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

**Eleventh 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 eleventh assessment report ("Eleventh Registry Assessment Report"), on 71 complete applications ("Applications") to participate in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiïsona* ("Case"), which includes:

- A brief description of the assessment criteria applied in relation to the 32 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 "transmit[] 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 39 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. Between 19 October 2020 and 18 June 2021, the Registry transmitted 40 applications categorised in Group C,¹⁴ 701 applications categorised in Group A¹⁵ and 382 applications in Group B¹⁶ together with reports thereon.¹⁷

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, ICC-01/14-01/18-875.

¹⁴ See Registry, “First Registry Transmission of Group C Applications for Victims’ Participation in Trial Proceedings”, 19 October 2020, ICC-01/14-01/18-687 and “Second Registry Transmission of Group C Applications for Victims’ Participation in Trial Proceedings”, 31 March 2021, ICC-01/14-01/18-940.

¹⁵ 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; “Registry’s Fourth Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 1 March 2021, ICC-01/14-01/18-896; “Fifth Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, dated 26 March 2021 and notified on 29 March 2021, ICC-01/14-01/18-935; “Sixth Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 30 April 2021, ICC-01/14-01/18-974; “Seventh Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 27 May 2021, ICC-01/14-01/18-1006 and “Eighth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings”, dated on 17 June 2021 and notified on 18 June 2021, ICC-01/14-01/18-1030.

¹⁶ See Registry, “First Registry Transmission of Group B Applications for Victims’ Participation in Trial Proceedings”, 29 March 2021, ICC-01/14-01/18-936; “Second Registry Transmission of Group B Applications for Victims’ Participation in Trial Proceedings”, 30 April 2021, ICC-01/14-01/18-975 and “Third Registry Transmission of Group B Applications for Victim Participation in Trial Proceedings”, dated on 17 June 2021 and notified on 18 June 2021, ICC-01/14-01/18-1031.

12. Between 23 November 2020 and 16 June 2021, the Chamber issued eight decisions on the merits of those applications.¹⁸

13. On 8 and 9 July 2021, the Legal Representatives for the Victims (“LRVs”) confirmed that they agreed with the Registry’s preliminary assessment concerning the 39 Applications categorised within Group B.¹⁹

III. Classification

14. 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.²⁰

¹⁷ See Registry, “First Registry Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, 19 October 2020, ICC-01/14-01/18-688; “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 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; “Sixth Registry Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, dated 26 March 2021 and notified on 29 March 2021, ICC-01/14-01/18-934; “Seventh Registry Assessment Report on Applications for Victims’ Participation in Trial Proceedings”, 31 March 2021, ICC-01/14-01/18-939 and “Eighth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 30 April 2021, ICC-01/14-01/18-976; “Ninth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 27 May 2021, ICC-01/14-01/18-1007 and “Tenth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 17 June 2021, ICC-01/14-01/18-1029.

¹⁸ See Trial Chamber V, “Decision on Victims’ Participation in Trial Proceedings”, 23 November 2020, ICC-01/14-01/18-738; “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; “Fourth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 29 January 2021, ICC-01/14-01/18-858; “Fifth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 1 April 2021, ICC-01/14-01/18-943; “Sixth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)”, 4 May 2021, ICC-01/14-01/18-980; “Seventh Decision on Victims’ Participation in Trial Proceedings (Groups A and B)”, 1 June 2021, ICC-01/14-01/18-1009 and “Eighth Decision on Victims’ Participation in Trial Proceedings (Group A)”, 16 June 2021, ICC-01/14-01/18-1028.

¹⁹ Email from Me Fall and Me Rabesandratana to the Registry on 8 July 2021 at 17:52. Emails from Me Massidda (on behalf of the team of LRVs representing the victims of the other crimes) to the Registry on 8 July 2021 at 18:06 and on 9 July 2021 at 10:12.

²⁰ 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.

IV. Applicable Law

15. The present transmission is submitted in accordance with article 68(1) and (3) of the Rome Statute, rules 85 to 89 and 92 of the Rules of Procedure and Evidence, regulation 86 of the Regulations of the Court, and regulations 107 to 109 of the Regulations of the Registry.

V. Submissions

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

16. The 32 Applications transmitted under Group A include 27 applications from victims admitted to participate already during the pre-trial stage.²¹

17. Applying the criteria set out in paragraph 31 of the Decision, the Registry has assessed each of the 32 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 32 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 established²²;

²¹ The victims admitted at pre-trial stage are: a/65205/19; a/65251/19; a/65258/19; a/65259/19; a/65266/19; a/65402/19; a/65428/19; a/65429/19; a/65430/19; a/65431/19; a/65432/19; a/65737/19; a/65769/19; a/65981/19; a/65983/19; a/65987/19; a/65990/19; a/65991/19; a/65993/19; a/66018/19; a/66019/19; a/66020/19; a/66021/19; a/66022/19; a/66038/19; a/66056/19 and a/66193/19. The Registry has reviewed said applications and concluded that the crimes suffered by these victims remained within the scope of the Case following the Decision on Confirmation of Charges.

²² Decision, paras. 31-34. The VPRS notes that certain applications have been submitted by minors, applying on their own behalf (a/65205/19; a/65429/19; a/65430/19; a/65893/19; a/65983/19; a/65987/19 and a/65991/19). 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

- ii. He or she has suffered harm;²³
- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the Case.²⁴

Observations in relation to criterion (i)

18. Certain applications²⁵ 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"²⁶ and considers that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]"²⁷

Observations in relation to criterion (iii)

19. 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.²⁸
20. In accordance with the 23 November 2020 Decision,²⁹ the Registry categorises within Group A applicants who mention crimes committed by Anti-Balaka

into consideration the fact that the applicants have turned 18 since the time of the submission of their Application.

²³ Decision, paras. 31-34.

²⁴ *Id.*, para. 37.

²⁵ The applications with minor discrepancies include: a/15130/20; a/65737/19; a/65769/19; a/65981/19; a/65991/19; a/65993/19; a/66019/19 and a/66022/19.

²⁶ Decision, para. 34.

²⁷ *Ibid.*

²⁸ 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.

²⁹ 23 November 2020 Decision, paras 27-33.

groups in areas neighbouring the borders of Cattin or Boeing and clearly related to the alleged attack in Bangui on 5 December 2013.³⁰

21. Lastly, 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)³¹ 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.³² 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".³³

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

22. The 39 Applications transmitted under Group B include 23 applications from victims previously admitted to participate during the pre-trial stage.³⁴

³⁰ The Registry noted, at times, slight variations in the spelling of the places of incidents between applications (for instance Gbaya Dombia is spelt as "Baye Doumbia" in application a/15130/20). The Registry considers these as minor discrepancies due to the various written transcriptions of the same phonetic pronunciation.

³¹ These applications include: a/65205/19 and a/65251/19.

³² These applications include: a/20526/19; a/20531/21; a/65205/19; a/65246/19; a/65258/19; a/65259/19; a/65266/19; a/66019/19; a/66020/19; a/66021/19; a/66022/19; a/66056/19; a/65893/19 and a/65981/19.

³³ 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.

³⁴ The victims admitted at pre-trial stage are: a/65158/19; a/65177/19; a/65213/19; a/65217/19; a/65218/19; a/65253/19; a/65261/19; a/65268/19; a/65272/19; a/65473/19; a/66104/19; a/66119/19; a/66125/19; a/66126/19; a/66127/19; a/66137/19; a/66141/19; a/66143/19; a/66147/19; a/66152/19; a/66155/19; a/66158/19 and a/66159/19.

23. Applying the criteria set out in paragraph 31 of the Decision, the Registry has assessed each of the 39 Applications transmitted under Group B as complete.
24. In conducting its *prima facie* assessment in accordance with paragraph 38 of the Decision, the Registry has concluded that the persons whose applications have been transmitted under Group B clearly do not/no longer qualify as victims in the Case because the harm alleged has resulted from events falling outside:
- a. The temporal parameters of the Case; and/or
 - b. The geographic parameters of the Case.
25. 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.
26. 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.

p.p.



Marc Dubuisson, Director Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 14 July 2021

At The Hague, The Netherlands