

**Cour
Pénale
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**International
Criminal
Court**

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

Date: 25 July 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

**Public Redacted Version of “Victims’ Observations on the ‘Second Registry
Assessment Report on Victim Applications for Participation in Trial Proceedings’
(ICC-01/14-01/21-405)”**

No. ICC-01/14-01/21-432-Conf, dated 25 July 2022

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

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I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings (the “Legal Representative”),¹ hereby submits her response to the “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (the “Second Registry Assessment Report”).²

2. The Legal Representative posits that the Chamber should adopt a flexible approach when assessing victims’ applications, in accordance with the existing jurisprudence, as confirmed by the Single Judge acting on behalf of Pre-Trial Chamber II (the “Single Judge”) in the present case.³ She contends that said approach is certainly appropriate in the present case in light of the specificities attached to the applicants’ victimisation.

3. She further posits that the Chamber’s victim eligibility assessment is limited to evaluating whether applicants have demonstrated that the conditions established in Rule 85 of the Rules of Procedure and Evidence (the “Rules”) are met *prima facie*.

4. Consequently, she submits that all 19 transmitted applications *prima facie* fulfil the criteria for the victims to be admitted to participate in the present stage of the proceedings.

II. PROCEDURAL BACKGROUND

5. On 16 April 2021, the Single Judge acting on behalf of Pre-Trial Chamber II issued the “Decision establishing the principles applicable to victims’ applications for

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG CT](#) and [No. ICC-01/14-01/21-T-007-Red-ENT CT WT](#), p. 47, lines 12-24; the “Decision on matters relating to the participation of victims during the trial”, [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; and the “Decision authorising 20 victims to participate in the proceedings”, [No. ICC-01/14-01/21-331](#), 27 May 2022 (the “First Decision on Participation”).

² See the “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, with Confidential Annex, [No. ICC-01/14-01/21-405-Conf](#) and [No. ICC-01/14-01/21-405-Red](#), 13 July 2022 (the “Second Registry Assessment Report”).

³ See the “Decision on victim applications for participation in the proceedings and on legal representation of victims” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-199](#), 6 October 2021, para. 41.

participation”, endorsing, *mutatis mutandis*, the victim admission system adopted in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the “*Yekatom and Ngaïssona* case”).⁴

6. On 6 October 2021, the Single Judge authorised 27 victims to participate in the present case and appointed Counsel of the Office of Public Counsel for Victims to act as common legal representative for the authorised victims.⁵

7. On 9 December 2021, Pre-Trial Chamber II confirmed part of the charges against Mahamat Saïd Abdel Kani (“Mr Saïd”) relating to crimes allegedly committed at the *Office Central de Répression du Banditisme* (the “OCRB”) between 12 April and 30 August 2013.⁶

8. On 21 February 2022, Trial Chamber VI (the “Chamber”) set the start date of the trial on 26 September 2022.⁷

9. On 13 April 2022, the Chamber issued its “Decision on matters relating to the participation of victims during the trial” (the “Decision”), in which it, *inter alia*, adopted an amended version of the victim admission system endorsed by the Single Judge, in light of the expected low number of applications in the present case.⁸

⁴ See the “Decision establishing the principles applicable to victims’ applications for participation” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-56](#), 16 April 2021. See also the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-141](#), 5 March 2019 (the “*Yekatom and Ngaïssona* Decision on Victim Application Procedure”).

⁵ See the “Decision on victim applications for participation in the proceedings and on legal representation of victims” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-199](#), 6 October 2021.

⁶ See the “Decision on the confirmation of charges against Mahamat Saïd Abdel Kani” (Pre-Trial Chamber II), [No. ICC-01/14-01/21-218-Conf](#) and [No. ICC-01/14-01/21-218-Red](#), 9 December 2021 (the “Confirmation Decision”).

⁷ See the “Decision Setting the Commencement Date of the Trial and Related Deadlines” (Trial Chamber VI), [No. ICC-01/14-01/21-243](#), 21 February 2022.

⁸ See the “Decision on matters relating to the participation of victims during the trial” (Trial Chamber VI), [No. ICC-01/14-01/21-278](#), 13 April 2022.

10. On 27 May 2022, the Chamber authorised 20 victims to participate in the proceedings (the “First Decision on Participation”).⁹

11. On 13 July 2022, the Registry submitted its Second Registry Assessment Report on 19 complete applications to participate (the “Applications”) in the present case, assessing 14 of these Applications to fall in Group A and five Applications in Group C.¹⁰ On the same day, the Registry transmitted the Applications in original version to the Chamber and the Legal Representative and in redacted form to the parties,¹¹ in accordance with the Decision.¹²

III. CLASSIFICATION

12. Pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court, the present submission is classified as confidential following the classification chosen by the Victims Participation and Reparations Section (the “VPRS”) and because it contains information likewise classified as confidential regarding two applicants. A public redacted version will be filed in due course.

IV. SUBMISSIONS

13. At the outset, the Legal Representative incorporates by reference her previous submissions regarding the legal framework for the assessment of victim eligibility for participation, as set out in her observations on the first Registry assessment report.¹³

⁹ See the First Decision on Participation, *supra* note 1. See also “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, with Confidential Annex, [No. ICC-01/14-01/21-297](#), 6 May 2022.

¹⁰ See the Second Registry Assessment Report, *supra* note 2, para. 3.

¹¹ See the “Second Registry Transmission of Group A and Group C Victim Applications for Participation in Trial Proceedings”, with 19 Annexes, confidential *ex parte*, only available to the Registry and Me Sarah Pellet, and confidential redacted versions, [No. ICC-01/14-01/21-406](#), 13 July 2022.

¹² See the “Decision on matters relating to the participation of victims during the trial”, *supra* note 8, paras. 16-17, and 24.

¹³ See the “Victims’ Observations on the ‘First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings’ (ICC-01/14-01/21-297)”, [No. ICC-01/14-01/21-317](#), 19 May 2022, paras. 10-12. See also “First decision on the admission of victims to participate in trial proceedings” (Trial Chamber I), [No. ICC-02/05-01/20-556](#), 14 January 2022, para. 4.

A. Three Group C applications

14. Regarding a/20603/21, a/20607/21 and a/20608/21, the Legal Representative concurs with the VPRS that “*discrepancies* [between the dates provided by the applicants in their initial application form and in the supplementary information they provided] *do not systematically constitute reason to doubt the reliability of the information provided by applicants*”.¹⁴ This is in line with the First Decision on Participation in the present case.¹⁵

15. Regarding these three applications, the Legal Representative posits that a flexible approach is warranted considering the time that has elapsed between the commission of the alleged crimes and the completion of the participation form; all the more since the events left durable traumatic scars that affect the recollection of the events by the victims. She further submits that the adoption of such an approach by Chambers of this Court when assessing victim applications ensures the expeditiousness of the proceedings and the interests of victims.

B. Two remaining Group C applications

16. The Legal Representative notes with concern the VPRS’ observations regarding a/70311/22¹⁶ and a/70312/22.¹⁷ The issue is twofold: (i) the VPRS has exceeded its mandate in considering certain litigation matters in its assessment; and (ii) the VPRS has inconsistently singled out those applications, in violation of the *prima facie* criteria to be applied in such assessment pursuant to the First Decision on Participation.¹⁸

17. The Legal Representative posits that the VPRS exceeded its mandate when it considered issues outside the scope of the assessment of victim applications for participation, which is limited to assessing whether the exhaustive criteria under Rule 85 of the Rules are fulfilled. In this regard, the Legal Representative recalls that

¹⁴ See the Second Registry Assessment Report, *supra* note 2, para. 19.

¹⁵ See the First Decision on Participation, *supra* note 1, paras. 8-9.

¹⁶ See *supra* note 11, [annex 8](#).

¹⁷ *Ibid.*, [annex 9](#).

¹⁸ See the First Decision on Participation, *supra* note 1, para. 9.

the assessment of victim eligibility by the Chamber is distinct from any assessment of the facts and circumstances described in the charges.¹⁹ Accordingly, the VPRS is bound by such legal criteria and should refrain from entering in speculation related [REDACTED].²⁰ The Legal Representative recalls that the Chamber has already emphasised that it would “not [engage] in a systematic in-depth credibility assessment of all the information provided by the applicants”, stating that “[a] determination that an applicant may be authorised to participate in these proceedings therefore does not imply [...] that the Chamber has made a determination that the alleged criminal conduct in the applications meets all the elements of one or more of the charged crimes”.²¹

18. It is noteworthy that the VPRS clearly stated that it “[REDACTED]”.²² Hence, it specifically accepted that the *prima facie* requirement is fulfilled for these applications. Notwithstanding, it added a further criterion to be met which goes to [REDACTED]. The Legal Representative is dismayed by such an inconsistent approach.

19. Furthermore, [REDACTED] – [REDACTED]²³ – [REDACTED];²⁴ [REDACTED] – [REDACTED] – [REDACTED].²⁵ It further clearly stated that [REDACTED]”.²⁶

20. In any case, the assessment of victim applications at this stage is based on the information provided therein. [REDACTED].²⁷ As a matter of fact, a/70311/22 and a/70312/22 were detained at the OCRB between [REDACTED], *i.e.* partly during the time Mr Saïd was *de facto* head of the OCRB, [REDACTED]. Indeed, [REDACTED].

¹⁹ See, *inter alia*, the “Decision on Victims’ Participation in Trial Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-738](#), 23 November 2020 (the “*Yekatom and Ngaïssona* Decision on Victims’ Participation in Trial Proceedings”), para. 21; and the *Ntaganda* “Second decision on victims’ participation in trial proceedings” (Trial Chamber VI), [No. ICC-01/04-02/06-650](#), 16 June 2015, para. 18. See also the “Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-338](#), 13 September 2019, para. 28.

²⁰ See *contra*, the Second Registry Assessment Report, *supra* note 2, para. 20.

²¹ See the First Decision on Participation, *supra* note 1, para. 9.

²² See the Second Registry Assessment Report, *supra* note 2, para. 20.

²³ *Idem*.

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

FOR THESE REASONS, the Legal Representative posits that all Applications *prima facie* fulfil the criteria for the victims to be admitted to participate in the present stage of the proceedings and respectfully requests the Chamber to admit all 19 applicants to participate in the proceedings.



Sarah Pellet

Dated this 25th day of July 2022

At The Hague, The Netherlands