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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

Decision on Victims' Participation in Trial Proceedings

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 68(1) and (3) of the Rome Statute (the ‘Statute’), Rules 85 and 89 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 86 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on Victims’ Participation in Trial Proceedings’.

I. Procedural history

1. On 5 March 2019, Pre-Trial Chamber II (the ‘PTC II’) established the procedure for the processing of victims applications, and set out the criteria to be met for an applicant to qualify as a victim in this case.¹ It further instructed the Registry to:
 - (i) classify victim applicants into three categories, namely (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’);
 - (ii) prepare ‘regular reports that list the applications for participation and classify them according to the three groups’; and
 - (iii) prepare ‘assessment reports for the attention of the Chamber and the parties, highlighting the difficulties encountered regarding Group C applications’.²
2. On 21 June 2019³ and 13 September 2019,⁴ PTC II authorised respectively 15⁵ and 1,070⁶ victims to participate in the proceedings (the ‘21 June 2019 Decision’ and the ‘13 September 2019 Decision’, respectively).

¹ Decision Establishing the Principles Applicable to Victims’ Applications for Participation, ICC-01/14-01/18-141 (the ‘5 March 2019 Decision’), paras 29-38.

² 5 March 2019 Decision, ICC-01/14-01/18-141, para. 41.

³ 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

3. On 11 December 2019, PTC II issued the ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’ (the ‘Confirmation Decision’).⁷
4. On 19 March 2020, the Chamber confirmed that the victim application procedure adopted by PTC II would remain in place.⁸
5. On 8 April 2020, in line with the Chamber’s direction,⁹ the Registry provided an update on applications received and forecast on potential new applications.¹⁰ It noted that it was carrying out a comprehensive review of all applications for participation received to date in order to, *inter alia*, assess whether the crimes suffered by the victims admitted to participate in the confirmation of charges hearing still remained within the scope of the case following the Confirmation Decision.¹¹
6. On 17 July 2020, the Registry sought the Chamber’s guidance on certain issues that have arisen in the context of its assessment of victims’ applications.¹²
7. On 30 July 2020, the Chamber directed the Registry, with regard to issues pertaining to the scope of the charges, to seek the Chamber’s guidance on the record.¹³

Other Crimes, and the victims’ procedural position, ICC-01/14-01/18-227-Conf (redacted version notified the same day, ICC-01/14-01/18-227-Red), p. 14.

⁴ Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation, ICC-01/14-01/18-338, p. 13.

⁵ The authorised victims include a/65061/19, a/65082/19, a/65107/19 and a/65137/19 referred to in the First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 19 October 2020, ICC-01/14-01/18-688 (with one confidential annex, ICC-01/14-01/18-688-Conf-Anx) (the ‘Registry Report’).

⁶ The authorised victims include a/66228/19, a/65035/19, a/66138/19, a/66150/19, a/66140/19, a/65138/19, a/66217/19, a/66171/19, a/65742/19 and a/65958/1 referred to in the Registry Report.

⁷ Confirmation Decision, ICC-01/14-01/18-403-Conf-Corr (corrected version and corrected public redacted version notified on 14 May 2020, ICC-01/14-01/18-403-Red-Corr).

⁸ Order Scheduling First Status Conference, 19 March 2020, ICC-01/14-01/18-459, para. 8(iv).

⁹ Order Scheduling First Status Conference, ICC-01/14-01/18-459, para. 3(I).

¹⁰ Update on Victim Applications for Participation, Annex III to the Registry Submissions in View of the upcoming Status Conference, ICC-01/14-01/18-470-Conf-Exp-AnxIII (public redacted version notified on 22 May 2020, ICC-01/14-01/18-470-AnxIII-Red2).

¹¹ Update on Victim Applications for Participation, ICC-01/14-01/18-470-AnxIII-Red2, para. 6.

¹² Email from the Registry, 17 July 2020, at 17:29.

¹³ Email from the Chamber, 30 July 2020, at 13:56.

8. On 19 October 2020, the Registry transmitted 15 Group C applications (the ‘Applications’) to the Chamber, providing redacted versions thereof to the participants.¹⁴
9. On the same day, the Registry filed the Registry Report,¹⁵ which sets out the reasons why, in relation to issues falling under five categories, it is not in a position to make a clear determination on the Applications.
10. On 30 October 2020, the Common Legal Representatives of Victims of Other Crimes (the ‘CLRV’),¹⁶ the Ngaïssona Defence,¹⁷ and the Yekatom Defence¹⁸ responded to the Registry Report.

II. Applicable law

11. The Chamber refers to the consistent jurisprudence of the Court on Rule 85 of the Rules, as set out by PTC II.¹⁹
12. It is recalled, in particular, that for an individual applicant to be considered a victim within the definition of Rule 85(a) of the Rules, the following conditions must be met: (i) the applicant’s identity appears to have been duly established; (ii) the events described in the application for participation constitute one or more charged crimes within the jurisdiction of the Court; and (iii) the applicant

¹⁴ First Registry Transmission of Group C Applications for Victim Participation in Trial Proceedings, ICC-01/14-01/18-687 (the ‘First Transmission’) (with 15 confidential *ex parte* annexes, only available to the Registry, as well as confidential redacted versions thereof).

¹⁵ First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-01/14-01/18-688.

¹⁶ Response by the Common Legal Representatives of Victims of the other crimes to the First Registry Assessment Report of Applications of Victims to participate at trial, ICC-01/14-01/18-704-Conf-Exp, confidential *ex parte*, only available to the Prosecution, the Yekatom Defence, the Ngaïssona Defence and the CLRVs (confidential redacted version notified the same day, ICC-01/14-01/18-704-Conf-Red) (the ‘CLR V Response’).

¹⁷ Defence Observations relating to the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, ICC-01/14-01/18-688, ICC-01/14-01/18-707 (the ‘Ngaïssona Defence Response’).

¹⁸ Defence Observations on the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (ICC-01/14-01/18-688), ICC-01/14-01/18-708 (the ‘Yekatom Defence Response’).

¹⁹ 5 March 2019 Decision, ICC-01/14-01/18-141, paras 21, 31-36.

suffered harm, *prima facie*, as a result of the commission of the charged crime(s).²⁰

III. Submissions and analysis

A. General issues

13. When assessing the Applications, the Chamber needs to determine whether the alleged harm suffered by the applicants results from an incident falling within the temporal, geographical and material parameters of the case. In this regard, the Registry suggests following the ‘flexible approach’ adopted by PTC II. The Chamber recalls that PTC II instructed the Registry to adopt a ‘flexible approach in assessing victim applications with regard to the temporal and territorial scope of the present case’, including ‘flexibility with respect to the precise dates of the alleged acts’. It further found that ‘minor discrepancies in terms of dates or locations should not lead to the exclusion of the applications’.²¹
14. The CLRV request that the Chamber follow this flexible approach in assessing the Applications,²² arguing that such an approach is appropriate in light of: (i) the nature of the alleged crimes, which suggests that the focus in the assessment of the Applications should not be on the administrative boundaries of the cities, towns or villages where the crimes were allegedly committed, but rather on the area(s) objectively affected by the crimes (which may be broader);²³ and (ii) the terminology used in the Confirmation Decision, and notably ‘the intentional use of the “inclusive” terms’, which indicates that PTC II ‘never intended to exhaustively quote all the locations where the abovementioned crimes were allegedly committed or otherwise limit the geographical scope of the case to the administrative boundaries’ referred to in the Confirmation Decision.²⁴

²⁰ 5 March 2019 Decision, ICC-01/14-01/18-141, para. 21.

²¹ 21 June 2019 Decision, ICC-01/14-01/18-227-Red, para. 24.

²² CLRV Response, ICC-01/14-01/18-704-Conf-Red, paras 1, 32-33.

²³ CLRV Response, ICC-01/14-01/18-704-Conf-Red, paras 2, 13-19.

²⁴ CLRV Response, ICC-01/14-01/18-704-Conf-Red, paras 25-27.

15. The Ngaïssona Defence submits that following the flexible approach in the 21 June 2019 Decision at this stage would be ‘misguided’, noting that: (i) said decision was based on PTC II’s recalling that ‘[w]arrants of Arrest are not determinative as to the scope of the confirmation hearing or a possible trial if the charges are confirmed’;²⁵ (ii) the Confirmation Decision is now authoritative for the purpose of determining the material, temporal and geographical scope of the case;²⁶ and (iii) the flexible approach was adopted in light of the ‘provisional lack of clear factual boundaries of the case at a stage of the proceedings where the Warrants of Arrest were the only possible references’.²⁷
16. The Yekatom Defence submits that the harm reported in most of the Applications results from incidents falling outside the temporal, geographical and/or material parameters of the present case. According to the Yekatom Defence, accepting these applications would therefore amount to an ‘impermissible expansion of the parameters set out in the Confirmation Decision and a violation of Mr Yekatom’s rights to a fair trial’.²⁸ In this regard, the Yekatom Defence argues that the scope of the case should be strictly interpreted for the assessment of the Applications, which would be in line with Mr Yekatom’s right to be informed promptly and in detail of the nature, cause and content of the charges. An expansive approach to the interpretation of the parameters of the confirmed charges would, according to the Yekatom Defence, contravene the principle of legal certainty and jeopardise Mr Yekatom’s ability to efficiently prepare his defence.²⁹ Consequently, the Yekatom Defence submits that a victim should only be admitted if the details described in a victim application precisely match the material, temporal and geographical parameters set out in the Confirmation Decision.³⁰
17. It follows from the above that the participants disagree on the appropriate degree of flexibility to be applied when assessing the Applications in light of the

²⁵ Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 17.

²⁶ Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 18.

²⁷ Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 19.

²⁸ Yekatom Defence Response, ICC-01/14-01/18-708, para. 2.

²⁹ Yekatom Defence Response, ICC-01/14-01/18-708, paras 42-43.

³⁰ Yekatom Defence Response, ICC-01/14-01/18-708, para. 44.

scope of the charges. While the CLRV argue in favour of a flexible approach, in line with the instructions in the 21 June and 13 September 2019 Decisions, the Yekatom and the Ngaïssona Defence call for a strict approach and limited flexibility.

18. At the outset, the Chamber emphasises that the 21 June 2019 Decision was issued prior to the Confirmation Decision. Accordingly, PTC II emphasised that the warrants of arrest issued against Mr Yekatom and Mr Ngaïssona were not determinative as to the scope of the confirmation hearing or a possible trial, and made it clear that the flexible approach applied to *that* specific stage of the proceedings.³¹ Against this background, the Chamber is of the view that, at the current stage of the proceedings, it is no longer appropriate to apply the same flexible approach as adopted in the 21 June 2019 Decision.
19. Concerning its previous direction that existing procedures on the processing of victims' applications shall remain in place at the trial stage,³² the Chamber emphasises that this direction related to the *procedure* for the processing of applications, as opposed to the *approach* to be adopted with regard to the material assessment of the applications. Consequently, the Chamber also considers that the CLRV's reference to the finding by Trial Chamber X in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, indicating the undesirability of changing procedures at the trial stage as this would result in a disparity between applicants who applied at the confirmation of charges stage and those who apply for the purposes of trial, is misguided.³³ Indeed, the procedure referred to in Trial Chamber X's decision concerned a suggestion that applicants should be allowed to answer parties' observations, which is clearly a procedural matter unrelated to the approach to be followed when assessing an application.

³¹ 21 June 2019 Decision, ICC-01/14-01/18-227-Conf, para. 24. *See also* paras 26, 28-29.

³² *See* CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 34, *referring to* Order Scheduling First Status Conference, ICC-01/14-01/18-459, para. 8(iv).

³³ CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 35, *referring to* Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial, 12 March 2020, ICC-01/12-01/18-661, para. 24.

20. At the present stage of the proceedings, the consistent jurisprudence of this Court indicates that the scope of the charges is determined by the Confirmation Decision.³⁴ Accordingly, any applications by victims to participate in the current proceedings are to be assessed against the parameters set out in that decision.
21. That notwithstanding, the Chamber also finds that the assessment of victim eligibility is distinct from any assessment of the facts and circumstances described in the charges. Victim eligibility determinations do not delineate, and are without prejudice to, the parameters of the charges, the admission of any items into evidence or the Chamber's ultimate decision on the merits. Rather, a *prima facie* demonstration of harm suffices for the purpose of victim admission, allowing a certain degree of leeway when assessing the information provided by an applicant.³⁵ The limits of this leeway, which cannot be equated with the flexible approach referred to in the 21 June 2019 Decision, are to be assessed on a case-by-case basis, in light of the specific information provided by the applicants and the link between the alleged harm suffered and the parameters of the charges.

B. Assessment of the Applications

1. Issues pertaining to the geographical scope of the 5 December 2013 attack in Bangui ('Category I')

i. Submissions

22. The Registry notes that PTC II confirmed the charges in relation to the alleged attack in Bangui on 5 December 2013 (the '5 December 2013 Attack'), and developed these charges under a section with the sub-title 'Bangui (including

³⁴ In this regard, *see* Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 124; Pre-Trial Chamber I, *The Prosecutor v. Charles Blé Goudé*, Decision establishing system for disclosure of evidence, 14 April 2014, ICC-02/11-02/11-57, para. 27; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the date of the confirmation of charges hearing and proceedings leading thereto, 14 December 2012, ICC-02/11-01/11, para. 27. *See also* Chambers Practice Manual (2019), <https://www.icc-cpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>, paras 57-58.

³⁵ For a similar approach, *see* Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Second decision on victims' participation in trial proceedings, 16 June 2015, ICC-01/04-02/06-650. *See also* 13 September 2019 Decision, ICC-01/14-01/18-338, para. 28.

Cattin) and Boeing’. The factual findings made by PTC II, however, only refer to the locations of Cattin and Boeing.³⁶

23. Noting that some applicants refer to crimes committed in areas of Bangui other than just Cattin, or in areas neighbouring Bangui other than only Boeing,³⁷ the Registry enquires whether the geographical scope of the 5 December 2013 Attack comprises *arrondissements* of Bangui and areas neighbouring Bangui. Noting ‘the adjoining position of the neighborhoods in this area’, the Registry recommends following the flexible approach of PTC II that the Bangui area may include ‘all areas commonly considered to be part of Bangui or those neighbouring Bangui’.³⁸
24. The CLRV submit that PTC II’s use of the word ‘including’ indicates that the geographical scope should not be limited to Boeing or Cattin, but should encompass localities situated in the city of Bangui as a whole and other places where the alleged crimes were also committed.³⁹ In this regard, they argue that because PTC II heard evidence by witnesses identifying several locations where alleged crimes were committed during the 5 December 2013 Attack, ‘it can be assumed that it did not intend to exclude the locations identified by the witnesses’.⁴⁰ Further, they submit that PTC II’s wording in the context of the attack on Bangui means that the entire Bangui (town) area was affected, and that the specification ‘including Cattin and Boeing’ was necessary because these two areas are on the outskirts of the town of Bangui.⁴¹
25. The Ngaissona Defence disagrees with the Registry’s suggestion to follow the flexible approach adopted by PTC II, and requests the dismissal of all but one of the applications in this category. In this regard, it notes that the Confirmation Decision ‘circumscribed its factual findings in relation to “Bangui and adjacent

³⁶ Registry Report, ICC-01/14-01/18-688, para. 19, *referring to* Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, paras 75-104.

³⁷ Registry Report, ICC-01/14-01/18-688, para. 20.

³⁸ Registry Report, ICC-01/14-01/18-688, paras 21-22.

³⁹ CLRV Response, ICC-01/14-01/18-704-Conf-Red, paras 25, 27, 37.

⁴⁰ CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 31.

⁴¹ CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 38.

neighbourhoods” to the Cattin and Boeing areas’.⁴² It further notes that paragraph 92 of the Confirmation Decision, which is referred to in the operative paragraphs of the Confirmation Decision, provides that ‘[t]he evidence also reveals that, following the 5 December 2013 Attack, nearly all the Muslim residents of *Boeing and Cattin* fled to PK5, a predominantly Muslim neighbourhood in Bangui, other parts of the CAR or neighbouring countries’, whereas all Category 1 applicants who fled specify that they did so from other areas of Bangui or its vicinity.⁴³ The Ngaissona Defence therefore submits that PTC II did not exclude the possibility that Anti-Balaka groups, who were not under the command of Mr Yekatom, participated in the 5 December 2013 Attack, but held that no link to either Mr Yekatom or Mr Ngaissona was established in relation to alleged displacements in areas other than Cattin and Boeing.⁴⁴

26. The Yekatom Defence requests that the Category 1 applications be rejected,⁴⁵ arguing that no finding in the Confirmation Decision suggests that the geographical scope of Counts 1 to 8 extends to ‘all areas commonly considered to be part of Bangui or those neighbouring Bangui’.⁴⁶ It notes that the locations referred to by five of the Category 1 applicants do not share any border with Cattin or Boeing and are on the other side of Bangui.⁴⁷

ii. The Chamber’s determination

27. With reference to the Category 1 applications, the Chamber notes that PTC II confirmed the charges of: (i) directing attacks against the civilian population ‘in Bangui, including Cattin and the Boeing market, starting on 5 December 2013, on the basis of the conduct pertaining to Counts 2 to 6 and 8, as set out in paragraphs 244-256 of the DCC and paragraphs 86-92 of the [Confirmation Decision]’;⁴⁸ (ii) displacement for ‘the dislocation of nearly all Muslim persons residing in Cattin and Boeing to PK5, a predominantly Muslim neighbourhood

⁴² Ngaissona Defence Response, ICC-01/14-01/18-707, para. 24

⁴³ Ngaissona Defence Response, ICC-01/14-01/18-707, paras 25-26.

⁴⁴ Ngaissona Defence Response, ICC-01/14-01/18-707, para. 27. *See also* para. 28.

⁴⁵ Yekatom Defence Response, ICC-01/14-01/18-708, para. 14.

⁴⁶ Yekatom Defence Response, ICC-01/14-01/18-708, para. 11.

⁴⁷ Yekatom Defence Response, ICC-01/14-01/18-708, para. 12.

⁴⁸ Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, pp. 100, 103.

in Bangui, other parts of the CAR or neighbouring countries, starting from 5 December 2013 in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 252-253 of the DCC and paragraph 92 of the [Confirmation Decision];⁴⁹ and (iii) forcible transfer and deportation for ‘the dislocation of nearly all Muslim persons residing in Cattin and Boeing to PK5, a predominantly Muslim neighbourhood in Bangui, other parts of the CAR or neighbouring countries, starting from 5 December 2013 in the context of the attack on Bangui, including Cattin and Boeing, on 5 December 2013, as set out in paragraphs 252-253 of the DCC and paragraph 92 of the [Confirmation Decision]’.⁵⁰

28. Paragraphs 86 to 92 of the Confirmation Decision describe the alleged Anti-Balaka’s attack against civilians at the Boeing market, after which the Anti-Balaka moved to Cattin. They refer to the fact that, following the 5 December 2013 Attack, nearly all the Muslim residents of Boeing and Cattin fled to PK5, to other parts of the CAR or to neighbouring countries. Recalling that the Confirmation Decision is the authoritative document establishing the parameters of the case, the Chamber therefore considers that the geographical scope of these charges is confined to crimes occurring or, as concerns displacement, forcible transfer and deportation, starting in the areas of Boeing and Cattin.
29. Applicant **a/65061/19** claims to have suffered harm as a result of his flight from KINA-KM5 in Bangui following the alleged Anti-Balaka attack on 5 December 2013.⁵¹ Noting that KM5 is located in the 3rd *arrondissement*, which neighbours the Cattin area, and that the applicant clearly refers to the 5 December 2013 Attack,⁵² the Chamber is satisfied, *prima facie*, that the applicant suffered harm as a result of a crime falling within the geographical parameters of the present case. This applicant is therefore authorised to participate in the present proceedings.

⁴⁹ Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, pp. 101, 104.

⁵⁰ Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, pp. 102, 105.

⁵¹ Annex 2 to First Transmission, ICC-01/14-01/18-687-Conf-Anx2-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 2.

⁵² In this regard, *see also* Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 29.

30. Applicants **a/65107/19** and **a/65137/19** claim to have suffered harm as a result of their flight from the Combattant and the Boy-Rabé areas of Bangui, respectively, following the 5 December 2013 Attack.⁵³ Noting that these areas are located on the other side of Bangui and do not share any border with Boeing or Cattin, the Chamber considers that it cannot be established that the applicants suffered harm as a result of crimes falling within the geographical scope of the case. These applications are therefore rejected.
31. Applicant **a/66228/19** claims to have suffered harm as the result of the Anti-Balaka attack on Gobongo in Bangui on 20 December 2013, during which they looted and destroyed the *Mosquée de Gobongo*.⁵⁴ Noting that the applicant refers to an area outside of Cattin and Boeing, the Chamber considers that it cannot be established that the applicant suffered harm as a result of a crime falling within the geographical parameters of the present case. The application is therefore rejected.
32. Applicant **a/65035/19** claims to have suffered harm at the hands of the Anti-Balaka during the alleged 5 December 2013 attack in PK12 – La Colline.⁵⁵ Considering that the alleged incident leading to the harm suffered occurred in PK12 and not in Bangui, and noting the distance between PK12 and the Cattin and Boeing areas, the Chamber considers that it cannot be established that the applicant suffered harm as a result of a crime falling within the geographical parameters of the present case. The application is therefore rejected.
33. Applicant **a/65082/19** claims to have suffered harm as a result of her flight from Taretara in Bangui following an alleged attack by the Anti-Balaka on 12 December 2013.⁵⁶ Noting that the applicant refers to an area of Bangui not bordering Cattin or Boeing, the Chamber considers that it cannot be established

⁵³ Annex 4 to First Transmission, ICC-01/14-01/18-687-Conf-Anx4-Red; Annex 5 to First Transmission, ICC-01/14-01/18-687-Conf-Anx5-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, pp. 2-3.

⁵⁴ Annex 15 to First Transmission, ICC-01/14-01/18-687-Conf-Anx15-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 3.

⁵⁵ Annex 1 to First Transmission, ICC-01/14-01/18-687-Conf-Anx1-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 3.

⁵⁶ Annex 3 to First Transmission, ICC-01/14-01/18-687-Conf-Anx3-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 2.

that the applicant suffered harm as a result of a crime falling within the geographical parameters of the present case. The application is therefore rejected.

2. *Issues pertaining to the geographical scope of the crimes committed along the PK9-Mbaïki axis ('Category 2')*

i. *Submissions*

34. The Registry notes that PTC II confirmed charges in the context of the Anti-Balaka's advance through, and takeover of, villages along the PK9-Mbaïki axis.⁵⁷ It further notes that some applicants indicate that they suffered from crimes allegedly perpetrated by the Anti-Balaka in the Mbaïki *sous-préfecture*, but in localities which are not along the PK9-Mbaïki axis.⁵⁸
35. Noting that the term 'Mbaïki' includes a town as well as a *sous-préfecture*, the Registry suggests to follow the approach in the 21 June 2019 Decision and to consider as falling within the parameters of the case all locations in the Mbaïki *sous-préfecture* which are not along the PK9-Mbaïki axis but in its vicinity, such as Boukoko or Mbata.⁵⁹
36. The CLRV support the Registry's proposal to understand the term 'Mbaïki' as encompassing the entire *sous-préfecture*. The CLRV submit that the use of the word 'along' indicates that the geographical scope should not be limited to the villages on the PK9-Mbaïki axis, but should also encompass other places where the alleged crimes were committed.⁶⁰ They further note that PTC II heard evidence from witnesses providing details about the locations where they were attacked along the PK9-Mbaïki axis, suggesting that it did not intend to exclude the locations identified by the witnesses.⁶¹

⁵⁷ Registry Report, ICC-01/14-01/18-688, para. 23.

⁵⁸ Registry Report, ICC-01/14-01/18-688, para. 24.

⁵⁹ Registry Report, ICC-01/14-01/18-688, para. 26.

⁶⁰ CLRV Response, ICC-01/14-01/18-704-Conf-Red, paras 25, 37.

⁶¹ CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 31.

37. The Ngaïssona Defence requests the dismissal of the Category 2 applications.⁶² It notes that the approach in the 21 June 2019 Decision was not reiterated or recalled in the 13 September 2019 Decision.⁶³
38. The Yekatom Defence submits that the Registry's suggestion would render moot the geographical scope set out in the Confirmation Decision,⁶⁴ and that the geographical scope of the PK9-Mbaïki axis should be limited to the stretch of the road connecting the two locations and the villages located thereon, and exclude any locations beyond the city of Mbaïki.⁶⁵ It therefore requests the Chamber to reject applicant a/66138/19 which pertains to a location past the town of Mbaïki, and takes no position as to applicant a/66150/19.⁶⁶

ii. The Chamber's determination

39. The Chamber notes that PTC II confirmed the charges of displacement, forcible transfer and deportation for the 'dislocation of the majority of the Muslim population from their towns and villages between on or about 10 January 2014 and on or about 6 February 2014, in the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki axis (including Sekia, Ndangala, Bimon, Kapou, Bossongo, Pissa, Mbaïki), as set out in paragraphs 340-343 of the DCC and paragraphs 129-134 of the [Confirmation Decision]'.⁶⁷
40. Applicant **a/66138/19** claims to have suffered harm as a result of his flight from Boukoko, PK11 in Mbaïki to Chad following an alleged Anti-Balaka attack on 28 January 2014.⁶⁸ Applicant **a/66150/19** claims to have suffered harm as a result of her flight from Mbata, in Mbaïki *sous-préfecture*, to Chad following an alleged Anti-Balaka attack in January 2014.⁶⁹

⁶² Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 36.

⁶³ Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 34.

⁶⁴ Yekatom Defence Response, ICC-01/14-01/18-708, para. 27..

⁶⁵ Yekatom Defence Response, ICC-01/14-01/18-708, para. 30.

⁶⁶ Yekatom Defence Response, ICC-01/14-01/18-708, para.31.

⁶⁷ Confirmation Decision, ICC-01/14-01/18-403-Corr-Red, pp. 105-106.

⁶⁸ Annex 10 to First Transmission, ICC-01/14-01/18-687-Conf-Anx10-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 3.

⁶⁹ Annex 12 to First Transmission, ICC-01/14-01/18-687-Conf-Anx12-Red. *See also* ICC-01/14-01/18-688-Conf-Anx, p. 4.

41. With regard to applicant a/66138/19, the Chamber notes that Boukoko is not located on the PK9-Mbaïki axis but rather approximately ten kilometres north-west of Mbaïki,⁷⁰ and is further not referred to in the relevant paragraphs of the Confirmation Decision. As regards a/66150/19, the Chamber notes that Mbata is located at a considerable distance from the PK9-Mbaïki axis, and notably more than 40 kilometres south-east of Mbaïki.⁷¹
42. On the basis of the information provided in these applications, the Chamber therefore considers that it cannot be established whether the applicants suffered harm as a result of a crime falling within the geographical parameters of the present case. Nonetheless, the Chamber notes that both applicants identify the Anti-Balaka group led by Mr Yekatom as the alleged perpetrators and state that as a result of their attack, they fled to Chad. The Chamber also notes that the Confirmation Decision refers to individuals fleeing attacks by the Anti-Balaka in the Lobaye Prefecture who first went to Mbaïki – where they were harassed, insulted and threatened – and then to Chad.⁷² The harm suffered under those circumstances would fall within the geographical parameters of the present case. Therefore, the Chamber defers its decision with regard to these applications and directs the Registry to seek additional information on: (i) the circumstances which led the two applicants to flee to Chad; and (ii) the events that took place between the time the applicants left their localities and the time they arrived in Chad.

3. *Issues pertaining to the temporal scope of the crime of enlistment and/or conscription and use of child soldiers ('Category 3') [count 29]*

i. Submissions

43. The Registry notes that while the document containing the charges (the 'DCC') and the 13 September 2019 Decision refer to broader time frames for the crime of enlistment and/or conscription and use of child soldiers, the Confirmation

⁷⁰ See Registry Report, ICC-01/14-01/18-688, para. 24, n. 25. See also para. 26, n. 30.

⁷¹ See Registry Report, ICC-01/14-01/18-688, para. 24, n. 25. See also para. 26, n. 31. See also Annex F10 to the Prosecution's Notification of Filing of the Document Containing the Charges and List of Evidence, 19 August 2019, ICC-01/14-01/18-282-Conf-AnxF10.

⁷² Confirmation Decision, ICC-01/14-01/18-403-Corr-Red, paras 131-134.

Decision defines the temporal scope of these crimes as ‘between at least December 2013 and August 2014’.⁷³ Given that several victim applications are from individuals who allege to have been used or recruited after this time frame, it suggests following the approach in the 13 September 2019 Decision, and to admit such applications as long as they fall within the general temporal scope of the case, *i.e.* from September 2013 to December 2014.⁷⁴

44. The CLRV submit that PTC II stated ‘unambiguously’ that the relevant crimes were allegedly committed between September 2013 and December 2014.⁷⁵
45. The Yekatom Defence, supported by the Ngaïssona Defence,⁷⁶ requests the Chamber to reject the application under this category, noting that the Confirmation Decision specified the timeframe for this count as ‘at least December 2013 and August 2014’, and therefore excludes any period beyond August 2014.⁷⁷

ii. The Chamber’s determination

46. The Chamber notes that the Confirmation Decision delimits the timeframe for the charge of conscription, enlistment and use of children under the age of fifteen years to participate actively in hostilities (count 29) to ‘between at least December 2013 and August 2014’.⁷⁸
47. Applicant **a/65196/19** claims to have suffered harm as a result of his enlistment as a child soldier in Sekia in November 2014, where he was trained and remained until early 2015.⁷⁹ Noting that the time frame of the alleged incident falls outside the temporal scope of the crime of conscription and/or enlistment and use of child soldiers as set out in the Confirmation Decision, the Chamber considers that it cannot be established that the applicant suffered harm as a

⁷³ Registry Report, ICC-01/14-01/18-688, paras 27-28.

⁷⁴ Registry Report, ICC-01/14-01/18-688, paras 29-30.

⁷⁵ CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 26.

⁷⁶ Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 37.

⁷⁷ Yekatom Defence Response, ICC-01/14-01/18-708, paras 33-35.

⁷⁸ Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, p. 105.

⁷⁹ Annex 7 to First Transmission, ICC-01/14-01/18-687-Conf-Anx7-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 4.

result of a crime falling within the temporal parameters of the present case. The application is therefore rejected.

4. *Issues pertaining to both the temporal and geographical scope of the case ('Category 4')*

i. *Submissions*

48. The Registry notes that some applications relate to attacks against the civilian population by the Anti-Balaka in various neighbourhoods of Bangui and its vicinity throughout 2014. In this regard, it notes that the DCC refers to the 5 December 2013 Attack as an attack which started on 5 December 2013 and continued in the following days, without providing a specific end date for the activities covered under the umbrella of this attack. For these reasons, the Registry seeks further clarification as to whether and to what extent these applications may be assessed as describing the alleged crimes committed in continuation of, and thus part of, the 5 December 2013 Attack.⁸⁰ Specifically, noting PTC II's finding 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', the Registry seeks the Chamber's guidance as to the timeframe to be applied with regard to the scope of the 5 December 2013 Attack.⁸¹

49. The CLRV submit that before and following the attack, the Muslims – or individuals perceived as collectively responsible for, complicit with or supportive of the Seleka or having a connection with Muslims – were forced to leave their houses or properties in fear for their lives. According to the victims' accounts, it sometimes took weeks or months before they could reach a safe place. Therefore, the CLRV contend that 'in the context of the crimes of persecution, forcible transfer/deportation and displacement in particular, the temporal scope of the case extends for several months during which underlying acts were committed either protractedly or at different times falling within the

⁸⁰ Registry Report, ICC-01/14-01/18-688, paras 31-32.

⁸¹ Registry Report, ICC-01/14-01/18-688, paras 33-34, *referring to* 21 June 2019 Decision, ICC-01/14-01/18-227-Red, para. 29.

timeframe and/or movement/temporal residence of the persons concerned and targeted'.⁸²

50. The Ngaïssona Defence submits that the Registry's arguments under this category are based exclusively on its review of the DCC with no mention of the Confirmation Decision, despite it now being the authoritative document in relation to the scope of the charges.⁸³ It requests that all Category 4 applications be rejected because all applicants were located in areas other than Cattin and Boeing at the time of the alleged incident and because the alleged crimes fall outside the temporal scope of the case.⁸⁴

51. The Yekatom Defence requests the Chamber to reject the Category 4 applications on the basis that, rather than mentioning a time period, the Confirmation Decision refers specifically to the date of 5 December 2013.⁸⁵

ii. The Chamber's determination

52. The Chamber recalls its findings above regarding the geographical scope of the charges related to the 5 December 2013 Attack.⁸⁶

53. Applicant **a/66140/19** claims to have suffered harm as the result of an Anti-Balaka attack in Delébama, PK24 on the Damara axis on 19 January 2014, during which they looted his home and livestock.⁸⁷

54. Applicant **a/66217/19** claims to have suffered harm as a result of her flight from Modoua in Bangui following an Anti-Balaka attack on 28 March 2014. She states that she fled south with her family, and upon their return, all their belongings had been looted.⁸⁸

⁸² CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 40.

⁸³ Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 38.

⁸⁴ Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 39.

⁸⁵ Yekatom Defence Response, ICC-01/14-01/18-708, paras 38-40.

⁸⁶ See paragraphs 27 – 28 above.

⁸⁷ Annex 11 to First Transmission, ICC-01/14-01/18-687-Conf-Anx11-Red. See also Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 4.

⁸⁸ Annex 14 to First Transmission, ICC-01/14-01/18-687-Conf-Anx14-Red. See also Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 5.

55. Applicant **a/66171/19** claims to have suffered harm as a result of his flight from Brazza in Bangui following an Anti-Balaka attack on 22 April 2014. He states that while other Muslims left at the start of the hostilities, he remained in his home and only fled when the Anti-Balaka arrived, destroying and looting everything he owned.⁸⁹
56. Noting that the aforementioned applications all relate to locations other than Cattin and Boing (or neighbouring areas) and further refer to harm suffered as a result of crimes allegedly committed outside the context of the 5 December 2013 Attack, the Chamber considers that it cannot be established that the applicants suffered harm as a result of incidents falling within the geographical and temporal parameters of the present case. The applications are therefore rejected.
57. Applicant **a/65138/19** claims to have suffered harm as a result of her flight from Kokoro in Bangui following an Anti-Balaka attack on 8 February 2014. She states that the Anti-Balaka looted her home and set up their headquarters at her business.⁹⁰ Noting that the applicant refers to harm suffered as a result of crimes allegedly committed outside the context of the 5 December 2013 Attack, the Chamber considers that it cannot be established that the applicant suffered harm as a result of incidents falling within the temporal parameters of the present case. The application is therefore rejected.

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

i. Submissions

58. The Registry seeks the Chamber's guidance with regard to applicants who state that they fled from locations outside the geographical scope of the case, as delimited by the Confirmation Decision, 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, during which time they report to have

⁸⁹ Annex 13 to First Transmission, ICC-01/14-01/18-687-Conf-Anx13-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 5.

⁹⁰ Annex 6 to First Transmission, ICC-01/14-01/18-687-Conf-Anx6-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 4.

suffered, *inter alia*, from severe deprivation of liberty.⁹¹ The Registry seeks the Chamber's guidance as to whether it should consider that the alleged harm suffered by these applicants as a result of the deprivation of their liberty due to their confinement in the PK5 enclave can be considered an underlying act of Counts 1 and/or 8 of the Confirmation Decision.⁹²

59. The CLRV submit that the fact that victims may have suffered harm in locations no longer within the scope of the charges and that forced them to flee does not preclude their recognition as victims in the case. They therefore submit that victims should be admitted as long as they can demonstrate *prima facie* that they have suffered from any type of harm as a result of any of the crimes charged.⁹³ According to the CLRV, victims who sought refuge in the PK5 enclave of Bangui suffered, *inter alia*, severe deprivation of liberty, which is 'an underlying act of the crime of persecution due to its gravity'.⁹⁴ Consequently, the CLRV argue that the confinement of Muslim civilians in the PK5 enclave of Bangui should be considered part of the commission of the crime of persecution.⁹⁵
60. The Ngaïssona Defence submits that the Confirmation Decision's findings in relation to PK5 exclusively relate to the alleged victims of the 5 December 2013 Attack who fled in response to that attack having occurred in Boeing and Cattin, and excluded the alleged Yaloké and Berberati attacks from the scope of the charges. Consequently, the Ngaïssona Defence submits that the consequences of these alleged attacks also fall outside the scope of the charges.⁹⁶

ii. The Chamber's determination

61. The Chamber recalls its above findings regarding the geographical scope of the charges related to the 5 December 2013 Attack.⁹⁷

⁹¹ Registry Report, ICC-01/14-01/18-688, para. 36.

⁹² Registry Report, ICC-01/14-01/18-688, para. 37.

⁹³ CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 43.

⁹⁴ CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 44.

⁹⁵ CLRV Response, ICC-01/14-01/18-704-Conf-Red, para. 45.

⁹⁶ Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 43.

⁹⁷ See paras 27-28 above.

62. Applicant **a/65742/19** claims to have suffered harm as a result of her flight from Yaloké to Bangui following an Anti-Balaka attack on 4 January 2014, where she took refuge near the *Mosquée Centrale* and remained confined for three years.⁹⁸
63. Applicant **a/65958/19** claims to have suffered harm as a result of her flight from Berberati to Bangui following an Anti-Balaka attack on 8 February 2014, where she was confined in the PK5 enclave for an unspecified length of time.⁹⁹
64. The Chamber notes that the Confirmation Decision's factual findings in relation to PK5 relate to the alleged victims of the 5 December 2013 Attack who fled in response to that attack having occurred in Boeing and Cattin.¹⁰⁰ The alleged attacks in Yaloké and Berberati were excluded from the scope of the charges. Accordingly, the Chamber considers that it cannot be established that the applicants suffered harm as a result of incidents falling within the geographical and temporal parameters of the present case. The applications are therefore rejected.

C. The Ngaïssona Defence Request

65. The Ngaïssona Defence notes the Registry's submission that it conducted its review based on the instructions in the 21 June and 13 September 2019 Decisions. In this regard, it questions the method applied by the Registry in classifying victim applicants, arguing that the fact that the Registry followed 'obsolete instructions' must have had an impact not only on the number of victims classified as participating victims but also on the number of applications submitted, as these instructions appear to have been relayed to the intermediaries in the field.¹⁰¹
66. As a result, the Ngaïssona Defence requests the Chamber 'to instruct the Registry to assess all victim applications classified as Group A anew, only on

⁹⁸ Annex 8 to First Transmission, ICC-01/14-01/18-687-Conf-Anx8-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 5.

⁹⁹ Annex 9 to First Transmission, ICC-01/14-01/18-687-Conf-Anx9-Red. *See also* Annex to the Registry Report, ICC-01/14-01/18-688-Conf-Anx, p. 5.

¹⁰⁰ Confirmation Decision, ICC-01/14-01/18-403-Red-Corr, paras 86-92.

¹⁰¹ Ngaïssona Defence Response, ICC-01/14-01/18-707, paras 20-21.

the basis of the Confirmation Decision and any guidance the Chamber might give [...] on this topic' (the 'Ngaïssona Defence Request').¹⁰²

67. On the basis of the Registry Report, the Chamber notes that the Registry assessed all applications against the geographical, temporal, and material parameters of the case as set out in the Confirmation Decision and has classified any applications leaving a doubt as to whether the parameters are met as Group C, subject to an assessment by the Chamber.
68. In these circumstances, the Chamber considers that another assessment of all victim applications classified as Group A is not warranted. Nevertheless, should the Registry consider that any of the directions in the present decision impact its previous assessment of applications classified as Group A, the Chamber directs the Registry to make any necessary adjustments and to inform the Chamber and the participants accordingly in the next regular report.¹⁰³

¹⁰² Ngaïssona Defence Response, ICC-01/14-01/18-707, para. 22.

¹⁰³ See 5 March 2019 Decision, ICC-01/14-01/18-141, para. 41(iii).

FOR THESE REASONS, THE CHAMBER HEREBY

ADMITS applicant a/65061/19 as a participating victim;

DEFERS its decision with regard to applicants a/66138/19 and a/66150/19;

DIRECTS the Registry to seek additional information in relation to applicants a/66138/19 and a/66150/19 as provided in paragraph 42 above and to report back to the Chamber as soon as practicable;

DECIDES to reject the applications from applicants a/65107/19, a/65137/19, a/66228/19, a/65035/19, a/65082/19, a/65196/19, a/66140/19, a/66217/19, a/66171/19, a/65138/19, a/65742/19 and a/65958/19; and

REJECTS the Ngaïssona Defence Request.

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

Judge Péter Kovács

Judge Bertram Schmitt

Presiding Judge

Judge Chang-ho Chung

Dated 23 November 2020

At The Hague, The Netherlands