

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/21
Date: 30 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 Document

**Public Redacted Version of "OPCV Observations on the 'Second Registry
Assessment Report on Victim Applications for Participation in Pre-Trial
Proceedings' (ICC-01/14-01/21-168-Conf)"
No. ICC-01/14-01/21-180-Conf-Exp, dated 24 September 2021**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. Counsel from the Office of Public Counsel for Victims (“Counsel”) representing the collective interests of victims in the present case,¹ posits that a flexible approach should be adopted when assessing victims’ applications and accordingly the existing jurisprudence in this regard should be applied.²

2. Counsel contends that said approach is certainly appropriate in the present case in light of the specificities attached to the applicants’ victimisation.

3. Consequently, Counsel submits that applications a/20599/21, a/20601/21, a/20602/21, a/20603/21, a/20607/21, a/20565/21, a/20667/21, a/20577/21, a/20597/21, and a/20610/21 fulfil the criteria for the victims to be admitted to participate in the present stage of the proceedings. Counsel further submits that the Chamber should defer its decision on applications a/20589/21, a/20590/21, a/20596/21, a/20608/21, and a/20612/21 until additional information are received by the VPRS.

II. PROCEDURAL HISTORY

4. On 7 January 2019, Pre-Trial Chamber II (the “Chamber”) issued a warrant of arrest against Mr Mahamat Saïd Abdel Kani.³

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 present case.⁴

¹ See the “Decision on legal representation of victims and related matters” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-119](#), 9 July 2021, para. 30 (the “Impugned Decision”). See also the “Notification pursuant to the ‘Decision on legal representation of victims and related matters’ (No. ICC-01/14-01/21-119)”, [No. ICC-01/14-01/21-121](#), 12 July 2021.

² See “Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, [No. ICC-01/14-01/21-168-Conf](#), 13 September 2021, paras. 23-25.

³ See “Public Redacted Version of ‘Warrant of Arrest for Mahamat Saïd Abdel Kani’, 7 January 2019, ICC-01/14-01/21-2-US-Exp”, [No. ICC-01/14-01/21-2-Red2](#), 17 February 2021.

⁴ See “Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings”, [No. ICC-01/14-01/21-25](#), 26 February 2021.

6. On 16 April 2021, the Single Judge, acting on behalf of the Chamber (the “Single Judge”), issued the “Decision establishing the principles applicable to victims’ applications for participation”.⁵
7. On 9 July 2021, the Single Judge issued the “Decision on legal representation of victims and related matters”, *inter alia*, “assign[ing] the OPCV to represent the collective interests of victims, with a view to protect the interests of, and provide assistance and support to all applicant victims pending completion of the transmission of their applications to the Chamber”.⁶
8. On 16 August 2021, the Prosecution notified its Document Containing the Charges (the “DCC”).⁷
9. On 27 August 2021, the Registry transmitted 13 victim applications categorised in Group A⁸ together with a report thereon.⁹
10. On 30 August 2021, the Prosecution filed its Pre-Confirmation Brief.¹⁰
11. On 13 September 2021, the Registry transmitted 15 victim applications categorised in Group C¹¹ together with a report thereon.¹²

⁵ See the “Decision of on the principles applicable to victims’ applications for participation” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-56](#), 16 April 2021.

⁶ See the “Decision on legal representation of victims and related matters” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-119](#), 9 July 2021, para. 30. See also the “Notification pursuant to the ‘Decision on legal representation of victims and related matters’ (No. ICC-01/14-01/21-119)”, [No. ICC-01/14-01/21-121](#), 12 July 2021.

⁷ See the “Public Redacted Version of ‘Document Containing the Charges’, ICC-01/14-01/21-144-Conf”, dated 16 August 2021, [No. ICC-01/14-01/21-144-Red](#), 17 September 2021.

⁸ See “First Registry Transmission of Group A Applications for Victim Participation in Participation in Pre-Trial Proceedings”, [No. ICC-01/14-01/21-151](#), 27 August 2021.

⁹ See “First Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, [No. ICC-01/14-01/21-152](#), 27 August 2021.

¹⁰ See “Public Redacted Version of ‘Pre-Confirmation Brief’, ICC-01/14-01/21-155-Conf, 30 August 2021”, [No. ICC-01/14-01/21-155-Red](#), 21 September 2021.

¹¹ See “Public redacted version of ‘First Registry Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings, 13 September 2021, ICC-01/14-01/21-167-Conf”, [No. ICC-01/14-01/21-167-Conf](#), 13 September 2021.

¹² See “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”, [No. ICC-01/14-01/21-168-Red](#), 20 September 2021.

III. CLASSIFICATION

12. Pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, the present submission is classified confidential *ex parte* only available to the Chamber since it refers to information that are not known to the OTP or Defence at this stage of the proceedings. A confidential redacted version is filed simultaneously. A public redacted version will be filed in due course.

IV. SUBMISSIONS

1. *Flexible approach*

13. Counsel submits that the assessment to be undertaken by the Pre-Trial Chamber at the present stage of the proceedings is limited to evaluating whether applicants have demonstrated that the conditions established in Rule 85 of the Rules of Procedure and Evidence are met *prima facie*.¹³ As recalled by the Single Judge – albeit in a different case – since the authorisation to participate is limited to the confirmation of charges proceedings, “*it would be inappropriate to be unduly strict in assessing victim applications*”.¹⁴ And indeed such flexible approach is warranted considering the time that elapsed between the commission of the alleged crimes and the completion of the participation form; all the more that the events left durable traumatic scars that affect the recollection of the events by the victims, be it regarding the temporal or the geographical scope of their application.¹⁵ Mindful of these difficulties, the Single Judge accepted that “*when a date provided is just a few days or weeks off from the dates of the*

¹³ See, *inter alia*, the “Second Decision on the Principles Applicable to Victims’ Applications for Participation” (Pre-Trial Chamber I, Single Judge), [No. ICC-01/12-01/18-146-tENG](#), 8 October 2018, para. 20; and the “Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-398](#), 20 May 2021, para. 41, and footnote 42.

¹⁴ See the “Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests”, *idem*, para. 41.

¹⁵ *Ibid.* See also para. 43.

*charges, the Chamber will authorise the applicants to participate in the confirmation proceedings”.*¹⁶

14. Along the same vein, Pre-Trial Chamber I specified that the victim applications *“must be assessed case by case on the basis of their intrinsic coherence, taking into consideration any information suggesting that the acts occurred within the time frame of the case before the Chamber and, where appropriate, corroboration by information included in other victim applications”.*¹⁷

15. The adoption of the flexible approach by Chambers of this Court when assessing victim applications in turn ensures the expeditiousness of the proceedings and the interests of victims.¹⁸

16. Counsel posits that the approach to be adopted by the Chamber should not be any different than the one implemented in other cases before this Court and should not potentially disadvantage victims participating in the present proceedings.

2. Specific issues pertaining to the temporal and geographical scope of the case

17. In relation to the specific applications, Counsel provides the following observations.

18. Applicant a/20565/21 misplaced the date of his transfer to the CEDAD by 5 days whereas his ordeal started on [REDACTED] at the time of his arrest by the Seleka.¹⁹ Very understandably given the circumstances of his arrest, he could not have been aware of the exact date of his transfer. Further, Counsel submits that the date provided

¹⁶ *Idem*, para. 45.

¹⁷ See the “Second Decision on the Principles Applicable to Victims’ Applications for Participation”, *supra* note 13, para. 21. See also the “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” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-227-Red](#), 21 June 2019, para. 24.

¹⁸ In this sense, see the “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”, *ibid*.

¹⁹ See annex, [No. ICC-01/14-01/21-168-Conf-Anx](#), p. 1.

is just [REDACTED] off from the dates of the charges and he should therefore be admitted to participate in the confirmation proceedings as per the existing jurisprudence.²⁰

19. As for applicant a/20567/21, Counsel notes that the fact that he has been tortured prior to his transfer to the CEDAD can easily explain the [REDACTED] discrepancy. [REDACTED].²¹ Moreover, going through the entire application, [REDACTED].²² Further, Counsel submits that the date provided is [REDACTED] off from the dates of the charges and he should therefore be admitted to participate in the confirmation proceedings as per the existing jurisprudence.²³

20. Regarding a/20577/21, Counsel notes [REDACTED]²⁴ and [REDACTED],²⁵ [REDACTED].²⁶

21. Applicant a/20597/21 depicts events very similar to other applicants and might not be in a position to remember the dates accurately due to the traumatic experience he endured. Counsel notes that [REDACTED],²⁷ [REDACTED].²⁸

22. Regarding the issues noted concerning the incidents at the OCRB involving applicants a/20599/21, a/20601/21, a/20602/21 and a/20603/21, Counsel posits that they are intrinsically coherent with other similar victim applications, as well as to witnesses accounts. Moreover, many applicants are not in a position to know the precise location of their detention. Indeed, they were brought to their place of detention hooded,

²⁰ See the “Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests”, *supra* note 13, para. 45.

²¹ [REDACTED].

²² See [a/20567/21](#), p. 7, *in fine*.

²³ See the “Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests”, *supra* note 13, para. 45.

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED]. See also [REDACTED].

²⁸ [REDACTED].

preventing them from seeing said place.²⁹ Accordingly, the events described could have taken place at the CEDAD, as opposed to the OCRB, and therefore fall within the temporal scope of the case.

23. Regarding applicants a/20589/21, a/20590/21, a/20596/21, a/20608/21 and a/20612/21, Counsel notes that they were submitted on behalf of deceased victims and that additional information might be needed to avoid speculating on their place of detention and on the exact dates of the events.

V. CONCLUSION

24. For the foregoing reasons, Counsel respectfully requests the Chamber to adopt a flexible approach in assessing the victim applications to participate at the present stage of the proceedings, and consequently admit a/20599/21, a/20601/21, a/20602/21, a/20603/21, a/20607/21, a/20565/21, a/20667/21, a/20577/21, a/20597/21, and a/20610/21 to participate in the present proceedings.

25. Counsel respectfully request the Chamber to defer its decision on a/20589/21, a/20590/21, a/20596/21, a/20608/21 and a/20612/21 until additional information is received by the VPRS.³⁰



Sarah Pellet
Counsel

Dated this 30th day of September 2021
At The Hague, The Netherlands

²⁹ See “Public Redacted Version of ‘Pre-Confirmation Brief’, ICC-01/14-01/21-155-Conf, 30 August 2021”, *supra* note **Error! Bookmark not defined.**, para. 87: “As described by both insiders and victims, the Seleka often severely beat prisoners during their arrest and upon their arrival at OCRB or CEDAD. At the CEDAD, prisoners were hooded while being transported to and from the compound and often during their interrogations” (footnotes omitted). See also para. 280: “The abducted persons were hooded and then driven in circles around Bangui by the Seleka arrest patrols under SAID’s command so that by the time they arrived at the CEDAD compound they did not know how they had gotten there. P-1004 explained that he saw Seleka elements bring in prisoners with black hoods over their heads and faces and place them in the detention rooms” (footnotes omitted). See also [REDACTED]; and [REDACTED].

³⁰ [REDACTED].