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Date: **24 October 2022**

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

**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)**

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 response to the “Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings” (the “Updated Registry Report”).²

2. The Common Legal Representative posits that the “Decision on the scope of the charges” (the “Decision on the Scope of the Charges”)³ has no bearing whatsoever on the eligibility of victims to participate in the proceedings, be it on those already admitted, on those awaiting a decision from Trial Chamber VI (the “Chamber”), or on future applications for participation to be submitted.

3. Ruling otherwise would jeopardise the meaningful and effective participation of victims in the proceedings and would further constitute an unprecedented step backwards for the rights of victims to participate in proceedings before this Court, running against the *raison d’être* of the Rome Statute and the interpretation of the relevant founding texts of the Court by all other chambers having ruled on participation of victims.

4. In the alternative, if by extraordinary the Chamber would be minded to consider that the Decision on the Scope of the Charges should lead to restricting the participation of victims, the Common Legal Representative submits that all applicants admitted to participate in the proceedings should continue to do so, and that victim status should be granted to all pending applications, according to the same criteria, without the need to collect additional information.

5. In the further alternative, if by extraordinary the Chamber would deem it necessary to collect supplementary information in relation to these applications, the Common Legal Representative will liaise with eleven of her clients with a view to determining whether they were detained in the underground cell and will in turn provide said information to the Registry, if applicable.

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG CT](#) and [No. ICC-01/14-01/21-T-007-Red-ENT CT WT](#), 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; and 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”).

² 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 (the “Updated Registry Report”).

³ See the “Decision on the scope of the charges” (Trial Chamber VI), [No. ICC-01/14-01/21-472](#), 6 September 2022 (the “Decision on the Scope of the Charges”).

II. PROCEDURAL BACKGROUND

6. On 9 December 2021, Pre-Trial Chamber II (the “Pre-Trial Chamber”) confirmed the charges against Mr Saïd 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”).⁴

7. 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”), 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*”.⁵

8. On 27 May 2022, pursuant to its “Decision on matters relating to the participation of victims during the trial”,⁶ and following the submission of the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”,⁷ the Chamber authorised 20 victims to participate in the proceedings (the “First Decision on Participation”).⁸

9. On 13 July 2022, the Registry submitted its “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (the “Second Registry Report”)⁹ on 19 complete applications to participate in the present case, assessing 14 of them to fall in Group A and five in Group C.¹⁰ On 21 July 2022 the Prosecution¹¹ and the Defence¹² submitted their observations on the Second Registry Report. On 25 July 2022, the Common Legal

⁴ 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”).

⁵ 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”).

⁶ 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.

⁷ See the “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, [No. ICC-01/14-01/21-297](#), 6 May 2022.

⁸ See the First Decision on Participation, *supra* note 1.

⁹ 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 (the “Second Registry Report”).

¹⁰ *Ibid.*

¹¹ See the “Prosecution’s Observations on the ‘Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings’ (ICC-01/14-01/21-405-Conf)”, [No. ICC-01/14-01/21-420-Conf](#) and [No. ICC-01/14-01/21-420-Red](#), 21 July 2022.

¹² See the “*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)*”, [No. ICC-01/14-01/21-422-Conf](#) and [No. ICC-01/14-01/21-422-Red](#), 21 July 2022.

Representative submitted her observations.¹³ A decision on these applications is currently pending before the Chamber.

10. On 6 September 2022, following protracted litigation in this respect,¹⁴ the Chamber issued the Decision on the Scope of the Charges, reiterating its position adopted in the Notification Decision.¹⁵

11. 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.¹⁶ A decision on these applications is pending before the Chamber.

12. 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”.¹⁷

13. On 11 October 2022, the Registry submitted the Updated Registry Report, 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.¹⁸

III. SUBMISSIONS

14. To date, the Chamber has authorised 20 victims to participate in the proceedings.¹⁹ Seventeen additional applications have been assessed as falling in Group A by the Registry²⁰ and are awaiting a decision by the Chamber.

15. In the Updated Registry Report, the Registry found that four victims already admitted in the First Decision on Participation were now to be classified as falling in Group C or as

¹³ See the “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](#) and [No. ICC-01/14-01/21-432-Red](#), 25 July 2022.

¹⁴ 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 6; 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.

¹⁵ See the Decision on the Scope of the Charges, *supra* note 3.

¹⁶ 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).

¹⁷ See the “Order for the Reassessment of Victims Applications” (Trial Chamber VI), [No. ICC-01/14-01/21-490](#), 27 September 2022.

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

¹⁹ See the First Decision on Participation, *supra* note 1.

²⁰ See the Second Registry Report, *supra* note 9.

incomplete as a result of the Decision on the Scope of the Charges.²¹ Similarly, the Registry found that eight pending applications – transmitted by way of the Second Registry Report – were either incomplete or to be classified as falling in Group C.²²

A. As a main, the Decision on the Scope of the Charges has no impact on the eligibility of the concerned victims to participate in the present proceedings

16. The Common Legal Representative recalls in full her observations in relation to the “Prosecution’s application to amend the charges”, in which she argued that the Confirmation Decision allows for the possibility of adding additional incidents to the charges insofar as these incidents fall within the temporal scope of the confirmed charges.²³ This position is in line not only with the Statutory framework,²⁴ and with the Pre-Trial Chamber’s position as stated in the Confirmation Decision²⁵ and as reiterated in its “Decision on the ‘Prosecution’s application to amend the charges’”,²⁶ but also with the Appeals Chamber’s jurisprudence.²⁷ That notwithstanding, absent any available legal avenue for victims to contest the Decision on the Scope of the Charges, the Common Legal Representative is bound thereby and will not formulate any further observations in this respect.

17. The Common Legal Representative posits however that the Decision on the Scope of the Charges has no bearing whatsoever on the eligibility of victims to participate in the present proceedings, be it on those already admitted, on those awaiting a decision from the Chamber, or on applications for participation to be submitted.

18. Excluding victims on the basis of the Decision on the Scope of the Charges would amount to erroneously conflating two issues, namely that of the scope of the charges (and of appropriate notice to the accused), on the one hand, and that of the participation of victims, on

²¹ Among the victims admitted to participate in the First Decision on Participation, a/70294/22, a/70295/22, a/70296/22 were deemed to have met the criteria to be admitted to participate and are now classified under Group C by the Registry. Similarly a/70286/22 was admitted by way of the First Decision on Participation and is now deemed incomplete by the Registry.

²² The Registry found that a/70447/22 (classified as Group A in the Second Registry Report) is to be classified under Group C, while a/70448/22, a/70449/22, a/70450/22, a/70451/22, a/70452/22, a/70453/22 and a/70454/22 (classified as Group A in the Second Registry Report) are now deemed incomplete.

²³ See 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.

²⁴ See in particular articles 67(1) and 74(2) of the Rome Statute and regulation 52 of the Regulations of the Court.

²⁵ See the Confirmation Decision, *supra* note 4, para. 80: “[the OTP list of 20 specific incidents] *is meant to provide examples of conduct underlying the charges*”.

²⁶ See the “Decision on the ‘Prosecution’s application to amend the charges’”, *supra* note 14, para. 27.

²⁷ See, in particular, the “Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A A2](#), 30 March 2021, paras. 326-327. See also, in another case, the “Decision on the ‘Prosecution’s application to amend the charges’” (Pre-Trial Chamber II), [No. ICC-02/05-01/20-626](#), 14 March 2022, paras. 18, and 20-24.

the other hand. More importantly, said interpretation will deprive victims of their right to participate in the proceedings.

19. In this respect, the Common Legal Representative recalls that the issue of the definition and assessment of the facts and circumstances described in the charges is distinct from the assessment of victim eligibility, as previously held by other chambers of this Court.²⁸

20. In the present case, the Chamber itself acknowledged said distinction and acted upon it. Indeed, the First Decision on Participation was issued on 27 May 2022,²⁹ therefore more than a month after the Notification Decision issued on 20 April 2022,³⁰ in which it had already ruled that, in light of the scale of criminality and the mode of individual criminal liability,³¹ “*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*”.³² Yet, in the First Decision on Participation, the Chamber granted victim status to individuals not specifically referring to incidents listed at paragraph 29 of the Confirmation Decision. Remarkably, when issuing this decision, the Chamber took into account³³ the Defence’s submission on the applications according to which the information provided in many of said applications – including the ones in Group A – was too vague to enable any link to be established with the confirmed charges.³⁴ The Chamber rejected said argument and ruled 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 the charges*”.³⁵

21. No new circumstances have arisen since then. Indeed, the Decision on the Scope of the Charges is a mere reiteration of the position adopted by the Chamber four months earlier in the Notification Decision. The victims concerned met and still meet the criteria to be allowed to participate in the proceedings.³⁶ All victims previously assessed as falling in Group A (and

²⁸ 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”, [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.

²⁹ See the First Decision on Participation, *supra* note 1.

³⁰ See the Notification Decision, *supra* note 5.

³¹ *Idem*, para. 16.

³² *Idem*, para. 17.

³³ The Chamber referred to the Defence’s argument at paragraph 6 of the First Decision on Participation, *supra* note 1.

³⁴ See the “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)” [No. ICC-01/14-01/21-316-Conf](#), paras. 38-45.

³⁵ See the First Decision on Participation, *supra* note 1, para. 16.

³⁶ As per the constant case-law of this Court, to be allowed to participate in the proceedings, victims can limit themselves to demonstrate *prima facie* that they are victims within the meaning of Rule 85 of the Rules, according to the following criteria: (i) the applicant has established his/her identity as a natural person; (ii) the applicant is

authorised to participate in the proceedings for 20 of them) have demonstrated *prima facie* to meet these criteria and there is no reason to depart from this finding. While the Decision on the Scope of the Charges may have served various purposes, such as giving notice to the Defence and/or clarifying the facts and circumstances described in the charges by the Pre-Trial Chamber, it does not supersede the definition of the charges as framed by the Pre-Trial Chamber for the purpose of the participation of victims in the present case.

22. Ruling otherwise and considering that victims should not be authorised to participate on the basis that they do not refer to, or are not referred to, in the list of specific incidents listed in the Confirmation Decision, would not only amount to a *de facto* reconsideration of the First Decision on Participation, but would also jeopardise the meaningful and effective participation of victims in the proceedings.³⁷

23. Indeed, as previously stated,³⁸ requiring victims to be specifically identified in the charges formulated by the Prosecution would *de facto* result in only Prosecution witnesses and their relatives – as indirect victims – being in a position to participate in the proceedings. This would constitute an unprecedented step backwards with regard to the rights of victims to participate in proceedings before this Court, and run against the *raison d'être* of the Rome Statute and the interpretation of the relevant founding texts by all other chambers of this Court having ruled on participation of victims in the proceedings.³⁹

alleged to have suffered harm; and (iii) the personal harm reported by the applicant resulted from an incident falling within the temporal, geographic and material parameters of the case (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 “First decision on the admission of victims to participate in trial proceedings” (Trial Chamber I), with public annex, [No. ICC-02/05-01/20-556](#), 14 January 2022, para. 4; the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (Pre-Trial Chamber I, Single Judge), [No. ICC-01/12-01/18-37-tENG](#), 24 May 2018, para. 48; and the “Second decision on victims’ participation in trial proceedings”, *supra* note 28, paras. 10 and 18).

³⁷ See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), [No. ICC-01/04-01/07-474](#), 13 May 2008, para. 49. See also the “Victims’ response to the Prosecution’s application to amend the charges (ICC-01/14-01/21-294-Red)”, *supra* note 23.

³⁸ See the “Victims’ response to the Prosecution’s application to amend the charges (ICC-01/14-01/21-294-Red)”, *supra* note 23, paras. 14-19.

³⁹ 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.

24. Lastly, such a restrictive interpretation would lead to an absurd and discriminatory situation in which certain victims not specifically identified in paragraph 29 of the Confirmation Decision are not allowed to participate in the proceedings despite having been detained at the exact same time as other victims specifically identified therein and therefore allowed to participate in the proceedings. This is the case, for instance, of a/70453/22 (classified as incomplete), who was detained at the OCRB together with victims specifically identified in incidents (e), (l), (m), (n), (p), and (q) as listed in the Confirmation Decision (and authorised to participate in the proceedings).⁴⁰

25. In short, in respect of the four applications previously assessed as falling in Group A and now as falling in Group C, the Common Legal Representative contends that no change has intervened with regard the situation of a/70294/22, a/70295/22 and a/70296/22, already admitted by the Chamber, and therefore, they should continue to participate in the present proceedings; and that a/70447/22 (initially assessed as falling in Group A by the Registry) should be assessed following the same criteria and be granted victim status. Similarly, a/70286/22, previously deemed complete and admitted by the Chamber, should continue to participate, and all other seven applicants (initially assessed as falling in Group A by the Registry) should be assessed following the same criteria and be granted victim status. Furthermore, as already put forward by the Common Legal Representative,⁴¹ a/70311/22 and a/70312/22, who were assessed as falling in Group C in the Second Registry Report although the Registry considered that the crimes described in their applications fall squarely within the scope of the case,⁴² should also be assessed following the same criteria and be granted victim status since all of them fall within the geographical, temporal and material scope of the charges.

26. Going forward, the same criteria as those applied in the First Decision on Participation should be applied.

⁴⁰ A/70453/22 was also detained at the OCRB together with victims specifically identified in incident (q) of the Prosecution's trial brief (not listed in para. 29 of the Confirmation Decision). Incident (q) of para. 29 of the Confirmation Decision corresponds to incident (r) of the Prosecution's trial brief. See the "Prosecution's Trial Brief", [No. ICC-01/14-01/21-359-Conf](#) and [No. ICC-01/14-01/21-359-Red](#), 13 June 2022.

⁴¹ See the "Victims' Observations on the 'Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings' (ICC-01/14-01/21-405)", *supra* note 13, paras. 16-20.

⁴² See the Second Registry Report, *supra* note 9, para. 20.

B. In the alternative, the applicants should be admitted to participate in the present proceedings

27. Assuming *arguendo* that, by extraordinary, the Chamber would be minded to entertain the conclusions of the Updated Registry Report, the Common Legal Representative argues that:

- i. applicants a/70294/22, a/70295/22, a/70296/22, and a/70447/22 assessed as falling in Group C in the Updated Registry Report meet the criteria for participation and should be authorised to continue participating in the proceedings or formally be authorised to do so, as applicable;
- ii. applicants a/70311/22 and a/70312/22 (assessed as falling in Group C in the Second Registry Report and not reassessed in the Updated Registry Report) should be admitted to participate in the proceedings; and
- iii. applicants a/70286/22, a/70448/22, a/70449/22, a/70450/22, a/70451/22, a/70452/22, a/70453/22, and a/70454/22 whose applications are deemed incomplete in the Updated Registry Report, and applicants a/20603/21, a/20607/21 and a/20608/21, assessed as falling in Group C in the Second Registry Report and not reassessed in the Updated Registry Report, should be admitted to participate, except if the Chamber deems it necessary to collect supplementary information.

Applications assessed as falling in Group C in the Updated Registry Report

28. In the Updated Registry Report, the Registry assessed applicants a/70294/22, a/70295/22, a/70296/22 (previously admitted), and a/70447/22 (assessed as falling in Group A in the Second Registry Report and awaiting a decision of the Chamber) as falling in group C on the basis that, while their narratives match the descriptions of incidents (b), (c) and (e) as applicable, they are not specifically mentioned in the relevant paragraphs of the Confirmation Decision.⁴³

29. The Common Legal Representative recalls that the applicable standard to evaluate victim applications is that of *prima facie* and submits that the fact that their “*narratives [...] match the descriptions of the [...] [i]ncidents [listed in paragraph 29 of the Confirmation Decision]*”⁴⁴ is fully sufficient to meet said standard. The fact that they are not mentioned by name in the Confirmation Decision cannot serve as a basis to exclude them from participating, as long as they demonstrate to have experienced events corresponding to incident (b), (c) or (e),

⁴³ See the Updated Registry Report, *supra* note 2, para. 25.

⁴⁴ *Ibid.*

as applicable. Ruling otherwise would amount to requiring that the Confirmation Decision already exhaustively identifies all victims, an exercise which is not only not required from pre-trial chambers, but also in contravention with the purpose of a confirmation decision which is simply to evaluate whether there are reasonable grounds to believe that the suspect had committed the charged crimes.

30. Accordingly, a/70294/22, a/70295/22 and a 70296/22 should continue to participate in the present proceedings, and a/70447/22 should be formally authorised to do so.

Applications a/70311/22 and a/70312/22

31. The Common Legal Representative recalls that in the Second Registry Report, the Registry had assessed applications a/70311/22 and a/70312/22 as falling in Group C,⁴⁵ and reiterates her observations on these applications.⁴⁶

32. Specifically, the Common Legal Representative already pointed out the incoherent approach adopted by the Registry and underlined that the applicants had explained and demonstrated that they have been detained between mid-August and mid-September 2013 at the OCRB, in the underground cell, and that they therefore ought to be assessed as falling in Group A.⁴⁷

33. The Common Legal Representative understands from the Updated Report that the Registry has indeed corrected its position and that it now accepts that any individual in a position to demonstrate to the required *prima facie* standard that they were in the underground cell at the time of the charges may be considered as falling within incident (r) as listed in paragraph 29 of the Confirmation Decision.⁴⁸

34. Accordingly, since both applicants made clear in their applications for participation that they have been detained in the underground cell at the time of the charges, the Common Legal Representative submits that no additional information is required from these applicants and they can be admitted.

⁴⁵ See the Second Registry Report, *supra* note 9.

⁴⁶ See the “Victims’ Observations on the ‘Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings’ (ICC-01/14-01/21-405)”, *supra* note 13, paras. 16-20.

⁴⁷ *Idem*, para. 20.

⁴⁸ See the Updated Registry Report, *supra* note 2, para. 25.

Applications assessed as incomplete in the Updated Registry Report, and applications a/20603/21, a/20607/21 and a/20608/21

35. In its Updated Report, the Registry classified applications a/70286/22 (previously admitted) and a/70448/22, a/70449/22, a/70450/22, a/70451/22, a/70452/22, a/70453/22 and a/70454/22 (assessed as falling in Group A in the Second Registry Report and awaiting a decision) as incomplete on the basis that it is unable to conclude whether these applicants were detained in the underground cell and could therefore be deemed as falling within incident (r) as listed in paragraph 29 of the Confirmation Decision.⁴⁹ The Registry thus proposes to request additional information from these applicants in order to conduct a new assessment.⁵⁰

36. Regarding applications a/20603/21, a/20607/21 and a/20608/21, the Common Legal Representative recalls that the Registry had assessed these, in the Second Registry Report, as falling in Group C,⁵¹ and reiterates her observations on these applications without a need to repeat them.⁵²

37. The Common Legal Representative restates that a flexible approach is warranted considering the time that has elapsed between the commission of the alleged crimes and the completion of the relevant victim applications;⁵³ all the more since the events left durable traumatic scars that affect the recollection of the events by the victims. Therefore, the Common Legal Representative submits that she might not be able to obtain clear information for all eleven clients concerned.

38. Furthermore, the Common Legal Representative recalls once again that the applicable standard to evaluate victim applications is that of *prima facie*⁵⁴ and submits that requiring victims to provide further detailed information would go well beyond this standard of proof, putting as such an undue burden on them.

39. The unsuitability of such an elevated burden of proof is all the more apparent for indirect victims given the nature of their victimisation. This is especially the case for indirect victims whose relatives died while held in detention at the OCRB, or as a result of the cruel treatments suffered while held in detention at the OCRB, and who are therefore unable to provide further

⁴⁹ *Idem*, para. 27.

⁵⁰ *Ibid.*

⁵¹ See the Second Registry Report, *supra* note 9.

⁵² See the “Victims’ Observations on the ‘Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings’ (ICC-01/14-01/21-405)”, *supra* note 13, paras. 14-15.

⁵³ *Ibid.*

⁵⁴ See *supra*, para. 29.

information regarding the detention of their relatives.⁵⁵ As such, indirect victims would *de facto* be excluded from participating in the present proceedings, which would constitute an unprecedented step backwards with regard to the rights of victims to participate in proceedings before this Court.⁵⁶

40. Therefore, the Common Legal Representative posits that these eleven applications fulfil *prima facie* the criteria for the victims to be admitted to participate in the present stage of the proceedings.

41. In the further alternative, should the Chamber deem it necessary to collect supplementary information in relation to these applications, the Common Legal Representative will liaise with her clients with a view to determining whether they were detained in the underground cell and will in turn provide said information to the Registry.

FOR THESE REASONS, the Common Legal Representative posits that the Decision on the Scope of the Charges has no impact on the eligibility of victims to participate in the present proceedings, and respectfully requests the Chamber to rule that all applicants admitted to participate in the proceedings should continue to do so, and to assess all other pending, or upcoming, applications according to the same criteria.

IN THE ALTERNATIVE, if by extraordinary the Chamber would be minded to consider that the Decision on the Scope of the Charges has an impact on the eligibility of victims to participate in the present proceedings, the Common Legal Representative requests that the Chamber rule that all applicants admitted to participate in the proceedings should continue to do so, and to grant victim status to all pending applications, according to the same criteria, without the need to collect additional information.

⁵⁵ For example, a/70286/22, an indirect victim, explained in his application that he is not privy to this information since his relative died without having had the strength to speak.

⁵⁶ See, *inter alia*, the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” (Appeals Chamber), [No. ICC-01/04-01/06-1432 OA9 OA10](#), 11 July 2008, paras. 1, and 29-39. This jurisprudence has been consistently applied and further developed by Chambers of this Court. See, *inter alia*, the “Public redacted version of ‘Decision on ‘indirect victims’” (Trial Chamber I), [No. ICC-01/04-01/06-1813](#), 8 April 2009; the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/04-02/06-211](#), 15 January 2014, paras. 31-33, and 48-50; the “Decision on victims’ participation in trial proceedings” (Trial Chamber VI), [No. ICC-01/04-02/06-449](#), 6 February 2015, paras. 47-48; and the “Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled ‘Order for Reparations pursuant to Article 75 of the Statute’” (Appeals Chamber), [No. ICC-01/04-01/07-3778-Red A3 A4 A5](#), 8 March 2018, paras. 5, and 115-120.

IN THE FURTHER ALTERNATIVE, if by extraordinary the Chamber would deem it necessary to collect additional information for applications considered incomplete by the Registry, the Common Legal Representative requests that the Chamber:

- grant victim status to all four applicants assessed as falling in Group C in the Updated Registry Report (a/70294/22, a/70295/22, a/70296/22 and a/70447/22), as well as to applicants a/70311/22 and a/70312/22 because of their clearly established link with one of the incidents as listed in paragraph 29 of the Confirmation Decision and therefore no additional information is needed;
- defer its ruling in relation to applicants 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, until she has collected supplementary information, if any.

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

Sarah Pellet

Dated this 24th day of October 2022

At The Hague, The Netherlands