

**Cour
Pénale
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**International
Criminal
Court**

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Date: 27 September 2021

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

**With Confidential Annex 1 and Confidential *EX PARTE* Annex 2, only available
to the Registry**

**Third Registry Assessment Report on Victim Applications for Participation in
Pre-Trial Proceedings**

Source: The Registrar

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

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Unrepresented Victims

**Unrepresented Applicants
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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 Registry hereby transmits its third report on 17 complete applications to participate ("Applications") in the case of *The Prosecutor v. Mahamat Said Abdel Kani* ("Case") which includes:

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).

- a brief description of the assessment criteria applied in relation to the 11 applicants who clearly, in the Registry's assessment, fall within the scope of the Case and have been transmitted in Group A;⁶
 - a brief description of the assessment criteria applied in relation to the five applicants who, in the Registry's assessment, clearly do not fall within the scope of the Case and have been transmitted in Group B.
3. The Applications falling in Group A and B have been listed in Annex 1 to the present submission and are being transmitted separately to the Chamber in accordance with the Victim Application Procedure.⁷ Annex 2 contains a brief description of the assessment criteria applied in relation to Group B applications.

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 ("Registry's Report").⁹
6. On 16 April 2021, the Single Judge issued the Decision, adopting the Victim Application Procedure.¹⁰
7. On 30 June 2021, the Chamber decided to postpone the commencement of the confirmation of charges hearing in the Case until 12 October 2021.¹¹

⁶ The Registry noted that out of these 12 applicants, 10 have designated Ms Kessel and Mr Nzala as their legal representatives, one a counsel of OPCV and one did not designate a counsel.

⁷ *Ibid.*, para. 41(ii).

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, "Second order on disclosure and postponement of the confirmation hearing", 30 June 2021, ICC-01/14-01/21-112.

8. 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.¹²
9. On 16 August 2021, the Prosecution notified its Document Containing the Charges (“DCC”).¹³
10. On 27 August 2021, the Registry transmitted 13 applications categorised in Group A¹⁴ alongside a report thereon.¹⁵
11. On 30 August 2021, the Prosecution filed its Pre-Confirmation Brief (“PCB”).¹⁶
12. 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.¹⁷
13. On 13 September 2021, the Registry transmitted 15 applications categorised in Group C (“First transmission of Group C Applications”)¹⁸ alongside a report thereon (“Second Assessment Report”).¹⁹

¹² 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.

¹³ Prosecution, “Document Containing the Charges”, 16 August 2021, ICC-01/14-01/21-144-Conf. A public redacted version was filed on 17 September 2021 (ICC-01/14-01/21-144-Red).

¹⁴ 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.

¹⁵ Registry, “First Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, 27 August 2021, ICC-01/14-01/21-152.

¹⁶ Prosecution, “Pre-Confirmation Brief”, 30 August 2021, ICC-01/14-01/21-155-Conf. A public redacted version was filed on 21 September 2021 (ICC-01/14-01/21-155-Red).

¹⁷ Email from Pre-Trial Chamber II to Registry, 9 September 2021, at 15:27.

¹⁸ Registry, “First Registry Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings”, 13 September 2021, ICC-01/14-01/21-167-Conf. A public redacted version was filed on 20 September 2021 (ICC-01/14-01/21-167-Red).

¹⁹ Registry, “Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, 13 September 2021, ICC-01/14-01/21-168-Conf. A public redacted version was filed on 20 September 2021 (ICC-01/14-01/21-168-Red).

III. Classification

14. Annex 1 to the report is classified as confidential and Annex 2 is classified as confidential *ex parte*, available only to the Registry, in accordance with the Victim Application Procedure.²⁰

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

Preliminary observations on the completeness of Applications

16. The VPRS kindly seeks the Single Judge's approval for a new type of identity document provided by new applicants, as further explained below. This type of identification has recently been approved by Trial Chamber V in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard. Ngaïssona*.²¹
17. In the Decision, the Single Judge has accepted as proof of identity the documents listed in the Registry Report.²² The Single Judge further indicated that if applicants present documents not listed in the Registry Report ("Other documents"), he will "decide whether to accept such documents upon receipt of the Registry's assessments and recommendations".²³
18. During its processing of applications, the VPRS has identified a new type of such Other documents used by applicants to establish their identity in lieu of

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

²¹ Email from Trial Chamber V to VPRS, 15 July 2021 at 8:43.

²² See Registry Report, para. 17.

²³ See Decision, para. 28.

any other type of identification, namely a *“reçu de paiement”*, stamped by an official authority.²⁴

19. As previously reported, the issuance of national identity cards in Central African Republic is problematic and difficult to get to.²⁵ Moreover, the VPRS found that some victims who requested a new national identity card in the recent years were no longer provided with the document entitled *“récépissé de dépôt de demande de carte nationale d'identité”* issued previously and accepted in the Decision as a valid identity document. In the absence of such documents, applicants have used the *“reçu de paiement”* - an official receipt issued by the company responsible for producing relevant identity cards (*Al Madina*) - along with a photograph and an authentication by the Police (a stamp). In light of substantial delays in issuing the proper identity cards, the *“reçu de paiement”* document has been used by applicants to facilitate travel and for police checks pending the issuance of their new identity cards.

20. The level of information which appears on these receipts varies slightly. Yet, certain key information is common to these documents. The receipt provided in the present transmission includes the following information:

- First and last names of the person requesting a national identity card;
- Unique number of receipt;
- Date and time of issuance of the receipt;
- Unique reference number;
- Unique Bar Code;
- Amount paid ;
- Photography of the beneficiary;
- Stamp of (judicial) police;
- Title and signature of police representative.

²⁴ See application a/20586/21.

²⁵ Registry Report, footnote 26.

21. Due to the similarity of such “*reçus de paiement*” to the identity documents previously accepted by the Chamber, as well as the prevailing challenges on the ground currently faced by applicants to prove their identity, the VPRS respectfully seeks the Single Judge’s approval to consider the “*reçu de paiement*” as an alternative document that can be used to establish the identity of an applicant in the Case.

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

22. Applying the criteria set out in the Victim Application Procedure,²⁶ the VPRS has assessed each of the 12 applications transmitted under Group A as complete. In conducting its initial assessment,²⁷ the VPRS confirms that each of the 12 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;²⁸
- ii. He or she has suffered harm;²⁹
- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the Case.³⁰

23. In relation to criterion (i), certain applications³¹ falling under Group A contain minor discrepancies, pertaining to, *inter alia*, the spelling of the applicant’s name. These discrepancies appear to be the result of inadvertent errors. Accordingly, the VPRS followed the approach set in the Victim Application Procedure, i.e. that “a certain degree of flexibility must be shown”³² and considered in its assessment of the forms in question that the discrepancies

²⁶ 5 March 2019 Decision, para. 31.

²⁷ In accordance with paragraph 38 of the 5 March 2019 Decision.

²⁸ 5 March 2019 Decision, paras. 31-34.

²⁹ *Ibid.*, paras 31, 35.

³⁰ *Ibid.*, para. 37.

³¹ The applications with minor discrepancies are: a/20581/21, a/20587/21, a/20593/21, a/20595/21 and a/20609/21.

³² 5 March 2019 Decision, para. 34.

presented in these applications “do not call into question the overall credibility of the information provided by the applicant [...]”.³³

24. Regarding criterion (iii),³⁴ one applicant does not explicitly indicate the “*Comité Extraordinaire pour la Défense des Acquis Démocratiques*” (“CEDAD”) but refers instead to a location “*derrière Air France*” - ³⁵ which according to the PCB corresponds to the CEDAD location.³⁶ The VPRS has thus assessed that, *prima facie*, the application contains sufficient contextual information that places the events within the parameters of the Case.

Description of Assessment Criteria applied to Applications Falling within Group B

25. Applying the criteria set out in the Victim Application Procedure,³⁷ the VPRS has assessed each of the five applications transmitted under Group B as complete.
26. In conducting its *prima facie* assessment, the VPRS has concluded that the persons whose applications have been transmitted under Group B clearly do not qualify as victims in the Case because the harm alleged has resulted from an incident falling outside:
- The temporal parameters of the Case;
 - The geographic parameters of the Case; and/or
 - The material parameters of the Case.
27. In accordance with the Victim Application Procedure,³⁸ the VPRS has provided an assessment report to the Chamber in Annex 2 setting out the specific reasons for rejecting the applications, in order to allow the Chamber to take a final decision on such applications if necessary.

³³ *Id.*

³⁴ See *supra*, para.16.

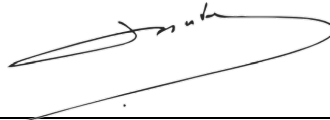
³⁵ See application a/20587/21.

³⁶ See PCB, paras. 113, 310.

³⁷ See 5 March 2019 Decision, paras. 31 and 38.

³⁸ *Ibid*, para. 41(vi)

28. Noting the deadlines set out in the Victim Application Procedure, the present report and related transmission filing will constitute the VPRS's final report and transmission of Group A and B applications prior to the confirmation of charges hearing unless the hearing is postponed.³⁹



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

Dated this 27 September 2021

At The Hague, the Netherlands

³⁹ Pursuant to paragraph 41(vii) of the 5 March 2019 Decision, all Group A and B applications must be transmitted to the Chamber “no later than 15 days before the date of commencement of the confirmation hearing.” The VPRS informs the Chamber that, since its First transmission of Group C Applications, the VPRS has completed seven further applications which present similar issues as those presented in the Second Assessment Report. In accordance with the deadlines set for Group C applications, the VPRS will refrain from transmitting these applications to the Chamber, unless the commencement of the confirmation of charges is postponed.