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PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR V. ALFRED YEKATOM
and PATRICE-EDOUARD NGAÏSSONA***

**Public
With Confidential Annex**

**Registry's Fifth Assessment Report on Applications for Victims' 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. In paragraph 41 of the Decision Establishing the Principles Applicable to Victims' Applications for Participation ("Decision"),¹ Pre-Trial Chamber II ("Chamber") established an admission system whereby the Registry should *inter alia* "classif[y] 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")."²
2. Additionally, the Chamber ordered the Registry to prepare "regular reports that list the applications for participation and classify them according to the three groups".³
3. The Registry hereby transmits its fifth report on 309 applications received 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 301 applicants assessed by the Registry as clearly falling within Group A;
 - A brief overview of the reasons why the Registry was not in a position to make a clear determination on the eight applications falling under Group C.
4. The applications have been listed in an annex to the present submission ("Annex") and are being transmitted separately to the Chamber and, where appropriate, to the Parties, in accordance with paragraph 41(ii) and (iv) of the Decision.

¹ Pre-Trial Chamber I, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141.

² Decision, para. 41(i).

³ Decision, para. 41(iii).

II. Procedural History

5. On 5 March 2019, the Chamber issued the Decision, setting out *inter alia* the admission procedure for victims' participation in the Case.⁴
6. On 15 May 2019, the Victims Participation and Reparations Section ("VPRS") transmitted 15 applications categorised in Group C ("First Transmission")⁵ and submitted a first assessment report on those applications.⁶
7. On 15 May 2019, the Chamber decided to postpone the commencement of the confirmation of charges hearing in the Case until 19 September 2019.⁷
8. On 14 June 2019, the Registry transmitted 74 applications under the classification of "Group A" to the Chamber,⁸ and submitted a second assessment report on those applications.⁹
9. On 21 June 2019, the Chamber issued a decision on the merits of the applications included in the First Transmission ("First Decision on victims applications").¹⁰
10. On 12 July 2019, the Registry transmitted 161 applications under the classification of "Group A" to the Chamber,¹¹ and submitted a third assessment report on those applications.¹²

⁴ See *supra*, footnote 1.

⁵ Registry, "Registry's First Transmission of Group C Applications for Victims' Participation in Pre-Trial Proceedings", dated 14 May 2019 and notified on 15 May 2019, ICC-01/14-01/18-197.

⁶ Registry, "Registry's First Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings", dated 14 May 2019 and notified on 15 May 2019, ICC-01/14-01/18-198.

⁷ Pre-Trial Chamber II, "Decision on the 'Prosecution's Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines'", 15 May 2019, ICC-01/14-01/18-199, p. 17.

⁸ Registry, "Registry's First Transmission of Group A Applications for Victims' Participation in Pre-Trial Proceedings", 14 June 2019, ICC-01/14-01/18-222.

⁹ Registry, "Registry's Second Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings", 14 June 2019, ICC-01/14-01/18-223.

¹⁰ 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-Red.

¹¹ Registry, "Registry's Second Transmission of Group A Applications for Victims' Participation in Pre-Trial Proceedings", 12 July 2019, ICC-01/14-01/18-245.

11. On 30 July 2019, the Registry transmitted 150 applications under the classification of “Group A” to the Chamber,¹³ and submitted a fourth assessment report on those applications.¹⁴

III. Classification

12. The annex to the present submission is classified as confidential in accordance with the instruction of the Chamber.¹⁵

IV. Applicable Law

13. The present report is submitted on the basis of 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 (“RoC”), 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

14. Applying the criteria set out in paragraph 31 of the Decision, the VPRS has assessed each of the 301 applications transmitted under Group A as complete. In conducting its initial assessment in accordance with paragraph 38 of the Decision, the VPRS confirms that each of the 301 applicants whose applications have been transmitted in Group A have met *prima facie* the following criteria:

¹² Registry, “Registry’s Third Assessment Report on Applications for Victims’ Participation in Pre-Trial Proceedings”, 12 July 2019, ICC-01/14-01/18-247.

¹³ Registry, “Registry’s Third Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings”, 30 July 2019, ICC-01/14-01/18-258.

¹⁴ Registry, “Registry’s Fourth Assessment Report on Applications for Victims’ Participation in Pre-Trial Proceedings”, 30 July 2019, ICC-01/14-01/18-259.

¹⁵ Decision, para. 41(iii).

- i. His or her identity as a natural person is established;¹⁶
- ii. He or she has suffered harm;¹⁷
- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the Case.¹⁸

15. In relation to point (i), the VPRS notes that certain applications¹⁹ falling under Group A contain minor discrepancies, pertaining to *inter alia*: an applicant's date of birth, an inversion of an applicant's first and last name, an applicant's signature date or the spelling of an applicant's name, or other minor inconsistencies in the information provided which appear to be the result of inadvertent errors. In these cases, the VPRS remained mindful of the Chamber's instruction that "a certain degree of flexibility must be shown"²⁰ and thus submits that, in light of the information provided in the relevant applications forms as a whole, the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]".²¹

¹⁶ Decision, paras. 31-34. The VPRS notes that certain victims whose applications have been filed under Group A are under the age of 18 and do not have a person acting on their behalf (a/65191/19; a/65195/19; a/65198/19; a/65199/19; a/65229/19; a/65231/19; a/65233/19; a/65238/19; a/65384/19; a/65395/19; a/65401/19; a/65406/19; a/65409/19). For those 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 Pre Trial Chamber II to VPRS, 11 July 2019 at 11.24). 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 and parties.

¹⁷ *Ibid.*, paras 31, 35.

¹⁸ *Ibid.*, para. 37.

¹⁹ The applications with minor discrepancies include: a/65146/19; a/65161/19; a/65392/19; a/65402/19; a/65411/19; a/65464/19; a/65560/19; a/65562/19; a/65574/19; a/65584/19; a/65591/19; a/65602/19; a/65616/19; a/65654/19; a/65661/19; a/65664/19; a/65665/19; a/65668/19; a/65669/19; a/65671/19; a/65729/19; a/65910/19; a/65968/19; a/65971/19; a/65973/19; a/65977/19; a/65988/19; a/66019/19; a/66022/19; a/66024/19; a/66025/19; a/66026/19; a/66076/19; a/66077/19; a/66078/19; a/66082/19; a/66087/19; a/66104/19; a/66121/19; a/66136/19; a/66145/19; a/66148/19; a/66177/19.

²⁰ Decision, para. 34.

²¹ *Id.*

16. Regarding criterion (iii) *supra* (para. 14), the VPRS notes that certain applications do not explicitly state specific dates but refer to publicly known events (such as for example the resignation of the former President of the Central African Republic, Mr Michel Djotodia), or provide any other sufficiently detailed contextual descriptions that would clearly date the events.²² In these cases, the VPRS again applied the Chamber's instruction "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" in its assessment of the application forms.²³

Description of Issues Encountered and List of Applications Falling in Group C

17. The VPRS notes that the eight applications listed in Group C have been assessed as complete in accordance with the criteria set out in paragraph 31 of the Decision. Yet, the VPRS has been unable to make a clear determination whether or not the personal harm reported by the applicants resulted from an incident falling within the parameters of the Case. In this regard, the VPRS is mindful of the Chamber's guidance and encouragement to raise any pertinent issues in

²² These applications include: a/65198/19; a/65233/19; a/65238/19; a/65270/19; a/65271/19; a/65295/19; a/65314/19; a/65316/19; a/65409/19; a/65527/19; a/65529/19; a/65532/19; a/65535/19; a/65548/19; a/65550/19; a/65551/19; a/65554/19; a/65567/19; a/65572/19; a/65582/19; a/65583/19; a/65584/19; a/65585/19; a/65589/19; a/65609/19; a/65610/19; 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/65630/19; a/65633/19; a/65644/19; a/65647/19; a/65648/19; a/65669/19; a/65671/19; a/65713/19; a/65714/19; a/65715/19; a/65729/19; a/65776/19; a/65802/19; a/65810/19; a/65835/19; a/65896/19; a/65910/19; a/65911/19; a/65912/19; a/65922/19; a/65927/19; a/65943/19; a/65945/19; a/65947/19; a/65948/19; a/65966/19; a/65974/19; a/65986/19; a/65992/19; a/66006/19; a/66011/19; a/66025/19; a/66026/19; a/66043/19; a/66044/19; a/66052/19; a/66056/19; a/66061/19; a/66064/19; a/66068/19; a/66069/19; a/66074/19; a/66085/19; a/66087/19; a/66104/19; a/66110/19; a/66119/19; a/66150/19; a/66169/19; a/66201/19; a/66223/19.

²³ 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-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."

advance of filing Group C applications;²⁴ however, in view of the commencement of the confirmation of charges hearing on 19 September 2019, as per the Decision²⁵, any remaining Group C applications have to be filed with the Chamber by today's date.

18. A table is provided in the Annex with extracts from unclear applications illustrating the two key issues, as further specified below. The unredacted versions of these eight applications are also transmitted to the Chamber and redacted versions of the applications are transmitted to the parties, in accordance with paragraph 41(ii) and (iv) of the Decision, respectively.

Issue 1: Territorial Scope – Areas on the road between Bangui and Mbaiki.

19. For certain applications received thus far, the VPRS has encountered difficulties on an issue pertaining to the territorial scope of the Case. Specifically, the VPRS is unable to determine whether the crimes allegedly committed by Mr Yekatom and his group by 20 December 2013 in and around southwest Bangui²⁶ could be interpreted to include areas on the road between Bangui and Mbaiki, including: Sekia, Ndangala, Bimon, Bossongo and Pissa.
20. The VPRS notes that the Chamber found reasonable grounds to believe that acts amounting to crimes against humanity and war crimes were committed by Mr Yekatom and his group by 20 December 2013 in and around southwest Bangui.²⁷ In addition, the Chamber referred in the warrants of arrest issued for Alfred Yekatom and for Patrice-Edouard Ngaïssona ("Warrants of Arrest") to the Prosecutor's contention that "following the 5 December 2013 Bangui Attack, [...] Yekatom's subordinates advanced towards Mbaiki, taking control, without any

²⁴ First Decision on victim's applications, para. 33.

²⁵ Decision, para. 41(vii).

²⁶ Pre-Trial Chamber II, "Warrant of Arrest for Patrice-Edouard Ngaïssona", 21 February 2019, ICC-01/14-01/18-89-Red, p. 13.

²⁷ *Id.*

resistance, over, *inter alia*, the following villages: Sekia, Ndangala, Bimon, Kapou, Bossongo and Pissa.”²⁸

21. While the VPRS is mindful that it should adopt a flexible approach in assessing victim applications with regards to the temporal and territorial scope of the present case at these stage”,²⁹ it notes that the Chamber did not find that the evidence presented by the Prosecutor at this stage established grounds to believe that Mr Yekatom’s group committed acts amounting to persecution and pillaging in the aforementioned areas.³⁰
22. The VPRS is therefore seeking guidance as to whether the locations cited by the victim applicants in the Annex conform to the scope of the Case.

Issue 2: Temporal scope – Enlistment of children under the age of 15 years and their use to participate actively in hostilities

23. In assessing the applications received thus far, the VPRS has encountered difficulties assessing the temporal scope of the crime of enlistment and use of children under the age of 15. In particular, certain victims alleged that they have been enlisted by the Anti-Balaka after August 2014, including in 2015 and 2016.
24. The VPRS notes that the Warrants of Arrest state that children were enlisted and used in Mr Yekatom’s group until “at least August 2014”.³¹ In addition, the Chamber clarified in its First Decision on victim’s applications that “no specific

²⁸ Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 17 November 2018, ICC 01/14-01/18-1-Red, p. 15; “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 21 February 2019, ICC-01/14-01/18-89-Red, p. 17.

²⁹ First Decision on victim’s applications, para. 24.

³⁰ Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 17 November 2018, ICC 01/14-01/18-1-Red, p. 16; “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 21 February 2019, ICC-01/14-01/18-89-Red, p. 17.

³¹ Pre-Trial Chamber II, “Warrant of Arrest for Alfred Yekatom”, 17 November 2018, ICC 01/14-01/18-1-Red, p. 17; “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 21 February 2019, ICC-01/14-01/18-89-Red, p. 18.

end dates should be applied to alleged criminal conduct lacking such a temporal parameter in the Warrants of Arrest at this stage of the proceedings”.³²

25. The VPRS notes that the timeframe set out in the warrant of arrest against Patrice-Edouard Ngaïssona frames all charges “between at least 5 December 2013 and at least December 2014”, but that the “evidence indicates that some of the crimes [...] appear to extend beyond the relevant time period for the contextual elements of crimes against humanity and war crimes [...], namely December 2014”.³³
26. The VPRS therefore seeks guidance as to whether it may consider that the temporal scope of the crime of enlistment and use of children under the age of 15 extends beyond December 2014, including 2015 and 2016.
27. 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 Decision.



Marc Dubuisson, Director, Division of Judicial Services,
on behalf of Peter Lewis, Registrar

Dated this 19 August 2019

At The Hague, The Netherlands

³² First Decision on victim’s applications, para. 29.

³³ Pre-Trial Chamber II, “Warrant of Arrest for Patrice-Edouard Ngaïssona”, 21 February 2019, ICC-01/14-01/18-89-Red, footnote 213.