

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/21

Date: 6 May 2022

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
With Confidential Annex**

**First Registry Assessment Report on 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 13 April 2022, Trial Chamber VI ("Chamber") issued its "Decision on matters relating to the participation of victims during the trial" ("Decision")¹ in which it *inter alia* adopted an amended version of the victim admission system endorsed by Pre-Trial Chamber II ("PTC" and "Victim Application Procedure")² in light of the expected low number of applications in the present case.³
2. In compliance with the Victim Application Procedure, the Victims Participation and Reparations Section of the Registry ("VPRS") shall:
 - i. classify victim 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") ("A-B-C Approach"),⁴ and
 - ii. transmit Group A and C applications to the parties together with the corresponding reports pursuant to Regulation 86(5) of the Regulations of the Court ("RoC").⁵
3. The Registry hereby transmits its first report on 23 complete applications to participate ("Applications") in the case of *The Prosecutor v. Mahamat Said Abdel Kani* ("Case"). The Registry has assessed 20 of these Applications to fall in Group A and three Applications in Group C.

¹ Trial Chamber VI, "Decision on matters relating to the participation of victims during the trial", 13 April 2022, ICC-01/14-01/21-278, paras. 16-18 ("Decision").

² On 16 April 2021, Pre-Trial Chamber II issued its "Decision Establishing the Principles Applicable to Victims' Applications for Participation" (ICC-01/14-01/21-56) in which it endorsed, *mutatis mutandis*, the victim application procedure adopted in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona* (5 March 2019, ICC-01/14-01/18-141) ("5 March 2019 Decision").

³ Decision, para. 16.

⁴ The VPRS understands that the assessments are to be done in light of the criteria set in the 5 March 2019 Decision and in the Decision (*id.*, para. 19).

⁵ Decision, para. 16.

4. The Applications are listed in the annex to the present report (“Annex”) and are being transmitted separately in original version to the Chamber and in redacted form to the parties, in accordance with the Decision.⁶

II. Procedural History

5. On 16 April 2021, the 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*.⁷
6. On 6 October 2021, the PTC authorised 27 victims to participate in the Case and appointed OPCV Counsel to act as common legal representatives for the authorised victims.⁸
7. On 9 December 2021, the PTC confirmed part of the charges against Mr Said, relating to crimes allegedly committed at the *Office Central de Répression du Banditisme* (“OCRB”).⁹
8. On 21 January 2022, the Registry provided its ‘Update on Victim Participation’ (“Update”).¹⁰
9. On 21 February 2022, the Chamber set the start date of trial on 26 September 2022.¹¹
10. On 13 April 2022, the Chamber issued the Decision, slightly amending the pre-trial A-B-C approach in light of the expected low number of applications

⁶ Decision, paras.16, 17 and 24.

⁷ See *supra*, footnote 1.

⁸ 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.

⁹ 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 (“Confirmation Decision”).

¹⁰ Registry, “Public Redacted version of Annex II to the Registry Submissions in view of the 28 January 2022 Status Conference”, 21 January 2022, ICC-01/14-01/21-229-AnxII-Red.

¹¹ Trial Chamber VI, “Decision Setting the Commencement Date of the Trial and Related Deadlines”, 21 February 2022, ICC-01/14-01/18-243.

in the Case;¹² it also set the “end of the Prosecution’s presentation of evidence as the deadline for the transmission of victim applications by the Registry”.¹³

III. Classification

11. The Annex to this report is classified as confidential in accordance with the Victim Application Procedure.¹⁴

IV. Applicable Law

12. 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 RoC, and regulations 107 to 109 of the Regulations of the Registry.

V. Submissions

13. In accordance with the Victim Application Procedure, the VPRS has assessed each of the 23 applications transmitted as complete. In conducting its assessment,¹⁵ the VPRS confirms that 20 applicants whose applications are being transmitted in Group A have met *prima facie* the following criteria:

- i. His or her identity as a natural person is established;¹⁶
- ii. He or she has suffered harm;¹⁷

¹² Decision, para. 16, in reference to the Appeals Chamber’s ‘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”’, ICC-01/14-01/21 OA2, 14 September 2021 and the latest edition (5th edition, 2022) of the Chambers Practice Manual which sets the ABC application process as the general default, para. 96 (albeit limiting the transmission of forms to the parties to “C” forms, *id.*, para. 96 (vi)).

¹³ Decision, paras 10-28.

¹⁴ 5 March 2019 Decision, para. 41(iii).

¹⁵ In accordance with paragraph 38 of the 5 March 2019 Decision.

¹⁶ 5 March 2019 Decision, para. 31.

¹⁷ *Id.*, paras 31, 35.

- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the Case.¹⁸

14. In relation to criterion (i), certain applications¹⁹ falling under Group A contain minor discrepancies, pertaining to, *inter alia*, the spelling of the relevant applicant's name. These discrepancies appear to be the result of inadvertent errors. Accordingly, the VPRS followed the approach set in the 5 March 2019 Decision, i.e. that "a certain degree of flexibility must be shown";²⁰ with this guidance in mind, following its assessment the VPRS came to the conclusion that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]".²¹
15. The VPRS is further transmitting three applications²² under Group C. These applications were previously filed²³ and rejected at the pre-trial stage.²⁴ The applicants have since then provided additional information. The VPRS notes that there is a discrepancy between the dates provided by the applicants in their initial application form and in their supplementary information. Based on its experience, the VPRS considers that there is an inherent risk of discrepancies appearing between narratives written down at different times by different persons. Such inconsistencies do not systematically constitute reason to doubt the reliability of the information provided at a later stage, owing to the particular circumstances of the application/case concerned.²⁵ The

¹⁸ *Id.*, para. 37.

¹⁹ The applications with minor discrepancies are a/20602/21, a/70291/22 and a/70305/22.

²⁰ 5 March 2019 Decision, para. 34.

²¹ *Ibid.*

²² a/20599/21, a/20601/21 and a/20602/21.

²³ Registry, "First Registry Transmission of Group C Applications for Victims' Participation in Pre-Trial Proceedings", 13 September 2021, ICC-01/14-01/21-167.

²⁴ 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.

²⁵ They can be explained by various factors including the relevant interviewers' own limitations, memory issues where specific dates times need to be confirmed that lie far in the past, and the relationship between a victim and the interviewer. When there is no serious reason to doubt the

VPRS is transmitting these applications under group C for reconsideration by the Chamber in light of information received subsequently to their rejections.

16. The Registry will continue to assess all applications it receives according to the criteria established by the Chamber; it will transmit all complete applications on a rolling basis in accordance with the deadlines set out in the Decision.

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

Dated this 6 May 2022

At The Hague, The Netherlands

reliability of the victim's narrative from a holistic perspective, the VPRS considers that the discrepancies should not be read to the detriment of the applicant, not least because their legal representative will be in a position to verify – and speak to - the accuracy of the overall information contained in the application where necessary.