

**Cour
Pénale
Internationale**



**International
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Court**

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PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA***

Public

**With Confidential Annexes 1 and 2 and Confidential *EX PARTE* Annex 3 only
available to the Registry**

**Sixth Registry Assessment Report on Victim Applications for Participation in Pre-
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 27 June 2022, Pre-Trial Chamber II (“Chamber”) issued its “Order on the conduct of the confirmation of charges proceedings” (“27 June 2022 Order”),¹ in the case of *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka* case (“Case”), in which it *inter alia* adopted the “A-B-C” victim application procedure² and endorsed the guidance on the legal assessment of victim applications adopted by the Pre-Trial Chamber in the case of *The Prosecutor v. Yekatom and Ngaïssona* (“*Yekatom and Ngaïssona* Case”).³ Specifically, in its 27 June 2022 Order, the Chamber instructed the Registry to:
 - a. Classify the 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”);⁴ and
 - b. Prepare reports that accompany each transmission. These reports should list the applications for participation and the group they are classified in.⁵
2. The Registry hereby transmits its sixth assessment report (“Report”), on 329 complete applications (“Applications”) to participate in the Case, which includes:
 - A brief description of the assessment criteria applied to 271 applicants who clearly, in the Registry’s assessment, qualify as victims falling within the scope of the Case (Group A); and

¹ Pre-Trial Chamber II, “Order on the conduct of the confirmation of charges proceedings”, 27 June 2022, ICC-01/14-01/22-62.

² *Id.*, para. 40.

³ *Id.*, para. 44.

⁴ *Id.*, para. 40(iv).

⁵ *Id.*, para. 40(vii).

- A brief description of the assessment criteria applied in relation to the remaining 58 applications who, in the Registry's assessment, clearly fall outside of the scope of the Case (Group B).
3. The Applications falling in Group A and Group B respectively, are listed in Annex 1 to the present submission ("Annex 1") and are being transmitted separately to the Chamber, in accordance with paragraph 40(v) of the 27 June 2022 Order. Annex 2 to the present submission ("Annex 2") is a list of applications which were previously transmitted⁶ and since reassessed by the Registry in light of the Document Containing the Charges;⁷ that is, in light of the new scope of the Case ("New Scope of the Case" and "Reassessed Applications", respectively) which remain in Group A. Annex 3 is a brief description of the assessment criteria applied in relation to Group B applications.

II. Procedural History

4. On 22 March 2022, the Warrant of Arrest against Mr Mokom was made public.⁸ On the same date, Mr Mokom made his first appearance before the Chamber.⁹

⁶ Registry, "First Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings", dated 13 September 2022 and registered on 14 September 2022, ICC-01/14-01/22-87, "Second Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings", 13 October 2022, ICC-01/14-01/22-102, "Third Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings", 21 November 2022, ICC-01/14-01/22-114, "Fourth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings", 15 December 2022, ICC-01/14-01/22-121, and "Fifth Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings", 20 January 2023, ICC-01/14-01/22-134.

⁷ Office of the Prosecutor, "Prosecution's Submission of the Document Containing the Charges", 9 March 2023, ICC-01/14-01/22-174.

⁸ Pre-Trial Chamber II, "Public Redacted Version of 'Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka' (ICC-01/14-01/22-2-US-Exp)" ("Warrant of Arrest"), dated 10 December 2018 and registered on 22 March 2022, ICC-01/14-01/22-2-Red2.

⁹ See Pre-Trial Chamber II, "Order convening a hearing for the first appearance of Mr Mokom", 16 March 2022, ICC-01/14-01/22-21.

At that occasion, the Chamber scheduled the opening of the confirmation of charges hearing provisionally for 31 January 2023.¹⁰

5. On 27 June 2022, the Chamber issued its Order setting out *inter alia* the admission procedure for victims' participation in the Case¹¹ and endorsing the guidance on the legal assessment of victim applications adopted by the Pre-Trial Chamber in the *Yekatom and Ngaïssona* Case.¹²
6. Between 14 September 2022 and 20 January 2023, the Registry transmitted 423 applications categorised in Group A,¹³ together with reports thereon.¹⁴
7. On 9 March 2023, the Office of the Prosecutor notified the document containing the charges against Mr Mokom.¹⁵
8. On 11 and 15 May 2023, the respective legal representatives of the victims ("LRV") did not object with the Registry's preliminary assessment concerning the applications categorised as Group B.¹⁶

III. Classification

9. The annexes to the present submission are classified respectively as confidential (Annexes 1 and 2) and confidential *ex parte*, only available to the Registry (Annex 3), in accordance with the 27 June 2022 Order.¹⁷

¹⁰ ICC-01/14-01/22-T-001-Red-ENG WT 22-03-2022, p.11, lines 20-22.

¹¹ 27 June 2022 Order, paras. 40-41.

¹² *Id.*, para. 44.

¹³ Last Registry transmission: "Fifth Registry Transmission of Group A Applications for Victim Participation in Pre-Trial Proceedings", 20 January 2023, ICC-01/14-01/22-134.

¹⁴ Last Registry report: "Fifth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings", 20 January 2023, ICC-01/14-01/22-133.

¹⁵ Office of the Prosecutor, "Prosecution's Submission of the Document Containing the Charges", 9 March 2023, ICC-01/14-01/22-174.

¹⁶ Email from Me Fall to Registry on 11 May 2023 at 12:48 and emails from Me Suprun to Registry on 15 May 2023 at 12:04 and 12:05.

¹⁷ 27 June 2022 Order, para. 40(vii-viii).

IV. Applicable Law

10. 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

11. Among the 329 aforementioned applications, 193 are Reassessed Applications. Out of these Reassessed Applications, 170 applications were assessed by the Registry as falling within the New Scope of the Case and 23 applications were assessed as falling outside the New Scope of the Case.
12. Additionally, out of the 329 Applications in question, 101 applications that have not previously been transmitted to the Chamber, were assessed by the Registry as falling within the New Scope of Case; accordingly, they are transmitted to the Chamber herewith (i.e., as the Registry's sixth transmission of forms inside the New Scope of the Case. For their part, the remaining 35 applications were assessed by the Registry as falling outside the New Scope of the Case and are transmitted to the Chamber, as part of the first Registry transmission of applications not – or no longer – falling within the New Scope of the Case.

Details on the Assessment Criteria of Applications Falling within Group A

13. Applying the criteria set out in paragraph 40(ii) of the 27 June 2022 Order, the Registry has assessed each of the 101 Applications presently transmitted under Group A as well as the 170 Reassessed Applications listed in Annex 2 (and re-transmitted) as complete. In conducting its assessment, in accordance with paragraph 40(ii) of the 27 June 2022 Order, the Registry confirms that each of

the 271 applicants whose applications are being (re)transmitted in Group A have met *prima facie* the following criteria:

- i. Her or his identity is established;
- ii. She or he has suffered harm;
- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material New Scope of the Case.

Observations in relation to criterion (i)

14. Certain Applications presently transmitted¹⁸ falling under Group A contain minor discrepancies, pertaining to *inter alia*: the applicant's date of birth or age; the inversion of the applicant's first and last name; the partial illegibility of the applicant's date of birth on the identity document, while the other elements of the applicant's identity, like the name and the place of birth, are consistent; the spelling of the applicant's name; the applicant's signature appearing on the first page of the form, the year of signature date reading 2013 instead of 2019, or other minor inconsistencies in the information provided which appear to be the result of inadvertent errors or the deterioration of hard-copy documentation over time. In these cases, the Registry took note of the Chamber's endorsement¹⁹ of the guidance on the legal assessment adopted by the Pre-Trial Chamber in the *Yekatom and Ngaïssona* Case that "a certain degree

¹⁸ The applications with minor discrepancies include: a/40096/23, a/40097/23, a/40099/23, a/40100/23, a/40101/23, a/40102/23, a/40104/23, a/40142/23, a/40143/23, a/40144/23, a/40145/23, a/40146/23, a/40148/23, a/40149/23, a/40150/23, a/40158/23, a/40164/23, a/40165/23, a/40167/23, a/40168/23, a/40191/23, a/40219/23, a/40223/23, a/40228/23, a/40229/23, a/40230/23, a/40231/23, a/40236/23, a/40238/23, a/40241/23, a/40244/23, a/40245/23, a/40246/23, a/40248/23, a/40251/23, a/40252/23, a/40253/23, a/40255/23, a/40258/23, a/40261/23, a/40263/23, a/40264/23, a/40265/23, a/40266/23, a/40267/23, a/40271/23, a/40272/23, a/40273/23, a/40276/23, a/40278/23, a/40280/23, a/40281/23, a/40283/23, a/40284/23, a/40289/23, a/40291/23, a/40292/23, a/40293/23, a/40294/23, a/40295/23, a/40296/23, a/40297/23 and a/40298/23. The registry notes that it did not list the minor discrepancies pertaining to Reassessed Applications.

¹⁹ 27 June Order, para. 44.

of flexibility must be shown”²⁰ and considered that the discrepancies presented in these applications “do not call into question the overall credibility of the information provided by the applicant [...]”.²¹

15. Some applicants or persons acting on their behalf have submitted as identification document two types of cards delivered by relevant camp management agencies following a registration process (respectively, “Registration card” and “Entitlement card”).²² In accordance with paragraph 43 of the 27 June 2022 Order, the Registry follows the Pre-Trial Chamber’s approval in the *Yekatom and Ngaïssona* Case and considers such documents as sufficiently establishing the identity of applicants in the Case.²³

Observations in relation to criterion (iii)

16. In identifying the crimes falling within the New Scope of the Case, the Registry looks solely at the alleged acts and – save in the case of alleged persecution – does not make any assessment as to the potential underlying grounds for their commission.²⁴

²⁰ Pre-Trial Chamber II, *The Prosecutor v. Yekatom and Ngaïssona*, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (“5 March 2019 Decision”), 5 March 2019, ICC-01/14-01/18-141, para. 34.

²¹ *Ibid.*

²² The Registry found – in the context of the Y/N case – 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 ICC-01/14-01/18-133-AnxII-Red2, pp. 78-80). The Registry further found that Registration cards and Entitlement cards were used outside of the context of internally displaced persons camps/sites for identification purposes. The applications concerned are: a/40142/23, a/40164/23, a/40231/23, a/40236/23, a/40238/23, a/40246/23, a/40248/23, a/40255/23, a/40261/23, a/40263/23, a/40264/23, a/40266/23, a/40273/23, a/40280/23, a/40281/23, a/40289/23, a/40291/23, a/40293/23, a/40296/23 and a/40297/23.

²³ Email from Pre-Trial Chamber II in the Y/N Case to Registry on 2 August 2019 at 15:20.

²⁴ As a result, the Registry considers 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.

17. The Registry notes that certain applications²⁵ appear to provide an erroneous date of the alleged events, sometimes contradicting other dates in the narrative, or do not explicitly state specific dates (such as, 5 December 2019 instead of 5 December 2013 for the Attack of Bangui). However, they also refer to publicly known events (such as, in Mbaiki, the evacuation of the Muslim community to Bangui by the Chadian forces)²⁶ or provide any other sufficiently detailed contextual descriptions that date the events in question. In these cases, in accordance with paragraph 44 of the 27 June 2022 Order, the Registry has applied the Pre-Trial Chamber's guidance in the *Yekatom and Ngaïssona* Case "to adopt a flexible approach in assessing victim applications with regard to the temporal and territorial scope of the present case at this stage of the proceedings".²⁷

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

18. The 58 Applications transmitted under Group B consist of 23 Reassessed Applications²⁸ and 35 new applications not yet transmitted to the Chamber.

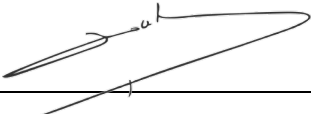
²⁵ These applications include: a/71120/22, a/40150/23 and a/40163/23.

²⁶ This event occurred on or around 6 February 2014. See TCV Single Judge, "Public redacted version of Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona'", 29 June 2021, ICC-01/14-01/18-403-Corr-Red, para. 134 or also Human Rights Watch, "Central African Republic: Muslims forced to flee", 12 February 2014, at [Central African Republic: Muslims Forced to Flee | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2014/02/12/car-muslims-forced-to-flee).

²⁷ Pre Trial Chamber II, *The Prosecutor v. Yekatom and Ngaïssona*, "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-Red, para. 24. Accordingly, the Registry has considered as falling within Group A "applications that are internally coherent, clearly relate to the events described in the Warrants of Arrest and/or, where appropriate, the information in other victim applications, and clearly establish that the alleged perpetrators were part of the Anti-Balaka."

²⁸ See *supra*, para. 11. The 23 Reassessed Applications are: a/70651/22, a/70669/22, a/71053/22, a/71054/22, a/71055/22, a/71058/22, a/71060/22, a/71061/22, a/71064/22, a/71067/22, a/71069/22, a/71070/22, a/71074/22, a/71076/22, a/71079/22, a/71080/22, a/71083/22, a/71085/22, a/71212/22, a/71213/22, a/71214/22, a/71215/22 and a/71216/22.

19. Applying the criteria set out in paragraph 40(ii) of the 27 June 2022 Order, the Registry has assessed each of the 58 Applications transmitted under Group B as complete.²⁹
20. In conducting its *prima facie* assessment in accordance with paragraph 40(ii) of the 27 June 2022 Order, the Registry has concluded that the persons whose applications have been transmitted under Group B clearly do not qualify as victims in the New Scope of the Case because the harm alleged has resulted from the indication of alleged perpetrators and events falling outside the territorial, temporal, and/or material parameters of the New Scope of the Case.
21. Pursuant to paragraph 40(viii) of the 27 June 2022 Order, the Registry provides an assessment report for the Chamber in Annex 3, setting out the specific reasons for rejecting relevant applications, in order to assist the Chamber to take a decision on these applications.



Marc Dubuisson, Director, Division of Judicial Services
On behalf of Osvaldo Zavala Giler, Registrar

Dated this 25 May 2023
At The Hague, The Netherlands

²⁹ The Registry notes that some applications have been submitted by a minor, applying on her or his own behalf (a/71051/22, a/71052/22, a/71053/22 and a/71206/22). For these applications, the Registry has assessed the maturity of the applicant based on the information contained in the form in accordance with the Chamber's endorsement of the Pre-Trial Chamber's instructions in the Y/N Case (email from Pre-Trial Chamber in the Y/N Case to VPRS, 11 July 2019 at 11:24). This includes personal information such as current occupation, marital status, number of children and dependants. The Registry also took into consideration the fact that the applicants have turned 18 since the time of the submission of their Applications.