

**Original: English****No. ICC-01/14-01/22****Date: 17 February 2023****PRE-TRIAL CHAMBER II****Before:****Judge Rosario Salvatore Aitala, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane****SITUATION IN THE CENTRAL AFRICAN REPUBLIC II****IN THE CASE OF*****THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA*****Public**

Corrected version of “Order in relation to the ‘Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jeoffrey [sic] Eli Mokom Gawaka* to the victims participating in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*’”

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr Mokom

Mr Philippe Larochelle

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this ‘Order in relation to the “Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jeoffrey [sic] Eli Mokom Gawaka* to the victims participating in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*”’.

I. PROCEDURAL HISTORY

1. On 10 December 2018, the Chamber issued the Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka (‘Mr Mokom’ and ‘Warrant of Arrest’).¹
2. On 14 March 2022, Mr Mokom was surrendered to the Court and arrived at the Detention Centre.
3. On 25 March 2022, the Chamber ordered the Registry to revoke the appointment of Mr Nicholas Kaufman (‘Mr Kaufman’) as Mr Mokom’s counsel due to an impediment to representation or a conflict of interest.²
4. On 1 April 2022, the Chamber, *inter alia*, instructed the Registry to appoint duty counsel for Mr Mokom.³ On the same day, Mr Gregory Townsend was appointed as Duty Counsel for Mr Mokom.⁴
5. On 7 April 2022, the Office of the Public Counsel for Victims (the ‘OPCV’) filed the ‘Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jeoffrey [sic] Eli Mokom Gawaka* to the victims participating in the case of

¹ ICC-01/14-01/22-2-US-Exp (a redacted, under seal, *ex parte*, only available to the Prosecutor and the Victims and Witnesses Unit, version was issued on 31 January 2019, ICC-01/14-01/22-2-US-Exp-Red; a public redacted version was issued on 22 March 2022, [ICC-01/14-01/22-2-Red2](#)).

² Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-26-Conf-Exp, confidential and *ex parte*, only available to the Prosecution, Mr Kaufman, Mr Mokom, and the Registry (the ‘25 March 2022 Order’) (a public redacted version was issued on 13 June 2022, [ICC-01/14-01/22-26-Red](#)).

³ Order convening a status conference and instructing the Registry to appoint duty counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-32-Conf-Exp, confidential and *ex parte*, only available to Mr Mokom and the Registry.

⁴ Notification of the Appointment of Mr Gregory Townsend as Duty Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, 4 April 2022, ICC-01/14-01/22-33-Conf-Exp, confidential and *ex parte*, only available to Mr Mokom and the Registry, with Annex I, confidential and *ex parte*, only available to Mr Mokom and the Registry.

The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona’ (the ‘Application’ and the ‘Yekatom and Ngaïssona case’).⁵

6. On 25 May 2022, pursuant to the Chamber’s order of 17 May 2022,⁶ the Registry provided its observations on the Application (the ‘Registry Observations’),⁷ and Duty Counsel responded to the Application (the ‘Duty Counsel Response’).⁸

7. On 3 June 2022, Duty Counsel responded to the Registry Observations.⁹

8. On 27 June 2022, the Chamber deferred its adjudication of the Application until permanent counsel for Mr Mokom, who remained to be appointed, has had an opportunity to submit a response on behalf of Mr Mokom.¹⁰

9. On 19 December 2022, the Appeals Chamber, by majority, ultimately confirmed the removal of Mr Kaufman as counsel for Mr Mokom.¹¹

⁵ [ICC-01/14-01/22-35](#), public, with Annexes A and B, public.

⁶ Order seeking observations on matters related to the conduct of the confirmation proceedings, [ICC-01/14-01/22-50](#), public, para. 13.

⁷ Registry Observations pursuant to Pre-Trial Chamber II’s “Order seeking observations on matters related to the conduct of the confirmation Proceedings” (ICC-01/14-01/22-50), [ICC-01/14-01/22-55](#), with public annexes I and II, and confidential, *ex parte* annex III, only available to the Registry. The Prosecution informed the Chamber that it did not intend to file a response to the Registry’s Observations and that it defers to the Chamber’s assessment regarding the recommendations provided (see email from Prosecution to the Chamber, 3 June 2022 at 12:01).

⁸ Mr. Mokom’s Response to OPCV’s Application for recognition of the status of victims in the case of Prosecutor v. Mokom to victims participating in the case of Prosecutor v. Yekatom and Ngaïssona, [ICC-01/14-01/22-56](#), public.

⁹ Mr. Mokom’s Response to the Registry’s Observations on victim participation, [ICC-01/14-01/22-57](#), public.

¹⁰ Order on the conduct of the confirmation of charges proceedings, [ICC-01/14-01/22-62](#), public (the ‘27 June 2022 Order’).

¹¹ Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022, ICC-01/14-01/22-124-Conf, confidential, together with an annex containing the dissenting opinion of Judges Bossa and Ibáñez Carranza (public redacted versions of the decision and the annex were issued on the same day, ICC-01/14-01/22-124-Red and [ICC-01/14-01/22-124-Anx-Red](#)). Following an appeal by Mr Mokom, the Appeals Chamber, by majority, directed the Chamber to provide further reasons for its 25 March 2022 Order, on 19 July 2022. The Chamber issued a decision setting out further reasons pursuant to the Appeals Chamber’s directions on 19 August 2022 and, in addition, *proprio motu* granted leave to appeal that decision to Mr Mokom (the ‘19 August 2022 Decision’). On 27 September 2022, the Appeals Chamber declared Mr Mokom’s appeal against the 19 August 2022 Decision inadmissible on the basis that leave to appeal was improperly granted. After the Chamber granted leave to Mr Mokom to appeal the 19 August 2022 Decision on 29 September 2022, the Appeals Chamber, by majority, confirmed the 19 August 2022 Decision on 19 December 2022.

10. On 24 January 2023, following the appointment of Mr Philippe Larochelle as permanent counsel for Mr Mokom ('Permanent Counsel'),¹² the Chamber, *inter alia*, specified that the Prosecution shall submit the Document Containing the Charges (the 'DCC') on 9 March 2023 (the '24 January 2023 Order').¹³

11. On 8 February 2023, Permanent Counsel, further to the 24 January 2023 Order,¹⁴ responded to the Application (the 'Permanent Counsel Response').¹⁵

II. SUBMISSIONS

A. The Application

12. The OPCV requests that the victims already authorised to participate at the pre-trial and trial phase in the *Yekatom and Ngaïssona* case, as well as the victims who were initially admitted and subsequently excluded at the trial stage following the confirmation decision in that case, be automatically admitted to participate in the present case. It asserts that, given the similarity of the alleged crimes and events in both cases, the assessment carried out pursuant to rule 85 of the Rules of Procedure and Evidence (the 'Rules') by the chambers in the *Yekatom and Ngaïssona* case at the pre-trial and trial stage remains valid for the present case.

13. The OPCV further contends that this approach is consistent with the practice of the Court previously adopted in similar cases, and in line with the recommendation in the Final Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System. It, moreover, argues that adopting such approach would also take into account the victims' interests and preserve their security and well-being while promoting the efficiency of the proceedings because it would: (i) make it unnecessary to require each victim to fill in a second application form, thereby

¹² Registry, Notification of the Appointment of Mr Philippe Larochelle as Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, 23 January 2023, [ICC-01/14-01/22-136](#), public, with Annexes I, II and IV, public and Annex III, confidential.

¹³ Order for observations and decision on the Prosecution's request for a status conference, 24 January 2023, [ICC-01/14-01/22-138](#), para. 12. See also [27 June 2022 Order](#), para. 35.

¹⁴ Order for observations and decision on the Prosecution's request for a status conference, 24 January 2023, [ICC-01/14-01/22-138](#), public, para. 11.

¹⁵ Mokom Defence Observations on Matters Related to the Participation of Victims, [ICC-01/14-01/22-155](#), public.

minimising the risk of re-traumatisation; and (ii) avoid a burden for the Chamber of reassessing applications for the same events and crimes.

14. The OPCV asserts that the Chamber enjoys discretion in considering the applications in such a manner as to ensure the effectiveness of the proceedings. It, therefore, suggests presuming the consent of victims admitted in the *Yekatom and Ngaïssona* case to participate in the present proceedings absent a clear indication of their intention not to participate.

15. In the alternative, the OPCV requests to be appointed to represent the distinct collective interests of the two categories of victims in the present case, in accordance with its mandate under regulation 81(4) of the Regulations of the Court (the ‘Regulations’).

B. Registry Observations

16. The Registry concurs with the Application regarding the similarity of the alleged crimes and events. It consequently submits that victims’ applications admitted at the pre-trial and/or trial stage in the *Yekatom and Ngaïssona* case should also be admitted in the present case. It further argues that new application forms submitted in the *Yekatom and Ngaïssona* case until the end of the Prosecution case could be admitted in the present case, should the Chamber accept the decision on victims’ applications issued in the *Yekatom and Ngaïssona* case. The Registry further agrees that there should be an automatic acceptance of application forms in any proceedings that address the harm expressed in a victim’s application form and that the victims be consulted and their explicit notification be sought if they do not wish to participate in the *Mokom* case.

C. Duty Counsel Response

17. Duty Counsel for Mr Mokom responds to five points of law. Under the first and fifth points, it is contended that the Application should be dismissed as inadmissible for lack of standing because regulation 81(4) of the Regulations, cited as its only legal basis, refers to the OPCV having standing based on an instruction, with the leave of the Chamber, or when appointed. According to Duty Counsel, no such instruction, leave or appointment exists in respect of the Application.

18. Second, Duty Counsel argues that automatically deeming victims from separate proceedings, which are at a different procedural stage and without a specific application to that effect, to constitute ‘victims’ in the present case does not comply with the requirement of article 68(3) of the Rome Statute (the ‘Statute’) that: (i) the victims must demonstrate that their personal interests have not been affected; and (ii) their participation does not prejudice or is inconsistent with the rights of the accused, including the right to fair and impartial proceedings. Regarding the latter, it is asserted that the assessment of applications from purported victims is not a burden but rather forms part of the required legal process that characterises fair pre-trial proceedings.

19. Third, it is submitted that automatically admitting persons who do not presently qualify as victims in the *Yekatom and Ngaïssona* case is far from an applicant showing a personal interest in this case.

20. Fourth, it is argued that presuming that a person is a victim, that he or she consents, and requiring him or her to opt out of a separate case – while the OPCV indicates that is possible for the applicants to opt-in – is too much of a shortcut and that the efficiency in this case does not justify a circumvention of the legal process.

D. Permanent Counsel Response

21. Permanent Counsel reiterates Duty Counsel’s submissions with regard to the requirements of article 68(3) of the Statute.

22. Furthermore, it is asserted that the automatic transfer of victims would be contrary to the Appeals Chamber’s finding that the most appropriate system for the processing of victims’ applications be case-specific and based on objective information. Instead, in the view of Permanent Counsel, any applicant must go through the A-B-C approach adopted by the Chamber, which would ensure the Chamber’s judicial control over the entirety of the admission process and preserve the rights of the suspect in the process.

III. DETERMINATION

23. At the outset, the Chamber observes that the OPCV does not provide any legal basis for submitting the Application. Regulation 81(4)(c) of the Regulations provides that the OPCV may advance submissions on the instruction or with the leave of the

Chamber in certain circumstances. However, at the time of the filing of the Application, the OPCV had neither been designated as legal representative of victims in the present case, nor had it requested permission to file the Application. Accordingly, the Chamber finds the Application inadmissible.

24. Nonetheless, the Chamber recalls that, at present, ‘the charges in the [*Yekatom and Ngaïssona*] case largely overlap with the allegations brought against Mr Mokom’.¹⁶ There is, therefore, a realistic likelihood that victims having participated or participating in the *Yekatom and Ngaïssona* case may have an interest in participating in the present case. The Chamber also notes that Mr Mokom – through both Duty Counsel and Permanent Counsel – and the Prosecution have had the opportunity to express their views on how to proceed with regards to the victims participating in the related *Yekatom and Ngaïssona* case. On this basis, the Chamber, mindful of its duty to ensure the fair and expeditious conduct of the proceedings, considers that it is in the interest of justice to *proprio motu* define the approach to be adopted regarding victims who have participated or are participating in the *Yekatom and Ngaïssona* case.

25. The Chamber observes that applications for victims’ participation are not case specific and that, under rule 16(1)(c) of the Rules, it is for the Registry to link them to existing situations and cases before the Court.¹⁷ Moreover, rule 89(4) of the Rules allows a chamber to consider the applications in such a manner as to ensure the effectiveness of the proceedings. A high degree of discretion is afforded to chambers in this regard, which allows the Chamber to organise the application and admission process in light of the circumstances of each case.¹⁸ In addition, in view of other relevant statutory provisions addressing the need for expeditious proceedings before the Court, this rule must be understood as affording chambers the discretion to resort to effective systems to process victims’ applications.¹⁹

¹⁶ [25 March 2022 Order](#), para. 10.

¹⁷ Pre-Trial Chamber I, Single Judge, *The Prosecutor v. Charles Blé Goudé*, [Decision on victims’ participation in the pre-trial proceedings and related issues](#), 11 June 2014, ICC-02/11-02/11-83, public, para. 12.

¹⁸ See Appeals Chamber, *The Prosecutor v. Mahamat Said Abdel Kani*, [Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled “Decision establishing the principles applicable to victims’ applications for participation”](#), 14 September 2021, ICC-01/14-01/21-171 (the ‘Said Appeals Judgment’), public, para. 63.

¹⁹ [Said Appeals Judgment](#), para. 64.

26. As stated above, the *Yekatom and Ngaïssona* case and the present proceedings are ‘substantially related’.²⁰ More specifically, the Chamber notes the overlap between the crimes and events alleged in the Warrant of Arrest in the present case compared to the Warrants of Arrest and the decision on the confirmation of charges in the *Yekatom and Ngaïssona* case.²¹ As a result, the Chamber anticipates that numerous victims having participated or participating in the *Yekatom and Ngaïssona* case will also have an interest in participating in the present proceedings.

27. Moreover, the Chamber is mindful of its duty to take appropriate measures to protect the psychological well-being of the victims, in accordance with article 68(1) of the Statute. In this regard, the Chamber considers that requiring victims to submit new application forms for the present case may put an unnecessary burden on the victims.

28. In these specific circumstances, the Chamber, with a view to ensuring an efficient and effective process regarding victim applications, finds it appropriate to order the Registry to include the applications submitted by the following categories of victims from the *Yekatom and Ngaïssona* case in the *Mokom* case so as to integrate them into the A-B-C system adopted previously:²²

- 1) victims admitted at the pre-trial and/or trial stage;
- 2) victims excluded for falling outside the scope of the charges following the non-confirmation of part of the charges; and
- 3) any victims to be admitted at a later stage by Trial Chamber V until the deadline for the submission of the final transmission of Group A applications.²³

²⁰ [25 March 2022 Order](#), para. 10.

²¹ Compare Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Warrant of Arrest for Patrice-Edouard Ngaïssona, ICC 01/14-01/18-1-US-Exp (a public redacted version was filed on 13 December 2018, [ICC-01/14-01/18-89-Red](#)), para. 16; Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom*, Warrant of Arrest for Alfred Yekatom, ICC 01/14-01/18-1-US-Exp (a public redacted version was filed on 17 November 2018, [ICC-01/14-01/18-1-Red](#)), para. 18(a)-(c) (Bangui and Bangui area attacks, Yamwara school), para. (18)(d)-(g) (Lobay Prefecture – Mbaïki); Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, 11 December 2019, ICC-01/14-01/18-403-Conf-Corr (a public redacted version was filed on 14 May 2020, [ICC-01/14-01/18-403-Red-Corr](#)), paras 75-92 (Bangui and Bangui area attacks), 105-109 (Bossangoa), 113-117 (Yamwara School), 129-137 (Mbaïki) and [Mokom Warrant of Arrest](#), para. 15.

²² [27 June 2022 Order](#), paras 38-44.

²³ See Second order on the conduct of the confirmation of charges proceedings, 13 February 2023, [ICC-01/14-01/22-157](#), public, para. 39.

29. In this regard, the Chamber, noting the arguments of Duty Counsel and Permanent Counsel regarding matters of fairness and the lack of personal interest of victims from the *Yekatom and Ngaïssona* case, emphasises that the A-B-C system: (i) allows the Chamber to oversee the entire victim admission process; and (ii) is conducive to expeditious proceedings in cases of numerous potential applications. Accordingly, the Chamber is satisfied that integrating the aforementioned groups of victims into the A-B-C procedure ensures the right of the victims to meaningfully participate at the earliest juncture possible while guaranteeing the suspect's right to a fair and expeditious trial.

30. At the same time, the Chamber observes that the Prosecution announced its intention to modify the allegations against Mr Mokom in the DCC compared to the Warrant of Arrest.²⁴ Therefore, the Chamber instructs the Registry to assess the applications submitted by the victims from the *Yekatom and Ngaïssona* case falling into the aforementioned categories and all remaining victim applications that have been previously assessed pursuant to the A-B-C approach, including those transmitted to the Chamber,²⁵ on the basis of the parameters as defined in the DCC, once submitted. The Chamber is of the view that, in light of the Prosecution's explicit intention to adjust the allegations against Mr Mokom, it is appropriate to have this reassessment conducted so as to ensure clarity and certainty regarding the categories and number of victims who may be allowed to participate in the present proceedings.

31. Finally, the Chamber finds that victims from the *Yekatom and Ngaïssona* case must expressly consent to their participation in the present case as it cannot be presumed, without more, that a victim from one case necessarily wishes to participate in another, albeit related, case. Therefore, the Registry is instructed to enquire, either through their Legal Representatives or, where necessary, directly, whether eligible victims from the *Yekatom and Ngaïssona* case wish to participate in the *Mokom* case and, if so, proceed with the implementation of the present decision.

²⁴ Transcript of hearing, 7 February 2023, [ICC-01/14-01/22-T-005-ENG](#), p. 14, line 25 to p. 15, line 16.

²⁵ See First Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings, 13 September 2022, [ICC-01/14-01/22-87](#), public; Second Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings, 13 October 2022, [ICC-01/14-01/22-102](#), public; Third Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings, 21 November 2022, [ICC-01/14-01/22-113](#), public; Fourth Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings, 15 December 2022, [ICC-01/14-01/22-122](#), public; Fifth Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings, 20 January 2023, [ICC-01/14-01/22-134](#), public.

FOR THESE REASONS, THE CHAMBER HEREBY

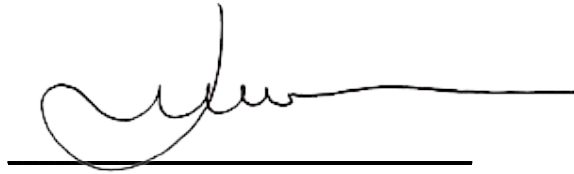
FINDS the Application inadmissible;

ORDERS the Registry to include the application forms of the following categories of victims from the *Yekatom and Ngaïssona* case in the present case so as to integrate them into the A-B-C system: (i) victims admitted at the pre-trial and/or trial stage; (ii) victims excluded for falling outside the scope of the charges following the non-confirmation of part of the charges; and (iii) any victims to be admitted at a later stage by Trial Chamber V until the deadline for the submission of the final transmission of Group A applications;

INSTRUCTS the Registry to assess the applications submitted by the victims from the *Yekatom and Ngaïssona* case falling into the aforementioned categories and all remaining victim applications that have been previously assessed pursuant to the A-B-C approach, including those transmitted to the Chamber, on the basis of the parameters as defined in the DCC, once submitted; and

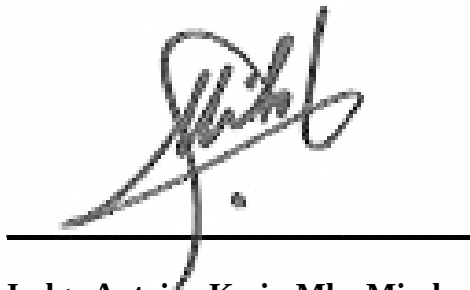
INSTRUCTS the Registry to enquire, either through their Legal Representatives or, where necessary, directly, whether eligible victims in the *Yekatom and Ngaïssona* case wish to participate in the *Mokom* case.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Rosario Salvatore Aitala

Presiding



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Friday, 17 February 2023

At The Hague, The Netherlands