

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/21
Date: 20 November 2023

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Report on the Status of Eight Incomplete 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 8 November 2023, Trial Chamber VI ("Chamber") issued its "Second Decision Authorising Victims to Participate in the Proceedings" ("Second Decision") in the case of *The Prosecutor v. Mahamat Said Abdel Kani* ("Case"), in which it *inter alia* instructed the Registry to provide an update on the status of eight incomplete applications referred to in paragraphs 27 and 38 of the Second Decision.¹ The Registry hereby complies with the instruction.

II. Procedural History

2. On 16 April 2021, Pre-Trial Chamber II ("PTC") issued its "Decision Establishing the Principles Applicable to Victims' Applications for Participation", adopting the A-B-C approach implemented in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*.²
3. On 6 October 2021, the PTC authorised 27 victims to participate in the Case and appointed OPCV Counsel to act as common legal representative for the authorised victims.³
4. On 9 December 2021, the PTC confirmed part of the charges against Mr Said ("Confirmation of Charges Decision"),⁴ relating to crimes allegedly committed at the *Office Central de Répression du Banditisme* ("OCRB").

¹ Trial Chamber VI, "Second Decision Authorising Victims to Participate in the Proceedings", ICC-01/14-01/21- 640-Conf. A public redacted version of the decision was filed on the same day (ICC-01/14-01/21-640-Red).

² Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 16 April 2021, ICC-01/14-01/21-56, para. 35. The PTC endorsed *mutatis mutandis*, the victim application procedure adopted in the Yekatom and Ngaissona case (5 March 2019, ICC-01/14-01/18-141) ("5 March 2019 Decision" and "Victim Application Procedure") whereby the Victims Participation and Reparations Section ("VPRS") should "classify all complete applications into three categories: Group A: Applicants who clearly qualify as victims of this case; Group B: Applicants who clearly do not qualify as victims of this case; and Group C: Applicants for whom the Registry could not make a clear determination" ("A-B-C approach").

³ Pre-Trial Chamber II, "Decision on victim applications for participation in the proceedings and on legal representation of victims", 6 October 2021, ICC-01/14-01/21-199.

⁴ Pre-Trial Chamber II, "Public redacted version of Decision on the confirmation of charges against Mahamat Said Abdel Kani, 9 December 2021, ICC-01/14-01/21-218-Red.

5. On 6 May 2022, the Registry submitted its first assessment report⁵ and transmitted 20 applications classified as belonging to Group A and three applications classified as belonging to Group C.⁶
6. On 27 May 2022, the Chamber authorised 20 victims to participate in the Case (“First Decision”).⁷
7. On 13 July 2022, the Registry submitted its second assessment report⁸ and transmitted 14 applications classified as belonging to Group A and five applications classified as belonging to Group C.⁹
8. On 6 September 2022 the Chamber clarified that the scope of the charges in the Case is limited to the specific criminal acts listed by the PTC in paragraph 29 of the operative part of the Confirmation of Charges Decision (“Clarified Scope” and “6 September 2022 Decision”).¹⁰
9. On 12 September 2022, the Registry submitted its third assessment report,¹¹ on three applications classified as Group A.
10. On 27 September 2022, the Chamber issued the “Order for the Reassessment of Victims Applications” in which it instructed the Registry “to reassess all applications that it had previously classified as Group A, including those

⁵ Registry, “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 6 May 2022, ICC-01/14-01/21-297.

⁶ Registry, “First Registry Transmission of Group A and C Victim Applications for Participation in Trial Proceedings”, 6 May 2022, ICC-01/14-01/21-296.

⁷ Trial Chamber VI, “Decision authorising 20 victims to participate in the proceedings”, 27 May 2022, ICC-01/14 01/21-331.

⁸ Registry, “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 13 July 2022, ICC-01/14-01/21-405-Conf. A public redacted version was filed on the same day (ICC-01/14-01/21-405-Red).

⁹ Registry, “Second Registry Transmission of Group A and C Victim Applications for Participation in Trial Proceedings”, 13 July 2022, ICC-01/14-01/21-406.

¹⁰ Trial Chamber, “Decision on the Scope of the Charges”, 6 September 2022, ICC-01/14-01/21-472, para. 25.

¹¹ Registry, “Third Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 13 September 2022, ICC- 01/14-01/21-478.

authorised to participate in the First Decision, in light of the clarified scope of the charges".¹²

11. On 11 October 2022, the Registry submitted its "Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings" ("Updated Assessment Report"), in which it, *inter alia*, indicated that it had assessed eight applications as incomplete considering the Clarified Scope of the Case ("Incomplete Applications").¹³
12. On 8 November 2023, the Chamber issued the Second Decision, instructing, *inter alia*, the Registry to report on the Incomplete Applications, no later than 20 November 2023.¹⁴

III. Applicable Law

13. The present report 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.

IV. Submissions

Update on the collection of the Incomplete Applications

14. Whilst the Registry intended to request additional information in relation to the Incomplete Applications at the earliest stage possible,¹⁵ it considered most appropriate to do so only after the Second Decision would be issued and the

¹² Trial Chamber VI, "Order for the Reassessment of Victims Applications", 27 September 2022, ICC-01/14-01/21-490. para. 8.

¹³ Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings, 11 October 2022, ICC-01/14-01/21-498, paras. 26 and 27. The Incomplete Applications are the following: a/70286/22, a/70448/22, a/70449/22, a/70450/22, a/70451/22, a/70452/22, a/70453/22 and a/70454/22.

¹⁴ See *supra* footnote 1.

¹⁵ Updated Assessment Report, para. 27.

question it raised in its Updated Assessment Report would be clarified, to be certain of the questions to be asked to the relevant applicants. As a result, prior to the Second Decision, the Registry did not collect any additional information for these applications.

15. Following the issuance of the Second Decision, Counsel of the OPCV as the Common Legal Representative of Victims (“CLR V”) liaised with the Registry, offering to contact the applicants in order to collect additional information.¹⁶
16. To date, the CLR V has thus collected and transmitted to the Registry additional information in relation to five Incomplete Applications: a/70286/22, a/70448/22, a/70450/22, a/70453/22, and a/70454/22 (“Completed Applications”).¹⁷ These applications have been assessed by the Registry and are transmitted separately in accordance with the Victim Application Procedure.¹⁸
17. The CLR V further informed the Registry that applicant a/70451/22 is deceased and that her family is gathering documents to proceed with a resumption of action by a family member.
18. Lastly, the CLR V reported that, despite her best efforts, she was unable to meet with applicants a/70449/22 and a/70452/22 at this stage. She indicated that she will carry on trying to contact them, with VPRS assistance as required.

Reassessment of the Completed Applications

19. The Registry has reassessed the five Completed Applications,¹⁹ at the pre-trial phase classified as Group A, in light of the additional information collected and the Clarified Scope of the charges in the Case. It considers that they now

¹⁶ Email from CLR V to Registry, 8 November 2023 at 12:00.

¹⁷ Email from CLR V to Registry, 15 November 2023 at 17:17.

¹⁸ See *supra* footnote 4.

¹⁹ See *supra*, para.16.

fall within Group C since the Registry is not able to make a clear determination as to whether they fall within the scope of any of the Incidents.

20. Applicant a/70286/22 suffered harm as a result of the detention of her family member who died few months after his release. While the applicant is not able to confirm whether her relative was detained in an underground cell, the Registry considers that this possibility cannot be excluded either. The applicant could therefore potentially fall within the scope of Incident (r). However, in the absence of such information, it is unable to clearly assess whether, at this stage of the proceedings, the applicant met the *prima facie* standard to qualify as a victim in the Case.

21. Concerning applications a/70448/22, a/70450/22, a/70453/22, and a/70454/22, the CLRV confirmed that the issue of the underground cell was raised with the applicants. All indicated having been detained in one of the “regular” cells.²⁰ These applicants therefore seem to fall outside the scope of incident (r). However, the Registry considers that these applicants could still be connected to Incident (a), considering that i) the Second Decision recognises that “individuals other than those who are specifically named or identified in the Confirmation of Charges Decision may qualify as victims in the case”,²¹ and ii) the applicants report:

- having been detained at the OCB on a date which is close to the dates referred to in Incident (a); and
- having been arrested or detained because they were perceived as supporting the Anti Balaka.

22. While the Confirmation of Charges Decision makes no reference to other individuals than P-1289 in relation to Incident (a),²² the Registry cannot assess clearly whether Incident (a) is strictly limited to P-1289.

²⁰ Email from CLRV team to Registry, 16 November 2023 at 17:37.

²¹ Second Decision, para.40.

²² Confirmation of Charges Decision, para.29(a)

23. Relevant guidance is thus sought from the Chamber.

24. The Registry will continue to seek additional information in relation to the remaining Incomplete Applications and transmit all future completed applications as soon as possible.



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

Dated this 20 November 2023

At The Hague, The Netherlands