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No. ICC-01/14-01/18

Date: 27 July 2021

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 public Annexes A and B**

**Ninth Decision on Victims' Participation in Trial Proceedings
(Groups A and B)**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 68(3) of the Rome Statute, Rules 85 and 89 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 86 of the Regulations of the Court, issues this ‘Ninth Decision on Victims’ Participation in Trial Proceedings (Groups A and B)’.

1. The Chamber recalls the procedural history set out in its previous decisions concerning victim participation.¹ In particular, the Chamber recalls the criteria for an applicant to qualify as a victim and the procedure established for the admission of Group A and B applications, namely that ‘barring a clear, material error in the Registry’s assessment’, it would ratify the Registry’s assessment of the applications.² The Chamber further recalls that Group A applications correspond to ‘applicants who clearly qualify as victims’ and Group B applications correspond to ‘applicants who clearly do not qualify as victims’.³
2. On 18 June 2021, the Chamber received 70 Group A victims’ applications (the ‘Group A Applications’)⁴ and 39 Group B victims’ applications (the ‘Group B Applications’).⁵ Additionally, the Registry filed an assessment report,⁶ containing a brief description of the criteria applied in its assessment of the

¹ 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 (with one public annex); Third Decision on Victim’s Participation in Trial Proceedings (Group A), 29 December 2020, ICC-01/14-01/18-798 (with one public annex); Fourth Decision on Victims’ Participation in Trial Proceedings (Group A), 29 January 2021, ICC-01/14-01/18-858 (with one public annex); Fifth Decision on Victims’ Participation in Trial Proceedings (Group A), 1 April 2021, ICC-01/14-01/18-943 (with one public annex); Sixth Decision on Victims’ Participation in Trial Proceedings (Groups A and B), 4 May 2021, ICC-01/14-01/18-980 (with public Annexes A and B); Seventh Decision on Victims’ Participation in Trial Proceedings (Groups A and B), 1 June 2021, ICC-01/14-01/18-1009 (with public Annexes A and B); Eighth Decision on Victims’ Participation in Trial Proceedings (Group A), 16 June 2021, ICC-01/14-01/18-1028 (with one public annex).

² Pre-Trial Chamber II, Decision Establishing the Principles Applicable to Victims’ Applications for Participation, 5 March 2019, ICC-01/14-01/18-141 (the ‘5 March 2019 Decision’), paras 29-41.

³ 5 March 2019 Decision, ICC-01/14-01/18-141, para. 41(i).

⁴ Eighth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, ICC-01/14-01/18-1030 (with 70 confidential *ex parte* annexes, only available to the Registry).

⁵ Third Registry Transmission of Group B Applications for Victim Participation in Trial Proceedings, 18 June 2021, ICC-01/14-01/18-1031 (with 39 confidential *ex parte* annexes, only available to the Registry).

⁶ Tenth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 17 June 2021, ICC-01/14-01/18-1029 (with confidential Annex 1, ICC-01/14-01/18-1029-Conf-Anx1, and confidential *ex parte* Annex 2, only available to the Registry, ICC-01/14-01/18-1029-Conf-Exp-Anx2) (the ‘Tenth Registry Report’).

Group A Applications and the Group B Applications respectively, and several related observations.

3. The Registry notes, *inter alia*, that, pursuant to the Chamber's 'Decision on Victims' Participation in Trial Proceedings' (the 'First Decision on Victim Participation'),⁷ it categorised under Group A applicants who (i) describe crimes committed by Anti-Balaka groups in areas neighbouring the borders of Cattin or Boeing, and (ii) clearly relate those crimes to the alleged Anti-Balaka attack in Bangui on 5 December 2013.⁸
4. The Registry further notes that some of the Group A Applications seemingly '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 [...] which appear to be the result of inadvertent errors'.⁹ The Registry submits that in assessing the applications, it took note of the instruction by Pre-Trial Chamber II (hereinafter: 'PTC II') that 'a certain degree of flexibility must be shown' and considers that these discrepancies 'do not call into question the overall credibility of the information provided by the applicant'.¹⁰
5. The Registry also notes that certain applications 'appear to provide an erroneous date (year) of the alleged events' or 'do not explicitly state specific dates', while at the same time referring to 'publicly known events' or providing 'any other sufficiently detailed contextual descriptions that date the events'.¹¹ In these cases, the Registry submits that it applied the Chamber's instruction to assess applications 'holistically by assessing their internal coherence and the overall context of the alleged acts'.¹²

⁷ First Decision on Victim Participation, ICC-01/14-01/18-738, paras 27-33.

⁸ Tenth Registry Report, ICC-01/14-01/18-1029, para. 21.

⁹ Tenth Registry Report, ICC-01/14-01/18-1029, para. 18.

¹⁰ Tenth Registry Report, ICC-01/14-01/18-1029, para. 18 *referring to* the 5 March 2019 Decision, ICC-01/14-01/18-141, para. 34.

¹¹ Tenth Registry Report, ICC-01/14-01/18-1029, para. 22.

¹² Tenth Registry Report, ICC-01/14-01/18-1029, para. 22 *referring to* an email from the Chamber to the Registry, 30 July 2020, at 17:29.

6. With regard to the Group B Applications, the Registry notes that, in conducting its *prima facie* assessment in accordance with the First Decision on Victim Participation,¹³ it concluded that these applicants ‘clearly do not/no longer qualify as victims in the Case’ because the harm alleged has resulted from events falling outside the temporal, geographic and/or temporal parameters of the case.¹⁴
7. The Chamber recalls the applicable law set out in its First Decision on Victim Participation¹⁵ and the consistent jurisprudence of the Court on Rule 85 of the Rules, as set out by PTC II.¹⁶
8. The Group A Applications were individually assessed by the Registry, which determined that the applicants meet, on a *prima facie* basis, the requirements of Rule 85(a) of the Rules for the granting of victim status.¹⁷ The Group B Applications were also individually assessed by the Registry, which determined that, on a *prima facie* basis, the applicants clearly do not qualify as victims.¹⁸
9. The Chamber has not identified any clear, material error in the Registry’s assessment and therefore authorises the participation as victims of the 70 applicants whose applications were transmitted under Group A, and rejects the 39 applicants whose applications were transmitted under Group B.

FOR THESE REASONS, THE CHAMBER HEREBY

ADMITS the 70 applicants whose applications were transmitted under Group A, listed in Annex A to the present decision, as participating victims for the purpose of the trial proceedings; and

¹³ First Decision on Victim Participation, ICC-01/14-01/18-738, para. 38.

¹⁴ Tenth Registry Report, ICC-01/14-01/18-1029, para. 25. *See in detail* Annex 2 to the Tenth Registry Report, ICC-01/14-01/18-1029-Conf-Exp-Anx2.

¹⁵ First Decision on Victim Participation, ICC-01/14-01/18-738, paras 11-12.

¹⁶ 5 March 2019 Decision, ICC-01/14-01/18-141, paras 21, 31-36.

¹⁷ *See* Tenth Registry Report, ICC-01/14-01/18-1029, para. 17.

¹⁸ *See* Tenth Registry Report, ICC-01/14-01/18-1029, paras 24-25.

REJECTS the 39 applicants whose applications were transmitted under Group B, listed in Annex B to the present decision, as participating victims for the purpose of the trial proceedings.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt

Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 27 July 2021

At The Hague, The Netherlands