

v
**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 30 November 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
NGAÏSSONA**

**Public
With Confidential Annex**

**Second 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:

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis

Counsel for Patrice-Edouard Ngaissona

Geert-Jan Alexander Knoops

Legal Representatives of the Victims

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

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

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").¹ 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")² 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");³ and
 - ii. prepare "regular reports that list the applications for participation and classify them according to the three groups".⁴
2. The Registry hereby transmits its first report on 100 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 A.
3. The Applications are listed in the annex to the present submission ("Annex") and are being transmitted separately to the Chamber in accordance with paragraph 41(ii) of the Decision.

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

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

³ *Ibid.*, para. 41 (i). In paragraph 41 (ii) of the decision, the PTC ordered the Registry to "transmits to the Chamber on a rolling basis and in unredacted form all complete applications and any supporting documentation in its possession".

⁴ *Ibid.*, para. 41(iii).

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.⁵
5. On 21 June 2019, the PTC authorised 15 victims to participate at the confirmation hearing in the Case ("First Decision on Victims' Applications").⁶
6. On 13 September 2019, the PTC authorised an additional 1,070 victims to participate in the proceedings ("Second Decision on Victims' Applications").⁷
7. On 11 December 2019, the PTC issued a decision partially confirming the charges against the accused ("Decision on the Confirmation of Charges").⁸
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;⁹ and ii) requested the Registry to provide an update and forecast on (additional) applications by victims to participate in the proceedings.¹⁰
9. On 22 May 2020, the Registry provided its Update on Victim Participation ("Update").¹¹
10. On 16 July 2020, the Chamber set the start of the trial on 9 February 2021 and the "end of the Prosecution's presentation of evidence as the deadline for the

⁵ See *supra*, footnote 2.

⁶ 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-Conf. A public redacted version was filed on the same day (ICC-01/14-01/18-227-Red).

⁷ 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.

⁸ 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).

⁹ Scheduling Order, para. 8 (iv).

¹⁰ *Ibid.*, para. 3 (I).

¹¹ Registry, "Update on Victim Applications for Participation", 8 April 2020, ICC-01/14-01/18-470-Conf-Exp-AnxIII. A confidential redacted version was filed on the same day (ICC-01/14-01/18-470-Conf-AnxIII-Red). A public redacted version was filed on 22 May 2020 (ICC-01/14-01/18-470-AnxIII-Red2).

transmission of victim applications by the Registry” (“16 July 2020 Decision”).¹²

11. On 17 July 2020, the Registry sought, by way of email, the Chamber’s guidance on a number of issues encountered during its assessment of victim applications.¹³
12. On 30 July 2020, the Chamber directed the Registry to seek its guidance on the record for a number of the issues raised.¹⁴
13. On 19 October 2020, the Victims Participation and Reparations Section (“VPRS”) transmitted 15 applications categorised in Group C¹⁵ and submitted a first assessment report on those applications (“First Transmission”).¹⁶
14. On 23 November 2020, the Chamber issued a decision on the merits of the applications included in the First Transmission (“23 November 2020 Decision”).¹⁷

III. Classification

15. The annex to the present submission is classified as confidential in accordance with the Decision.¹⁸

IV. Applicable Law

16. 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.

¹² Trial Chamber V, “Decision Setting the Commencement Date of the Trial”, 16 July 2020, ICC-01/14-01/18-589.

¹³ Email from Registry to Trial Chamber V on 17 July 2020 at 13:41.

¹⁴ Email from Trial Chamber V to Registry on 30 July 2020 at 17:29.

¹⁵ Registry, “Registry’s First Transmission of Group C Applications for Victims’ Participation in Trial Proceedings”, 19 October 2020, ICC-01/14-01/18-687.

¹⁶ Registry, “Registry’s First Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, 19 October 2020, ICC-01/14-01/18-688.

¹⁷ Trial Chamber V, “Decision on Victims’ Participation in Trial Proceedings”, 23 November 2020, ICC-01/14-01/18-738.

¹⁸ Decision, para. 41(iii).

V. Submissions

17. The 100 Applications transmitted under Group A include applications from victims admitted to participate during the pre-trial stage as well as applications submitted by victims subsequent to the Decision on Confirmation on Charges.¹⁹

18. Applying the criteria set out in paragraph 31 of the Decision, the VPRS has assessed each of the 100 applications transmitted under Group A as complete. In conducting its initial assessment in accordance with paragraph 38 of the Decision, the VPRS confirms that each of the 100 applicants whose applications are being transmitted in Group A have met *prima facie* the following criteria:

- i. His or her identity as a natural person is established;²⁰
- ii. He or she has suffered harm;²¹
- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the Case.²²

¹⁹ The victims admitted at pre-trial stage are: a/65122/19, a/65125/19, a/65127/19, a/65129/19, a/65130/19, a/65131/19, a/65179/19, a/65180/19, a/65182/19, a/65185/19, a/65187/19, a/65188/19, a/65189/19, a/65192/19, a/65193/19, a/65195/19, a/65197/19, a/65199/19, a/65200/19, a/65201/19, a/65202/19, a/65204/19, a/65228/19, a/65234/19, a/65238/19 and a/65407/19). As reported in its Update (ICC-01/14-01/18-470-AnxIII-Red2, paras 6-9.), the Registry has reviewed their Applications in order to assess whether the crimes suffered by these victims remained within the scope of the Case following the Decision on Confirmation of Charges.

²⁰ Decision, paras. 31-34. The VPRS notes that certain applications have been submitted by minors, applying on their own behalf (a/65125/19, a/65129/19, a/65182/19, a/65185/19, a/65187/19, a/65195/19, a/65199/19, a/65238/19 and a/65407/19). For these applications, the VPRS has assessed the maturity of the applicant based on the information contained in the form in accordance with the Chamber's instruction (email from Chamber to VPRS, 30 July 2020 at 17:29). This includes personal information such as current occupation, marital status, number of children and dependants contained in page three of the form (which is not included in the version of the form transmitted to the Chamber). The VPRS also took into consideration the fact that the applicants have turned 18 since the time of the submission of their Application.

²¹ *Ibid.*, paras 31, 35.

²² *Ibid.*, para. 37.

Observations in relation to criterion (i)

19. Certain applications²³ falling under Group A contain minor discrepancies, pertaining to *inter alia*: the applicant's date of birth, an inversion of the applicant's first and last name, the applicant's signature date or the spelling of the applicant's name, or other minor inconsistencies in the information provided which appear to be the result of inadvertent errors. In these cases, the VPRS took note of the PTC's instruction that "a certain degree of flexibility must be shown"²⁴ and considers that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]".²⁵

20. Some applicants²⁶ have submitted with their applications a "*Formulaire d'enregistrement des électeurs*" (also called "*Récépissé*") to establish their identity. As previously indicated in the Registry's report on proof of identity documents available in the Central African Republic, the Registry was informed that such type of document has been used by individuals in lieu of their electoral cards to vote on time for the 2015 elections, in the context of the crisis and the dysfunction of administrative institutions.²⁷ In accordance with paragraph 25 of the Decision, the VPRS sought²⁸ and obtained²⁹ the PTC's approval to consider such document as sufficiently establishing the identity of applicants in the Case.

²³ The applications with minor discrepancies include: a/15013/20, a/15016/20, a/15073/20, a/15079/20, a/15089/20, a/15160/20, a/15188/20, a/15190/20, a/15206/20, a/15209/20, a/65125/19, a/65185/19, a/65193/19, a/65200/19 and a/65407/19.

²⁴ Decision, para. 34.

²⁵ *Id.*

²⁶ These applications include: a/15188/20, a/15193/20, a/15194/20 and a/15197/20.

²⁷ Registry, "Annex I to the Registry Report on Proof of Identity Documents Available in the Central African Republic and Transmission of Proposed Application Form for Victims Under Rule 85(b) of the Rules of Procedure and Evidence ", 28 February 2019, ICC-01/14-01/18-133-AnxI, para. 18. A sample of such document is available in annex II to the Registry's report (See ICC-01/14-01/18-133-AnxII-Red2, pp.76-77).

²⁸ Email from Registry to PTC on 28 August 2019 at 11:23. The Registry noted that such document contained similar features to the ones considered to be valid by the PTC in the instant Case.

²⁹ Email from PTC to Registry on 29 August 2019 at 11:17.

Observation in relation to criterion (iii)

21. In identifying the crimes falling within the scope of the Case, the VPRS looks solely at the alleged acts and - except in the case of alleged persecution - does not make any assessment as to the underlying grounds for their commission.³⁰
22. In accordance with the 23 November 2020 Decision,³¹ the VPRS categorises within Group A applicants who mention crimes committed by Anti-Balaka groups in areas neighbouring the borders of Cattin or Boeing and clearly relate to the alleged attack in Bangui on 5 December 2013.
23. Lastly, the VPRS notes that certain applications³² appear to provide an erroneous date of the alleged events (5 December 2014 instead of 5 December 2013)³³ or do not explicitly state specific dates. However, they refer to publicly known events (such as for example the resignation of former President of the Central African Republic Michel Djotodia), or provide any other sufficiently detailed contextual descriptions that date the events. In these cases, the VPRS applied the Chamber's instruction to assess applications "holistically by assessing their internal coherence and the overall context of the alleged acts".³⁴

³⁰ As a result, the VPRS assesses within Group A applicants who have suffered harm from at least one of the crimes charged against the accused. The VPRS assesses whether the victims were "perceived as collectively responsible for, complicit with, or supportive of the Seleka" only in cases where the applicant appears to have suffered from the charged crime of persecution.

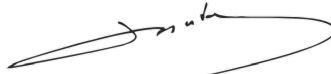
³¹ 23 November 2020 Decision, paras 27-33.

³² These applications include: a/15064/20, a/15189/20, a/15195/20, a/65125/19, a/65127/19, a/65179/19, a/65200/19, a/65234/19 and a/65238/19.

³³ See a/65238/19 and a/15064/20.

³⁴ Email from Trial Chamber V to Registry on 30 July 2020 at 17:29. The VPRS notes that such instructions were provided where applications contained discrepancies with regards to date. The VPRS considers that, in the same vein, such instructions should apply to those instances where an applicant did not provide an exact date but where the applicant's allegations clearly relate to the

24. The Registry will continue to assess all applications in its possession according to the criteria established by the Chamber and will transmit all complete applications on a rolling basis in accordance with the deadlines set out in the 16 July 2020 Decision.



Marc Dubuisson, Director, Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 30 November 2020

At The Hague, The Netherlands

events described in the Decision on Confirmation of Charges. VPRS believes that such interpretation is consistent with the guidance provided by the Chamber in the 23 November 2020 Decision.