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**No.: ICC-01/14-01/21
Date: 8 November 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***

Public Redacted

Second Decision Authorising Victims to Participate in the Proceedings

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

The Office of the Prosecutor

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Legal Representatives of Victims

Ms Sarah Pellet

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Unrepresented Victims

**Unrepresented Applicants
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States Representatives

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REGISTRY

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Reparations Section**

Mr Philipp Ambach

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 67 and 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 and regulations 99 and 100 of the Regulations of the Registry, issues this ‘Second Decision Authorising 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 whereby it instructed the Registry to classify the victims’ applications for participation into three categories:

Group A: applicants who clearly qualify as victims in this case;

Group B: applicants who clearly do not qualify as victims in this case; and

Group C: applicants for whom the Registry could not make a clear determination for any reason.²

2. On 6 May 2022, the Registry submitted its first assessment report (the ‘First Report’), regarding 20 applications classified as Group A and three applications classified as Group C.³

3. On 27 May 2022, the Chamber issued its ‘Decision authorising 20 victims to participate in the proceedings’ (the ‘First Decision’), in which it authorised all 20 applicants classified as Group A to participate in the proceeding and denied authorisation to all three Group C applicants included in the First Report.⁴

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 Participation Decision, ICC-01/14-01/21-278, paras 10-18.

³ First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 6 May 2022, ICC-01/14-01/21-297 (the ‘First Report’).

⁴ Decision authorising 20 victims to participate in the proceeding, 27 May 2022, ICC-01/14-01/21-331 (the ‘First Decision’), disposition.

4. On 13 July 2022, the Registry submitted its second assessment report (the ‘Second Report’) and transmitted 14 applications classified as Group A and five applications classified as Group C.⁵
5. On 21 July 2022, observations on the Second Report were submitted by the Office of the Prosecutor (the ‘Prosecution’)⁶ and the Defence.⁷
6. On 25 July 2022, the Office of Public Counsel for Victims (‘OPCV’), representing the applicants,⁸ submitted its observations on the Second Report (‘OPCV Observations’).⁹
7. On 6 September 2022, the Chamber issued its ‘Decision on the Scope of the Charges’,¹⁰ clarifying ‘that the scope of the charged crimes in the present case is limited to the specific incidents listed by the Pre-Trial Chamber in paragraph 29 of the operative part of the Confirmation of Charges Decision’ (the ‘Incidents’).¹¹
8. On 12 September 2022, the Registry submitted its third assessment report (the ‘Third Report’) and transmitted 3 applications classified as Group A.¹²

⁵ Public redacted version of “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 13 July 2022, ICC-01/14-01/21-405-Conf, 13 July 2022, ICC-01/14-01/21-405-Red (the ‘Second Report’); Second Registry Transmission of Group A and Group C Victim Applications for Participation in Trial Proceedings, ICC-01/14-01/21-406, with 19 confidential annexes.

⁶ Prosecution’s Observations on the “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (ICC-01/14-01/21-405-Conf), 21 July 2022, ICC-01/14-01/21-420-Conf (a public redacted version was filed on 9 August 2022: ICC-01/14-01/21-420-Red) (the ‘Prosecution Observations’).

⁷ Réponse de la Défense au « Second Registry Transmission of Groups A and Group C Victims Applications for Participation in Trial Proceedings » (ICC-01/10-01/21-406), 21 July 2022, ICC-01/14-01/21-422-Conf (a public redacted version was filed on 27 July 2022: ICC-01/14-01/21-422-Red) (the ‘Defence Response’).

⁸ Transcript of status conference held on 28 January 2022, ICC-01/14-01/21-T-007-Red-ENG CT, p. 47.

⁹ Public Redacted Version of “Victims’ Observations on the ‘Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings’ (ICC-01/14-01/21-405)” No. ICC-01/14-01/21-432-Conf, dated 25 July 2022, 25 July 2022, ICC-01/14-01/21-432-Red (the ‘OPCV Observations’).

¹⁰ Decision on the Scope of the Charges, 6 September 2022, ICC-01/14-01/21-472 (the ‘Decision on the Scope of the Charges’), para. 25.

¹¹ Decision on the confirmation of charges against Mahamat Said Abdel Kani, 9 December 2021, ICC-01/14-01/21-218-Red (the ‘Confirmation Decision’), para. 29.

¹² Third Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 12 September 2022, ICC-01/14-01/21-478, (the ‘Third Report’) with one confidential annex; Third Registry Transmission of Group A Victim Applications for Participation in Trial Proceedings, 12 September 2022, ICC-01/14-01/21-477, with three confidential *ex parte* annexes and three confidential redacted annexes.

9. On 27 September 2022, the Chamber issued its ‘Order for the Reassessment of Victims Applications’ (the ‘Order for Reassessment’),¹³ instructing the Registry to reassess all victims’ 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.

10. On 11 October 2022, the Registry submitted its ‘Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings’ (the ‘Updated Assessment Report’).¹⁴

11. On 24 October 2022, the OPCV¹⁵ and the Defence¹⁶ submitted observations on the Updated Assessment Report. The Prosecution did not provide any observations.

12. On 12 December 2022, the Registry informed the Chamber that a/70906/22 had resubmitted the signed signature page of his application.¹⁷ Since the Registry had already considered the application complete based on other information, this resubmission of the signature page had no impact on the Updated Assessment Report.

II. SUBMISSIONS

A. The Second Report

1. Registry

13. The Registry points out that three¹⁸ of the five Group C applications were originally submitted and rejected during the confirmation phase.¹⁹ Since then, the

¹³ Order for the Reassessment of Victims Applications, 27 September 2022, ICC-01/14-01/21-490.

¹⁴ Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings, 11 October 2022, ICC-01/14-01/21-498 (the ‘Updated Assessment Report’).

¹⁵ Common Legal Representative of Victims’ response to the “Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings” (ICC-01/14-01/21-498), 24 October 2022, ICC-01/14-01/21-512 (the ‘OPCV Observations on Updated Assessment Report’).

¹⁶ Version Publique Expurgée des « Observations de la Défense sur le « Updated Registry Assessment Report on Previously Transmitted Victim Applications for participation in Trial Proceedings » (ICC-01/14-01/21-498) » (ICC-01/14-01/21-511-Conf), 31 October 2022, ICC-01/14-01/21-511-Red (the ‘Defence Observations on Updated Assessment Report’).

¹⁷ Email from VPRS to the Chamber, 12 December 2022, at 17:59.

¹⁸ a/20603/21; a/20607/21; and a/20608/21

¹⁹ 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, (the ‘Pre-Confirmation Participation Decision’) paras 43 and 46. a/20603/21 and a/20607/21’s applications were rejected because the timing

applicants provided additional information, giving rise to discrepancies which the Registry refers to the Chamber for assessment.²⁰ In relation to the other two applicants,²¹ the Registry notes that the Pre-Trial Chamber had considered that the events of which they claim to be victims fall outside the temporal scope of the case.²²

2. Prosecution

14. In relation to a/20603/21, a/20607/21 and a/20608/21, the Prosecution points out that the former and the latter not only changed the dates of the events but also the account of what allegedly happened. According to the Prosecution, these changes are not sufficiently explained.²³ Moreover, the Prosecution expresses concern about the reliability of the revised application of all three applicants.

15. The Prosecution notes, in this regard, that none of the applicants were interviewed by the Prosecution and that it is not in possession of any information confirming the presence of these three applicants at the OCRB at the alleged time they now provide.²⁴ Finally, the Prosecution submits that, except for a/20607/21, neither of the two other applicants provide information suggesting that their detention and mistreatment at the OCRB was because they were perceived to be pro-Bozizé supporters or on any other persecutory ground.²⁵

16. In relation to a/70311/22 and a/70312/22, the Prosecution points out that they are [REDACTED].²⁶ For this reason, the Prosecution argues that they should be authorised to participate in these proceedings.

of the incidents that allegedly caused the harm was too far removed from the periods relevant to the crimes charged. a/20608/21's application was rejected because the application was deemed to be so lacking in detail that it was difficult to determine whether or not he was detained or mistreated at the OCRB or the CEDAD during the relevant periods.

²⁰ Second Report, ICC-01/14-01/21-405-Red, para. 19

²¹ a/70311/22 and a/70312/22.

²² Second Report, ICC-01/14-01/21-405-Red, para. 20, *referring to* Confirmation Decision, ICC-01/14-01/21-218-Red, para. 117.

²³ Prosecution Observations, ICC-01/14-01/21-420-Red, paras 11, 13.

²⁴ Prosecution Observations, ICC-01/14-01/21-420-Red, para. 15.

²⁵ Prosecution Observations, ICC-01/14-01/21-420-Red, para. 16.

²⁶ Prosecution Observations, ICC-01/14-01/21-420-Red, para. 17, *referring to* Confidential Annex A, 10 July 2022, ICC-01/14-01/21/354-Conf-AnxA.

3. *Defence*

17. The Defence argues that the Chamber should rigorously examine all applications, because: (i) allowing victims to participate by definition prejudices the accused because he will have to respond to their allegations; and (ii) all applications were received after the Confirmation Decision, which allowed the applicants to adjust their story.²⁷ The Defence also submits that, due to extensive redactions and missing support evidence, it lacks the necessary information to meaningfully comment on the applications.²⁸

18. In relation to a/20603/21, the Defence points out that the applicant changed his story in terms of who allegedly took him to the hospital after he was injured and provides no explanation for this change.²⁹ The Defence also casts doubts on the explanation for the change in terms of dates.³⁰

19. In relation to a/20607/21, the Defence submits that the explanation as to the change in dates is unpersuasive and questions the reliability of the process by which the original application form was filled in. The Defence specifically questions why the applicant initially gave a specific date and is now much vaguer in terms of timing.³¹

20. Similarly, in relation to a/20608/21, the Defence points out that the applicant had originally given a very precise date and time of the alleged event and never explains why this supposedly wrong information was initially provided.³²

21. As regards a/70311/22 and a/70312/22, the Defence argues that they were detained outside the period of the charges. Specifically in relation to a/70311/22, the Defence refers to the applicant's witness statement to the Prosecution to argue that it is impossible to determine when he was detained.³³ Similarly, in relation to a/70312/22, the Defence points out that, in his witness statement, he claimed to be unable to even indicate the month when he was detained.³⁴ The Defence also submits that no

²⁷ Defence Response, ICC-01/14-01/21-422-Red, paras 3-7.

²⁸ Defence Response, ICC-01/14-01/21-422-Red, paras 8-26.

²⁹ Defence Response, ICC-01/14-01/21-422-Red, para. 28.

³⁰ Defence Response, ICC-01/14-01/21-422-Red, para. 28.

³¹ Defence Response, ICC-01/14-01/21-422-Red, para. 29.

³² Defence Response, ICC-01/14-01/21-422-Red, para. 30.

³³ Defence Response, ICC-01/14-01/21-422-Red, para. 34, *referring to* CAR-OTP-2050-0172, paras 17, 54, 56.

³⁴ Defence Response, ICC-01/14-01/21-422-Red, para. 35, *referring to* CAR-OTP-2130-2147, para. 20.

explanation is given for the discrepancy in terms of the timing of the events between the applicant's witness statement and his application form.³⁵ Finally, the Defence complains that the *mandat de dépôt* attached to a/70312/22's application is entirely redacted, making it impossible for it to verify the dates.

4. OPCV

22. The OPCV argues that the Chamber should take a flexible approach towards authorising victims participation.³⁶ In relation to a/20603/21, a/20607/21 and a/20608/21, the OPCV argues that the Chamber should consider that the events happened many years ago and 'left durable traumatic scars that affect the recollection of the events by the victims'.³⁷

23. Regarding a/70311/22 and a/70312/22, the OPCV focuses most of its attention on arguing that the VPRS has exceeded its mandate by entering into speculation related to possible conflicting information contained in the witnesses' statements vis-à-vis the scope of the case.³⁸ According to the OPCV, the *prima facie* standard is met as soon as the crimes described in the applications *may* fall within the scope of the case.³⁹ In any case, the OPCV argues that a/70311/22 and a/70312/22 were detained at the OCRB [REDACTED].⁴⁰

B. The Updated Assessment Report

1. Registry

24. In the Updated Assessment Report, the Registry indicates that, following the issuance of the Order for Reassessment, it has reassessed the 37 applications originally classified as Group A in the First, Second, and Third Reports, in light of the clarified scope of the charges, and has concluded that: 25 remain in Group A, four are assessed as falling into group C, and eight are considered incomplete.⁴¹

³⁵ Defence Response, ICC-01/14-01/21-422-Red, para. 35.

³⁶ OPCV Observations, ICC-01/14-01/21-432-Red, para. 2.

³⁷ OPCV Observations, ICC-01/14-01/21-432-Red, para. 15.

³⁸ OPCV Observations, ICC-01/14-01/21-432-Red, para. 17.

³⁹ OPCV Observations, ICC-01/14-01/21-432-Red, para. 18.

⁴⁰ OPCV Observations, ICC-01/14-01/21-432-Red, para. 20.

⁴¹ Updated Assessment Report, ICC-01/14-01/21-498, paras 18-19.

25. Regarding the applications classified as falling within Group A, the Registry indicates that the harm suffered by the applicants clearly results from the Incidents included within the scope of the charges.⁴² The Registry explains that it reached this conclusion based on the following factors:

- a. Some applicants are dual status witnesses whose pseudonym is specifically mentioned in the Incidents and/or in other paragraphs of the Confirmation Decision referring to those Incidents;
- b. The applicants' names or identifying personal details (such as, for example, the applicant's profession) are provided in the Incidents; and
- c. The details contained in the applications.⁴³

26. Regarding the four applications classified as falling within Group C, the Registry indicates that it cannot clearly determine whether they fall within the scope of Incidents (b), (c), or (e).⁴⁴ It specifies that, although the applicants' narratives match the description of the Incidents, they are not specifically mentioned in the relevant paragraphs beyond the general notion of 'other detainees'.⁴⁵

27. Last, regarding the eight applications assessed as incomplete, the Registry indicates that it has requested additional information from these applicants in order to conduct a new assessment and report back to the Chamber.⁴⁶

2. *OPCV*

28. The OPCV argues that the Decision on the Scope of the Charges has no bearing on the eligibility of victims to participate in the proceedings.⁴⁷ It further submits that excluding victims on this basis would not only amount to a *de facto* reconsideration of the First Decision, but would also jeopardise meaningful and effective participation of

⁴² Updated Assessment Report, ICC-01/14-01/21-498, para. 20.

⁴³ Updated Assessment Report, ICC-01/14-01/21-498, para. 21.

⁴⁴ Updated Assessment Report, ICC-01/14-01/21-498, para. 23.

⁴⁵ Updated Assessment Report, ICC-01/14-01/21-498, paras 24-25.

⁴⁶ Updated Assessment Report, ICC-01/14-01/21-498, paras 26-27.

⁴⁷ OPCV Observations on Updated Assessment Report, ICC-01/14-01/21-512, paras 2, 17.

victims and constitute an unprecedented step backwards for the rights of victims to participate in proceedings before the Court.⁴⁸

29. In the submission of the OPCV, a restrictive interpretation of the charges would lead to ‘an absurd and discriminatory situation’ whereby victims not specifically identified in paragraph 29 of the Confirmation Decision will not be allowed to participate in the proceedings despite having been detained at the exact same time as other victims specifically identified therein and allowed to participate as a result.⁴⁹ In sum, the OPCV argues that all 37 applications previously assessed as falling in Group A, as well as all future applications, should be assessed pursuant to the same criteria previously applied and should therefore be granted victim status because they all fall within the geographical, temporal and material scope of the charges.⁵⁰

30. In the alternative, the OPCV submits that Group C applicants a/70294/22, a/70295/22, a/70296/22 and a/70447/22 should participate in the proceedings as their narratives match the description of Incidents (b), (c) or (e) and the fact that their names are not mentioned cannot serve as a basis to exclude them from participating.⁵¹ Regarding a/70286/22, a/70448/22, a/70449/22, a/70450/22, a/70451/22, a/70452/22, a/70453/22, a/70454/22, a/20603/21, a/20607/21 and a/20608/21, the OPCV argues that these applications fulfil the *prima facie* criteria for the victims to be admitted to participate at the current stage of the proceedings. In the alternative, she requests that the Chamber defer its ruling on their applications until supplementary information, if any, is collected.⁵²

3. Defence

31. Regarding the applicants classified in Group A, the Defence reiterates its previous submissions and argues that it does not possess all the necessary information to assess the applications, either because it was not provided with useful documents or because the applied redactions prevent the Defence from fully understanding the victims’

⁴⁸ OPCV Observations on Updated Assessment Report, ICC-01/14-01/21-512, paras 3, 18, 22-23.

⁴⁹ OPCV Observations on Updated Assessment Report, ICC-01/14-01/21-512, para. 24.

⁵⁰ OPCV Observations on Updated Assessment Report, ICC-01/14-01/21-512, paras 25-26.

⁵¹ OPCV Observations on Updated Assessment Report, ICC-01/14-01/21-512, paras 28-30.

⁵² OPCV Observations on Updated Assessment Report, ICC-01/14-01/21-512, paras 35-41.

applications.⁵³ In addition, the Defence submits that the content of the victims' applications is vague, unclear and lacks essential information.⁵⁴ Accordingly, the Defence asserts that it is impossible for it, as well as for the Chamber, to determine whether the applicants qualify as direct victims of the alleged crimes.⁵⁵

32. More specifically in relation to applicants classified by the Registry as falling within Group A, the Defence submits that regarding a/70307/22 and a/70310/22, in addition to the lack of medical certificates and specific information concerning the individuals who are allegedly responsible for the alleged crimes, the applications do not include a date that would allow the alleged facts to be linked to Incident (h), as suggested by the Registry.⁵⁶ Regarding applicant a/70314/22, the Defence submits that the Registry's suggestion that the alleged facts may fall within Incident (e) is not confirmed by a reading of the facts alleged in the application, as they allegedly took place from [REDACTED] onwards, whereas Incident (e) refers to events that unfolded around 22 August 2013.⁵⁷

33. Regarding a/70294/22, a/70295/22, a/70296/22 and a/70447/22, which were reclassified from Group A to Group C by the Registry, the Defence submits that the applications do not provide the necessary elements to establish a link with any of the Incidents alleged in the charges.⁵⁸ In particular, the Defence argues that none of the applications correspond to any of the relevant dates that would allow them to be linked to Incidents (b), (c), or (e), as suggested by the Registry.⁵⁹ Accordingly, the Defence requests that the four applications be rejected.⁶⁰

34. Last, regarding the eight applications classified as incomplete by the Registry, the Defence submits that the applicants should provide material and objective evidence in support of any clarification that they may make.⁶¹ The Defence further submits that the applicants should justify why a particular detail or date was not provided in the initial

⁵³ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, paras 19, 20-25.

⁵⁴ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 26.

⁵⁵ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 24.

⁵⁶ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 29.

⁵⁷ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 30.

⁵⁸ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, paras 31-33.

⁵⁹ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 34-38.

⁶⁰ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 39.

⁶¹ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, paras 40-41.

application.⁶² The Defence submits that, otherwise, there is a risk that applicants may change their statements, without evidence, based on the Chamber's decisions and the Registry's report, which are both public, to allow their applications to be admitted.⁶³

III. PRELIMINARY ISSUES

35. Regarding the Defence's reiterated submissions that the victim application procedure involves an adversarial process and that the redactions applied are excessive,⁶⁴ the Chamber refers to its findings in the First Decision regarding the scope of the review conducted in order to authorise victims to participate in the proceedings and the role of the parties, the participants, the Registry, and the Chamber in the process.⁶⁵

36. In addition, the Chamber notes that it has reviewed the redactions applied and it is satisfied that, even with redactions, the applications still contain sufficient information to allow the parties to make meaningful submissions in relation to each individual applicant. Moreover, the Chamber cannot fail to note that, in relation to [REDACTED] and [REDACTED], the Registry [REDACTED].⁶⁶ Accordingly, despite the fact that the Registry redacted the names and other identifying information from the application forms,⁶⁷ the Defence did, in fact, have access to some of the information which it complains was entirely redacted.⁶⁸

37. Regarding the OPCV's submissions, the Chamber is not persuaded that it would be 'absurd and discriminatory' and a setback for victims' rights if the Chamber were not to authorise anyone who was detained at the OCRB during the period covered by the charges to participate in these proceedings.⁶⁹ On the contrary, given the scope of the charges, it would be inappropriate to allow individuals who cannot establish a *prima facie* link to one of the charged Incidents, as clarified by the Chamber in its Decision

⁶² Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 41.

⁶³ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 41.

⁶⁴ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, paras 20-27.

⁶⁵ First Decision, ICC-01/14-01/21-331, paras 10-12.

⁶⁶ Second Report, ICC-01/14-01/21-405-Red, para. 20.

⁶⁷ ICC-01/14-01/21-406-Conf-Anx8-Red and ICC-01/14-01/21-406-Conf-Anx9-Red.

⁶⁸ See also Defence Response, ICC-01/14-01/21-422-Red, para. 35, where the Defence submits that the *mandat de dépôt* is entirely redacted, whereas a copy of this document (CAR-OTP-2073-0734-R01) was disclosed to the Defence in April 2021.

⁶⁹ OPCV Observations on Updated Assessment Report, ICC-01/14-01/21-512, paras 22-26.

on the Scope of the Charges, to participate. Indeed, as held by the Appeals Chamber, applicants only qualify as victims in the sense of rule 85 of the Rules if they are able to demonstrate a link between the harm suffered and the particular crimes *charged*, even if their personal interests are otherwise affected by an issue in the trial.⁷⁰

IV. ANALYSIS

38. The Chamber notes that, since the start of the trial proceedings, the Court has received 45 applications to participate in the trial of Mr Said. Of those, three applications were already rejected by the Chamber,⁷¹ 25 applicants are currently deemed by the Registry as clearly qualifying as victims of the case (Group A), nine applications as being difficult to determine (Group C), and eight as still incomplete. In line with the approach adopted in this case, the Chamber will assess all the applications.⁷² Regarding the eight incomplete applications, the Chamber will defer its ruling on them until they are completed and assessed by the Registry.

39. In analysing the applications, the Chamber has assessed a person to qualify as a victim pursuant to rule 85(a) of the Rules if:

- 1) the applicant's identity has been duly established;
- 2) the events described in the application form correspond to the alleged crimes which have been confirmed in the 18 specific Incidents listed in paragraph 29 of the operative part of the Confirmation Decision;⁷³ and
- 3) 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).

40. In relation to point two above, 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. It follows that, at this

⁷⁰ 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 61-64.

⁷¹ First Decision, ICC-01/14-01/21-331, paras 18-26.

⁷² Participation Decision, ICC-01/14-01/21-278, para. 16.

⁷³ Confirmation Decision, ICC-01/14-01/21-218-Red, para. 29.

stage of proceedings, when victim applicants can make a *prima facie* case that they potentially fall within the scope of an Incident then they may be authorised to participate as victims of the charged crime.

41. As noted in the First Decision, the Chamber stresses that its determination as to whether the above criteria have been met is based on a *prima facie* assessment.⁷⁴ In this regard, the Chamber is mindful of the nature of victim application forms, in that they are not testimonial, and the manner and circumstances in which they are completed, typically with the assistance of third parties. As such, the Chamber reiterates that it will not engage in a systematic in-depth credibility assessment of the information provided by the applicants and the authorisation to participate in the proceedings does not imply a finding that the alleged crimes took place.⁷⁵ The Chamber further stresses that the fact that a person is authorised to participate as a victim in these proceedings does not necessarily mean that he or she is entitled to receive reparations in the event that Mr Said were to be convicted for the charged Incident to which the applicant was *prima facie* connected.

42. The Chamber wishes to emphasise that the fact that an applicant does not meet these criteria does not mean that he or she is not a victim in a broader sense. As noted above, this case is limited to the 18 specific charged incidents and does not include everyone who may have suffered harm at the hands of the Seleka at the OCRB during the period when Mr Said allegedly held a position of authority there. Accordingly, a rejection of an applicant's application to participate should not be interpreted as a denial of the applicant's suffering.

A. Group A Applications

43. The Chamber has analysed the 25 applications and is satisfied that the alleged crimes in respect of which they or their relatives are alleged to have been the victims fall within the scope of the charges.

44. As regards the Defence's objections based on the unavailability of medical records to corroborate the factual allegations made in the application forms, the

⁷⁴ First Decision, ICC-01/14-01/21-331, para. 9.

⁷⁵ First Decision, ICC-01/14-01/21-331, para. 9.

Chamber recalls that this is not a formal requirement and that the Chamber only conducts a *prima facie* review at this stage.⁷⁶ Therefore, the Chamber does not consider that the absence of medical documentation is ground to reject the applications.

45. Specifically in relation to a/70307/22 and a/70310/22, the Chamber has considered the Defence's argument that they cannot be linked to Incident (h) because the applicants do not provide dates.⁷⁷ In relation to a/70307/22, the Chamber notes that the applicant does provide a date for when he was liberated, from which it is possible to assess when he would have first been apprehended. Moreover, the facts set out in a/70307/22's application correspond closely to the alleged events that are the subject of Incident (h). Similarly, although a/70310/22 does not provide any dates, the description of events is sufficiently similar to that of other applicants in relation to Incident (h) to satisfy the Chamber that he qualifies as a potential victim of this Incident for the purposes of participation in these proceedings.

46. As regards a/70314/22, it is not clear to the Chamber why the Registry suggested that he is a potential victim of Incident (e). Applicant a/70314/22 was originally mentioned in the Document Containing the Charges in the description of incident (c), which relates primarily to P-0481.⁷⁸ It is significant to note, in this regard, that the Pre-Trial Chamber removed specific mention of a/70314/22 from this Incident because his testimony was not included in the Prosecution's List of Witnesses.⁷⁹ However, the Pre-Trial Chamber did confirm Incident (b) relating to P-0481 and the Incident still mentions the allegation that P-0481 was detained 'along with other perceived BOZIZE supporters'.⁸⁰ It is quite clear from a/70314/22's application that he was detained because he was suspected of being linked to Bozizé. In terms of timing, according to a/70314/22's application, he was detained at the OCRB a few days after P-0481 was allegedly detained there. Accordingly, the time of detention of a/70314/22 coincided at

⁷⁶ First Decision, ICC-01/14-01/21-331, paras 9-10.

⁷⁷ Defence Observations on Updated Assessment Report, ICC-01/14-01/21-511-Red, para. 29.

⁷⁸ Corrected Version of "Document Containing the Charges", 16 August 2021, ICC-01/14-01/21-144-Conf, 26 October 2021, ICC-01/14-01/21-144-Conf-Corr (the 'Document Containing the Charges'), (a public redacted version of the corrected version was filed on 27 October 2021: ICC-01/14-01/21-144-Red-Corr) para. 33(c): '...During his detention, P-0481, along with other perceived BOZIZE supporters like P-3047, was deprived of sufficient nutrition and independent medical treatment...'

⁷⁹ Confirmation Decision, ICC-01/14-01/21-218-Red, para. 87.

⁸⁰ Confirmation Decision, ICC-01/14-01/21-218-Red, para. 29(b).

least partially with P-0481's. The Chamber therefore considers that the events described in a/70314/2's application form correspond to the crimes alleged under Incident (b) and a/70314/22 is authorised to participate on this basis.

47. In sum, the Chamber authorises the following victims to participate in these proceedings:

- a/70289/22⁸¹ – Incident (a) – Dual status ([REDACTED])
- a/70314/22⁸² – Incident (b) – Dual status ([REDACTED])
- a/70297/22⁸³ – Incident (c) - Dual status ([REDACTED])
- a/70290/22⁸⁴ – Incident (h)
- a/70291/22⁸⁵ – Incident (h) – Dual status ([REDACTED])
- a/70292/22⁸⁶ – Incident (h) – Dual status ([REDACTED])
- a/70293/22⁸⁷ – Incident (h)
- a/70298/22⁸⁸ – Incident (h)
- a/70303/22⁸⁹ – Incident (h)
- a/70306/22⁹⁰ – Incident (h) – Dual status ([REDACTED])
- a/70307/22⁹¹ – Incident (h)
- a/70308/22⁹² – Incident (h)
- a/70310/22⁹³ – Incident (h)
- a/70313/22⁹⁴ – Incident (h) – Dual status ([REDACTED])
- a/70830/22⁹⁵ – Incident (h)
- a/70905/22⁹⁶ – Incident (h)

⁸¹ ICC-01/14-01/21-296-Conf-Exp-Anx6.

⁸² ICC-01/14-01/21-406-Conf-Exp-Anx11.

⁸³ ICC-01/14-01/21-296-Conf-Exp-Anx14.

⁸⁴ ICC-01/14-01/21-296-Conf-Exp-Anx7.

⁸⁵ ICC-01/14-01/21-296-Conf-Exp-Anx8.

⁸⁶ ICC-01/14-01/21-296-Conf-Exp-Anx9.

⁸⁷ ICC-01/14-01/21-296-Conf-Exp-Anx10.

⁸⁸ ICC-01/14-01/21-296-Conf-Exp-Anx15.

⁸⁹ ICC-01/14-01/21-296-Conf-Exp-Anx20.

⁹⁰ ICC-01/14-01/21-296-Conf-Exp-Anx23.

⁹¹ ICC-01/14-01/21-406-Conf-Exp-Anx4.

⁹² ICC-01/14-01/21-406-Conf-Exp-Anx5.

⁹³ ICC-01/14-01/21-406-Conf-Exp-Anx7.

⁹⁴ ICC-01/14-01/21-406-Conf-Exp-Anx10.

⁹⁵ ICC-01/14-01/21-477-Conf-Exp-Anx1.

⁹⁶ ICC-01/14-01/21-477-Conf-Exp-Anx2.

a/70300/22⁹⁷ – Incident (i) – Dual status ([REDACTED])
 a/70190/22⁹⁸ – Incident (j) – Dual status ([REDACTED])
 a/70309/22⁹⁹ – Incident (l) – Dual status ([REDACTED])
 a/70301/22¹⁰⁰ – Incident (m) – Dual status ([REDACTED])
 a/70906/22¹⁰¹ – Incident (m) – Dual status ([REDACTED])
 a/70302/22¹⁰² – Incident (o) – Dual status ([REDACTED])
 a/70299/22¹⁰³ – Incident (q) – Dual status ([REDACTED])
 a/70304/22¹⁰⁴ – Incident (q) – Dual status ([REDACTED])
 a/70305/22¹⁰⁵ – Incident (q) – Dual status ([REDACTED])

B. Group C Applications

48. The nine group C applications, transmitted in the Second Report and in the Updated Assessment Report, will be analysed separately according to the following categories: (i) applicants a/20603/21, a/20607/21 and a/20608/21, whose applications were rejected during the confirmation phase because the events were deemed to fall outside the temporal and/or geographic scope of the charges and who later provided updated information regarding the dates and/or location of the events; (ii) applicants a/70311/22 and a/70312/22, two Prosecution witnesses who are alleged victims of incident 33(r) of the Document Containing the Charges, which was not confirmed by the Pre-Trial Chamber; and (iii) applicants a/70294/22, a/70295/22, a/70296/22 and a/70447/22, for whom the Registry could not make a clear determination in the Updated Assessment Report.

⁹⁷ ICC-01/14-01/21-296-Conf-Exp-Anx17

⁹⁸ ICC-01/14-01/21-296-Conf-Exp-Anx4

⁹⁹ ICC-01/14-01/21-406-Conf-Exp-Anx-6.

¹⁰⁰ ICC-01/14-01/21-296-Conf-Exp-Anx18.

¹⁰¹ ICC-01/14-01/21-477-Conf-Exp-Anx3.

¹⁰² ICC-01/14-01/21-296-Conf-Exp-Anx19.

¹⁰³ ICC-01/14-01/21-296-Conf-Exp-Anx16.

¹⁰⁴ ICC-01/14-01/21-296-Conf-Exp-Anx21.

¹⁰⁵ ICC-01/14-01/21-296-Conf-Exp-Anx22.

I. a/20603/21, a/20607/21 and a/20608/21

(a) a/20603/21¹⁰⁶

49. In his original application of August 2021, a/20603/21 claimed that he had been the victim of [REDACTED] and subsequent detention and torture at the OCRB, where he spent a week in detention in [REDACTED]. After his application was rejected by the Pre-Trial Chamber for being outside the temporal scope of the charges,¹⁰⁷ he submitted additional declarations in which he claims that [REDACTED] took place on [REDACTED]. The applicant explains his original mistake on the basis that his father had died [REDACTED].

50. The Chamber notes that the Prosecution did not charge and the Pre-Trial Chamber did not confirm any incidents allegedly taking place during the new time period put forward by a/20603/21 in his additional declarations, namely [REDACTED]. Accordingly, the Chamber is not satisfied that the events described in a/20603/21's application form correspond to the alleged crimes which have been confirmed in the Incidents set out in the Confirmation Decision. In these circumstances, a/20603/21 cannot be authorised to participate.

(b) a/20607/21¹⁰⁸

51. The original application of a/20607/21 was rejected by the Pre-Trial Chamber because he alleged that the detention and mistreatment at the OCRB lasted from [REDACTED].¹⁰⁹ In two additional declarations subsequently submitted, a/20607/21 claims that the facts actually took place in [REDACTED].¹¹⁰ He explains this shift by claiming that he had not understood the question when completing the original application and that he just wanted to give a date for his story.¹¹¹ He states that he now knows the correct date on the basis of conversations he had with a relative.

52. The Chamber has taken note of a/20607/21's explanation for the change in dates, but finds it implausible that a misunderstanding as to the question led him to give an

¹⁰⁶ ICC-01/14-01/21-406-Conf-Exp-Anx1.

¹⁰⁷ Pre-Confirmation Participation Decision, ICC-01/14-01/21-199, paras 42-43.

¹⁰⁸ ICC-01/14-01/21-406-Conf-Exp-Anx2.

¹⁰⁹ Pre-Confirmation Participation Decision, ICC-01/14-01/21-199, paras 42-43.

¹¹⁰ ICC-01/14-01/21-406-Conf-Exp-Anx2, pp. 9, 12.

¹¹¹ ICC-01/14-01/21-406-Conf-Exp-Anx2, p. 12.

incorrect date when completing his original application, particularly in view of the fact that the applicant also states that he just wanted to give a date for his story. The original application was very specific about both the date of his arrest, as well as the date (and even time) of his release, and the explanations provided in the additional declarations raise *prima facie* questions regarding the credibility of this aspect of the applicant's story. The Chamber is also mindful that a/20607/2's additional declarations were prepared in light of the Pre-Trial Chamber's decision to reject his original application. In these circumstances, the Chamber cannot authorise a/20607/21 to participate in these proceedings.

(c) **a/20608/21**¹¹²

53. The application of a/20608/21 pertains to the alleged disappearance of her father. In the original application, it was claimed that a/20608/21's father was abducted on [REDACTED] by Mr Said because of his opposition to the Seleka. As the original application made no mention of the OCB or the CEDAD, the Pre-Trial Chamber denied authorisation to participate in the confirmation proceedings.¹¹³ Since then, the applicant provided additional declarations and now claims that her father was abducted towards [REDACTED] and that he was taken to the OCB.¹¹⁴ a/20608/21 explains the shift in the timing of the alleged abduction and disappearance of her father on the basis of the fact that she was stressed and not in a good state of mind when she completed the original application form.¹¹⁵

54. The Chamber notes that a/20608/21's current version of events in terms of timing is called into question by her father's death certificate,¹¹⁶ which mentions [REDACTED] as the date of death. The Chamber notes, in this regard, that this is the same date on which a/20608/21 originally claimed that her father was arrested.¹¹⁷ Similarly, the Chamber notes that the original application made no reference to the OCB and a/20608/21 did not provide information relating to the OCB until it was noted as a reason for the original rejection of her application, which raises *prima facie*

¹¹² ICC-01/14-01/21-406-Conf-Exp-Anx3.

¹¹³ Pre-Confirmation Participation Decision, ICC-01/14-01/21-199, para. 46.

¹¹⁴ ICC-01/14-01/21-406-Conf-Exp-Anx3, pp. 10-11, 13.

¹¹⁵ ICC-01/14-01/21-406-Conf-Exp-Anx3, p. 13.

¹¹⁶ ICC-01/14-01/21-406-Conf-Exp-Anx3, p. 8.

¹¹⁷ ICC-01/14-01/21-406-Conf-Exp-Anx3, p. 1.

questions regarding the credibility of key aspects of the applicant's story. In these circumstances, the Chamber cannot authorise a/20608/21 to participate in these proceedings.

2. *a/70311/22 and a/70312/22*

55. *a/70311/22* and *a/70312/22* are two Prosecution witnesses who were the two main alleged victims of incident 33(r) of the Document Containing the Charges filed before the confirmation of charges.¹¹⁸ This incident was not confirmed by the Pre-Trial Chamber because the wording of the incident suggested that the alleged events fell outside the temporal scope of the charges.¹¹⁹ The Chamber subsequently found that the Prosecution could not add new incidents, including the old incident 33(r), to the charges absent an amendment to the charges.¹²⁰ The question remains whether the events related in *a/70311/22* and *a/70312/22*'s applications fall in whole or in part within the scope of one of the other confirmed Incidents in terms of timing and substance.

56. Although *a/70311/22* and *a/70312/22* were not arrested under the same circumstances, both claim to have been detained in a cell [REDACTED].¹²¹ They say that from there they were moved to the OCRB together, where they were detained in the underground cell.¹²² Although the applications lack precision and clarity on the timing and sequence of events, a combined reading of both applications suggests that *a/70311/22* and *a/70312/22* may have been transferred to the OCRB [REDACTED].

57. The Chamber is cognisant of the Defence's objections in this regard, but does not consider it necessary to resolve these issues for the purpose of the present decision and on the basis of their applications to participate as victims. Accordingly, the Chamber is *prima facie* satisfied on the basis of the information provided in the application forms that *a/70311/22* and *a/70312/22* may have been detained in the underground cell of the OCRB for at least a few days [REDACTED]. The Chamber underlines that this conclusion is without prejudice to any final determination that the Chamber may reach

¹¹⁸ Document Containing the Charges, ICC-01/14-01/21-144-Red-Corr, para. 33(r).

¹¹⁹ Confirmation Decision, ICC-01/14-01/21-218-Red, para. 117.

¹²⁰ Decision on Prosecution Notification regarding the Charges (ICC-01/14-01/21-262-Red), 20 April 2022, ICC-01/14-01/21-282; Decision on the Scope of the Charges, ICC-01/14-01/21-472.

¹²¹ ICC-01/14-01/21-406-Conf-Exp-Anx8, p. 2; ICC-01/14-01/21-406-Conf-Exp-Anx9, p. 2.

¹²² ICC-01/14-01/21-406-Conf-Exp-Anx8, p. 10; ICC-01/14-01/21-406-Conf-Exp-Anx9, p. 2.

on this issue for the purposes of the judgment or, if it arises, reparations, which will be based on an assessment of the sworn testimonies of these two witnesses in light of all other relevant evidence at the end of the trial.

58. The next question is whether or not the events described in a/70311/22 and a/70312/22's applications are linked to one of the confirmed Incidents. Given the timing of a/70311/22 and a/70312/22's detention and the assertion that they were detained in the underground cell, the Chamber is satisfied that the events described in their application forms may correspond to the alleged crimes which have been confirmed in Incident (o) or Incident (r). Accordingly, the Chamber authorises a/70311/22 and a/70312/22 to participate in these proceedings.

3. *a/70294/22, a/70295/22, a/70296/22 and a/70447/22*

59. As noted in the Updated Assessment Report, a/70294/22, a/70295/22, a/70296/22 and a/70447/22 are applicants in relation to whom the Registry could not clearly determine whether they fall within the scope of Incidents (b), (c), or (e).¹²³ According to the Registry, although the applicants' narratives match the description of the Incidents, they are not specifically mentioned in the relevant paragraphs of the Confirmation Decision beyond the general notion of 'other detainees'.¹²⁴

(a) Applicants a/70294/22, a/70295/22, and a/70296/22

60. The Chamber notes that a/70294/22, a/70295/22 and a/70296/22 all seem to be describing the same events. They all mention that the direct victims were engaged in [REDACTED] when they were arrested. They also mention that the direct victims were [REDACTED]. Finally, they all mention that one of the direct victims ([REDACTED]) was killed by the Seleka at the OCRB at some point.¹²⁵ It is further worth noting that a/70294/22 and a/70295/22 mention each other by name¹²⁶ and a/70295/22 identifies

¹²³ Updated Assessment Report, ICC-01/14-01/21-498, para. 23.

¹²⁴ Updated Assessment Report, ICC-01/14-01/21-498, paras 24-25.

¹²⁵ ICC-01/14-01/21-296-Conf-Exp-Anx11, pp. 5-6; ICC-01/14-01/21-296-Conf-Exp-Anx12, pp. 1, 5; ICC-01/14-01/21-296-Conf-Exp-Anx13, pp. 1, 6.

¹²⁶ ICC-01/14-01/21-296-Conf-Exp-Anx11, p. 6; ICC-01/14-01/21-296-Conf-Exp-Anx12, p. 1.

a/70296/22 as well as [REDACTED] by name.¹²⁷ It is thus safe to conclude that the three applicants describe the same events.

61. The Chamber notes from their applications that, in terms of timing, a/70294/22, a/70295/22 and a/70296/22 place the victims' arrest between [REDACTED] and indicate that they were detained over an unclear time frame. The Chamber also notes that the manner in which the narratives are set out in the application forms raises questions of consistency in terms of the sequence and timing of key events, the treatment the direct victims suffered, as well as the location where they were detained after being arrested.

62. However, for the purposes 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,¹²⁸ the Chamber does not consider it appropriate to weigh individual applications against each other in order to resolve inconsistencies and test the credibility of the applicants' accounts against the accounts of other applicants. The Chamber is satisfied that, *prima facie*, the events described in the application forms of a/70294/22, a/70295/22 and a/70296/22 correspond to the alleged crimes which have been confirmed in Incidents (b) or (e), given that the temporal scope of these Incidents ranges between June, July and August 2013.

63. Accordingly, given the standard applicable at this stage and without prejudice to any determination that may be made in the judgment or, if it arises, in respect of reparations, regarding the aforementioned Incidents, the Chamber authorises a/70294/22, a/70295/22 and a/70296/22 to participate in these proceedings.

(b) Applicant a/70447/22

64. In his application, a/70447/22 describes an [REDACTED], which the Seleka (and Mr Said in particular) resolved by forcing him and [REDACTED].¹²⁹ The applicant recounts that, on the morning of [REDACTED], the Seleka, including the accused,

¹²⁷ ICC-01/14-01/21-296-Conf-Exp-Anx12, p. 5. Applicant a/70296/22 states [REDACTED], was arrested and detained together with two other individuals without mentioning their names: ICC-01/14-01/21-296-Conf-Exp-Anx13, p. 1.

¹²⁸ See paragraph 41 above.

¹²⁹ ICC-01/14-01/21-406-Conf-Exp-Anx12, pp 1, 5.

arrived at his house and took a/70447/22, along with [REDACTED], to the OCRB.¹³⁰ On arrival, a/70447/22 and [REDACTED] were taken to the secretarial office where they remained from 9:00 to 20:00 without eating, drinking or being interviewed.¹³¹ The applicant describes various interactions with the accused, who released him the same day and released [REDACTED] the following day.¹³²

65. The Chamber notes that the events described in a/70447/22's application took place on [REDACTED]. Although there is some potential temporal overlap with Incidents (c) and (h), which make reference to other individuals in addition to identified victims, the Chamber finds that the description of events by a/70447/22 does not appear to correspond to the facts alleged in these Incidents. The Chamber further notes that, despite the fact that a/70447/22's [REDACTED], there is no indication that a/70447/22 was arrested or detained because he was perceived as a Bozizé supporter. Indeed, it would appear from the description of events in a/70447/22's application form that he and [REDACTED] were detained on account of [REDACTED] in which Mr Said is alleged to have intervened. Accordingly, in these circumstances, a/70447/22 cannot be authorised to participate.

¹³⁰ ICC-01/14-01/21-406-Conf-Exp-Anx12, p. 5.

¹³¹ ICC-01/14-01/21-406-Conf-Exp-Anx12, p. 5.

¹³² ICC-01/14-01/21-406-Conf-Exp-Anx12, pp 5-6.

FOR THESE REASONS, THE CHAMBER HEREBY

AUTHORISES all Group A applicants as well as a/70311/22, a/70312/22, a/70294/22, a/70295/22 and a/70296/22 to participate in these proceedings;

DENIES AUTHORISATION to participate in these proceedings to applicants a/20603/21, a/20607/21, a/20608/21, and a/70447/22; and

ORDERS the Registry to provide an update on the status of the eight incomplete applications referred to in paragraphs 27 and 38 of the present decision no later than 20 November 2023.

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

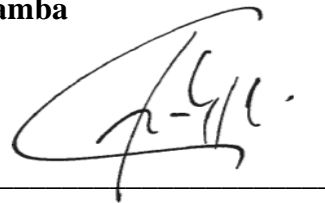


Judge Miatta Maria Samba

Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Dated 8 November 2023

At The Hague, The Netherlands