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**International
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PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

Public redacted version of “Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings, 13 September 2021, ICC-01/14-01/21-168-Conf”

Source: The Registrar

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

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I. Introduction

1. On 16 April 2021, Pre-Trial Chamber II ("Chamber") issued its "Decision Establishing the Principles Applicable to Victims' Applications for Participation" ("Decision")¹ in which it *inter alia* adopted, *mutatis mutandis*, the victim application procedure implemented in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* ("Victim Application Procedure").² In compliance with this 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");³
 - ii. prepare regular reports that list the applications for participation and classify them according to the three groups;⁴ and
 - iii. prepare assessment reports for the attention of the Chamber, the Prosecutor and the Defence ("parties"), highlighting the difficulties encountered regarding Group C applications.⁵
2. The VPRS hereby transmits its second report on 15 complete applications to participate ("Applications") in the case of *The Prosecutor v. Mahamat Said Abdel Kani* ("Case"). The VPRS has assessed all of these Applications to fall in

¹ Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 16 April 2021, ICC-01/14-01/21-56.

² *Id.*, para. 35, referring to Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141 ("5 March 2019 Decision").

³ 5 March 2019 Decision, para. 41 (i). In paragraph 41 (ii) of the 5 March 2019 Decision, the Chamber ordered the Registry to "transmit[] to the Chamber on a rolling basis and in unredacted form all complete applications and any supporting documentation in its possession".

⁴ *Id.*, para. 41(iii).

⁵ *Id.*, para. 41(v).

Group C. The report also outlines the reasons why the VPRS was not in a position to make a clear determination on each of the Applications.⁶

3. 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 Victim Application Procedure.⁷

II. Procedural History

4. On 7 January 2019, the Chamber issued the warrant of arrest against Mahamat Said Abdel Kani (“Arrest Warrant”).⁸
5. On 26 February 2021, the Registry submitted observations and recommendations on aspects related to the admission process for victims seeking to participate in the proceedings in the Case.⁹
6. On 16 April 2021, the Single Judge issued the Decision, adopting the Victim Application Procedure.¹⁰
7. On 9 July 2021, the Single Judge issued a decision on legal representation of victims and related matters, *inter alia*: i) ordering the Registry to transmit the full victim application forms, including the page(s) which contain(s) information on the person/organisation assisting the applicant to fill in the form, to the Chamber as part of the Victim Application Procedure; and ii) assigning the Office of Public Counsel for Victims (“OPCV”) to represent the collective interests of applicants on a temporary and provisional basis.¹¹

⁶ The VPRS has assessed as incomplete eight further applications which present similar issues as those presented in the present report. It is currently seeking supplementary information for those applications.

⁷ 5 March 2019 Decision, para. 41(ii) and (iv).

⁸ Pre-Trial Chamber II, ‘Warrant of Arrest for Mahamat Said Abdel Kani, 7 January 2019, ICC-01/14-01/21-2-US-Exp. A public redacted version was filed on 17 February 2021 (ICC-01/14-01/21-2-Red2).

⁹ Registry, “Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings”, 26 February 2021, ICC-01/14-01/21-25.

¹⁰ See *supra*, footnote 1.

¹¹ Pre-Trial Chamber II, “Decision on legal representation of victims and related matters”, 9 July 2021, ICC-01/14-01/21-119, paras 30, 35 and p. 12.

8. On 16 August 2021, the Prosecution notified its Document Containing the Charges (“DCC”).¹²
9. On 27 August 2021, the Registry transmitted 13 applications categorised in Group A (“First Transmission”) ¹³ alongside a report thereon (“First Report”).¹⁴
10. [REDACTED].¹⁵
11. On 9 September 2021, the Single Judge granted OPCV Counsel Ms Sarah Pellet access to all victim applications that would fall within her mandate of representation.¹⁶

III. Classification

12. Pursuant to regulation 23*bis*(2) of the Regulations of the Court (“RoC”), the present report is filed confidentially since it refers to documents filed with similar classifications.¹⁷ The annex to the report is also classified as confidential in accordance with the Victim Application Procedure.¹⁸ The Registry will file a public redacted version of the report in the coming days.

IV. Applicable Law

13. 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.

¹² Prosecution, “Document Containing the Charges”, 16 August 2021, ICC-01/14-01/21-144-Conf.

¹³ Registry, “First Registry Transmission of Group A Applications for Victim Participation in Participation in Pre-Trial Proceedings”, 27 August 2021, ICC-01/14-01/21-151.

¹⁴ Registry, “First Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, 27 August 2021, ICC-01/14-01/21-152.

¹⁵ [REDACTED].

¹⁶ Email from Pre-Trial Chamber II to Registry, 9 September 2021, at 15:27.

¹⁷ See e.g. paras. 8, 10, footnotes 12, 15.

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

V. Submissions

Preliminary observations

14. At the time of filing its First report on 27 August 2021,¹⁹ the VPRS had conducted its first assessment of Group A applications on the basis of the Arrest Warrant. Having since been granted access to the DCC,²⁰ the VPRS has reassessed all applications in light of the DCC and concluded that out of the 13 applications previously transmitted as part of Group A (applications clearly inside the scope of the Case), three applications should in fact be part of Group C (unclear applications).²¹ These applications are listed in the Annex and are re-transmitted (this time also in redacted version) for the parties' consideration.

Details on the assessment criteria applied to Applications falling within Group C

15. While the 15 Applications categorised as belonging to Group C have been assessed as complete in accordance with the criteria set out in the Victim Application Procedure,²² the Registry is not in a position to make a clear determination whether the personal harm reported by the applicants resulted from an incident falling within the temporal, territorial and material parameters of the Case.

16. The issues raised by the Applications can be divided into the following categories:

- i. Issues pertaining to the temporal scope of the Case (Issue 1);
- ii. Issues pertaining to the territorial scope of the Case (Issue 2).

¹⁹ See *supra* footnote 14.

²⁰ The VPRS was not notified of, and only became aware of it after the issuance of the First Report.

²¹ These Applications are: a/20565/21, a/20567/21 and a/20577/21.

²² 5 March 2019 Decision, paras. 36 and 41 (ii).

17. A table is provided in the Annex, which includes extracts from the Applications illustrating the issues raised below.

Issue 1: Temporal Scope of the Case

18. The VPRS has encountered difficulties assessing the temporal scope of the crimes reported by some applicants in the context of the “*Office Central de Répression du Banditisme*” (“OCRB”) and the “*Comité Extraordinaire pour la Défense des Acquis Démocratiques*” (“CEDAD”).

Incidents at OCRB

19. The DCC states that Mr Said is individually criminally responsible for crimes committed at OCRB “from at least 12 April 2013 until 30 August 2013”.²³
20. According to some Applications, victims have been arrested/abducted, detained and tortured at the OCRB after 30 August 2013, including in September, October, November and December 2013.²⁴

Incidents at CEDAD

21. The Prosecution further indicates in the DCC that Mr Said is responsible for crimes committed at the CEDAD “from at least 15 September 2013 until on or about 8 November 2013”.²⁵
22. Some Applications relate to individuals who allege to have suffered from relevant crimes committed in the CEDAD before 15 September 2013,²⁶ and in some cases

²³ DCC, para. 27..

²⁴ See Annex: application a/20599/21 (in which the applicant refers to his arrest/detention in the OCRB from [REDACTED] October to [REDACTED] November 2013); application a/20601/21 (in which the applicant refers to her arrest/detention in the OCRB from [REDACTED] to [REDACTED] September 2013); application a/20602/21 (in which the applicant refers to his arrest/detention in the OCRB on [REDACTED] October 2013); application a/20603/21 (in which the applicant refers to his arrest/detention in the OCRB on [REDACTED] October 2013 for a week) and application a/20607/21 (in which the applicant refers to his arrest/detention in the OCRB from [REDACTED] November 2013 to [REDACTED] December 2013).

²⁵ DCC, para. 28.

²⁶ See Annex: application a/20565/21 (in which the applicant refers to his arrest/detention in CEDAD on [REDACTED] September 2013 for two days).

until an unspecified date.²⁷ Other Applications refer to alleged harm suffered in the CEDAD after 8 November 2013.²⁸

Previous jurisprudence

23. The VPRS recalls the decisions taken by the Chamber in other cases at this stage of the proceedings on the issue of difficulties experienced by victims when recalling dates.²⁹ In particular, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, the Chamber instructed the VPRS to adopt a “flexible approach in assessing victim applications”, including “flexibility with respect to the precise dates of the alleged acts”.³⁰ It further found that “minor discrepancies in terms of dates [...] should not lead to the exclusion of the applications”.³¹
24. In the present case, the VPRS observes that all relevant applications place the alleged harm suffered in the right year, regarding events as long as eight years ago (2013). Relevant time indications differ from the timeframes provided in the DCC by up to a few months.
25. The Registry seeks confirmation from the Chamber as to whether the aforementioned flexible approach can also be applied in the present Case, and

²⁷ See Annex: application a/20590/21 (in which the applicant refers to his relative’s arrest/detention in CEDAD on [REDACTED] August 2013); application a/20610/21 (in which the applicant refers to her relative’s arrest/detention in the CEDAD on [REDACTED] August 2013).

²⁸ See Annex: application a/20567/21 (in which the applicant refers to his arrest/detention in the CEDAD and the S.R.I (*Section de Recherches et d’Investigations*) from [REDACTED] to [REDACTED] November 2013); application a/20577/21 (in which the applicant refers to his arrest/detention in the CEDAD from [REDACTED] to [REDACTED] November 2013); application a/20589/21 (in which the applicant refers to his relative’s arrest/detention in the CEDAD on [REDACTED] December 2013); and application a/20597/21 (in which the applicant refers to his arrest/detention in the CEDAD from [REDACTED] to [REDACTED] November 2013).

²⁹ See for instance Pre-Trial Chamber II, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Deuxième décision relative aux principes applicables aux demandes de participation des victimes, 8 October 2018, ICC-01/12-01/18-146, paras 20-22; and the same Chamber in *The Prosecutor vs. Ali Muhammad Ali Abd-Al-Rahman*, Decision on victim applications for participation, legal representation, leave to appeal and amicus curiae requests, 20 May 2021, ICC-02/05-01/20-398, para. 41.

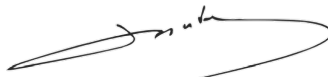
³⁰ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision regarding the Registry’s First Assessment Report on Applications for Victim Participation, the Registry’s First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims’ procedural position, 21 June 2019, ICC-01/14-01/18-227-Conf, para. 24. A public redacted version was filed on the same day (ICC-01/14-01/18-227-Red).

³¹ *Ibid.*

therefore if the relevant Applications can be considered as falling within the temporal scope of the Case.

Issue 2: Territorial Scope of the Case

26. During its legal assessment, the VPRS was not able to determine whether the alleged harm suffered by some applicants resulted from an incident falling within the geographical parameters of the Case.
27. This concerns Applications which mention neither the OCRB nor the CEDAD explicitly as locations where the victims were detained. While the applicants recount that the arrest of their relatives by Seleka elements occurred within the relevant timeframe of the Case, they have not received information on the fate or whereabouts of their relatives since these arrests.³² The Registry notes that some of the applicants indicate Mr Said as responsible for the disappearance of their relatives³³ while others only refer to the Seleka.³⁴
28. In light of the abovementioned jurisprudence applying a level of flexibility on matters of jurisdiction, the VPRS respectfully seeks the Chamber's clarification as to whether these Applications may be assessed as falling within the territorial scope of the Case.



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

Dated this 20 September 2021

At The Hague, the Netherlands

³² Given the alleged *modus operandi* of the Seleka as described by the Prosecution in the DCC (see DCC, paras 56-58), the VPRS believes that applicants were not always aware of the location where they - or their relatives - were detained.

³³ See Annex: application a/20608/21 (in which the applicant refers to his relative's disappearance on [REDACTED] November 2013).

³⁴ See Annex: application a/20596/21 (in which the applicant refers to his relative's disappearance on [REDACTED] August 2013) and application a/20612/21 (in which the applicant refers to his relative's disappearance on [REDACTED] August 2013).