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**Cour
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**International
Criminal
Court**

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No.: ICC-01/14-01/21
Date: 7 December 2023

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***

Confidential

Victims' response to the "*Demande d'autorisation de répliquer à la 'Victims' observations on the 'Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings' (ICC-01/14-01/21-650) (ICC-01/14-01/21-657) (ICC-01/14-01/21-662-Conf)*"

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 representing the collective interests of future applicants as well as of applicants in the proceedings and participating victims (the "Common Legal Representative")¹ hereby submits her response to the "*Demande d'autorisation de répliquer à la 'Victims' observations on the 'Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings'* (ICC-01/14-01/21-650)' (ICC- ICC-01/14-01/21-657)" (the "Defence Request" or the "Request").²

2. The Common Legal Representative opposes the Defence Request in full and submits that it should be dismissed since the Defence fails to raise and/or demonstrate any new issues in her observations which it could not reasonably have anticipated, as per the requirements of regulation 24(5) of the Regulations of the Court (the "Regulations"). In addition, the Common Legal Representative respectfully submits that Trial Chamber VI (the "Chamber") is already in possession of sufficient information to rule on the matter at hand and would therefore not be assisted by receiving further submissions from the Defence.

II. PROCEDURAL BACKGROUND

3. On 8 November 2023, the Chamber issued the "Second Decision Authorising Victims to Participate in the Proceedings" (the "Second Decision on Participation"),³ authorising 30 victims and denying four victims to participate in the proceedings. It further ordered the Registry to provide an update on the status of eight incomplete applications requiring additional information by 20 November 2023, at the latest.

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG](#) and [No. ICC-01/14-01/21-T-007-Red-ENG](#), p. 47, lines 12-24; 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, para. 29; the "Decision authorising 20 victims to participate in the proceedings" (Trial Chamber VI), [No. ICC-01/14-01/21-331](#), 27 May 2022 (the "First Decision on Participation"); and the "Second Decision Authorising Victims to Participate in the Proceedings" (Trial Chamber VI), [No. ICC-01/14-01/21-640-Conf](#), 8 November 2023 (the "Second Decision on Participation").

² See the "*Demande d'autorisation de répliquer à la 'Victims' observations on the 'Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings'* (ICC-01/14-01/21-650)' (ICC- ICC-01/14-01/21-657)", [No. ICC-01/14-01/21-662-Conf](#), 6 December 2023 (the "Defence Request").

³ See the Second Decision on Participation, *supra* note 1.

4. On 20 November 2023, the Registry submitted the "Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings", reassessing five completed applications (the "Registry Report"),⁴ and transmitted the latter to the Chamber and the parties.⁵

5. On 1 December 2023, the Common Legal Representative,⁶ the Defence,⁷ and the Prosecution⁸ filed their observations on the Registry Report.

6. On 6 December, the Defence filed its Request.⁹

III. CLASSIFICATION

7. Pursuant to regulation 23bis(2) of the Regulations of the Court, the present response is classified as "confidential", since the Defence Request bears the same level of classification. A public redacted version will be filed in due course.

IV. SUBMISSIONS

8. Regulation 24(5) of the Regulations states that "[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated". The Appeals

⁴ See the "Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings", [No. ICC-01/14-01/21-650](#), 20 November 2023 (the "Registry Report").

⁵ See the "Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings", with five Annexes in Confidential *ex parte* version, only available to the Registry and the Common Legal Representative, and in Confidential redacted version, [No. ICC-01/14-01/21-651](#), 20 November 2023.

⁶ See the "Victims' observations on the 'Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings' (ICC-01/14-01/21-650)", [No. ICC-01/14-01/21-657-Conf](#) and [No. ICC-01/14-01/21-657-Red](#), 1 December 2023 (the "Victims' Observations").

⁷ See the "*Réponse de la Défense au 'Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings' (ICC-01/14-01/21-650) et au 'Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings' (ICC-01/14-01/21-651)*", [No. ICC-01/14-01/21-655-Conf](#) and [No. ICC-01/14-01/21-655-Red](#), 1 December 2023 (the "Defence's Response").

⁸ See the "Prosecution's Observations on the 'Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings' (ICC-01/14-01/21-651)", [No. ICC-01/14-01/21-658-Conf](#), 1 December 2023.

⁹ See the Defence Request, *supra* note 2.

Chamber ruled in this regard that said provision “precludes the possibility of an automatic response by the parties to the victims’ response, except with the leave of the [Chamber]”.¹⁰

9. Trial Chamber IX also held that “[...] it is at the Chamber’s discretion as to whether such leave to reply will be granted. It is equally within the Chamber’s discretion to conclude that a reply would not be of assistance in reaching a decision and instead issue its decision forthwith particularly when time is of the essence [...]”.¹¹ Moreover, a request for leave to reply should be rejected if the Chamber is in possession of sufficient information to determine the matter at hand.¹²

10. In its Request, the Defence seeks leave to reply to several issues which it allegedly could not reasonably have anticipated. However, said issues were clearly foreseeable at the time that the Defence submitted its response to the Registry Report.

11. Indeed, following an analysis of the Second Decision on Participation,¹³ the Registry specifically concluded that applicants a/70448/22, a/70450/22, a/70453/22, and a/70454/22 could be connected to Incident (a) as they have been detained at the OCRB on a date close to the dates referred to in said Incident because they were perceived as Anti-Balaka supporters, but that it was not able to assess whether said Incident is strictly limited to P-1289.¹⁴ In other words, the Registry applied the legal framework as ruled on by the Chamber, and assessed the applicants concerned as falling within Group C – as opposed to Group A, only because it was not able to assess whether

¹⁰ See the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled ‘Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute’” (Appeals Chamber), [No. ICC-02/11-01/15-208 OA6](#), 8 September 2015, para. 22.

¹¹ See the “Decision on Defence Request for Leave to Appeal Decision 1248” (Trial Chamber IX), [No. ICC-02/04-01/15-1263](#), 22 May 2018, para. 20. See also the “Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision” (Trial Chamber IX), [No. ICC-02/04-01/15-1147](#), 24 January 2018, para. 15.

¹² See e.g. the “Public Redacted version of ‘Decision on the ‘Prosecution’s submissions on the conduct of proceedings pursuant to decision ICC-02/04-01/15-277’” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/15-293-Red](#), 23 March 2016, para. 8.

¹³ See the Registry Report, *supra* note 4, note 21, referring to the Second Decision on Participation, *supra* note 1, para. 40.

¹⁴ *Idem*, paras. 21-22.

Incident (a) makes reference to other individuals. As such, the Registry unequivocally brought said issue to the attention of the Chamber to seek its guidance on the matter.¹⁵ It was thus entirely foreseeable that the Common Legal Representative would assist the Chamber with its determination by examining the details of Incident (a) as recounted by witness P-1289.¹⁶

12. Regarding the second issue raised by the Defence,¹⁷ the Common Legal Representative underlines that her submissions are fully in accordance with the legal framework adopted by the Chamber in the Second Decision on Participation. More specifically, she stresses the fact that her argument is neither new nor unforeseeable, but rather an application of the Chamber's reasoning in relation to a/70294/22, a/70295/22 and a/70296/22, whom the Chamber authorised to participate in the present proceedings.¹⁸ Consequently, the Defence was in a position to anticipate the Common Legal Representative's argument which is entirely based on the Second Decision on Participation.¹⁹

13. The Defence further submits that the redactions applied by the Registry do not allow for a full analysis of the victim applications concerned,²⁰ and that the purpose of the procedure put in place by the Chamber is to allow for an adversarial procedure on said applications, allowing the parties to submit "*meaningful observations*", as recalled by the Chamber in its First Decision on Participation.²¹ The Common Legal Representative posits that this is a clear misrepresentation of the Chamber's findings,

¹⁵ *Idem*, para. 23.

¹⁶ See the Victims' Observations, *supra* note 6, para. 24.

¹⁷ See the Defence Request, *supra* note 2, paras. 13-17.

¹⁸ See the Victims' Observations, *supra* note 6, paras. 25, and 26, referring to the Second Decision on Participation, *supra* note 1, paras. 60-63.

¹⁹ See, exactly along these lines, the "*Demande de rejet in limine de la "Prosecution's Reply to 'Réponse de la Défense à la 'Prosecution's request to summon a witness'"* 13 November 2023, ICC-01/14-01/21-641-Conf", (ICC-01/14-01/21-646-Conf)", [No. ICC-01/14-01/21-649-Conf](#), 20 November 2023, para. 9: "[...] *dans la mesure où la décision de la Chambre [...] est le fondement même de la requête de l'Accusation, il était parfaitement prévisible que la Défense se fonde sur cette même décision dans sa réponse et que la teneur de cette décision serait discuté*".

²⁰ See the Defence Request, *supra* note 2, para. 14.

²¹ *Ibid.* para. 16, referring to the First Decision on Participation, *supra* note 1, para. 10.

as the Chamber ruled, precisely in the passage to which the Defence refers, that “[i]t is thus incorrect to suggest, as does the Defence, that the victim application process involves an adversarial procedure (*débat contradictoire*) which requires the parties thereto to have full access to all sorts of detailed information about each individual applicant. The parties must have the opportunity to make meaningful submissions, but they are neither claimant nor opponent in this process. Ultimately, it is the Chamber’s responsibility to determine, with the help of the Registry and in light of the parties’ submissions, which applicants should be authorised to participate in these proceedings. Given this limited review, there is no need to receive detailed evidentiary or legal submissions from the parties or to conduct extensive litigation in relation to each individual application”.²²

14. In addition, the Common Legal Representative notes the Defence’s contention that the events described by a/70448/22, a/70450/22, a/70453/22, and a/70454/22 are clearly unrelated to Incident (a).²³ This argument blatantly contradicts the Registry’s conclusion that the applicants concerned could be connected to Incident (a),²⁴ and has already been extensively presented by the Defence in its previous submissions on the matter.²⁵

15. Finally, the Common Legal Representative respectfully submits that the Chamber is already in possession of sufficient information to determine the matter at hand and therefore would not be assisted by receiving further submissions from the Defence. The Chamber has already ruled, on two occasions, on the participation of victims in the present proceedings,²⁶ and the parties and participants have fully explored the contested issues and made their submissions in their respective responses

²² See the First Decision on Participation, *supra* note 1, para. 10.

²³ See the Defence Request, *supra* note 2, para. 17.


²⁴ See the Registry Report, *supra* note 4, para. 21.

²⁵ See the Defence’s Response, *supra* note 7, paras. 45-54.

²⁶ See the First Decision on Participation, *supra* note 1; and the Second Decision on Participation, *supra* note 1.

to the Registry Report, thus enabling the Chamber to dispose of the matter expeditiously.²⁷

FOR THESE REASONS, the Common Legal Representative respectfully requests the Chamber to reject the Defence Request in its entirety.



Sarah Pellet

Dated this 7th day of December 2023

At The Hague, The Netherlands

²⁷ See, in the exact same vein, the the “*Demande de rejet in limine de la "Prosecution's Reply to 'Réponse de la Défense à la 'Prosecution's request to summon a witness'*” 13 November 2023, ICC-01/14-01/21-641-Conf”, (ICC-01/14-01/21-646-Conf)”, *supra* note 19, para. 11: “[...] il s'agit dans le cas d'espèce tout simplement de la mise en œuvre du dialogue judiciaire et surtout du principe du contradictoire. Chaque Partie a pu exposer sa position aux Juges leur permettant de rendre des décisions informées sur la base des écritures déposées en demande et en réponse, respectant ainsi les principes directeurs du procès équitable”.