

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/21
Date: 5 December 2023

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Public Redacted Version of “Victims’ observations on the ‘Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings’ (ICC-01/14-01/21-650)”
No. ICC-01/14-01/21-657-Conf, dated 1 December 2023**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings and participating victims (the “Common Legal Representative”)¹ hereby submits her observations on the “Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings” (the “Registry Report” or the “Report”).²

2. The Common Legal Representative, notwithstanding Trial Chamber VI’s (the “Chamber”) renewed restrictive interpretation of rule 85(a) of the Rules of Procedure and Evidence (the “Rules”), posits that the five reassessed applications (the “Completed Applications”) *prima facie* fulfil the criteria for the victims to be admitted to participate in the proceedings.

II. PROCEDURAL BACKGROUND

3. On 9 December 2021, Pre-Trial Chamber II (the “Pre-Trial Chamber”) confirmed the charges against Mahamat Said Abdel Kani (“Mr Saïd” or the “Accused”) relating to crimes allegedly committed at the *Office Central de Répression du Banditisme* (the “OCRB”) between 12 April and 30 August 2013 (the “Confirmation Decision”).³

4. On 20 April 2022, the Chamber issued the “Decision on Prosecution Notification regarding the Charges (ICC-01/14-01/21-262-Red)” (the “Notification Decision”),

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG](#) and [No. ICC-01/14-01/21-T-007-Red-ENG](#), p. 47, lines 12-24; the “Decision on matters relating to the participation of victims during the trial” (Trial Chamber VI), [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; the “Decision authorising 20 victims to participate in the proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-331](#), 27 May 2022 (the “First Decision on Participation”); and the “Second Decision Authorising Victims to Participate in the Proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-640-Conf](#), 8 November 2023 (the “Second Decision on Participation”).

² See the “Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-650](#), 20 November 2023 (the “Registry Report”).

³ See the “Decision on the confirmation of charges against Mahamat Said Abdel Kani” (Pre-Trial Chamber II), [No. ICC-01/14-01/21-218-Conf](#) and [No. ICC-01/14-01/21-218-Red](#), 9 December 2021 (the “Confirmation Decision”).

ruling that “*the scope of the charged crimes in this case is limited to the specific criminal acts listed by the Pre-Trial Chamber in paragraph 29 of the Confirmation Decision*”.⁴

5. On 27 May 2022, pursuant to its “Decision on matters relating to the participation of victims during the trial”,⁵ and following the submission of the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”,⁶ the Chamber authorised 20 victims to participate in the proceedings.⁷

6. On 13 July 2022, the Registry submitted its “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”⁸ on 19 complete applications to participate in the present case, assessing 14 of them to fall in Group A and five in Group C.⁹

7. On 6 September 2022, following protracted litigation in this respect,¹⁰ the Chamber issued the “Decision on the scope of the charges”, reiterating its position adopted in the Notification Decision 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 Decision (the “Incidents”).¹¹

⁴ See the “Decision on Prosecution Notification regarding the Charges (ICC-01/14-01/21-262-Red)” (Trial Chamber VI), [No. ICC-01/14-01/21-282](#), 20 April 2022 (the “Notification Decision”).

⁵ See the “Decision on matters relating to the participation of victims during the trial” (Trial Chamber VI), [No. ICC-01/14-01/21-278](#), 13 April 2022.

⁶ See the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-297](#), 6 May 2022.

⁷ See the First Decision on Participation, *supra* note 1.

⁸ See the “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-405-Conf](#) and [No. ICC-01/14-01/21-405-Red](#), 13 July 2022.

⁹ *Ibid.*

¹⁰ See, *inter alia*, the “Prosecution’s Notification Related to Incident (r) of Paragraph 33 of the Document Containing the Charges”, [No. ICC-01/14-01/21-262-Conf](#) and [No. ICC-01/14-01/21-262-Red](#), 18 March 2022; the Notification Decision, *supra* note 4; the “Prosecution’s application to amend the charges”, [No. ICC-01/14-01/21-294-Conf](#) and [No. ICC-01/14-01/21-294-Red](#), 5 May 2022; and the “Decision on the Prosecution’s application to amend the charges”, [No. ICC-01/14-01/21-396](#), 8 July 2022.

¹¹ See the “Decision on the scope of the charges” (Trial Chamber VI), [No. ICC-01/14-01/21-472](#), 6 September 2022.

8. On 12 September 2022, the Registry submitted its “Third Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” on three applications assessed as falling in Group A.¹²
9. On 27 September 2022, the Chamber issued an order instructing the Registry “to reassess all applications that it had previously classified as Group A, including those authorised to participate in the First Decision”.¹³
10. On 11 October 2022, the Registry submitted the “Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings” (the “Updated Registry Report”),¹⁴ in which it indicated that, of the 37 applications assessed as falling in Group A so far, 25 remain in Group A, four shall now be classified as falling in Group C, and eight require additional information in order to determine under which category they fall (the “Incomplete Applications”).
11. On 24 October 2022, the Common Legal Representative¹⁵ and the Defence¹⁶ submitted observations on the Updated Registry Report.
12. On 8 November 2023, the Chamber issued the “Second Decision Authorising Victims to Participate in the Proceedings” (the “Second Decision on Participation”),¹⁷ authorising 30 victims and denying four victims to participate in the proceedings, and ordering the Registry to provide an update on the status of the Incomplete Applications by 20 November 2023 at the latest.

¹² See the “Third Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, with Confidential Annex, [No. ICC-01/14-01/21-478](#), 13 September 2022 (dated 12 September 2022).

¹³ See the “Order for the Reassessment of Victims Applications” (Trial Chamber VI), [No. ICC-01/14-01/21-490](#), 27 September 2022.

¹⁴ See the “Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings”, with Confidential Annex, [No. ICC-01/14-01/21-498](#), 11 October 2022.

¹⁵ See the “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)”, [No. ICC-01/14-01/21-512](#), 24 October 2022.

¹⁶ See the “*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).’*”, [No. ICC-01/14-01/21-511-Conf](#) and [No. ICC-01/14-01/21-511-Red](#), 24 October 2022.

¹⁷ See the Second Decision on Participation, *supra* note 1.

13. On 20 November 2023, the Registry submitted its Report reassessing the Completed Applications,¹⁸ and transmitted the latter to the Chamber and the parties.¹⁹

III. CLASSIFICATION

14. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, the present filing is classified as “confidential”, since it contains information not known to the public at this stage. A public redacted version will be filed in due course.

IV. SUBMISSIONS

15. The Common Legal Representative regrets the Chamber’s renewed restrictive interpretation of rule 85(a) of the Rules, which unduly limits the victims’ rights to meaningfully and effectively participate in the present case. Pursuant to rule 85(a) of the Rules and the Court’s consistent jurisprudence,²⁰ applicants who demonstrate *prima facie* that they have suffered harm as a result of the commission of any of the confirmed crimes allegedly committed at the OCRB between 12 April and 30 August 2013 when Mr Saïd was in charge,²¹ ought to be admitted to participate in the present proceedings.

16. Instead, the Chamber assessed applicants to qualify as victims exclusively if their harm is a result of “*events [which] 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*”,²² despite clear indication by the Pre-Trial Chamber that “*the specific criminal acts listed by the Prosecution in respect of the confirmed charges must not*

¹⁸ See the Registry Report, *supra* note 2.

¹⁹ See the “Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings”, with five Annexes in Confidential *ex parte* version, only available to the Registry and the Common Legal Representative, and in Confidential redacted version, [No. ICC-01/14-01/21-651](#), 20 November 2023.

²⁰ See, *inter alia*, the “Decision on Victims’ Participation in Trial Proceedings” (Trial Chamber V), [No. ICC-01/14-01/18-738](#), 23 November 2020, para. 21; and the “Second decision on victims’ participation in trial proceedings” (Trial Chamber VI), [No. ICC-01/04-02/06-650](#), 16 June 2015, para. 18. See also the “Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-338](#), 13 September 2019, para. 28.

²¹ See the Confirmation Decision, *supra* note 3.

²² See the Second Decision on Participation, *supra* note 1, para. 39.

[...] *be considered as definitive or exhaustive*” and that *“the extent of the victimisation in connection with the confirmed charges [is] broader than the individual examples it specifically mentioned in the operative part of the Confirmation Decision”*.²³

17. As previously argued,²⁴ and in opposition to the Chamber’s finding in this regard,²⁵ this approach constitutes an unprecedented step backwards for the rights of victims to participate in proceedings before this Court, and runs contrary to the victim-centred spirit of the Rome Statute (the “Statute”) and the interpretation of the relevant founding texts of the Court by all other chambers having ruled on the participation of victims.²⁶ Furthermore, despite the Chamber’s explanation,²⁷ the Common Legal Representative maintains that said approach clearly leads to the absurd and discriminatory situation in which victims who demonstrate a *prima facie* link to the charges as confirmed by the Pre-Trial Chamber,²⁸ but no *prima facie* link to one of the Incidents as per the Chamber’s restrictive interpretation, are not allowed to participate in the proceedings despite having been detained during or around the same time as other victims who are allowed to participate in the proceedings because they fall within the scope of one of said Incidents.

18. By way of illustration, the Common Legal Representative notes that the Chamber did not authorise a/70447/22 to participate. In its assessment, the Chamber

²³ See the “Decision on the ‘Prosecution’s application to amend the charges’”, *supra* note 10, para. 20. See also the Confirmation Decision, *supra* note 3.

²⁴ See the “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)”, *supra* note 15, paras. 3, and 22-24; and the “Victims’ response to the Prosecution’s application to amend the charges (ICC-01/14-01/21-294-Red)”, [No. ICC-01/14-01/21-310-Conf-Exp](#) and [No. ICC-01/14-01/21-310-Red](#), 16 May 2022, paras. 16-19.

²⁵ See the Second Decision on Participation, *supra* note 1, para. 37.

²⁶ See, *inter alia*, the “Fifteenth Decision on Victims’ Participation in Trial Proceedings (Group A)” (Trial Chamber V), [No. ICC-01/14-01/18-1391](#), 5 May 2022, para. 1, referring to the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-141](#), 5 March 2019, paras. 29-41; the “Decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber II), [No. ICC-01/04-02/06-211](#), 15 January 2014, para. 25; and the “Decision on the Applications for participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 (Public Redacted Version)” (Pre-Trial Chamber I), [No. ICC-01/04-101-tEN-Corr](#), 17 January 2006, para. 79.

²⁷ See the Second Decision on Participation, *supra* note 1, para. 37.

²⁸ See *supra* para. 16, and note 23.

did not question the credibility of a/70447/22's account, and specifically observed that a/70447/22 was arrested by the Seleka in the presence of Mr Saïd, and taken to the OCRB where he had *"various interactions with [Mr Saïd], who released him the same day"*.²⁹ Despite Mr Saïd's active role in a/70447/22's arrest and detention at the OCRB, within the temporal scope of the charges, the Chamber denied authorisation for a/70447/22 to participate arguing that *"[a]lthough there is some potential temporal overlap with Incidents (c) and (h), which make reference to other individuals in addition to identified victims, [...] the description of events by a/70447/22 does not appear to correspond to the facts alleged in these Incidents"*.³⁰

19. In addition, the Common Legal Representative recalls that the Chamber's narrow reading of the charges is based on its finding that *"a high degree of proximity is alleged between the acts and conduct of the Accused and the crimes committed [which] distinguish the present case from the cases of The Prosecutor v. Bosco Ntaganda and The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb') cited by the Prosecution"*.³¹ In light of the high degree of proximity between the acts and conduct of Mr Saïd and the crimes suffered by a/70447/22, the Chamber's decision to not authorise the latter to participate appears all the more illogical.

20. This being said, the Common Legal Representative notes that *"the fact that an applicant does not meet [the Chamber's] criteria does not mean that he or she is not a victim in a broader sense"*, and that the *"rejection of an applicant's application to participate should not be interpreted as a denial of the applicant's suffering"*.³² However, she submits that this consideration is of little solace to victims who simply expect to be able to fully enjoy the rights granted to them by the Statute.

21. Keeping these observations in mind, the Common Legal Representative now turns to the Report whereby the Registry assessed the Completed Applications to *"fall*

²⁹ See the Second Decision on Participation, *supra* note 1, para. 64.

³⁰ *Idem*, para. 65.

³¹ See the Notification Decision, *supra* note 4, para. 16.

³² See the Second Decision on Participation, *supra* note 1, para. 42.

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”.³³

22. Regarding applicant a/70286/22, the Registry noted that he could potentially fall within the scope of Incident (r), since it cannot be excluded that his relative was detained in an underground cell.³⁴ The Common Legal Representative reiterates that a/70286/22 is an indirect victim whose relative died as a result of the cruel treatments suffered while held in detention at the ORCB, without having had the strength to speak.³⁵ Consequently, it is not possible for a/70286/22 to provide more detailed information regarding his relative’s detention, as explained once more by a/70286/22 in the additional information to his application.³⁶

23. In this regard, the Common Legal Representative recalls that indirect victims cannot be required to recount the circumstances of a direct victim’s victimisation to the same degree of detail as the direct victim. Indeed, when dealing with the eligibility of indirect victims for reparations in the *Lubanga* case, Trial Chamber II was “*alive to the fact that an indirect victim is not in a position to know and describe the detailed circumstances of a child soldier’s deployment or demobilization to the same level of detail as the child soldier*”, and concluded that “[i]t is therefore the Chamber’s view that indirect victims cannot be required to recount the circumstances of a direct victim’s membership of the militia to the same degree of detail”.³⁷ The Common Legal Representative underlines that this principle is applicable, *mutatis mutandis*, to the participation of victims in proceedings, especially given the lower burden of proof for victims to participate – *prima facie* – than

³³ See the Registry Report, *supra* note 2, para. 19.

³⁴ *Idem*, para. 20.

³⁵ See the “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)”, *supra* note 15, para. 39, and fn. 55.

³⁶ See Annex 1 to the “Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-651-Conf-Anx1-Red](#), 20 November 2023.

³⁷ See the “Corrected Version of the ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’” (Trial Chamber II), [No. ICC-01/04-01/06-3379-Conf-Corr-tENG](#), 21 December 2017, and [No. ICC-01/04-01/06-3379-Red-Corr-tENG](#), 5 July 2018, para. 161. See also, for a recent application of the principle, the “Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659” (Trial Chamber II), [No. ICC-01/04-02/06-2858-Conf](#) and [No. ICC-01/04-02/06-2858-Red](#), 14 July 2023, para. 106.

for victims to be found eligible for reparations – on a balance of probabilities. She therefore submits that a/70286/22 meets the *prima facie* standard to qualify as a victim in the present case and should thus be admitted to participate in the proceedings.

24. Concerning applicants a/70448/22, a/70450/22, a/70453/22, and a/70454/22, the Registry stated that they could be connected to Incident (a), in line with the Second Decision on Participation,³⁸ as they have been detained at the OCRB on a date close to the dates referred to in said Incident because they were perceived as Anti-Balaka supporters.³⁹ However, the Registry assessed said applicants as falling within Group C since it could not assess clearly whether Incident (a) makes reference to other individuals, or instead is strictly limited to P-1289.⁴⁰ On this matter, the Common Legal Representative notes that, in his witness statement, P-1289 specifically mentions having [REDACTED] “[REDACTED]”.⁴¹ As such, she submits that applicants a/70448/22, a/70450/22, a/70453/22, and a/70454/22 qualify as victims in the case given their *prima facie* link to Incident (a), despite not being specifically named or identified in the Confirmation Decision.⁴²

25. Additionally, the Common Legal Representative notes that applicants a/70450/22, a/70453/22, and a/70454/22 all describe the same events and even mention each other by name.⁴³ They all state being arrested in the same location by Seleka elements under the command of the same commander because they were perceived as Anti-Balaka supporters, and being taken all three of them together in a vehicle to the OCRB.⁴⁴ They further mention that they were put together in the same cell and that

³⁸ See the Second Decision on Participation, *supra* note 1, para. 40.

³⁹ See the Registry Report, *supra* note 2, para. 21.

⁴⁰ *Idem*, para. 22.

⁴¹ See P-1289: [CAR-OTP-2053-0359-R01](#), para. 51. Further references to [REDACTED] are made, *inter alia*, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

⁴² See the Second Decision on Participation, *supra* note 1, para. 40.

⁴³ *Idem*, para. 60.

⁴⁴ See Annex 3 to the “Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-651-Conf-Anx3-Red](#), 20 November 2023; Annex 4 to the “Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-651-Conf-Anx4-Red](#), 20 November 2023; and Annex 5 to the “Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-651-Conf-Anx5-Red](#), 20 November 2023.

they were released on the same day after their family had paid a ransom to the Seleka.⁴⁵ The Common Legal Representative thus posits that a/70450/22, a/70453/22, and a/70454/22 should be authorised to participate in the present proceedings, in line with the Second Decision on Participation.⁴⁶

26. In the same way, applicant a/70448/22 describes the same events as applicants a/70449/22, a/70451/22, and a/70452/22, and they all mention each other by name.⁴⁷ They all state being arrested, or their relative being arrested,⁴⁸ on the same day, in or around the same location, by the Seleka because they were perceived as Anti-Balaka supporters, and being put in the same cell at the OCRB.⁴⁹ They further mention that a/70451/22 was put in their cell on the last day of their detention, and describe their release from the OCRB in the same conditions.⁵⁰ Consequently, the Common Legal Representative submits that a/70448/22 ought to be authorised to participate in the present proceedings, in line with the Second Decision on Participation.⁵¹

⁴⁵ *Idem*.

⁴⁶ See the Second Decision on Participation, *supra* note 1, paras. 60-63.

⁴⁷ *Idem*, para. 60.

⁴⁸ A/70451/22 describes the arrest and detention of her husband, as well as her own detention. See Annex 16 to the “Second Registry Transmission of Group A and Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-406-Conf-Anx16-Red](#), 13 July 2022.

⁴⁹ See Annex 2 to the “Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-651-Conf-Anx2-Red](#), 20 November 2023; Annex 14 to the “Second Registry Transmission of Group A and Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-406-Conf-Anx14-Red](#), 13 July 2022; Annex 16 to the “Second Registry Transmission of Group A and Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-406-Conf-Anx16-Red](#), 13 July 2022; and Annex 17 to the “Second Registry Transmission of Group A and Group C Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-406-Conf-Anx17-Red](#), 13 July 2022.

⁵⁰ *Idem*.

⁵¹ See the Second Decision on Participation, *supra* note 1, paras. 60-63.

FOR THESE REASONS, the Common Legal Representative posits that the Completed Applications *prima facie* fulfil the criteria for the victims to be admitted to participate in the proceedings, and thus respectfully requests the Chamber to admit all five applicants to participate in the proceedings.

A handwritten signature in black ink, appearing to read 'Sarah Pellet', followed by a period.

Sarah Pellet

Dated this 5th day of December 2023

At The Hague, The Netherlands