



Original: English

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

Date: 19 May 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**

**Victims' Observations on the "First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings" (ICC-01/14-01/21-297)**

**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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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings (the “Legal Representative”),<sup>1</sup> submits that the Chamber’s victim eligibility assessment is limited to evaluating whether applicants have demonstrated that the conditions established in Rule 85 of the Rules of Procedure and Evidence (the “Rules”) are met *prima facie*.

2. The Legal Representative further posits that the Chamber should adopt a flexible approach when assessing victims’ applications, in accordance with the existing jurisprudence, as confirmed by the Single Judge acting on behalf of Pre-Trial Chamber II (the “Single Judge”) in the present case.<sup>2</sup> She contends that said approach is certainly appropriate in the present case in light of the specificities attached to the applicants’ victimisation.

3. Consequently, she submits that all 23 transmitted applications *prima facie* fulfil the criteria for the victims to be admitted to participate in the present stage of the proceedings.

## II. PROCEDURAL BACKGROUND

4. On 16 April 2021, the Single Judge issued the “Decision establishing the principles applicable to victims’ applications for participation”, endorsing, *mutatis mutandis*, the victim admission system adopted in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the “Yekatom and Ngaïssona case”).<sup>3</sup>

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<sup>1</sup> See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG CT](#), p. 47, lines 1-13.

<sup>2</sup> See the “Decision on victim applications for participation in the proceedings and on legal representation of victims” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-199](#), 6 October 2021, para. 41.

<sup>3</sup> See the “Decision establishing the principles applicable to victims’ applications for participation” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-56](#), 16 April 2021. See also the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-141](#), 5 March 2019 (the “Yekatom and Ngaïssona Decision on Victim Application Procedure”).

5. On 6 October 2021, the Single Judge authorised 27 victims to participate in the present case and appointed Counsel of the Office of Public Counsel for Victims to act as common legal representative for the authorised victims.<sup>4</sup>

6. On 9 December 2021, Pre-Trial Chamber II confirmed part of the charges against Mr Saïd relating to crimes allegedly committed at the *Office Central de Répression du Banditisme* between 12 April and 30 August 2013.<sup>5</sup>

7. On 21 February 2022, Trial Chamber VI (the “Chamber”) set the start date of the trial on 26 September 2022.<sup>6</sup>

8. On 13 April 2022, the Chamber issued its “Decision on matters relating to the participation of victims during the trial” (the “Decision”), in which it, *inter alia*, adopted an amended version of the victim admission system endorsed by the Single Judge, in light of the expected low number of applications in the present case.<sup>7</sup>

9. On 6 May 2022, the Registry submitted its “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (the “First Registry Assessment Report”) on 23 complete applications to participate (the “Applications”) in the present case, assessing 20 of these Applications to fall in Group A and three Applications in Group C.<sup>8</sup> On the same day, the Registry transmitted the Applications in original version to the Chamber and the Legal Representative and in redacted form to the parties,<sup>9</sup> in accordance with the Decision.<sup>10</sup>

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<sup>4</sup> See the “Decision on victim applications for participation in the proceedings and on legal representation of victims”, *supra* note 2.

<sup>5</sup> See the “Decision on the confirmation of charges against Mahamat Said Abdel Kani” (Pre-Trial Chamber II), [No. ICC-01/14-01/21-218-Conf](#) and [No. ICC-01/14-01/21-218-Red](#), 9 December 2021 (the “Confirmation Decision”).

<sup>6</sup> See the “Decision Setting the Commencement Date of the Trial and Related Deadlines” (Trial Chamber VI), [No. ICC-01/14-01/21-243](#), 21 February 2022.

<sup>7</sup> See the “Decision on matters relating to the participation of victims during the trial” (Trial Chamber VI), [No. ICC-01/14-01/21-278](#), 13 April 2022 (the “Decision”).

<sup>8</sup> See the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, with Confidential Annex, [No. ICC-01/14-01/21-297](#), 6 May 2022 (the “First Registry Assessment Report”).

<sup>9</sup> See the “First Registry Transmission of Group A and Group C Victim Applications for Participation in Trial Proceedings”, with 23 Annexes, confidential *ex parte*, only available to the Registry and Me Sarah Pellet, and confidential redacted versions, [No. ICC-01/14-01/21-296](#), 6 May 2022.

<sup>10</sup> See the Decision, *supra* note 7, paras. 16-17 and 24.

### III. SUBMISSIONS

10. The Legal Representative submits that the assessment to be undertaken by the 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 are met *prima facie*. In accordance with the Court's consistent jurisprudence, individuals seeking to be admitted as participating victims have to demonstrate *prima facie* that they are victims within the meaning of Rule 85 of the Rules, according to the following criteria: (i) the applicant has established his/her identity as a natural person; (ii) the applicant is alleged to have suffered harm; and (iii) the personal harm reported by the applicant resulted from an incident falling within the temporal, geographic and material parameters of the case.<sup>11</sup> The assessment of victim eligibility by the Chamber is distinct from any assessment of the facts and circumstances described in the charges.<sup>12</sup>

11. When assessing victim applications, Chambers of this Court have consistently adopted a flexible approach, thereby accepting minor discrepancies which do not call into question the overall credibility of the information provided by the concerned applicant.<sup>13</sup> In the *Yekatom and Ngaïssona* case in particular, Trial Chamber V held that

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<sup>11</sup> See, *inter alia*, the "Fifteenth Decision on Victims' Participation in Trial Proceedings (Group A)" (Trial Chamber V), [No. ICC-01/14-01/18-1391](#), 5 May 2022, para. 1, referring to the *Yekatom and Ngaïssona* Decision on Victim Application Procedure, *supra* note 3, paras. 29-41; the "First decision on the admission of victims to participate in trial proceedings" (Trial Chamber I), with public annex, [No. ICC-02/05-01/20-556](#), 14 January 2022, para. 4; the "Decision Establishing the Principles Applicable to Victims' Applications for Participation" (Pre-Trial Chamber I, Single Judge), [No. ICC-01/12-01/18-37-ENG](#), 24 May 2018 (the "*Al Hassan* Decision Establishing the Principles Applicable to Victims' Applications for Participation"), para. 48; and the *Ntaganda* "Second decision on victims' participation in trial proceedings" (Trial Chamber VI), [No. ICC-01/04-02/06-650](#), 16 June 2015, paras. 10 and 18.

<sup>12</sup> See, *inter alia*, the "Decision on Victims' Participation in Trial Proceedings" (Trial Chamber V), [No. ICC-01/14-01/18-738](#), 23 November 2020 (the "*Yekatom and Ngaïssona* Decision on Victims' Participation in Trial Proceedings"), para. 21; and the *Ntaganda* "Second decision on victims' participation in trial proceedings", *supra* note 11, para. 18. See also the "Decision regarding the Registry's Outstanding Transmissions of Applications for Victim Participation" (Pre-Trial Chamber II), [No. ICC-01/14-01/18-338](#), 13 September 2019, para. 28.

<sup>13</sup> See, *inter alia*, the "Decision on victim applications for participation in the proceedings and on legal representation of victims", *supra* note 2, para. 41 and footnote 37; the *Yekatom and Ngaïssona* Decision on Victim Application Procedure, *supra* note 3, para. 34 and footnote 37; the *Al Hassan* Decision Establishing the Principles Applicable to Victims' Applications for Participation, *supra* note 11, para. 50 and footnote 40; the "Public redacted version of 'Decision on Victim Participation at Trial and on Common Legal Representation of Victims'" (Trial Chamber VIII), [No. ICC-01/12-01/15-97-Red](#), 8 June 2016,

*“[...] a prima facie demonstration of harm suffices for the purpose of victim admission, allowing a certain degree of leeway when assessing the information provided by an applicant”*.<sup>14</sup>

12. The Legal Representative notes that the Chamber adopted an amended version of the victim admission system at the pre-trial stage of the *Yekatom and Ngaïssona* case,<sup>15</sup> as endorsed by the Single Judge,<sup>16</sup> in the present case,<sup>17</sup> which was followed by the Victims Participation and Reparations Section (the “VPRS”) in its assessment.<sup>18</sup> As such, she submits that the Chamber should apply the same degree of flexibility in order to not potentially disadvantage victims participating in the present proceedings.

13. For the sake of completeness, the Legal Representative notes that Trial Chamber V applied a limited degree of flexibility at the trial stage as compared to the approach adopted at the pre-trial stage,<sup>19</sup> specifying that “[t]he *limits of [the degree of leeway when assessing the information provided by an applicant] [...] are to be assessed on a case-by-case basis, in light of the specific information provided by the applicants and the link between the alleged harm suffered and the parameters of the charges*”.<sup>20</sup> However, she posits that, concerning the three applications assessed under Group C, a flexible approach is warranted considering the time that has elapsed between the commission of the alleged crimes and the completion of the participation form; all the more since the events left durable traumatic scars that affect the recollection of the events by the victims. She further submits that the adoption of such an approach by Chambers of this Court when assessing victim applications ensures the expeditiousness of the proceedings and the interests of victims.

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para. 19; and the “Decision on victim participation” (Trial Chamber I), [No. ICC-02/11-01/11-800](#), 6 March 2015, para. 32 and footnote 56. See also the “Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings”, [No. ICC-01/14-01/21-168-Conf](#) and [No. ICC-01/14-01/21-168-Red](#), 13 September 2021, para. 23.

<sup>14</sup> See the *Yekatom and Ngaïssona* Decision on Victims’ Participation in Trial Proceedings, *supra* note 12, para. 21.

<sup>15</sup> See the *Yekatom and Ngaïssona* Decision on Victim Application Procedure, *supra* note 3.

<sup>16</sup> See the “Decision establishing the principles applicable to victims’ applications for participation”, *supra* note 3.

<sup>17</sup> See the Decision, *supra* note 7.

<sup>18</sup> See the First Registry Assessment Report, *supra* note 8, paras. 2, 13-14

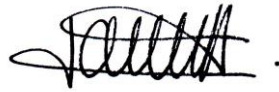
<sup>19</sup> See the *Yekatom and Ngaïssona* Decision on Victims’ Participation in Trial Proceedings, *supra* note 12, paras. 18-21.

<sup>20</sup> *Idem*, para. 21.

14. In this regard, the Legal Representative concurs with the VPRS that “*there is an inherent risk of discrepancies appearing between narratives written down at different times by different persons*”, which “*do not systematically constitute reason to doubt the reliability of the information provided at a later stage, owing to the particular circumstances of the application/case concerned*”.<sup>21</sup>

15. In any case, the Legal Representative posits that all Applications *prima facie* fulfil the criteria for the victims to be admitted to participate in the present stage of the proceedings.

**FOR THESE REASONS**, the Legal Representative respectfully requests the Chamber to adopt a flexible approach in assessing the Applications at the present stage of the proceedings, and consequently admit all 23 applicants to participate in the proceedings.



Sarah Pellet

Dated this 19<sup>th</sup> day of May 2022

At The Hague, The Netherlands

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<sup>21</sup> See the First Registry Assessment Report, *supra* note 8, para. 15 and footnote 25.