

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **9 August 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 *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public**

**Public Redacted Version of “Prosecution’s Observations on the “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (ICC-01/14-01/21-405-Conf)’, ICC-01/14-01/21-420-Conf, dated 21 July 2022**

**Source:** Office of the Prosecutor

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

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation  
and Reparations Section**

**Other**

## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby provides its observations regarding the Victims Participation and Reparations Section’s (“VPRS”) Second Assessment Report on Victim Applications for Participation in Trial Proceedings (“Second Assessment Report”).<sup>1</sup>

2. The VPRS seeks the reconsideration from Trial Chamber VI (“Chamber”) regarding three applications<sup>2</sup> previously filed under Group C during the pre-trial proceedings,<sup>3</sup> which were rejected by Pre-Trial Chamber II.<sup>4</sup> The Three Applications [REDACTED]. The Prosecution submits that these discrepancies and the date on which the supplementary information was provided, call for the serious consideration of the Chamber.

3. Furthermore, the VPRS seeks guidance from the Chamber regarding the remaining two applications under Group C which have been identified as [REDACTED].<sup>5</sup> [REDACTED]<sup>6</sup> [REDACTED]. The Prosecution submits that these two applications should be moved to the Group A category as they are to be considered dual status victims.<sup>7</sup>

## II. CONFIDENTIALITY

4. Pursuant to regulation 23bis(2) of the Regulations of the Court, these observations are filed as confidential as they refer to the content of Registry filings of the same designation. A public redacted version will be filed as soon as possible.

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<sup>1</sup> ICC-01/14-01/21-405-Conf.

<sup>2</sup> Hereinafter “Three Applications” or “Three Applicants”.

<sup>3</sup> ICC-01/14-01/21-168-Conf, paras. 15-22, 27. *See also* ICC-01/14-01/21-167-Conf-Anx11-Red, ICC-01/14-01/21-167-Conf-Anx12-Red, and ICC-01/14-01/21-167-Conf-Anx13-Red.

<sup>4</sup> ICC-01/14-01/21-199.

<sup>5</sup> [REDACTED] and [REDACTED].

<sup>6</sup> ICC-01/14-01/21-218-Conf, para. 117.

<sup>7</sup> ICC-01/14-01/21-354-Conf-AnxA.

### III. SUBMISSIONS

5. The VPRS seeks reconsideration from the Chamber regarding applications a/20603/21, a/20607/21 and a/20608/21 that were filed under Group C for participation during the Pre-Trial proceedings.<sup>8</sup>

#### A) Background

6. On 13 September 2021, issues as to the temporal and territorial scope of the Three Applications were raised by the VPRS and provided to Pre-Trial Chamber II.<sup>9</sup> The VPRS noted that applicant a/20603/21 [REDACTED]. Applicant a/20607/21 [REDACTED].<sup>10</sup> [REDACTED].<sup>11</sup>

7. On 6 October 2021, Pre-Trial Chamber II did not authorise the Three Applicants to participate in the proceedings “as the difference between the date of the incident which caused the alleged personal harm and the periods relevant to the crimes charged in relation to the OCRB [...], is too significant”<sup>12</sup> and as “in addition to not mentioning either of the two detention centres relevant to the present case, these applications are lacking in detail making it difficult to establish if any of the persons concerned was detained or mistreated at the OCRB [...] during the periods relevant to the charges”.<sup>13</sup>

8. On 9 December 2021, Pre-Trial Chamber II confirmed the crimes charged as committed at the OCRB between 12 April 2013 and 30 August 2013.<sup>14</sup>

9. [REDACTED].<sup>15</sup>

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<sup>8</sup> ICC-01/14-01/21-168-Conf; ICC-01/14-01/21-168-Conf-Anx, p. 1 and p. 3.

<sup>9</sup> ICC-01/14-01/21-168-Conf, paras. 20, 25 and 27-28.

<sup>10</sup> ICC-01/14-01/21-168-Conf-Anx, p. 1.

<sup>11</sup> ICC-01/14-01/21-168-Conf-Anx, p. 3.

<sup>12</sup> ICC-01/14-01/21-199, para. 43.

<sup>13</sup> ICC-01/14-01/21-199, para. 46.

<sup>14</sup> ICC-01/14-01/21-218-Red, paras. 24-40.

<sup>15</sup> ICC-01/14-01/21-406-Conf-Anx1-Red, p. 6; ICC-01/14-01/21-406-Conf-Anx2-Red, p. 8; ICC-01/14-01/21-406-Conf-Anx3-Red, p. 9.

**B) The revised dates and location of the Three Applications**

10. The Three Applicants have now provided revised and additional information, which now falls within the temporal and territorial scope of the charges as confirmed.<sup>16</sup>

*i) Application a/20603/21 (issue of temporal scope)*

11. Applicant a/20603/21 [REDACTED].<sup>17</sup> [REDACTED].

*ii) Application a/20607/21 (issue of temporal scope)*

12. Applicant a/20607/21 [REDACTED].<sup>18</sup> [REDACTED].

*iii) Application a/20608/21 (issue of territorial scope)*

13. Applicant a/20608/21 [REDACTED].<sup>19</sup> [REDACTED].

**C) The reliability of the revised applications**

14. The discrepancies between the dates and/ or location and the reasons provided in support of the new dates/ location raise concerns as to the reliability of the information provided by the Three Applicants. The Prosecution concurs with the VPRS's first and second assessment which consider that there are inevitable inherent risks of discrepancies appearing between narratives written down at different times by different persons.<sup>20</sup> Discrepancies do not systematically constitute reasons to doubt the reliability of the information provided by applicants.<sup>21</sup> However, the Prosecution

<sup>16</sup> ICC-01/14-01/21-406-Conf-Anx1-Red, pp. 7-8, ICC-01/14-01/21-406-Conf-Anx2-Red, pp. 9-10 and ICC-01/14-01/21-406-Conf-Anx3-Red, pp. 10-11.

<sup>17</sup> ICC-01/14-01/21-406-Conf-Anx1-Red.

<sup>18</sup> ICC-01/14-01/21-406-Conf-Anx2-Red (revised date).

<sup>19</sup> ICC-01/14-01/21-406-Conf-Anx3-Red, p. 11, 13.

<sup>20</sup> ICC-01/14-01/21-297, para. 15.

<sup>21</sup> ICC-01/14-01/21-405-Conf, para. 19.

believes that, in the present circumstances, these discrepancies call for consideration by the Chamber.

15. The revised dates of the alleged detentions at the OCRB were provided after the confirmation decision was issued on 9 December 2022. The Prosecution has also reviewed its records and can confirm that 1) none of the Three Applicants are Prosecution witnesses or were interviewed by the Prosecution and, 2) it is not in possession of evidence to support or corroborate the presence of the Three Applicants at the OCRB at the alleged time they now provide. The applications describe events that are unknown to the Prosecution at this stage of its investigation.

16. The Prosecution also submits that except for one applicant, which is a/20607/21, the two other applicants do not provide information that the victims' detention and mistreatment at the OCRB was because they were perceived to be pro-BOZIZE supporters or based on any other persecutory grounds.<sup>22</sup> The Prosecution recalls that Pre-Trial Chamber II did not confirm the incident described at paragraph 33(a) of the Document Containing the Charges because the Prosecution had failed "to provide sufficient evidence on the identities of the alleged victims or *whether they were targeted as perceived Bozizé supporters*" (emphasis added).<sup>23</sup>

**D) The applicants identified as [REDACTED]**

17. The applicants [REDACTED] and [REDACTED] have been identified as Prosecution witnesses [REDACTED] and [REDACTED],<sup>24</sup> [REDACTED],<sup>25</sup> [REDACTED],<sup>26</sup> and the Prosecution list of witnesses.<sup>27</sup> Thus, these applications identified as dual status victims should be reclassified as belonging to Group A.

<sup>22</sup> ICC-01/14-01/21-218-Red, para. 25.

<sup>23</sup> *Ibid.*, para. 83.

<sup>24</sup> [REDACTED].

<sup>25</sup> [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> ICC-01/14-01/21-354-Conf-AnxA.

#### IV. CONCLUSION

18. For the above reasons, the Chamber should exercise caution and seek additional information, if necessary, before allowing applicants a/20603/21, a/20607/21, and a/20608/21 to participate in the proceedings.

19. The applications [REDACTED] and [REDACTED] have been identified as dual status victims and should be classified as part of Group A.

A handwritten signature in black ink, appearing to be 'K.A.A. Khan', with a horizontal line underneath it.

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**Karim A. A. Khan QC, Prosecutor**

Dated this 9<sup>th</sup> day of August 2022  
At The Hague, The Netherland