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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
With Confidential Annexes I, II and III**

**Seventh 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") in this case.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
 - ii. prepare "regular reports that list the applications for participation and classify them according to the three groups";⁴ and
 - iii. prepare "assessment reports for the attention of the PTC and the parties, highlighting the difficulties encountered regarding Group C applications."⁵

2. The Registry hereby transmits its seventh report, on 25 complete applications ("Applications") to participate in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona* ("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.

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 (iv) of the decision, the PTC ordered the Registry to "disclose to the Prosecutor and the Defence all Group C applications, redacted as needed".

⁴ *Ibid.*, para. 41(iii).

⁵ *Ibid.*, para. 41(v).

3. The Applications have been listed in Annex I to the present submission and are 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. Annex I also contains excerpts of the relevant applications illustrating the difficulties encountered. The Registry further appends maps to illustrate the issues faced in relation to the geographical scope of: the 5 December 2013 attack in Bangui (“Annex II”); and the crimes committed along the PK9- Mbaïki axis (“Annex 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.⁶
5. On 21 June 2019, the PTC authorised 15 victims to participate at the confirmation hearing in the Case (“First Decision on Victims’ Applications”).⁷
6. On 13 September 2019, the PTC authorised an additional 1,070 victims to participate in the proceedings (“Second Decision on Victims’ Applications”).⁸
7. On 11 December 2019, the PTC issued a decision partially confirming the charges against the accused (“Confirmation Decision”).⁹
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;¹⁰ and ii) requested the Registry to provide an update and forecast on (additional) applications by victims to participate in the proceedings.¹¹

⁶ See *supra*, footnote 2.

⁷ 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).

⁸ 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.

⁹ 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).

¹⁰ Scheduling Order, para. 8 (iv).

¹¹ *Ibid.*, para. 3 (I).

9. On 22 May 2020, the Registry provided its Update on Victim Participation (“Update”).¹²
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”).¹³ The start of the trial was later postponed to 16 February 2021.¹⁴
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.¹⁵
12. On 30 July 2020, the Chamber directed the Registry to seek its guidance on the record for a number of the issues raised.¹⁶
13. On 19 October 2020, the Registry transmitted 15 applications categorised in Group C¹⁷ and submitted a report thereon (“Registry’s First Report”).¹⁸
14. On 23 November 2020, the Chamber issued a decision on the merits of those applications (“23 November 2020 Decision”).¹⁹
15. Between 30 November 2020 and 29 March 2021, the Registry transmitted 472 applications categorised in Group A and 250 applications categorised in Group B together with reports thereon.²⁰

¹² 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).

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

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

¹⁵ Email from Registry to Trial Chamber V on 17 July 2020 at 13:41.

¹⁶ Email from Trial Chamber V to Registry on 30 July 2020 at 17:29.

¹⁷ Registry, “First Registry Transmission of Group C Applications for Victims’ Participation in Trial Proceedings”, 19 October 2020, ICC-01/14-01/18-687.

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

¹⁹ Trial Chamber V, “Decision on Victims’ Participation in Trial Proceedings”, 23 November 2020, ICC-01/14-01/18-738.

²⁰ See Registry, “Second Registry Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, 30 November 2020, ICC-01/14-01/18-747; “Third Registry Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, dated 16 December 2020 and notified on

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

III. Applicable Law

17. 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 23 *bis* (2) and 86 of the Regulations of the Court, and regulations 107 to 109 of the Regulations of the Registry.

IV. Classification

18. Annex I to the present submission is classified as confidential in accordance with the Decision.²² Annexes II and III are marked as confidential since they refer to documents filed with similar classifications.

V. Submissions

19. The Registry notes that the 25 Applications categorised as Group C applications have been assessed as complete in accordance with the criteria set out in paragraph 31 of the Decision.²³ 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

17 December 2020, ICC-01/14-01/18-777; "Fourth Registry 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; "Fifth Registry Assessment Report on Applications for Victims' Participation in Trial Proceedings", 1 March 2021, ICC-01/14-01/18-895, and "Sixth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings", 29 March 2021, ICC-01/14-01/18-934.

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 Decision, para. 41(iii).

²³ The Registry notes that applications a/65060/19, a/65066/19, a/65079/19, a/65113/19, a/65119/19, a/65170/19, a/65171/19, a/65433/19, a/66029/19 and a/66148/19 were previously admitted by the PTC for participation purposes.

resulted from an incident falling within the temporal, territorial and material parameters of the Case.

20. 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 5 December 2013 attack in Bangui (category 3);
 - the crimes committed along the PK9- Mbaïki axis (category 4);
 - the crimes committed in Bossangoa (category 5);

21. 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.

i. Issues pertaining to the geographical scope of the Case

- *The 5 December 2013 attack in Bangui (including Cattin) and Boeing (category 1)*

22. In its 23 November 2020 Decision, the Chamber considered that the geographical scope of the charges related to the attack in Bangui on 5 December 2013 (the '5 December 2013 Attack') "is confined to crimes occurring or, as concerns displacement, forcible transfer and deportation, starting in the areas of Boeing and Cattin".²⁴ This included areas neighbouring or bordering Cattin or Boeing when the applicant clearly related to the 5 December 2013 Attack.²⁵ In particular, the Chamber included

²⁴ 23 November 2020 Decision, para. 28.

²⁵ *Ibid*, paras 29-33 .

Kina-KM5, “noting that KM5 is located in the 3rd *arrondissement*, which neighbours the Cattin area.”²⁶

23. Following this guidance, the Registry has listed the following areas as neighboring or bordering Boeing or Cattin, since they are located at a similar distance from Boeing or Cattin as Kina-KM5, and are in the 3rd *arrondissement*: Makombo, Doloko, Boulata, Gbatouri, Kokolo II, Fatima, Gbaya Dombia I, Gbaya Dombia II, Foulbe and Ouham Guida.²⁷
24. In the course of its ongoing legal analysis of applications, the Registry noted that some applicants mention areas included in the 3rd *arrondissement* of Bangui but at a further distance from Boeing or Cattin than Kina-KM5.²⁸ In addition, some applicants mention areas located in the 6th *arrondissement* of Bangui, albeit at an equivalent distance from Boeing and Cattin as areas included in the 3rd *arrondissement*.²⁹
25. Consequently, and noting the stretch and size of the 3rd *arrondissement* of Bangui,³⁰ the Registry respectfully requests guidance on:
- whether the geographical scope of the 5 December 2013 events may include all areas considered to be part of the 3rd *arrondissement* of Bangui, and in particular those highlighted in Annex II to the present submission;³¹ and

²⁶ *Ibid*, para 29. The Registry also notes that the following areas were considered by the Chamber as falling outside the geographical scope of the 5 December 2013 attack in Bangui: Combattant and Boy-Rabe areas (para. 30), Gobongo (para. 31), PK12- La Colline, (para. 32), Taretara (para. 33), Modoua (para.54), and Brazza (para. 55). See for illustration Annex II, Map B.

²⁷ See green zone in Annex II, Map A.

²⁸ See Annex I; application a/65060/19 (which mentions the Senegalais area); application a/65066/19 (which mentions the Sara area); application a/65079/19 (which mentions the Sanga Bibalé area); application a/65113/19 (which mentions the Castor area); application a/65119/19 (which mentions the Ramandji area); application a/65171/19 (which mentions the Béa Rex area); application a/15102/20 (which mentions the Yaloua area); application a/15056/20 (which mentions the Fondo area), application a/15133/20 (which mentions the PK5 market), application a/15118/20 (which mentions the Yakite area) and application a/15138/20 (which mentions an area close to the Bangui Central Mosque). For an illustration of the locations mentioned by those applications see Annex II, Map A.

²⁹ See Annex I, application a/66148/19 (which mentions the Kpetene I area)

³⁰ The 3rd *arrondissement* of Bangui is comprised of around 30 areas spread on a 5km² surface area (see https://reliefweb.int/sites/reliefweb.int/files/resources/agora_car_referencemap_bangui3eme_30032019_a1.pdf).

³¹ See Map I of Annex II regarding the entire 3rd *arrondissement* within the black circle.

- whether the geographical scope of the 5 December 2013 events may include areas included in the 6th *arrondissement* of Bangui when they are located at similar distance from Boeing and Cattin as areas included in the 3rd *arrondissement*.

26. The Registry recommends that ultimately a flexible approach be adopted in relation to the areas bordering the Bangui Airport (such as Ramandji, Yassamba and Fondo), given their close and facing position to Boeing.

- *Events along the PK9- Mbaïki axis (category 2)*

27. In the Confirmation Decision, the PTC confirmed charges 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 and Mbaïki.³² In addition, the PTC found reasonable grounds to believe that Mr. Yekatom's Anti-Balaka group set up various checkpoints in the region at which members of the Anti-Balaka collected tolls.³³

28. The Registry recalls that following the issuance of the Prosecutor's Document Containing the Charges ("DCC"),³⁴ and therefore prior to the Confirmation Decision, the PTC had specified that locations which "either fall within the DCC's general reference to 'the villages along the PK-9 – MBAIKI axis' or are mentioned specifically in the DCC", are within the geographical parameters of the present case.³⁵

29. The Registry also notes that, in the 23 November 2020 Decision, the Chamber clarified that two locations were outside the geographical scope of the PK9-Mbaïki axis because they were either around ten kilometers northwest of Mbaïki and not referred to in the relevant paragraphs of the Confirmation

³² Confirmation Decision, paras 129-143.

³³ *Ibid*, para. 135 and para. 138. The PTC considered the payment of tolls at these checkpoints as a conduct which amounts to persecution.

³⁴ 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).

³⁵ Second Decision on Victims' Applications, para. 30.

Decision (Boukoko) or located at a considerable distance from the PK9-Mbaïki axis, and notably more than 40 kilometers south-east of Mbaïki (Mbata).³⁶

30. However, in the course of its legal processing the Registry noted that some applicants indicate that they suffered from crimes allegedly perpetrated by the Anti-Balaka group in localities not specifically referred to in the relevant paragraphs of the Confirmation Decision, but located either i) directly along the PK9–Mbaïki axis,³⁷ or ii) in close proximity to the main road connecting the PK9 to Mbaïki.³⁸
31. The Registry thus respectfully requests the Chamber’s clarification as to whether it can consider as falling within the geographical scope of the PK9-Mbaïki axis locations which are not mentioned specifically in the Confirmation Decision but which are either found directly on the PK9-Mbaïki axis or located at less than 10 kilometers distance from the main road connecting the PK9 to Mbaïki.

ii. Issues pertaining to the temporal scope of the Case

- *The 5 December 2013 attack in Bangui (including Cattin) and Boeing (category 3)*

32. Although the 23 November 2020 Decision clarified that, in order to be authorized to participate at trial, applicants would have to allege crimes committed “within the context of the 5 December 2013 Attack”,³⁹ the Registry respectfully seeks further clarification regarding the temporal scope of the 5 December Attack.⁴⁰ In this regard, the Registry notes that the DCC refers to

³⁶ 23 November 2020 Decision, para. 41; see also Annex III (grey box).

³⁷ See Annex I: application a/65171/19 (which refers to Kpalongo village - located at PK15, on the PK9-Mbaïki road).

³⁸ See Annex I: application a/65433/19 (whose relevant place of crime is the village of Gbokila - located approximately 4,5 kilometers away from the PK9-Mbaïki road). This application was admitted at the pre-trial stage (see Second Decision on Victims’ Applications). See also application a/20103/21 (which refers to the village of Yombo, located at approximately 6 kilometers away from the PK9- Mbaïki road, and 1 km from the village of Gbokila). For an illustration of the locations mentioned by those applications see Annex III, Map C.

³⁹ 23 November 2020 Decision, para. 56.

⁴⁰ The Chamber was previously seized by the Registry of applications raising a question related at the same time to the temporal and geographical scopes of the 5 December 2013 Attack and it rejected

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.⁴¹

33. Some applications analyzed by the Registry relate to attacks against the civilian population allegedly perpetrated by the Anti-Balaka group in Cattin and Boeing in the days following the 5 December 2013 (from 6 December until the end of December 2013).⁴²

34. The Registry thus respectfully seeks the Chamber's clarification as to whether these applications may be assessed as falling within the temporal scope of the 5 December 2013 attack in Bangui.

- *Events on the PK9- Mbaïki axis (category 4)*

35. In the context of the Anti-Balaka's advance through and takeover of villages along the PK9-Mbaïki axis, the PTC 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" [emphasis added];⁴³
- murder, for the killing of Deputy Mayor Saleh on or around 28 February 2014 in Mbaïki;⁴⁴ and
- persecution in the context of the above-mentioned crimes.⁴⁵

them (see 23 November Decision, paras 52-57). The Registry presents this time applications which fall clearly within the geographical scope of the 5 December 2013 Attack.

⁴¹ 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).

⁴² See Annex I: application a/65170/19 (in which the applicant refers to an attack of the Anti-Balaka in Boeing on 6 December 2013); application a/15307/20 (in which the applicant refers to the looting of her property in Boeing and her forced displacement from this area on 10 December 2013); application a/15281/20 (in which the applicant refers to an attack of the Anti-Balaka in Cattin on 16 December 2013); and application a/15119/20 - (in which the applicant refers to an attack of the Anti-Balaka in Boeing at the end of December 2013).

⁴³ Confirmation Decision, pp. 101,102, 104 and 106.

⁴⁴ *Ibid*, paras. 136-138.

⁴⁵ *Ibid*, para. 138.

36. Some applications received by the Registry relate to individuals who allege to have suffered from relevant crimes committed by the Anti-Balaka some weeks prior to 10 January 2014,⁴⁶ or between 6 February and 28 February 2014.⁴⁷

37. The Registry respectfully seeks the Chamber's guidance as to whether these applications can be considered as within the temporal scope of the PK9-Mbaiki axis events.

- *Bossangoa events (category 5)*

38. In the Confirmation Decision, the PTC found reasonable ground to believe that Mr Ngaïssona is criminally responsible for:

- destruction of the adversary's property, "in the context of the attack on Bossangoa on 5 December 2013 and **in the days after the attack**, as set out in paragraph 379 of the DCC and paragraph 108 of the present decision (Count 33)" [emphasis added];⁴⁸ and
- pillaging, "in the context of the attack on Bossangoa on 5 December 2013, as set out in paragraph 379 of the DCC and paragraph 108 of the present decision (Count 34)".⁴⁹

39. While the Confirmation Decision describes those crimes and highlights that satellite imagery dated January and March 2014 confirmed that hundreds of buildings were destroyed in the days after the attack on Bossangoa,⁵⁰ it does not provide a clear end date for the above listed charges. Some applicants report the destruction and the pillage of their property by the Anti-Balaka

⁴⁶ See Annex I: application a/15387/20 (in which the applicant refers to an attack of the Anti-Balaka in Bossongo, on the PK9-Mbaiki axis, on 16 December 2013); application a/15418/20 (in which the applicant refers to his forced displacement by the Anti-Balaka in Sekia, on the PK9-Mbaiki axis, on 17 December 2013).

⁴⁷ See Annex I: application a/15015/20 (in which the applicant refers to the destruction and looting of his/her property in Mbaïki, on 15 February 2014); application a/66029/19 (in which the applicant refers to the destruction and looting of his/her property in Mbaïki, on 28 February 2014).

⁴⁸ Confirmation Decision, pp. 104, 105.

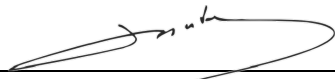
⁴⁹ *Ibid*, p. 105.

⁵⁰ *Ibid*, para.108.

after the 5 December 2013 Bossangoa Attack, throughout the whole month of December 2013.⁵¹

40. The Registry thus respectfully seeks the Chamber's guidance as to the temporal scope of the incidents charged on counts 33 and 34.

41. For all of the abovementioned issues pertaining to the temporal scope, the Registry respectfully recommends that the Chamber apply a flexible approach (as for the issues pertaining to the geographical scope), as long as the material pattern of harm sufficiently links to the crime complexes as charged by the Prosecutor.



Marc Dubuisson, Director, Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 31 March 2021

At The Hague, The Netherlands

⁵¹ See Annex I: application a/15302/20 (in which the applicant refers to the destruction of his property by the Anti-Balaka in Bossangoa, on 10 December 2013); application a/15304/20 (in which the applicant refers to the destruction and looting of his property by the Anti-Balaka in Bossangoa, on 20 December 2013); application a/15303/20 (in which the applicant refers to the looting of his property by the Anti-Balaka in Bossangoa, on 28 December 2013).