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Pénale
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**International
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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
NGAÏSSONA**

Public

**With Confidential Annex 1 and Confidential EX PARTE Annex 2 only available to
the Registry**

**Sixth 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 previously 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 sixth assessment report ("Sixth Registry Assessment Report"), on 328 complete applications ("Applications") to participate in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* ("Case") which includes:
 - A brief description of the assessment criteria applied in relation to the 78 applicants who clearly, in the Registry's assessment, qualify as falling within Group A;

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).

- A brief description of the assessment criteria applied in relation to the 250 applicants who, in the Registry's assessment, clearly do not qualify as victims and have been transmitted in Group B.
3. The applications falling in Group A and B have been listed in annex 1 to the present submission ("Annex 1") and are being transmitted separately to the Chamber, in accordance with paragraph 41(ii) of the Decision. Annex 2 contains a brief description of the assessment criteria applied in relation to Group B applications.

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

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 redacted version was filed on 14 May 2020 (ICC-01/14-01/18-403-Red-Corr).

⁹ Scheduling Order, para. 8 (iv).

- 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 transmission of victim applications by the Registry” (“16 July 2020 Decision”).¹² The start of the trial was later postponed to 16 February 2021.¹³
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.¹⁴
12. On 30 July 2020, the Chamber directed the Registry to seek its guidance on the record for a number of the issues raised.¹⁵
13. On 19 October 2020, the Registry transmitted 15 applications categorised in Group C¹⁶ and submitted a report thereon.¹⁷
14. On 23 November 2020, the Chamber issued a decision on the merits of those applications (“23 November 2020 Decision”).¹⁸
15. Between 30 November 2020 and 1 March 2021, the Registry transmitted 394 applications categorised in Group A¹⁹ together with reports thereon.²⁰

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).

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

¹³ Trial Chamber V, “Order Rescheduling the Commencement Date of the Trial”, 8 February 2021, CC-01/14-01/18-875.

¹⁴ Email from Registry to Trial Chamber V on 17 July 2020 at 13:41.

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

¹⁶ Registry, “Registry’s First Transmission of Group C Applications for Victims’ Participation in Trial Proceedings”, 19 October 2020, ICC-01/14-01/18-687.

¹⁷ Registry, “Registry’s First Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, 19 October 2020, ICC-01/14-01/18-688.

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

16. Between 11 December 2020 and 29 January 2021, the Chamber issued three decisions on the merits of those applications.²¹

17. On 24 February 2021, the Legal Representatives for the Victims (“LRVs”) informed the Registry in relation to their respective clients that they agreed with the Registry’s preliminary assessment concerning the 250 Applications categorized within Group B.²²

III. Classification

18. The annexes to the present submission are classified respectively as confidential (Annex 1) and confidential *ex parte*, only available to the Registry (Annex 2), in accordance with the Decision.²³

IV. Applicable Law

19. 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

¹⁹ See Registry, “Registry’s First Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 30 November 2020, ICC-01/14-01/18-746; “Registry’s Second Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, dated 16 December 2020 and notified on 17 December 2020, ICC-01/14-01/18-778; “Registry’s Third Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, dated 21 January 2021 and notified on 22 January 2021, ICC-01/14-01/18-847; and “Registry’s Fourth Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 1 March 2021, ICC-01/14-01/18-896

²⁰ See Registry, “Registry’s Second Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, 30 November 2020, ICC-01/14-01/18-747; “Registry’s Third Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, dated 16 December 2020 and notified on 17 December 2020, ICC-01/14-01/18-777; “Registry’s Fourth Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, dated 21 January 2021 and notified on 22 January 2021, ICC-01/14-01/18-846; and “Registry’s Fifth Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, 1 March 2021, ICC-01/14-01/18-895.

²¹ Trial Chamber V, “Second Decision on Victims’ Participation in Trial Proceedings (Group A)”, 11 December 2020, ICC-01/14-01/18-765; “Third Decision on Victims’ Participation in Trial Proceedings (Group A)”, 29 December 2020, ICC-01/14-01/18-798 and “Fourth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 29 January 2021, ICC-01/14-01/18-858.

²² Email from Me Massidda on behalf of the LRVs representing the victims of other crimes to Registry on 24 February 2021 at 13:08; and email from Me Massidda to Registry on 24 February 2021 at 13:52.

²³ Decision, paras 41(iii) for the lists of applications to be addressed to the Chamber, parties and if applicable to the legal representatives of participating victims, and para. 41(vi) for the assessment reports containing the reasons for rejecting applications in Group B to be provided exclusively to the Chamber.

Evidence, regulation 86 of the Regulations of the Court, and regulations 107 to 109 of the Regulations of the Registry.

V. Submissions

Details on the Assessment Criteria and List of Applications Falling within Group A

20. The 78 Applications transmitted under Group A include 39 applications from victims admitted to participate during the pre-trial stage.²⁴
21. Applying the criteria set out in paragraph 31 of the Decision, the Registry has assessed each of the 78 applications presently transmitted under Group A as complete. In conducting its assessment in accordance with paragraph 38 of the Decision, the Registry confirms that each of the 78 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;
- ii. He or she has suffered harm;²⁵

²⁴ The victims admitted at pre-trial stage are: a/65181/19, a/65275/19, a/65973/19, a/65976/19, a/65977/19, a/65978/19, a/65979/19, a/66054/19, a/66055/19, a/66057/19, a/66101/19, a/66102/19, a/66103/19, a/66105/19, a/66113/19, a/66115/19, a/66116/19, a/66121/19, a/66122/19, a/66128/19, a/66132/19, a/66136/19, a/66142/19, a/66146/19, a/66153/19, a/66163/19, a/66165/19, a/66166/19, a/66167/19, a/66174/19, a/66186/19, a/66187/19, a/66198/19, a/66199/19, a/66202/19, a/66209/19, a/66218/19, a/66220/19, and a/66226/19. The Registry has reviewed their applications and concluded that the crimes suffered by these victims remained within the scope of the Case following the Decision on Confirmation of Charges.

²⁵ Decision, paras. 31-34. The Registry notes that an application has been submitted by a minor, applying on its own behalf (a/65181/19). For this application, 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 Registry, 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 Registry also took into consideration the fact that the applicant has turned 18 since the time of the submission of its Application.

- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the Case.²⁶

Observations in relation to criterion (i)

22. Certain applications²⁷ 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 Registry took note of the PTC's instruction that "a certain degree of flexibility must be shown"²⁸ and considers that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]".²⁹
23. Some applicants³⁰ 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.³¹ In addition, some applicants have submitted as identification documents cards delivered by non-governmental organisations in the context of assistance programmes

²⁶ *Ibid.*, para. 37.

²⁷ The applications with minor discrepancies include: a/20037/21, a/20044/21, a/20046/21, a/20049/21, a/20066/21, a/20218/21, a/20219/21, a/20223/21, a/20224/21, a/20225/21, a/20229/21, a/65973/19, a/65976/19, and a/66153/19.

²⁸ Decision, para. 34.

²⁹ *Id.*

³⁰ These applications include: a/20101/21, and a/20136/21.

³¹ 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).

(“Entitlement cards”).³² In accordance with paragraph 25 of the Decision, the Registry sought³³ and obtained³⁴ the PTC’s approval to consider such documents as sufficiently establishing the identity of applicants in the Case.

Observations in relation to criterion (iii)

24. In identifying the crimes falling within the scope of the Case, the Registry looks solely at the alleged acts and - except in the case of alleged persecution - does not make any assessment as to the potential underlying grounds for their commission.³⁵
25. In accordance with the 23 November 2020 Decision,³⁶ the Registry categorises within Group A applicants who mention crimes committed by Anti-Balaka groups in areas neighbouring the borders of Cattin or Boeing and clearly related to the alleged attack in Bangui on 5 December 2013.
26. Lastly, the Registry notes that certain applications appear to provide an erroneous date (year) of the alleged events (5 December 2014 instead of 5 December 2013, or arrival of Anti-Balaka forces in Mbaiki on 4 February 2013 instead of 4 February 2014)³⁷ 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

³² The Registry found that in many instances displaced applicants had lost their identification document and had difficulties to access local authorities. However, they often possessed cards delivered by UN agencies, refugee camp management agencies or NGOs in a similar role, which they used in lieu of any other type of identification (See, ICC-01/14-01/18-133-AnxI, para. 21. A sample of such documents is available in annex II to the Registry’s report, see ICC-01/14-01/18-133-AnxII-Red2, pp. 78-80). The Registry further found that similar Entitlement cards were used outside of the context of internally displaced persons camps/sites for beneficiaries of assistance projects/programmes such as those addressing vulnerable categories of populations. These applications include: a/20066/21.

³³ Respectively, email from Registry to PTC on 28 August 2019 at 11:23 and email from Registry to PTC on 1 August 2019 at 18:33. The Registry noted (i) that both documents contained similar features to the ones considered to be valid by the PTC in the instant Case; and (ii) that many displaced victims had lost their identification documents (*see supra.*, fn. 34).

³⁴ Respectively, email from PTC to Registry on 29 August 2019 at 11:17 and email from PTC to Registry on 2 August 2019 at 15:20.

³⁵ As a result, the Registry assesses within Group A applicants who have suffered harm from at least one of the crimes charged against the accused. The Registry assesses whether relevant victim applicants 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.

³⁶ 23 November 2020 Decision, paras 27-33.

³⁷ The Registry notes that no applications were submitted with erroneous dates in this transmission.

any other sufficiently detailed contextual descriptions that date the events.³⁸

In these cases, the Registry applied the Chamber's instruction to assess applications "holistically by assessing their internal coherence and the overall context of the alleged acts".³⁹

Details on the Assessment Criteria and List of Applications Falling within Group B

27. The 250 Applications transmitted under Group B include 213 applications from victims admitted to participate during the pre-trial stage.⁴⁰

³⁸ These applications include: a/15362/20, a/66054/19, a/66055/19, and a/66057/19.

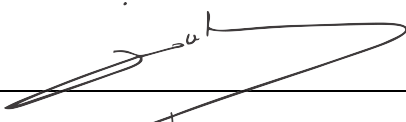
³⁹ Email from the Chamber to the Registry on 30 July 2020 at 17:29. The Registry notes that such instructions were provided where applications contained discrepancies with regards to the date. The Registry respectfully submits that the same logic should apply to those instances where an applicant did not provide an exact date but where the applicant's submission clearly relates to the events described in the Decision on Confirmation of Charges. The Registry respectfully submits that such interpretation is consistent with the guidance provided by the Chamber in the 23 November 2020 Decision).

⁴⁰ The victims admitted at pre-trial stage are: a/65149/19, a/65154/19, a/65208/19, a/65209/19, a/65211/19, a/65214/19, a/65257/19, a/65260/19, a/65270/19, a/65271/19, a/65273/19, a/65276/19, a/65277/19, a/65278/19, a/65279/19, a/65280/19, a/65281/19, a/65282/19, a/65283/19, a/65284/19, a/65285/19, a/65286/19, a/65287/19, a/65288/19, a/65289/19, a/65290/19, a/65291/19, a/65292/19, a/65293/19, a/65294/19, a/65295/19, a/65296/19, a/65297/19, a/65298/19, a/65299/19, a/65300/19, a/65301/19, a/65302/19, a/65303/19, a/65304/19, a/65305/19, a/65306/19, a/65307/19, a/65308/19, a/65309/19, a/65311/19, a/65312/19, a/65313/19, a/65314/19, a/65315/19, a/65316/19, a/65317/19, a/65318/19, a/65319/19, a/65320/19, a/65321/19, a/65324/19, a/65325/19, a/65326/19, a/65327/19, a/65328/19, a/65329/19, a/65330/19, a/65331/19, a/65332/19, a/65333/19, a/65334/19, a/65335/19, a/65336/19, a/65337/19, a/65338/19, a/65339/19, a/65340/19, a/65341/19, a/65342/19, a/65343/19, a/65344/19,, a/65345/19, a/65346/19, a/65347/19, a/65348/19, a/65349/19, a/65350/19, a/65352/19, a/65353/19, a/65354/19, a/65355/19, a/65356/19, a/65357/19, a/65358/19, a/65359/19, a/65360/19, a/65361/19, a/65362/19, a/65363/19, a/65364/19, a/65365/19, a/65367/19, a/65368/19, a/65369/19, a/65370/19, a/65371/19, a/65372/19, a/65373/19, a/65374/19, a/65375/19, a/65376/19, a/65377/19, a/65378/19, a/65379/19, a/65380/19, a/65381/19, a/65382/19, a/65383/19, a/65490/19, a/65492/19, a/65493/19, a/65494/19, a/65495/19, a/65496/19, a/65497/19, a/65498/19, a/65500/19, a/65501/19, a/65502/19, a/65503/19, a/65504/19, a/65505/19, a/65506/19, a/65507/19, a/65508/19, a/65509/19, a/65510/19, a/65511/19, a/65512/19, a/65513/19, a/65514/19, a/65515/19, a/65516/19, a/65517/19, a/65519/19, a/65520/19, a/65521/19, a/65522/19, a/65523/19, a/65524/19, a/65525/19, a/65526/19, a/65527/19, a/65529/19, a/65530/19, a/65531/19, a/65532/19, a/65533/19, a/65534/19, a/65535/19, a/65536/19, a/65537/19, a/65538/19, a/65539/19, a/65540/19, a/65541/19, a/65542/19, a/65543/19, a/65548/19, a/65549/19, a/65550/19, a/65551/19, a/65553/19, a/65554/19, a/65555/19, a/65601/19, a/65602/19, a/65603/19, a/65604/19, a/65605/19, a/65606/19, a/65607/19, a/65608/19, a/65609/19, a/65610/19, a/65611/19, a/65612/19, a/65613/19, a/65615/19, a/65616/19, a/65617/19, a/65618/19, a/65619/19, a/65620/19, a/65621/19, a/65622/19, a/65623/19, a/65624/19, a/65625/19, a/65626/19, a/65627/19, a/65628/19, a/65648/19, a/65649/19, a/65650/19, a/65652/19, a/65653/19, a/65655/19, a/65656/19, a/65658/19, a/65659/19, a/65660/19, a/65662/19, a/65663/19, a/65664/19, a/65665/19, and a/66118/19.

28. Applying the criteria set out in paragraph 31 of the Decision, the Registry has assessed each of the 250 Applications transmitted under Group B as complete.
29. In conducting its *prima facie* assessment in accordance with paragraph 38 of the Decision, the Registry has concluded that the persons⁴¹ whose applications have been transmitted under Group B clearly do not qualify as victims in the Case because the harm alleged has resulted from events falling outside:
- a. The geographic and temporal parameters of the Case; and
 - b. The geographic parameters of the Case.
30. Pursuant to paragraph 41(vi) of the Decision, the Registry has provided an assessment report for the Chamber in Annex 2 setting out the specific reasons for rejecting the applications, in order to allow the Chamber to take a final decision on such applications.

⁴¹ The Registry notes that an application has been submitted by a minor, applying on its own behalf (a/65260/19). For this application, 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 Registry, 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 Registry also took into consideration the fact that the applicant has turned 18 since the time of the submission of its Application.

31. 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 26 March 2021

At The Hague, The Netherlands