



Original: English

**No.: ICC-01/14-01/21
Date: 14 February 2024**

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 version of

Third Decision Authorising 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

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Unrepresented Victims

**Unrepresented Applicants
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**The Office of Public Counsel
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REGISTRY

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TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 64(2), 67(1) and 68(1) of the Rome Statute (the ‘Statute’), issues this ‘Third 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:

- 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

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

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

4. On 6 September 2022, the Chamber issued its ‘Decision on the Scope of the Charges’,⁵ clarifying ‘that the scope of the charged crimes in the present case is limited

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

² [Participation Decision](#), paras 10-18.

³ First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, [ICC-01/14-01/21-297](#) (‘First Report’).

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

⁵ Decision on the Scope of the Charges, 6 September 2022, [ICC-01/14-01/21-472](#), para. 25.

to the specific criminal acts listed by the Pre-Trial Chamber in paragraph 29 of the operative part of the Confirmation of Charges Decision' (the 'Incidents').⁶

5. On 27 September 2022, the Chamber issued its 'Order for the Reassessment of Victims Applications' (the 'Order'),⁷ 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.

6. 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').⁸ In this report, the Registry informed the Chamber that it was in possession of eight applications which it deemed incomplete.

7. On 8 November 2023, the Chamber issued its 'Second Decision Authorising Victims to Participate in the Proceedings'.⁹ In this decision, the Chamber deferred ruling on the eight incomplete applications and ordered the Registry to update the Chamber on the status of these applications by 20 November 2023.

8. On 20 November 2023, the Registry filed an update on the eight incomplete applications (the 'Registry Report')¹⁰ and transmitted five applications as Group C.¹¹

⁶ Public redacted version of 'Decision on the confirmation of charges against Mahamat Said Abdel Kani', 9 December 2021, [ICC-01/14-01/21-218-Red](#).

⁷ Order for the Reassessment of Victims Applications, [ICC-01/14-01/21-490](#).

⁸ Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings, [ICC-01/14-01/21-498](#) ('Updated Assessment Report').

⁹ Public Redacted Version of Second Decision Authorising Victims to Participate in the Proceedings, 8 November 2023, [ICC-01/14-01/21-640-Red](#).

¹⁰ Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings, 20 November 2023, [ICC-01/14-01/21-650](#).

¹¹ Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings, 20 November 2023, [ICC-01/14-01/21-651](#) with 5 confidential annexes.

9. On 1 December 2023, the Prosecution,¹² the OPCV¹³ and the Defence¹⁴ submitted observations on the Registry Report.

10. On 6 December 2023, the Defence asked to be authorised to file a reply to the Victims' Observations (the 'Request to Reply').¹⁵

11. On 7 December 2023, the OPCV responded to the Request to Reply.¹⁶

II. SUBMISSIONS & ANALYSIS

12. According to the Registry Report, the Registry received additional information in relation to five applicants. Another applicant, a/70451/22, is reportedly dead but her family may pursue her application in the future.¹⁷ Finally, two applicants, a/70449/22 and a/70452/22, could not be reached and their applications remain incomplete.¹⁸ In relation to the five applicants for whom additional information was received, the following submissions were made:

¹² Public Redacted Version of Prosecution's Observations on the 'Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings' (ICC-01/14-01/21-651), 1 December 2023, [ICC-01/14-01/21-658-Red](#) (the public redacted version was filed on 12 December 2023) (the 'Prosecution Observations').

¹³ 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), 1 December 2023, [ICC-01/14-01/21-657-Red](#) (the public redacted version was filed on 5 December 2023) (the 'Victims' Observations').

¹⁴ Version Publique Expurgée de la 'Réponse de la Défense au « Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings » (ICC-01/14-01/21-650) et au « Third Registry Transmission of Group C Victim Applications for Participation in Trial Proceedings » (ICC-01/14-01/21-651)' (ICC-01/14-01/21-655-Conf), 1 December 2023, [ICC-01/14-01/21-655-Red](#) (the public redacted version was filed on 5 December 2023) (the 'Defence Response').

¹⁵ Version publique expurgée de la 'Demande d'autorisation de répliquer à la « Victims' observations on the « Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings » (ICC-01/14-01/21-650) » (ICC-01/14-01/21-657)', 6 December 2023, [ICC-01/14-01/21-662-Red](#) (the public redacted version was filed on 13 December 2023) (the 'Request to Reply').

¹⁶ Victims' response to the 'Demande d'autorisation de répliquer à la "Victims' observations on the 'Report on the Status of Eight Incomplete Victim Applications for Participation in Trial Proceedings' (ICC-01/14-01/21-650)' (ICC-01/14-01/21-657)' (ICC-01/14-01/21-662-Conf), 7 December 2023, [ICC-01/14-01/21-663](#).

¹⁷ [Registry Report](#), para. 17.

¹⁸ [Registry Report](#), para. 18.

A. a/70286/22

13. According to a/70286/22, his brother was arrested [REDACTED] and detained at the OCRB from [REDACTED], where he was severely mistreated. He claims that his brother died as a result of this mistreatment on [REDACTED].¹⁹

14. Even though the events described in a/70286/22's application do not overlap with any of the specific Incidents mentioned in the charges, the Registry qualified a/70286/22 as Group C. It did this because it was unable to determine whether a/70286/22 could fall under Incident (r), which is open-ended in terms of temporal scope, but limited to persons who were detained in the OCRB's underground cell. Although a/70286/22 has no information about where his brother was detained at the OCRB, the Registry considers that the possibility that he was detained in the underground cell cannot be excluded.²⁰

15. The Prosecution agrees with the Registry that the possibility cannot be excluded that a/70286/22 was detained in the underground cell and could thus potentially fall within the scope of Incident (r).²¹

16. The OPCV also argues that a/70286/22 should be authorised to participate and points out that, since the application was submitted by an indirect victim, the Chamber cannot expect the same degree of detailed information, since the applicant is not in a position to know what happened to the direct victim.²²

17. The Defence objects to the suggestion that victims could be authorised to participate in proceedings on the basis of speculation about what might have happened to them.²³ The Defence points out that if it were permissible to rely on possibilities, every applicant would have to be allowed to participate without any concrete factual basis.²⁴ According to the Defence, a/70286/22's updated application remains vague and does not demonstrate a link between the alleged harm and any of the charged crimes.²⁵

¹⁹ ICC-01/14-01/21-651-Conf-Exp-Anx1.

²⁰ [Registry Report](#), para. 20.

²¹ [Prosecution Observations](#), para. 16.

²² [Victims' Observations](#), para. 23.

²³ [Defence Response](#), para. 39.

²⁴ [Defence Response](#), para. 39.

²⁵ [Defence Response](#), para. 40.

The Defence argues, in this regard, that the applicant does not explain why he is now able to say that it was military Seleka who tortured his brother, whereas in his initial application he stated that he did not know who tortured him since he was not present.²⁶

18. The Chamber notes that the applicant claims that he does not know whether or not his brother was detained in the underground cell because his brother [REDACTED] after he was freed from the OCRB.²⁷

19. It is worth noting that it appears from a document that was ostensibly sent by the Prosecution to a local contact in June 2019, that the Prosecution was seeking to obtain the contact details and whereabouts of a/70286/22's brother.²⁸ This suggests that in 2019 the Prosecution believed that a/70286/22's brother was still alive. The fact that he was alive seems to be confirmed by the corresponding investigation report by the [REDACTED], dated 31 July 2019, which states that the [REDACTED] visited the workplace of a/70286/22's brother in 2019 and were informed there that he was away to install satellite dishes in the provinces.²⁹ In a follow-up report from August 2019, the [REDACTED] stated that a/70286/22's brother had left his working place and moved to another area, but that no one knew where.³⁰

20. Under these circumstances, the Chamber cannot give the applicant the benefit of the doubt, as suggested by the OPCV and the Prosecution. There are currently too many questions about the veracity of the information contained in the application and no indication that a/70286/22's brother was ever held in the underground cell.

21. The current rejection is without prejudice to further information being provided by the applicant or the Prosecution.

B. a/70448/22, a/70450/22, a/70453/22 and a/70454/22

22. In relation to a/70448/22, a/70450/22, a/70453/22 and a/70454/22, the Registry notes that, although they all claim to have been arrested and detained on account of being suspected to be supporters of former president Bozize, the timing of the alleged

²⁶ [Defence Response](#), paras 41-42.

²⁷ ICC-01/14-01/21-651-Conf-Exp-Anx1, pp. 2, 16.

²⁸ Email message and attachment CAR-OTP-2116-0347 and attachment CAR-OTP-2116-0348 at 0349.

²⁹ Rapport d'enquêtes, CAR-OTP-2116-0367 at 0369.

³⁰ Rapport définitif d'enquêtes, CAR-OTP-2116-0384 at 0387.

events does not correspond to any of the charged Incidents. Nevertheless, the Registry avers that the applicants were detained at the OCRB on a date “which is close to the dates referred to in Incident (a)”.³¹ However, because the Registry cannot determine whether Incident (a) is restricted to P-1289 or also includes other individuals, it classified the applicants as Group C.³²

23. The Prosecution takes the view that there are no significant issues of reliability with the applications, but argues that none of them can be connected to either Incident (a) or (r) in terms of dates and conditions of detention.³³

24. The OPCV points out that a/70448/22, a/70450/22, a/70453/22 and a/70454/22 all describe the same events and that they were all arrested and detained because they were perceived supporters of the anti-Balaka.³⁴ The OPCV also claims that all four applicants can be linked to Incident (a) because the alleged victim of this Incident, P-1289, mentions in his statement that there were other detainees at the OCRB.³⁵

25. The Defence rejects the OPCV’s suggestion that a/70448/22, a/70450/22, a/70453/22 and a/70454/22 can be linked to Incident (a), arguing that this Incident is limited to P-1289.³⁶ The Defence further points out that the applicants give precise dates of the crimes they allege to have been the victims of and that these do not correspond to the temporal scope of Incident (a).³⁷

26. The Chamber observes that Incident (a) is limited to P-1289. The fact that this witness made reference to other detainees in his statement does not suffice to expand the scope of Incident (a). The scope of the charges is defined by the Confirmation Decision, not the content of the evidence. The Chamber notes, in this regard, that the Prosecution does not consider a/70448/22, a/70450/22, a/70453/22 and a/70454/22 to fall under Incident (a). Moreover, whereas the Confirmation Decision and the Prosecution’s Trial Brief situate P-1289’s alleged detention at the OCRB between

³¹ [Registry Report](#), para. 21.

³² [Registry Report](#), para. 22.

³³ [Prosecution Observations](#), paras 17-23.

³⁴ [Victims’ Observations](#), paras 25-25.

³⁵ [Victims’ Observations](#), para. 24.

³⁶ [Defence Response](#), para. 47.

³⁷ [Defence Response](#), para. 49.

[REDACTED] 2013,³⁸ all four applicants allege that they were arrested on 17 or 18 May 2013. Finally, the Chamber agrees with the Prosecution that, given the description of the conditions of detention in the application forms, the applicants cannot fall within the scope of Incident (r).

C. Request for Reply

27. In light of the Chamber's decision in relation to the scope of Incident (a), there is no need to hear the Defence's reply in this regard.

FOR THESE REASONS, THE CHAMBER HEREBY

DENIES AUTHORISATION to participate in these proceedings to applicants a/70286/22, a/70448/22, a/70450/22, a/70453/22 and a/70454/22; and

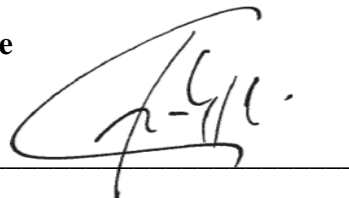
REJECTS the Request to Reply.



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 14 February 2024

At The Hague, The Netherlands

³⁸ Public redacted version of Decision on the confirmation of charges against Mahamat Said Abdel Kani, 9 December 2021, [ICC-01/14-01/21-218-Red](#), para. 29(a); Public Redacted Version of Prosecution's Trial Brief, 28 July 2022, [ICC-01/14-01/21-359-Red](#), paras 137-140.