

**Public redacted version of Annex II to Registry Submissions in view of the 28
January 2022 Status Conference**

Update on Victim Applications for Participation

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I. Update and Forecast regarding Victim Applications in the Case

A. Update on Applications Received

1. To date, the Registry has received 49 victim applications for participation in the proceedings in relation to the Case.
2. Out of these, 42 applications were transmitted to Pre-Trial Chamber II ("PTC") in accordance with the "Decision establishing the principles applicable to victims' participation and representation during the confirmation hearing" issued on 16 April 2021 ("16 April 2021 Decision").¹ According to the ABC admission system for victim applications approved by the PTC, 22 forms were

¹ Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 16 April 2021, ICC-01/14-01/21-56, para. 35. The PTC endorsed the victim application procedure adopted in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, (ICC-01/14-01/18-141) in which the VPRS shall 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"). ("ABC admission system").

transmitted as part of Group A, 5 as part of Group B and 15 as part of Group C.²

3. The PTC authorized 27 victims to participate in the proceedings.³
4. Seven applications for participation in the proceedings were not transmitted during the pre-trial stage of the proceedings because they were assessed by the Victims Participation and Reparations Section ("VPRS") as incomplete or unclear at the time of its last transmission of applications.
5. Following the decision confirming the charges in the Case ("Confirmation Decision")⁴, the Registry has conducted a review of all applications authorized to participate at the pre-trial stage in order to assess the impact of the Confirmation Decision's findings on the victim status of any of the participating victims. In the said decision, the PTC found substantial grounds to believe that Mr Said is individually criminally responsible for the crimes connected to the *Office Central de Répression du Banditisme* ("OCRB").⁵ However, it did not confirm the charges in connection with alleged crimes committed at the *Comité Extraordinaire pour la Défense des Acquis Démocratiques* ("CEDAD").⁶
6. Following its assessment, the Registry submits that the status of all participating victims to date is negatively impacted by the Confirmation Decision's findings since these victims all reported to have suffered harm as a result of crimes committed at the CEDAD, but not at the OCRB.

² 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; "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 was filed on 20 September 2021, ICC-01/14-01/21-167-Red); and "Registry's Second Transmission of Group A and First Transmission of Group B Victim Applications for Participation in Pre-Trial Proceedings ", 27 September 2021, ICC-01/14-01/21-183.

³ 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.

⁴ Pre-Trial Chamber I, "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.

⁵ *Id.*, para. 124.

⁶ *Id.*, para. 153.

B. Forecast on Potential New Applicants

7. For the purpose of this forecast, the VPRS makes a distinction between (i) the victims who may have suffered personal harm as a result of the crimes charged (“Potentially Eligible Victims”); and (ii), among this group, those victims who will ultimately be in a position to fill in and submit applications for participation (“Potential New Applicants”). While the first group represents the overall number of potential victims as a result of the alleged crimes, the second group gives an indication of the (expected) number of applicants for participation in the proceedings in the Case.

Potentially Eligible Victims

8. Considering the scope of the Case, the Registry estimates that a few hundred applicants could be considered as Potentially Eligible Victims (i.e. victims having suffered personal harm as a result of the charges confirmed), based on the following elements:
- the Prosecutor indicates that i) the OCRB had six cells in total, of which three were used by the Seleka;⁷ ii) each cell could contain 15-20 detainees at a time;⁸ and iii) an additional underground cell held up to at least 31 detainees during the relevant period;⁹
 - the PTC found reasonable grounds to believe that the detention and mistreatment at the OCRB occurred in a time frame of approximately 140 days (from at least 12 April to 30 August 2013), which means that there may have been a turnover in the occupation of cells;¹⁰ and

⁷ Pre-Trial Chamber II, “Public Redacted Version of ‘Warrant of Arrest for Mahamat Said Abdel Kani’, 7 January 2019, ICC-01/14-01/21-2-US-Exp”, 17 February 2021, ICC-01/14-01/21-2-Red2, para. 19(a).

⁸ *Id.*

⁹ Pre-Trial Chamber II, “Public Redacted Version of ‘Pre-Confirmation Brief’, ICC-01/14-01/21-155-Conf, 30 August 2021”, 21 September 2021, ICC-01/14-01/21-155-Red, para.163.

¹⁰ Pre-Trial Chamber II, Confirmation Decision, p.60.

- victims falling under the definition of rule 85 of the Rules of Procedure and Evidence (“Rules”) may include individual persons who have suffered direct personal harm as a result of one of the crimes outlined in the Confirmation Decision, but also individuals who have suffered indirect personal harm as a result of these crimes (for example, family members of direct OCRB victims or individuals who suffered harm as a result of their attempt to prevent the commission of the crimes).

Potential New Applicants

9. At the pre-trial stage, the Registry already highlighted the complex socio-political context in CAR, the volatile security situation, and the impact of the current global Coronavirus pandemic on its ability to conduct activities in a timely manner.¹¹
10. Despite the challenges in reaching out to victims, the Registry managed to keep on interacting with victims throughout the pre-trial stage. It followed a “hands-on” approach in its interactions with potential applicants by assisting applicants to fill-in forms either directly or by relying on the assistance of a few well-trained intermediaries.
11. [REDACTED] to inform them of the relevant ICC proceedings and the victims’ options in terms of participation in these.
12. During its activities reaching out to potential victims in the Case at pre-trial, the Registry was informed that few human rights organisations and victims’ associations documented crimes committed in the OCRB as these were less

¹¹ [REDACTED] See also, “Public redacted version of ‘Annex II to the Registry Report on Legal Representation of Victims and Observations on the Defence Requests’”, 21 May 2021, ICC-01/14-01/21-80-AnxII-Red, para. 5. A second Coronavirus wave hit CAR between May and July 2021 and impacted further the Registry’s activities on the ground, followed by a third wave in autumn and the spread of the Omicron variant at present.

widespread than other incidents taking place amidst the crisis. In consequence, relevant victim communities proved hard to map.

13. To mitigate these challenges, the Registry aims to conduct in the coming weeks and months a series of activities to further identify and inform potential victims in the Case. These include: meeting with victims' associations, broadcasting radio¹² and television programmes,¹³ and setting up pop-up installations¹⁴ and outdoor billboards with information about the Case.¹⁵ Through these activities, the Registry will provide its contact information to any Potential New Applicants in order to encourage direct contact with the Registry.
14. Finally, the Registry has held consultations with the Office of The Prosecutor ("OTP") to identify Potential New Applicants among the OCRB victims whom the latter has already been in contact with.¹⁶
15. Considering the foregoing, the Registry estimates that, should security and operational constraints allow, a number of Potential New Applicants may realistically be reached during the first semester of 2022 yielding a number of applications comparable to what was received at the pre-trial stage.¹⁷

¹² The COCAR will produce and send audio material to radio stations with large audience in CAR, such as radios Guira FM, RJDH, Ndeke-Lukas and Lengo Songo.

¹³ The COCAR will produce and send audiovisual material to TV Centrafrique and Vision4, the two main TV stations in the country.

¹⁴ The COCAR has planned a series of pop-up cinema activities, which consist in the outdoor screening of ICC video material throughout key neighborhoods in Bangui.

¹⁵ These billboards will be deployed in various areas in Bangui and contain information on the Confirmation Decision, the scope of the Case and the Registry contact information.

¹⁶ The OTP will inform the alleged victims of the OCRB charges confirmed of their right to participate in proceedings and to request reparations under the Statute. They will as well be provided with the contact details of the relevant Registry staff in charge of the VPRS in the relevant Country Office or at HQ that may provide additional information in this regard if the victims so wish.

¹⁷ See *supra*, para. 1 to 4. This may also be subject to judicial competing priorities and resources.

II. Other Registry Observations related to Victim Participation at Trial

A. Victim Admission Process

Confirmation of the existing procedures

16. The Registry notes that the Order does not address the procedure for the admission of victim applications at the trial stage. It is recommended that the ABC admission system implemented in the present Case at the pre-trial stage¹⁸ be maintained at the trial stage. The reasons which justify maintaining the ABC admission system as generally endorsed in the most recent Chamber's Practice Manual - are identical to those advanced by the Registry at the confirmation stage in this Case.¹⁹

17. Of note:

- Trial Chambers in the presently ongoing *Al Hassan, Yekatom/Ngaïssona* and *Abd-Al-Rahman* cases have found the continuation of the ABC admission system at the trial phase appropriate, efficient and compatible with the statutory framework;²⁰ and
- the Appeals Chamber has also found that this approach "is in principle an adequate tool to ensure the fairness and expeditiousness of the proceedings,

¹⁸ Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 16 April 2021, ICC-01/14-01/21-56, para. 35.

¹⁹ Registry, "Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings", 26 February 2021, ICC-01/14-01/21-25, paras 6-9.

²⁰ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, "Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial", 12 March 2020, ICC-01/12-01/18-661, paras. 17 *et seq.*; Trial Chamber V, *The Prosecutor v. Yekatom and Ngaïssona*, "Order Scheduling First Status Conference", ICC-01/14-01/18-459, para. 8 (iv), referring to Pre-Trial Chamber II in the same case, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141, para. 43; *see also* Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, "Decision on victims' participation in trial proceedings" 6 February 2015, ICC-01/04-02/06-449, paras. 29-30, and Trial Chamber I, *The Prosecutor vs. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, "Decision on victims' participation and legal representation in trial proceedings", para.15.

while at the same time respecting the rights of both the accused and the victims.”²¹

18. The Registry therefore respectfully requests that the existing procedures adopted by the PTC remain in place with regard to the use of the application form,²² the collection of victim applications,²³ the parameters of their legal processing²⁴ and the ABC admission system.²⁵ According to the latter procedure, the Registry would only transmit to the parties those unclear applications (i.e., Group C applications) for which it could not make a clear determination and for which the parties observations and a Chamber’s determination would be warranted.

Deadline for submitting victim applications

19. The Registry recommends that, independent from the admission system to be chosen by the Chamber, the transmission of applications be done in batches, on a rolling basis with a “cut-off” date set at the end of the presentation of evidence in the Case, or in the alternative at the end of the Prosecution case, as this was decided in other cases previously.²⁶ This would provide victims with the

²¹ Appeals Chamber, “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”, 14 September 2021, ICC-01/14-01/21-171, para. 82. The Registry notes however the caveat introduced by the Appeals Chamber in para. 82, when the number of victims’ applications remains low (“Nonetheless, in cases where the number of victims’ applications is expected to remain low, the interest of the suspect or accused in receiving copies thereof and replying thereto may outweigh the benefits gained by the implementation of the A-B-C Approach. In such cases, the safety and well-being of the victims may be more appropriately safeguarded by implementing necessary redactions to the victims’ applications prior to their transmission to the parties.”).

²² Pre-Trial Chamber II, 16 April 2021 Decision,

²³ 18 January 2021 Decision, ICC-02/05-01/20-259, paras 13, 14.

²⁴ *Ibid.*, paras 15-20.

²⁵ *Ibid.*, para. 34.

²⁶ See Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, “Decision Setting the Commencement Date of the Trial”, 16 July 2020, ICC-01/14-01/18-589, para. 20; see also Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, “Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial”, 12 June 2020, ICC-01/12-01/18-880, para. 13. The Registry notes that in both cases, the trial chambers, after

appropriate time and opportunity to apply for participation in the proceedings.²⁷

20. Owing to the challenging overall situation as recalled *supra*, it is currently difficult for the Registry to reach out to larger victim groups effectively, let alone identify and assist them. A comprehensive time frame for victims to come forward is therefore necessary. In addition, the proposed ABC admission system puts a minimal burden on the parties during trial proceedings and therefore has no slowing down effect, while at the same time ensuring that victims' access to participation in the proceedings under article 68(3) of the Rome Statute is provided in the most comprehensive fashion.

B. Legal Representation Scheme

Options for Legal Representation at Trial

21. At the pre-trial stage of the Case, the PTC assigned the Office of Public Counsel for Victims ("OPCV") "to represent the collective interests of applicant victims, on a temporary and provisional basis".²⁸ It further authorised 27 victims to participate in the Case and appointed a counsel from OPCV to act as common

giving due consideration to the circumstances caused by the COVID-19 pandemic as well as prevalent security concerns on the ground, set the cut-off date to the end of the Prosecution's presentation of evidence. Trial Chamber X also indicated that "[a]fter the expiry of the deadline, the Registry is encouraged to continue collecting (but not to file or transmit) application forms for the purposes of any future reparations proceedings" (Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, "Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial", 12 June 2020, ICC-01/12-01/18-880, para. 15).

²⁷ The Registry simultaneously collects reparation-related information from victims through its combined application form (available on the Court's website). The Registry would continue collecting such information of potential reparation beneficiaries throughout the entire trial phase independently from the cut-off date for these individuals to participate in the trial proceedings. See *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Trial Chamber X, 'Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial', ICC-01/12-01/18-880, 12 June 2020, para. 15.

²⁸ Pre-Trial Chamber II, "Decision on legal representation of victims and related matters", 9 July 2021, ICC-01/14-01/21-119, p. 12. The PTC specified that this assignment was "limited to the stage between the present decision and the Chamber's eventual decision taken on matters of legal representation at the stage of the determinations of the merits of the victim applications and on the status of victims."

legal representative for the participating victims, considering in particular the following elements:

“the Registry’s submissions as to the potential conflict of interest, certain applicants’ expressed preference for representation by the OPCV, the advanced stage of the proceedings, and the need to ensure that victims authorised to participate may present their views and concerns during the confirmation hearing in a meaningful manner.”²⁹

22. Notwithstanding the above and with a view to the victim representation framework stipulated in rule 90 of the Rules, the Registry notes that:

- all the victims who participated at the pre-trial stage are adversely impacted by the Confirmation Decision findings, in that their applications do no longer meet the requirements to participate in the trial proceedings; There would therefore be no continuity in the legal representation between both stages of the proceedings for these victims, and no prior existing client-counsel relationship to preserve, in light of the information currently available to the Registry;
- the PTC decision on common legal representation would apply to new participating victims unless a new legal representation scheme is decided for the trial proceedings;³⁰
- the date for the opening of the trial is yet to be set;
- while the Registry has not yet met any Potential New Applicant, the Registry contends that the information it has collected on the legal

²⁹ 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, para. 52.

³⁰ Appeals Chamber, *Prosecutor vs. William Samoei Ruto and Joshua Arap Sang*, “ Decision on the "Application of the Victims' Representative pursuant to Article 83 of the Regulations" ICC-01/09-01/11-409. The Appeals Chamber recalls herein that “ that the Victims remain represented unless and until the case is concluded, the Legal Representative withdraws, or is withdrawn by the Pre-Trial Chamber, the Trial Chamber or indeed the Appeals Chamber. In contrast, limiting the legal representation from the outset to the proceedings before the Pre-Trial Chamber would have led to a situation in which, as soon as the case moves to the Trial Chamber, as well as in respect of all proceedings before the Appeals Chamber, the Victims would be without legal representation.” (para.20).

representation of victims in the Case at pre-trial stage through various consultations still holds true.³¹

23. Considering the above, the Registry respectfully submits two options for the Chambers' consideration:

Option A: The Chamber decides to maintain the current legal representation scheme and the current CLRV at the trial stage.

Option B: the Chamber orders the Registry to organize the common legal representation under rule 90(3) of the Rules, following which the Registry would initiate a competitive recruitment process open to all legal representatives on the Court's List of Counsel.³² A common legal representative will be recommended to the Chamber, following a transparent, fair and competitive process, based on objective criteria, including those identified during the consultation process further elaborated in the Registry Report on Legal Representation;³³ the Registry notes that under such option, the Registry would be in a position to make a recommendation after a period of three months;

24. During its upcoming activities, the Registry will provide information to Potential New Applicants on the common legal representation in the Case and collect their views and concerns, if any, for the Chamber's consideration.

Periodic Review of the Legal Representation Scheme.

25. Regardless of the arrangement the Chamber may wish to adopt for the participation of victims in the Case, the Registry deems it important to keep the

³¹ See Registry, "Annex II to the Registry Report on Legal Representation of Victims and Observations on the Defence Requests" ("Registry's Report on Legal Representation"), 21 May 2021, ICC-01/14-01/21-80-AnxII, paras. 31-43. A public redacted version of the document was submitted on the same day (ICC-01/14-01/21-80-AnxII-Red).

³² See Registry's Report on Legal Representation, paras. 82-86. This may include counsel from OPCV as well as the legal representatives identified in the Registry's Report on Legal Representation (see paras. 47-57).

³³ Registry's Report on Legal Representation, paras. 31-43.

legal representation of victims under review in order to best attend to victims' needs and their counsel's concerns.

26. Given the new stage of proceedings as well as the operational and security challenges in reaching victims in the Case, the Registry proposes to assess on a continuous basis whether any adjustments may be advisable for the present phase of proceedings and report to the Chamber as appropriate.