

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **12 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 *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public**

**Public Redacted Version of "Prosecution's Observations on the "Third Registry  
Transmission of Group C Victim Applications for Participation in Trial  
Proceedings" (ICC-01/14-01/21-651)", ICC-01/14-01/21-658-Conf, dated 1 December  
2023**

**Source: Office of the Prosecutor**

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

**The Office of the Prosecutor**

Mr Karim A.A. Khan KC  
Mr Mame Mandiaye Niang  
Ms Holo Makwaia

**Counsel for Defence**

Ms Jennifer Naouri  
Mr Dov Jacobs

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel  
for Victims**

Ms Sarah Pellet  
Mr Tars Van Litsenborgh

**The Office of Public Counsel  
for the Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation  
and Reparations Section**

**Other**

## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby provides its observations regarding the Registry’s “Third Transmission of Group C Victim Applications for Participation in Trial Proceedings (“Third Group C Transmission”).<sup>1</sup>

2. In the Registry’s “Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings,”<sup>2</sup> the Registry has re-assessed five completed applications<sup>3</sup> in light of the additional information collected by the Common Legal Representative of Victims (“CLRV”) and the clarified scope of the charges in the case. The Registry considers that they now fall within Group C since it is not able to make a clear determination as to whether they fall within the scope of any of the Incidents.<sup>4</sup>

3. The Registry seeks the relevant guidance from Trial Chamber VI (“Chamber”) regarding the Five Applications<sup>5</sup> previously classified under Group A during the pre-trial proceedings,<sup>6</sup> out of which the Chamber admitted one application, taking into consideration only their time in detention at the OCRB and any possible abuse that was allegedly inflicted upon them.<sup>7</sup> The Five Applications concerned, alleged that they had been arrested, detained and mistreated at various times between 12 April and 30 August 2013. The Registry previously noted that these Applications may fall within Incident (r), which refers to the detention of various men “at an unknown time when Mr SAID was in control of the OCRB”, in an underground cell. However, the

---

<sup>1</sup> ICC-01/14-01/21-651.

<sup>2</sup> ICC-01/14-01/21-650.

<sup>3</sup> a/70286/22, a/70448/22, a/70450/22, a/70453/22, and a/70454/22 (hereinafter “Five Applications” or “Five Applicants”).

<sup>4</sup> ICC-01/14-01/21-650, paras. 16 and 19.

<sup>5</sup> ICC-01/14-01/21-650, para. 23.

<sup>6</sup> ICC-01/14-01/21-297 and ICC-01/14-01/21-405-Conf. *See also* annexes ICC-01/14-01/21-297-Conf-Anx (a/70286/22) and ICC-01/14-01/21-405-Conf-Anx (a/70448/22, a/70450/22, a/70453/22, and a/70454/22).

<sup>7</sup> ICC-01/14-01/21-331, paras. 15-17 (a/70286/22).

Registry was not able to conclude whether each applicant was detained in the said underground cell.<sup>8</sup>

4. The Prosecution submits that one of the Five Applications (a/70286/22) should be re-classified under Group A. Further, the Prosecution agrees with the Registry assessment that, even if the Applicant cannot confirm whether her relative was detained in the underground cell in the additional information, the possibility cannot be excluded either,<sup>9</sup> given the timing and reasons of the arrest. The Prosecution notes that the four other Applicants (a/70448/22, a/70450/22, a/70453/22, and a/70454/22) were detained in “regular” cells as reported by the Registry thus falling outside the scope of Incident (r)<sup>10</sup> and that the additional information on the alleged dates of the arrests and detentions provided by these Applicants is not enough to link the events to Incident (a) as considered by the Registry,<sup>11</sup> in line with the Chamber’s Second Decision.<sup>12</sup>

## II. CONFIDENTIALITY

5. Pursuant to regulation 23bis(2) of the Regulations of the Court, these observations are filed as confidential as they refer to the content of Registry filings of the same designation. A public redacted version will be filed as soon as possible.

---

<sup>8</sup> ICC-01/14-01/21-498, paras. 26-27.

<sup>9</sup> ICC-01/14-01/21-650, para. 20.

<sup>10</sup> ICC-01/14-01/21-650, para. 21.

<sup>11</sup> ICC-01/14-01/21-650, paras. 21-22.

<sup>12</sup> ICC-01/14-01/21-640-Conf, para. 40 (“the Chamber notes that a number of the 18 confirmed Incidents make reference to other individuals who were allegedly detained (and sometimes mistreated) together with the identified victims. Therefore, it is possible that individuals other than those who are specifically named or identified in the Confirmation Decision may qualify as victims in the case”).

### III. SUBMISSIONS

6. The Registry seeks relevant guidance from the Chamber regarding five applications a/70286/22, a/70448/22, a/70450/22, a/70453/22, and a/70454/22, filed under Group C for Participation in Trial Proceedings.<sup>13</sup>

#### A) Background

7. On 9 December 2021, Pre-Trial Chamber II (“PTC”) confirmed the crimes as charged that were committed at the OCRB between 12 April 2013 and 30 August 2013.<sup>14</sup>

8. On 6 May 2022, the Registry submitted its First Assessment Report on Victim Applications for Participation in Trial Proceedings<sup>15</sup> and transmitted 20 applications classified as belonging to Group A including a/70286/22.<sup>16</sup>

9. On 27 May 2022, the Chamber authorised 20 victims to participate in the case including one of the Five Applications, a/70286/22.<sup>17</sup>

10. On 13 July 2022, the Registry submitted its Second Assessment Report on Victim Applications for Participation in Trial Proceedings<sup>18</sup> and transmitted 14 applications classified as belonging to Group A including a/70448/22, a/70450/22, a/70453/22, and a/70454/22.<sup>19</sup>

---

<sup>13</sup> ICC-01/14-01/21-650.

<sup>14</sup> ICC-01/14-01/21-218-Red, paras. 24-40.

<sup>15</sup> ICC-01/14-01/21-297. *See also* annex ICC-01/14-01/21-297-Conf-Anx (a/70286/22).

<sup>16</sup> ICC-01/14-01/21-296.

<sup>17</sup> ICC-01/14-01/21-331, paras. 15-17 (a/70286/22).

<sup>18</sup> ICC-01/14-01/21-405-Conf. *See also* annex ICC-01/14-01/21-405-Conf-Anx (a/70448/22, a/70450/22, a/70453/22, and a/70454/22).

<sup>19</sup> ICC-01/14-01/21-406.

11. On 6 September 2022, the Chamber clarified that the scope of the charges in the case is limited to the specific criminal acts listed by the PTC in paragraph 29 of the operative part of the Confirmation of Charges Decision.<sup>20</sup>

12. On 27 September 2022, the Chamber issued the “Order for the Reassessment of Victims Applications” in which it instructed the Registry “to reassess all applications that it had previously classified as Group A, including those authorised to participate in the First Decision, in light of the clarified scope of the charges.”<sup>21</sup>

13. On 11 October 2022, the Registry submitted its “Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings”, in which it, *inter alia*, indicated that it had assessed eight applications as incomplete considering the clarified scope of the case, these included a/70286/22, a/70448/22, a/70450/22, a/70453/22, and a/70454/22.<sup>22</sup>

14. On 8 November 2023, the Chamber issued the Second Decision authorising 30 victims to participate in the proceedings, instructing, *inter alia*, the Registry to report on the Incomplete Applications, no later than 20 November 2023.<sup>23</sup>

**B) The additional information on the arrest/ detention of the Five Applicants**

15. In November 2023,<sup>24</sup> the Five Applicants provided additional information on the arrest and/or conditions of detention at the OCRB which now might fall within the scope of Incident (r) or (a) of the charges as confirmed.<sup>25</sup>

<sup>20</sup> ICC-01/14-01/21-472, para. 25.

<sup>21</sup> ICC-01/14-01/21-490. para. 8.

<sup>22</sup> ICC-01/14-01/21-498, paras. 26-27. *See also* annex ICC-01/14-01/21-498-Conf-Anx (a/70286/22, a/70448/22, a/70450/22, a/70453/22, and a/70454/22).

<sup>23</sup> ICC-01/14-01/21-640-Conf.

<sup>24</sup> The exact dates are redacted from the Parties.

<sup>25</sup> ICC-01/14-01/21-651-Conf-Anx1-Red, p. 16 (additional information on the circumstances of the arrest); ICC-01/14-01/21-651-Conf-Anx2-Red, p. 10 (additional information on the circumstances of the arrest/ detention); ICC-01/14-01/21-651-Conf-Anx3-Red, p. 9 (additional information on the circumstances of the detention); ICC-

*i) Application a/70286/22 (issue of Incident (r) scope)*

16. Applicant a/70286/22 initially stated in 2022 that her brother was arrested by the Seleka in the [REDACTED] *arrondissement* and detained at the OCRB from [REDACTED] April 2013. Then, he was released after his family paid a ransom and died [REDACTED] months later in [REDACTED] 2013<sup>26</sup> as stated in the death certificate.<sup>27</sup> The Applicant did not see the arrest but was told about it by those present. Her brother could not tell her what happened during his detention as he did not have the strength to do so due to injuries suffered. He was subsequently taken to the [REDACTED] in April 2013 and a medical certificate provided with the application states that he was a victim of torture.<sup>28</sup> The Applicant provided additional information in November 2023 and now claims that her brother was arrested by the Seleka because they searched him and found printed papers from the internet criticizing the action of the coalition and calling for rebellion against the coalition.<sup>29</sup> The Prosecution notes that the Applicant does not explain why she did not give these details about the arrest before and further she cannot say if her brother was detained in the underground cell or not as her brother could not speak about his detention after he was liberated. Nevertheless, given the timing and reason for the arrest, that he was perceived as a supporter of the Anti-Balaka, the Prosecution agrees with the Registry that it cannot exclude the possibility that this Application could potentially fall within the scope of Incident (r).

*ii) Application a/70448/22 (issue of Incident (a) scope)*

17. Applicant a/70448/22 initially stated in 2022 that a young Muslim with a Colonel and his elements came to his house at night accusing him of providing food supplies

---

01/14-01/21-651-Conf-Anx4-Red, p. 9 (additional information on the date and circumstances of the arrest); and ICC-01/14-01/21-651-Conf-Anx5-Red, p. 9 (additional information on the circumstances of the arrest/ detention).

<sup>26</sup> ICC-01/14-01/21-651-Conf-Anx1-Red, p. 2.

<sup>27</sup> ICC-01/14-01/21-651-Conf-Anx1-Red, p. 13.

<sup>28</sup> ICC-01/14-01/21-651-Conf-Anx1-Red, p. 14.

<sup>29</sup> ICC-01/14-01/21-651-Conf-Anx1-Red, p. 16.

to the Anti-Balaka stationed in a forest near Kalongo. The Applicant was tied in the *arbatachar* method and taken in a vehicle with other people to the OCRB in Bangui. He was detained in a cell without being interrogated and without water and food from [REDACTED] May 2013. One day, one of the Seleka chiefs ordered that the Applicant and others be taken out of their cell, interrogated and be freed. Thereafter a Seleka chief reprimanded the Seleka elements, drove the prisoners to a district in Bangui and gave them money before letting them go.<sup>30</sup> The Applicant provided additional information in November 2023 and now claims that he was not tied up in the *arbatachar* method during his arrest, but beaten seriously as he refused to watch his wife being raped. He also adds that he was detained with someone he knew in a cell in the OCRB where there were already many people including a young man they both knew from the sector they lived in. Furthermore, he explains that one day the wife of one of the detainees came to the OCRB to ask questions and [REDACTED].<sup>31</sup> The Prosecution notes that beyond adding details on his detention, the Applicant also revises his original description of his arrest. While the Applicant appears to have been arrested because he was perceived as supporting the Anti-Balaka, the Prosecution cannot connect his detention dates and conditions to Incident (a) dated 15 May 2013 or Incident (r) in the underground cell as he was detained in a “regular” cell in the OCRB.

*iii) Application a/70450/22 (issue of Incident (a) scope)*

18. Applicant a/70450/22 initially stated in 2022 that he was arrested with other young people on [REDACTED] May 2013 near Bangui by the Seleka who accused them of providing food supplies and information to the Anti-Balaka. They were taken in a vehicle to the OCRB central where the Applicant was tortured. He spent three days in a cell without water or showering or food for two days. On [REDACTED]

---

<sup>30</sup> ICC-01/14-01/21-651-Conf-Anx2-Red, p. 1 and 5-6.

<sup>31</sup> ICC-01/14-01/21-651-Conf-Anx2-Red, p. 10.



May 2013, General SAID ordered his liberation after a woman sold his [REDACTED] and used the money to pay a Seleka chief on [REDACTED] May 2013.<sup>32</sup> The Applicant provided additional information in November 2023 and now claims that he was arrested by the Seleka who accused him of providing information to the Anti-Balaka who were hiding in the forest. He states that he was taken in a BG80 vehicle with many other people to the OCRB. There he was detained in a cell with many people and was mistreated until he fainted on the second day of detention and woke up at the [REDACTED] where he was treated. The Seleka waited for him and took him back to the OCRB on the same day. The applicant was freed on [REDACTED] May 2013 in exchange for money.<sup>33</sup> While the Applicant appears to have been arrested because he was perceived as supporting the Anti-Balaka, the Prosecution notes that the Applicant was detained in a “regular” cell and cannot connect his detention dates and condition to Incident (a) dated 15 May 2013 or Incident (r) in the underground cell.

*iv) Application a/70453/22 (issue of Incident (a) scope)*

19. Applicant a/70453/22 initially stated in 2022 that he was arrested by a Seleka chief and his elements on [REDACTED] August 2013 on the side of a road. This was after an Anti-Balaka attack on a Seleka base in a village, the Seleka did not want to see any Christian (youth or men) on the side of the road. The Seleka accused the Applicant of being Anti-Balaka or asked him to show where the Anti-Balaka were hiding. After the arrest, the Seleka took the Applicant and others in their car to the OCRB central in Bangui. There, they were put in a cell without being questioned, and without food or water. The Applicant was liberated on [REDACTED] August 2013 after his aunt paid the requested sum of money.<sup>34</sup> The Applicant provided additional information in November 2023 and now claims that his arrest/ detention happened in April 2013 and not August as it was just after the Seleka took power. He added that he was arrested

---

<sup>32</sup> ICC-01/14-01/21-651-Conf-Anx3-Red, p. 1 and 5.

<sup>33</sup> ICC-01/14-01/21-651-Conf-Anx3-Red, p. 9.

<sup>34</sup> ICC-01/14-01/21-651-Conf-Anx4-Red, p. 1 and 5.

by Seleka elements because he was accused of being an Anti-Balaka based on his morphology and because he carried a machete and hoe. He was badly beaten and his left leg broken and taken to the OCRB with others where he never saw Mr SAID but heard the Seleka elements mentioning his name in saying that he gave such and such instruction. The Prosecution notes that the Applicant clarified that he is not literate and his application, once completed, was not read back to him so he could not correct any mistake or make clarifications which could explain the change of the date of arrest. Also, the Applicant clarified that he had no financial means to get treatment so he used traditional remedies which may explain the lack of medical records or other documents to substantiate his account.<sup>35</sup> While the Applicant provides an explanation for changing the dates of events and appears to have been arrested because he was perceived an Anti-Balaka supporter, the Prosecution cannot connect his detention dates and conditions to Incident (a) dated 15 May 2013 or Incident (r) in the underground cell.

v) *Application a/70454/22 (issue of Incident (a) scope)*

20. Applicant a/70454/22 initially stated in 2022 that he was arrested with another person on [REDACTED] May 2013 on the side of the road by armed Seleka in two vehicles, that they beat them, asked them to show where the Anti-Balaka were hiding and accused them of shooting at the Seleka. Once they arrived at the OCRB, the Seleka tied their arms in front of them and put them in a cell. The day after, the Seleka tortured their [REDACTED] so that they would show them where the Anti-Balaka were hiding. The Applicant also states that a Seleka Colonel took someone to PISSA to kill him. The Applicant was liberated on [REDACTED] May 2013 after his parents paid [REDACTED] CFA, in exchange.<sup>36</sup> The Applicant provided additional information in November 2023 and now claims that he was arrested because he was

---

<sup>35</sup> ICC-01/14-01/21-651-Conf-Anx4-Red, p. 9.

<sup>36</sup> ICC-01/14-01/21-651-Conf-Anx5-Red, p. 1 and 5.

accused of knowing where the Anti-Balaka were hiding and taken to the OCRB in a vehicle with another arrested person he found in it. The Seleka elements at the OCRB beat them and told them that they would only be released if their families paid [REDACTED] CFA.<sup>37</sup> While the Applicant appears to have been arrested because he was perceived as supporting the Anti-Balaka, the Prosecution cannot connect his dates and conditions of detention to Incident (a) dated 15 May 2013 or Incident (r) in the underground cell.

C) **The reliability of the additional information to complete the Applications**

21. The Prosecution does not raise any particular concern as to the reliability of the additional information provided by the Five Applicants. The Prosecution notes the Chamber's First and Second Decision authorising victims to participate in the proceedings which stressed that its determination as to whether the criteria for a person to qualify as a victim pursuant to rule 85(a) of the Rules of Procedure and Evidence have been met, is based on a *prima facie* assessment. Thus, for the purpose of a victim participation decision and given that the applications are not testimonial in nature and were completed with the assistance of different third parties, the Prosecution will not engage in a systematic in-depth credibility assessment of the information provided by the Five Applicants and while the authorisation to participate in the proceedings does not imply a finding that the alleged crimes took place, in line with the Chamber's decisions.<sup>38</sup>

22. The Prosecution submits that all Five Applicants, provide sufficient additional information that the victims' detention and mistreatment at the OCRB was because they were perceived to be pro-BOZIZE supporters or based on any other persecutory grounds.<sup>39</sup> However, the Prosecution asserts that except for one Applicant,

---

<sup>37</sup> ICC-01/14-01/21-651-Conf-Anx5-Red, p. 9.

<sup>38</sup> ICC-01/14-01/21-331, para. 9 (First Decision) and ICC-01/14-01/21-640-Conf, paras. 41 and 62 (Second Decision).

<sup>39</sup> ICC-01/14-01/21-218-Conf, para. 25 (operative part of the Confirmation of Charges Decision).

a/70286/22, the other four Applicants do not provide *prima facie* additional information on the alleged dates of arrests and detention at the OCRB to be linked to the scope of either Incident (a) or (r). The Prosecution has also reviewed its records and can confirm that 1) none of the Five Applicants are Prosecution witnesses or were interviewed by the Prosecution and, 2) it is not in possession of evidence to support or corroborate the presence of the Five Applicants at the OCRB in the alleged conditions they now provide and describe.

#### IV. CONCLUSION

23. For the above reasons, the Chamber should exercise caution before allowing Applicants a/70448/22, a/70450/22, a/70453/22, and a/70454/22 to participate in the proceedings and should consider Applicant a/70286/22 for re-classification to Group A.



---

**Karim A. A. Khan KC, Prosecutor**

Dated this 12<sup>th</sup> day of December 2023  
At The Hague, The Netherland