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

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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

Decision authorising 20 victims to participate in the proceedings

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

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
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Counsel Support Section

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**Victims Participation and
Reparations Section**

Mr Philipp Ambach

Other

TRIAL CHAMBER VI of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 67, 68, of the Rome Statute (the ‘Statute’), rules 85 and 89 of the Rules of Procedure and Evidence (the ‘Rules’), regulation 86 of the Regulations of the Court (the ‘Regulations’) and regulations 99-100 of the Regulations of the Registry, issues this ‘Decision authorising 20 victims to participate in the proceedings’.

I. PROCEDURAL HISTORY

1. On 13 April 2022, the Chamber issued its ‘Decision on matters relating to the participation of victims during the trial’ (the ‘Participation Decision’).¹ In the Participation Decision, the Chamber instructed the Registry to classify victim applicants into three categories:

- a. Group A: applicants who clearly qualify as victims in this case;
- b. Group B: applicants who clearly do not qualify as victims in this case:
and
- c. Group C: applicants for whom the Registry could not make a clear determination for any reason.

2. On 6 May 2022, the Registry submitted its first assessment report² and transmitted 20 applications classified as belonging to Group A and three applications classified as belonging to Group C.³

¹ Decision on matters relating to the participation of victims during the trial, 13 April 2022, ICC-01/14-01/21-278 (the ‘Participation Decision’).

² First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-01/14-01/21-297 (the ‘Assessment Report’).

³ First Registry Transmission of Group A and C Victim Applications for Participation in Trial Proceedings, ICC-01/14-01/21-296.

3. On 19 May 2022, the Prosecution,⁴ Defence⁵ and the Office of Public Counsel for Victims (the ‘OPCV’)⁶ submitted their observations in relation to the Group A and C applications.

II. SUBMISSIONS

4. The OPCV argues that the Chamber should adopt a flexible approach when evaluating the applications. This is particularly apposite, according to the OPCV, in relation to the three Group C applicants, considering that the events left durable traumatic scars that affect their recollection of the events.⁷ The OPCV also submits that the adoption of a flexible approach ensures the expeditiousness of the proceedings and the interests of victims.⁸ Accordingly, the OPCV argues that all Group A and C applicants should be authorised to participate in the proceedings.

5. The Prosecution limits its observations to the three Group C applicants. According to the Prosecution, the discrepancy between the dates of arrest and detention provided by the applicants and the reasons provided in support of the new dates raise serious concerns as to the reliability of the information provided by the three applicants.⁹ The Prosecution further indicates that it is not in possession of evidence to support or corroborate the presence of the three applicants at the *Office Central de Répression du Banditisme* (the ‘OCRB’) at the alleged time and that they describe events that are unknown to the Prosecution.¹⁰ Last, the Prosecution points out that none of the three applicants provide sufficient information that their arrest, detention and

⁴ Prosecution’s Observations on the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (ICC-01/14-01/21-297), ICC-01/14-01/21-315-Conf (the ‘Prosecution Observations’).

⁵ *Réponse de la Défense au « First Registry Transmission of Groups A and Group C Victims Applications for Participation in Trial Proceedings »* (ICC-01/10-01/21-296), ICC-01/14-01/21-316-Conf (the ‘Defence Observations’).

⁶ Victims’ Observations on the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (ICC-01/14-01/21-297), ICC-01/14-01/21-317 (the ‘OPCV Observations’).

⁷ OPCV Observations, para. 13.

⁸ OPCV Observations, para. 13.

⁹ Prosecution Observations, para. 13.

¹⁰ Prosecution Observations, para. 14.

mistreatment at the OCRB was because they were perceived to be pro-Bozizé supporters or based on any other persecutory grounds.¹¹

6. According to the Defence, none of the 23 Group A and C applicants should be authorised to participate. The Defence argues that the parties did not receive sufficient information about the individual applicants to allow them to properly evaluate the applications and make meaningful submissions.¹² In particular, the Defence points out that, for a majority of applications, there is no medical certificate that could confirm the allegations.¹³ Moreover, for 8 of the 10 applications for which such certificates are provided, the Defence has no access to them.¹⁴ More generally, the Defence complains that the application forms have been too heavily redacted by the Registry, which has failed to comply with the assessment process provided for in regulation 99 of the Regulations of the Registry.¹⁵ Moreover, the Defence claims that the information provided in many of the applications is too vague to enable any link to be established with the confirmed charges.¹⁶

7. Finally, in relation to the three Group C applications, the Defence argues that they have failed to provide any objective and concrete arguments that could justify the change of dates.¹⁷

¹¹ Prosecution Observations, para. 15.

¹² Defence Observations, paras 19-21.

¹³ Defence Observations, para. 23.

¹⁴ Defence Observations, para. 24.

¹⁵ Defence Observations, paras 25-32.

¹⁶ Defence Observations, paras 38-45.

¹⁷ Defence Observations, paras 33-37.

III. ANALYSIS

8. In analysing the applications, the Chamber has followed the approach adopted by other Chambers¹⁸ and has assessed a person to qualify as a victim pursuant to rule 85(a) of the Rules if:

- a. the applicant's identity has been duly established;
- b. the events described in the application form correspond to at least one of the alleged crimes which have been confirmed, i.e.
 - i. the alleged crime was committed between 12 April 2013 and 30 August 2013 (scope *ratione tempore*);
 - ii. the alleged crime was committed within the confines of the OCRB (scope *ratione loci*);
 - iii. the alleged crime is charged against Mr Said (scope *ratione materiae*):
 1. article 7(1)(e) - Imprisonment or other severe deprivation of physical liberty as a crime against humanity;
 2. article 7(1)(f) – torture as a crime against humanity;
 3. article 8(2)(c)(i)-4 – torture as a war crime;
 4. article 8(2)(c)(i)-3 – cruel treatment as a war crime;
 5. Article 7(1)(k) – other inhumane acts as a crime against humanity;
 6. article 8(2)(c)(ii) – outrages upon personal dignity as a war crime;
 7. Article 7(1)(h) - persecution as a crime against humanity;
- c. the applicant suffered direct or indirect personal harm (including material, physical, psychological harm as well as emotional suffering and economic loss) as a result of the commission of the aforementioned alleged crime(s).

9. The Chamber stresses that its determination as to whether the above criteria have been met is based on a *prima facie* assessment of the information provided in the

¹⁸ Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaissona*, [Decision Establishing the Principles Applicable to Victims' Applications for Participation](#), 5 March 2019, ICC-01/14-01/18-141; as adopted in this case in the [Decision establishing the principles applicable to victims' applications for participation](#), 16 April 2021, ICC-01/14-01/21-56. *See also* Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008](#), 11 July 2008, ICC-01/04-01/06-1432, paras 29-39, 53-66;

application forms.¹⁹ The Chamber has therefore not engaged in a systematic in-depth credibility assessment of all the information provided by the applicants. A determination that an applicant may be authorised to participate in these proceedings therefore does not imply a finding by the Chamber that the alleged crimes actually took place. It also does not imply that the Chamber has made a determination that the alleged criminal conduct in the applications meets all the elements of one or more of the charged crimes. The victim application process is not a mini-trial to determine for each individual victim whether they actually suffered harm as a result of crimes for which the accused can be held responsible. Such questions only arise, if at all, during the reparations process, in the event that a conviction is entered.

10. It is thus incorrect to suggest, as does the Defence,²⁰ 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,²¹ 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.

11. Under these circumstances, the Chamber rejects the Defence claim that the redactions applied by the Registry are prejudicial or violate the accused's rights.²² As

¹⁹ Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision Establishing the Principles Applicable to Victims' Applications for Participation](#), 24 May 2018, ICC-01/12-01/18-37-tENG, paras 46-53; Pre-Trial Chamber I, *Situation in Darfur*, [Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07](#), 6 December 2007, ICC-02/05-111-Corr, para. 5.

²⁰ Defence Observations, paras 19-21.

²¹ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, [Decision inviting the parties' observations on applications for participation of a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06, a/0001/07 to a/0005/07, a/0054/07 to a/0062/07, a/0064/07, a/0065/07, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0168/07 to a/0185/07, a/0187/07 to a/0191/07, a/0251/07 to a/0253/07, a/0255/07 to a/0257/07, a/0270/07 to a/0285/07, and a/0007/08](#), 6 May 2008, ICC-01/04-01/06-1308, para. 27.

²² Defence Observations, para. 25.

the Defence acknowledges, it is the Registry's responsibility to make an independent and objective risk assessment for all applicants.²³ The Chamber recalls its specific instructions in this regard.²⁴ The Defence did not object to this approach and the Chamber is satisfied that the Registry has complied with it. Given that the Chamber had pre-authorised certain categories of redactions,²⁵ the Registry did not have to seek the Chamber's prior approval before transmitting the forms.

12. The Defence also complains that question 9 of the application form has been systematically redacted and that this prevented the parties from ascertaining whether there are 'objective' justifications for the redactions.²⁶ The Chamber notes, in this regard, that the Registry is not bound or limited by the information provided by the applicants, which may be outdated or incomplete. Indeed, the Registry is required to make an independent assessment of the security environment at the time of transmitting the application forms, based on a wide variety of sources of information. The application forms constitute only a small part of this analysis. It would also be unrealistic to expect the Registry to systematically follow up with each applicant individually before deciding which specific information must be redacted. It is the responsibility of the OPCV, as the representative of the applicants, to liaise with the VPRS if there are particular security concerns in relation to individual applicants or, conversely, if some applicants do not wish certain information to be redacted despite the Registry's determination of an objective security risk.

13. In any event, the Chamber has reviewed the redacted application forms and is satisfied that, even with the redaction, they still contain sufficient relevant information to allow the parties and participants to make meaningful submissions in relation to each individual applicant in light of the criteria and standard of review mentioned above.

²³ Defence Observations, paras 31-32.

²⁴ Participation Decision, paras 23-25.

²⁵ [Participation Decision, paras 23-25.](#)

²⁶ Defence Observations, para. 31.

A. Group A Applications

15. In relation to the 20 Group A applications, the VPRS indicated that in relation to two applications (a/70291/22 and a/70305/22) there are ‘minor discrepancies’ in terms of the spelling of the applicants’ names, which ‘appear to be the result of inadvertent errors’.²⁷ Apart from this, the VPRS concluded that the following applicants clearly qualify as victims of this case:

a/70190/22	a/70292/22	a/70297/22	a/70302/22
a/70286/22	a/70293/22	a/70298/22	a/70303/22
a/70289/22	a/70294/22	a/70299/22	a/70304/22
a/70290/22	a/70295/22	a/70300/22	a/70305/22
a/70291/22	a/70296/22	a/70301/22	a/70306/22

16. Having reviewed the applications, the Chamber has come to the view that the 20 applicants indeed qualify as direct victims of the crimes charged in this case as the facts they allege fall within the geographical, temporal and substantive scope of charges. In relation to a/70305/22, the Chamber has not been able to identify any discrepancy in terms of the spelling of the applicant’s name, whereas in relation to a/70291/22, the discrepancy is so minor that it cannot cast any serious doubt on the identity of the applicant.

17. The Chamber is cognisant that in a number of cases the victims sustained the most serious harm as a result of crimes that were allegedly committed at different locations, usually before they were transferred to the OCRB. For present purposes, only their time in detention at the OCRB and any possible abuse that was allegedly inflicted upon them there has been taken into consideration.

²⁷ Assessment Report, para. 14. The Chamber notes that the Registry also identifies a discrepancy with regard to the spelling of a/20602/21’s name. As this applicant belongs to Group C and the application is denied for other reasons, there is no need to address this issue.

B. Group C Applications

1. a/20599/21

18. In his original application, a/20599/21 had indicated that he was detained at the OCRB in October and November 2013, i.e. more than a month after the end of the period relevant to the charges.²⁸ Pre-Trial Chamber II did not authorise a/20599/21 to participate in the confirmation proceedings because ‘the difference between the date of the incident which caused the alleged personal harm and the periods relevant to the crimes charged [...] is too significant.’²⁹

19. Since then, a/20599/21 has submitted another declaration in which he claims that, due to his experiences at the OCRB, he has mental problems and has difficulties remembering dates.³⁰ The Chamber notes that the new declaration is co-signed by a relative of a/20599/21, who is alleged to have been a/20599/21’s guardian during the time of events and who seems to be the one who provided the information that a/20599/21 was arrested and taken to the OCRB in early August 2013 instead of October 2013.

20. As suggested by the Defence, the Chamber is mindful of the fact that the new declaration was prepared in light of the Pre-Trial Chamber’s decision to reject a/20599/21’s application. Given that the applicant claims to have been hospitalised for several weeks as a result of injuries sustained at the hands of the Seleka, the Chamber would have expected the applicant to have provided some documentary evidence that could confirm his hospitalisation, or at least an explanation as to why such evidence is unavailable. The Chamber also cannot fail to note that, according to the Prosecution, there is no indication in the case record that a/20599/21 was detained at the OCRB during the period covered by the charges. Moreover, it appears from the application form that the injuries sustained by a/20599/21 were the result of a stray bullet that was not aimed at him. This would thus not fall within the scope *ratione materiae* of the case. It is also not clear from the application form how long a/20599/21 was allegedly

²⁸ ICC-01/14-01/21-296-Conf-Anx1-Red, p. 1.

²⁹ Decision on victim applications for participation in the proceedings and on legal representation of victims, 6 October 2021, ICC-01/14-01/21-199 (the ‘Pre-Trial Chamber’s Decision on Victim Participation’), para. 43.

³⁰ ICC-01/14-01/21-296-Conf-Anx1-Red, pp.7-8.

detained at the OCRB or on which grounds he was arrested and detained. Under these circumstances, the Chamber cannot authorise a/20599/21 to participate in the proceedings.

2. *a/20601/21*

21. In a/20601/21's initial application form, which was completed with the help of her lawyer, she indicated that she had been tortured and taken to the OCRB in late September 2013, i.e. almost a month after the end of the period covered by the charges.³¹ For this reason, the Pre-Trial Chamber denied her request to participate in the confirmation proceedings.³²

22. In a recent signed declaration, a/20601/21 now claims that the facts took place in April 2013 instead of September 2013.³³ a/20601/21 also claims that the alleged error in the initial application was due to the 'intermediary' who had helped her to fill in the application form in 2021. According to a/20601/21, the intermediary did not read out the content of the form and she signed it without knowing the exact content of the form. a/20601/21 insists that she had told the intermediary the correct date.

23. The Chamber is not persuaded by the explanation as to why the dates on the original application form, which are quite specific, were so wrong. It is significant to note, in this regard, that a/20601/21 blames an unidentified 'intermediary', whereas the original form appears to have been completed with the help of the lawyer she had appointed to represent her in the proceedings before the Court. The Chamber also notes that the description of the alleged crimes is extremely succinct and seems to suggest that a/20601/21 was tortured at another location before being taken to the OCRB, where she was detained for less than a week without further incident. However, in her additional declaration a/20601/21 now appears to claim that she was tortured at the OCRB. No explanation for this drastic change in her story is provided. Finally, the Chamber cannot fail to note that, according to the Prosecution, there is no indication in the case record that a/20601/21 was detained at the OCRB during the period covered

³¹ ICC-01/14-01/21-296-Conf-Anx2-Red, p. 1.

³² Pre-Trial Chamber's Decision on Victim Participation, para. 43.

³³ ICC-01/14-01/21-296-Conf-Anx2-Red, pp 7-8.

by the charges. Under these circumstances, the Chamber cannot authorise a/20601/21 to participate in these proceedings.

3. a/20602/21

24. In his original application, a/20602/21 indicated that the alleged crime of which he claims to have been the victim was committed in mid-October 2013, i.e. outside of the temporal scope of the charges.³⁴ In a more recent declaration, a/20602/21 claims that he told the lawyer who filled in the form on his behalf that he did not remember the date of the event and that he was surprised to learn that the lawyer had provided the date in October.³⁵ The witness now claims to remember that the crime took place on the national day of a particular country, which falls within the temporal scope of the charges.

25. The Chamber notes the explanation given by the applicant as to why he now remembers the date of the alleged crimes. The Chamber is not persuaded by this explanation, which is very specific, especially because there is no apparent reason why the applicant would have been unable to remember these details less than a year before, when the original application was filled in.

26. In addition to questions about the correct date of the event, the Chamber also notes that, in the original application form, a/20602/21 alleged that he was beaten and stabbed at a different location before being transported to the OCRB. In the new declaration, the applicant now seems to suggest that he was only arrested at this location and that the beatings and stabbing took place at the OCRB. This is significant, because from the original application form, which was completed before the Prosecution filed a public version of the Document Containing the Charges, it appeared quite clearly that a/20602/21 was already gravely wounded when he arrived at the OCRB, where he was only present briefly before being taken to a hospital. Given this sudden and quite drastic change in a/20602/21's story, the Chamber considers that there are too many doubts about whether the alleged crimes fall within the scope *ratione tempore* and *ratione loci*

³⁴ ICC-01/14-01/21-296-Conf-Anx3-Red, p. 1.

³⁵ ICC-01/14-01/21-296-Conf-Anx2-Red, pp 8-9.

of this case. Under these circumstances, the Chamber cannot authorise a/20602/21 to participate in these proceedings.

FOR THESE REASONS, THE CHAMBER HEREBY

AUTHORISES all Group A applicants to participate in these proceedings; and

DENIES AUTHORISATION for all Group C applicants to participate in these proceedings.

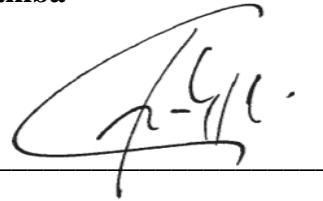


Judge Miatta Maria Samba

Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 27 May 2022

At The Hague, The Netherlands