**including** Cattin) and Boeing” [emphasis added]. The factual findings described in the relevant sub-section of the decision refer only to two locations, namely Cattin (inside Bangui’s 3<sup>rd</sup> arrondissement) and Boeing.
20. However, some applicants mention that they suffered crimes committed in areas of Bangui other than just Cattin, or in areas neighbouring Bangui other than only Boeing.<sup>21</sup>
21. The Registry recalls that, at the pre-trial stage, it requested the PTC’s guidance on a similar issue.<sup>22</sup> The latter applied a flexible approach and decided that the Bangui area may include “all areas commonly considered to be part of Bangui or those neighbouring Bangui”.<sup>23</sup>
22. The Registry respectfully requests guidance on whether the geographical scope of the 5 December 2013 events mentioned in the Decision on Confirmation of Charges - including the attack on religious buildings on 20 December 2013 - comprises arrondissements of Bangui and areas neighboring Bangui (such as PK12 for example). It respectfully recommends that the PTC’s approach may be adopted in relation to the areas surrounding Boeing and Cattin, given the adjoining position of the neighborhoods in this area.

<sup>20</sup> Decision on Confirmation of Charges, paras 75-104.

<sup>21</sup> See Annex, application a/65061/19 (which mentions the Kina-KM5 area of Bangui’s 3<sup>rd</sup> Arrondissement); application a/65082/19 (which mentions the Taretara area of Bangui’s 5<sup>th</sup> Arrondissement); application a/65107/19 (which mentions the Combatant area of Bangui’s 8<sup>th</sup> Arrondissement); application a/65137/19 (which mentions the Boy Rabe area of Bangui’s 4<sup>th</sup> Arrondissement) application a/66228/18 (which mentions the Gobongo area of Bangui’s 4<sup>th</sup> Arrondissement); application a/65035/10 (which mentions PK12 in Begoua in the vicinity of Bangui).

<sup>22</sup> Registry, “Registry’s First Assessment Report on Applications for Victims’ Participation in Pre-Trial Proceedings”, dated 14 May 2019 and notified on 15 May 2019, ICC-01/14-01/18-198, para. 16.

<sup>23</sup> First Decision on Victims’ Applications, para. 26.

J) *Events linked with the PK9- Mbaïki axis (category 2)*

23. In the Decision on Confirmation of Charges, the PTC confirmed charges in the context of the Anti-Balaka's advance through, and takeover of, villages along the PK9-Mbaïki axis.<sup>24</sup> It found in particular that Mr. Yekatom's Anti-Balaka group advanced through and took over numerous villages in the Lobaye Prefecture, and set up various checkpoints in the region. In fear of the attacks by the Anti-Balaka, Muslims from the Lobaye prefecture fled their villages, primarily to the Mbaïki sous-prefecture (within the Lobaye prefecture).
24. Some applicants indicate that they suffered from crimes allegedly perpetrated by the Anti-Balaka group in the Mbaïki sous-prefecture, but in localities which are not along the PK9–Mbaïki axis.<sup>25</sup>
25. The Registry recalls that prior to the issuance of the Prosecutor's Document Containing the Charge ("DCC"),<sup>26</sup> the PTC instructed the Registry to apply the same flexible approach adopted for Bangui to other locations.<sup>27</sup> It further considered that "if a town mentioned in the Warrants of Arrest belonged to a larger administrative unit bearing the same name [...], applications containing allegations relating to that larger unit should be accepted as well".<sup>28</sup> In addition, following the issuance of the DCC, the PTC specified that locations which fall within the DCC's general reference to "the villages along the PK9-MBAÏKI axis" or locations "mentioned specifically in the DCC", are within the geographical parameters of the present case.<sup>29</sup>

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<sup>24</sup> Decision on Confirmation of Charges, paras 129-143.

<sup>25</sup> See Annex, application a/66138/19 (which refers to Boukoko – approximately 10 km from Mbaïki on the road to Boda); application a/66150/19 (which refers to Mbata - approximately 40 km from Mbaïki on the road to Mongoumba).

<sup>26</sup> Prosecutor, "Document Containing the Charges", 19 August 2019, ICC-01/14-01/18-282-Conf-AnxB1. A public redacted version was filed on 18 September 2019 (ICC-01/14-01/18-282-AnxB1-Red).

<sup>27</sup> 'First Decision on Victims' Applications, para. 26 (referring to the conditions set in para. 24 for the 5 December 2013 attack in Bangui).

<sup>28</sup> *Ibid.*, para. 27.

<sup>29</sup> Second Decision on Victims' Applications, para. 30. The Registry notes that this decision included victim a/65433/19 (para. 31), whose relevant place of crime is the village of Gbokila - located approximately 4,5 kilometers away from the PK9-Mbaïki road (National Road 6).



26. The Registry notes that the term ‘Mbaïki’ includes a town as well as a *sous-préfecture*. In this light, the Registry respectfully suggests to follow the PTC’s approach and consider as falling within the parameters of the Case all those locations in the Mbaïki *sous-préfecture* which are not along the PK9–Mbaïki axis but in its vicinity, such as Boukoko<sup>30</sup> or Mbata.<sup>31</sup>

**ii. Issues pertaining to the temporal scope of the crime of enlistment and use of child soldiers (category 3)**

27. The Registry notes that the DCC set the time frame of the war crimes of conscripting, enlisting, and using children under the age of 15 years to participate actively in hostilities (“enlistment and use of child soldiers”) in different manners: as being “from at least December 2013 through August 2014”<sup>32</sup>, yet also as being “[b]etween September 2013 and at least August 2014”.<sup>33</sup>

28. During the pre-trial stage of proceedings, the PTC first clarified that the temporal scope of the Case (i.e. from September 2013 to December 2014) should be considered to determine the temporal scope of the charge of the crime of enlistment and use of child soldiers.<sup>34</sup> Later, in the Decision on Confirmation of Charges, the PTC indicated that the temporal scope of these crimes is “between at least December 2013 and August 2014”, without delineating more clearly the limits of the temporal scope of this charge,<sup>35</sup> and in a more limited time frame than it did before confirming this charge.<sup>36</sup>

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<sup>30</sup> According to the Registry’s information, Boukoko is located approximately 10 km from Mbaïki on the road to Boda.

<sup>31</sup> According to the Registry’s information, Mbata is located approximately 40 km from Mbaïki on the road to Mongoumba.

<sup>32</sup> DCC, paras 359-360.

<sup>33</sup> DCC, count 29, p. 229.

<sup>34</sup> Second Decision on Victims’ Applications, para. 33.

<sup>35</sup> Decision on Confirmation of Charges, p. 101, lit. (vii).

<sup>36</sup> *Ibid.*, para. 72 (in which the Chamber indicated that the armed conflict of a non-international character was ongoing “from September 2013 until at least December 2014”).

29. Yet, some victim applications received by the Registry relate to individuals who allege to have been used or recruited after August 2014, up to December 2014.<sup>37</sup>
30. The Registry respectfully proposes to follow the approach of the PTC in its Second Decision on Victims' Applications,<sup>38</sup> and to assess such applications as falling within the scope of the Case as long as they fall within the general temporal scope of the Case (i.e. from September 2013 to December 2014).

**iii. Issues pertaining to both the temporal and geographical scope of the Case (category 4)**

31. The Registry notes that some of the present Group C applications relate to attacks against the civilian population by the Anti-Balaka in the various neighbourhoods of Bangui and its vicinity throughout 2014.<sup>39</sup> In the DCC, the Prosecutor refers to the 5 December 2013 attack in Bangui as an attack which started on 5 December and continued the following days.<sup>40</sup> Yet, the DCC does not provide for a specific end date for activities covered under the umbrella of the 5 December 2013 attack.
32. These applications are firstly concerned by the issue of geographical scope of the Case, as already outlined above.<sup>41</sup> Secondly, a clarification will be helpful on whether and to what extent the above-referenced applications can be assessed as describing alleged crimes committed in continuation of the attack of 5 December 2013 in Bangui, and thus as part of said attack.

<sup>37</sup> See Annex, application a/65196/19 (in which the applicant explains that he/she joined the Anti-Balaka in November 2014).

<sup>38</sup> Second Decision on Victims' Applications, para. 33.

<sup>39</sup> See Annex, application a/65438/19 (in which the applicant refers to an attack of the Anti-Balaka in Delebama, PK24 on the Damara axis in front of Boeing, in January 2014); application a/65138/19 (in which the applicant refers to an attack of the Anti-Balaka, in Kokoro area in front of Boeing, in February 2014); application number a/66217/19 (in which the applicant refers to an attack of the Anti-Balaka in the Modoua area in the 6th arrondissement of Bangui in March 2014); application a/66171/19 (in which the applicant refers to an attack of the Anti-Balaka in the Brazza area in the 5th arrondissement of Bangui in April 2014).

<sup>40</sup> In particular, the Prosecutor provides "5 December 2013 and continuing" as the timeframe for count 1 (see DCC p. 136) and mentions "from 5 December 2013 onwards" as regards counts 4 and 5 (see DCC, para. 252).

<sup>41</sup> See *supra*, paras 19-22.

33. In instances where a clear end date of the commission time frame was not provided by the Prosecutor in the warrants of arrest against Mr. Yekatom and Mr. Ngaïssona, the PTC was of the view that “no specific end dates should be applied to alleged criminal conduct lacking a temporal parameter in the Warrants of Arrest at this stage of the proceedings”.<sup>42</sup>
34. For those cases, the Registry respectfully seeks the Chamber’s guidance as to what timeframe - in addition to what geographical parameter<sup>43</sup> - it should apply with regard to the scope of the 5 December 2013 attack in Bangui.

**iv. Issue pertaining to the confinement of civilians in the PK5 enclave of Bangui (category 5)**

35. During its review of all applications for participation that had been authorised to participate at the pre-trial stage, the VPRS has been unable to make a clear determination for certain applications regarding the scope of the crimes of persecution and/or attack against the civilian population. Those applications were still categorised as group A at pre-trial as they also relate to other crimes which had been committed within the geographical scope of the Case in locations listed by the DCC, such as for instance Yaloke or Berberati.<sup>44</sup> Following the Decision on Confirmation of Charges, they do however no longer clearly relate to the new scope of the Case since these locations have not been confirmed.
36. In the applications concerned, the applicants state that they fled from locations outside the geographical scope of the Case as delimited by the Decision on Confirmation of Charges and sought refuge in the PK5 enclave of Bangui to which the Anti-Balaka had been laying siege. As a result, the victims remained confined in PK5 and report to have suffered *inter alia* from severe deprivation of liberty.

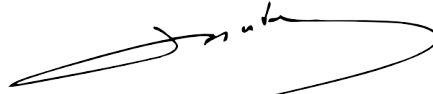
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<sup>42</sup> First Decision on victim’s applications, para. 29.

<sup>43</sup> See *supra*, paras 19-22.

<sup>44</sup> See Annex: application a/65742/19 (in which the applicant mentions that he/she was evacuated from Yaloke to the PK5 enclave in January 2014); application a/65958/19 (in which the applicant mentions that he/she fled from Berberati to the PK5 enclave in January 2014).

37. For those instances, the Registry seeks the Chamber's guidance as to whether it should consider that the harm suffered as a result of the deprivation of their liberty due to a confinement in the PK5 enclave can be considered as an underlying act of Counts 1 and/or 8 of the Decision on Confirmation on Charges.



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Marc Dubuissson, Director, Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 19 October 2020

At The Hague, The Netherlands