

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 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
With Confidential Annex**

**Public redacted version of “Second Registry Assessment Report on Victim
Applications for Participation in Trial Proceedings”, 13 July 2022,
ICC-01/14-01/21- 405-Conf**

Source: Registry

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

The Office of the Prosecutor

Karim A. A. Khan

Mame Mandiaye Niang

Counsel for Said Kani

Jennifer Naouri

Dov Jacobs

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of the Public Counsel for
Victims**

Sarah Pellet

**The Office of the Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

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 case of *The Prosecutor v. Mahamat Said Abdel Kani* ("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 second report on 19 complete applications to participate ("Applications") in the case of *The Prosecutor v. Mahamat Said Abdel Kani* ("Case"). The Registry has assessed 14 of these Applications to fall in Group A and five 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 Ngaïssona* (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 Ngaïssona*.⁷
6. On 16 August and 30 August 2021, respectively, the Prosecution filed its “Document Containing the Charges”⁸ (“DCC”) and “Pre-Confirmation”⁹ (“PCB”).
7. 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.¹⁰
8. 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”).¹¹
9. On 21 January 2022, the Registry provided its “Update on Victim Participation” (“Update”).¹²

⁶ Decision, paras.16, 17 and 24.

⁷ See *supra*, footnote 1.

⁸ Prosecution, “Document Containing the Charges”, 16 August 2021, ICC-01/14-01/21-144-Conf (public redacted version and its corrected version notified, respectively, on 16 August 2021 (ICC-01/14-01/21-144-Red) and 27 October 2021 (ICC-01/14-01/21-144-Red-Corr); corrected confidential version and its public redacted version notified, respectively, on 26 October 2021 (ICC-01/14-01/21-144-Conf-Corr) and 1 December 2021 (ICC-01/14-01/21-144-Corr-Red)).

⁹ Prosecution, ‘Pre-Confirmation Brief’, 30 August 2021, ICC-01/14-01/21-155-Conf (first and second public redacted versions notified, respectively, on 21 September 2021 (ICC-01/14-01/21-155-Red) and 9 December 2021 (ICC-01/14-01/21-155-Red3)).

confidential annexes A-D (public redacted version of annex A notified on 22 September 2021 (ICC-01/14-01/21-155-AnxA-Red) and 9 December 2021 (ICC-01/14-01/21-155-AnxA-Red3); corrected version of annex B notified on 26 October 2021 (ICC-01/14-01/21-155-Conf-AnxB-Corr)).

¹⁰ 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.

¹¹ 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. On 21 February 2022, the Chamber set the start date of trial on 26 September 2022.¹³
11. On 13 April 2022, the Chamber issued the Decision, amending the pre-trial A-B-C approach in light of the expected low number of applications in the Case;¹⁴ it also set the “end of the Prosecution’s presentation of evidence as the deadline for the transmission of victim applications by the Registry”.¹⁵
12. On 6 May 2022, the Registry submitted its first assessment report¹⁶ (“First Report”) and transmitted 20 applications classified as belonging to Group A and three applications classified as belonging to Group C.¹⁷
13. On 27 May 2022, the Chamber authorised 20 victims to participate in the Case.¹⁸

III. Classification

14. In accordance with regulation 23*bis*(1) of the Regulations of the Court (“RoC”), the present report is submitted as confidential [REDACTED]. The Annex to this report is also classified as confidential in accordance with the Victim Application Procedure.¹⁹ A public redacted version of the report is filed simultaneously.

¹² 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.

¹³ Trial Chamber VI, “Decision Setting the Commencement Date of the Trial and Related Deadlines”, 21 February 2022, ICC-01/14-01/18-243.

¹⁴ 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)).

¹⁵ Decision, paras 10-28.

¹⁶ Registry, “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 6 May 2022, ICC-01/14-01/21-297.

¹⁷ 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.

¹⁸ Trial Chamber VI, “Decision authorising 20 victims to participate in the proceedings”, 27 May 2022, ICC-01/14 01/21-331.

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

IV. Applicable Law

15. 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

16. In accordance with the Victim Application Procedure, the VPRS has assessed each of the 19 applications transmitted as complete. In conducting its assessment,²⁰ the VPRS confirms that 14 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;²¹
- ii. He or she has suffered harm;²²
- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the Case.²³

Observations in relation to Group A applications

17. In relation to criterion (i), certain applications²⁴ falling under Group A contain minor discrepancies pertaining to the applicant's date of birth. 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";²⁵ with this guidance in mind, following its assessment the VPRS came to the conclusion that the

²⁰ In accordance with paragraph 38 of the 5 March 2019 Decision.

²¹ 5 March 2019 Decision, para. 31.

²² *Id.*, paras 31, 35.

²³ *Id.*, para. 37.

²⁴ The applications with minor discrepancies are a/70450/22 and a/70451/22.

²⁵ 5 March 2019 Decision, para. 34.

discrepancies presented in these applications “do not call into question the overall credibility of the information provided by the applicant [...]”.²⁶

18. With regards to criterion (iii), the Registry notes that certain applications do not explicitly state specific dates of the alleged events. However, they refer to events specifically described by the Prosecution (such as the arrest - by Seleka elements - of individuals allegedly involved in the “*ville morte*” pamphlet distribution in Bangui²⁷),²⁸ or provide any other sufficiently detailed contextual descriptions that date the events.²⁹

Observations in relation to Group C applications

19. Out of the five applications transmitted under group C,³⁰ three were filed³¹ and rejected at the pre-trial stage.³² These 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 the supplementary information they provided. As explained in its First Report, the VPRS considers that such discrepancies do not systematically constitute reason to doubt the reliability of the information provided by applicants.³³ The VPRS is therefore transmitting these applications under group C for reconsideration by the Chamber in light of information received subsequent to their rejection.

²⁶ *Ibid.*

²⁷ See DCC, para. 33.i and PCB, para. 128.

²⁸ See a/70310/22.

²⁹ These applications include: a/70307/22, a/70308/22, a/70309/22, a/70310/22, a/70311/22, a/70312/22, a/70313/22, a/70314/22, a/70447/22, a/70448/22, a/70449/22, a/70450/22, a/70451/22, a/70452/22, a/70453/22, a/70454/22.

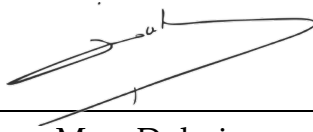
³⁰ a/20603/21, a/20607/21 and a/20608/21 a/70311/22 and a/70312/22.

³¹ a/20603/21, a/20607/21 and a/20608/21. See Registry, “First Registry Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings”, 13 September 2021, ICC-01/14-01/21-167.

³² 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.

³³ See First Report, para. 15.

20. The VPRS cannot make a clear determination with regards to the remaining two Group C applications,³⁴ [REDACTED].³⁵ [REDACTED].
21. The Registry will continue to assess all applications it receives according to the criteria established by the Chamber, and it will transmit all complete applications on a rolling basis in accordance with the deadlines set out in the Decision.



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

Dated this 13 July 2022

At The Hague, The Netherlands

³⁴ a/70311/22 and a/70312/22.

³⁵ [REDACTED].