

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 July 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

Fourth Decision Authorising Victims to Participate in Proceedings

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

The Office of the Prosecutor Mr Karim A. A. Khan Ms Holo Makwaia	Counsel for the Defence Ms Jennifer Naouri Mr Dov Jacobs
Legal Representatives of Victims Ms Sarah Pellet	Legal Representatives of Applicants
Unrepresented Victims	Unrepresented Applicants for Participation/Reparations
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives	Amicus Curiae
REGISTRY	
Registrar Mr Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section 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 having regard to articles 64(2), 67(1) and 68(1) of the Rome Statute (the ‘Statute’), and rules 77 and 85 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Fourth 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 proceedings 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, 6 May 2022, [ICC-01/14-01/21-297](#) (‘First Report’).

⁴ Decision authorising 20 victims to participate in the proceedings, 27 May 2022, [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’,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’.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 applications¹⁰ and transmitted five applications as Group C.¹¹

9. On 14 February 2024, the Chamber issued its ‘Third Decision Authorising Victims to Participate in the Proceedings’¹² in which it denied authorisation to participate in the proceeding to the five Group C applicants included in the Third

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, 27 September 2022, [ICC-01/14-01/21-490](#).

⁸ Updated Registry Assessment Report on Previously Transmitted Victim Applications for Participation in Trial Proceedings, 11 October 2022, [ICC-01/14-01/21-498](#).

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.

¹² Public Redacted Version of Third Decision Authorising Victims to Participate in the Proceedings, 14 February 2024, [ICC-01/14-01/21-695-Red](#).

Registry Transmission of Group C Victim Applications for Participation in the Trial Proceedings.¹³

10. On 19 April 2024, the Registry transmitted one application, a/30004/24, which it assessed as falling under Group A (the ‘Fourth Registry Transmission’).¹⁴ On the same day, the Registry submitted its ‘Sixth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings’ (the ‘Sixth Registry Report’) informing the Chamber that the Victims Participation and Reparations Section (the ‘VPRS’) assessed the application as complete.¹⁵

11. On 2 May 2024, the Office of Public Counsel for Victims (the ‘OPCV’), representing the applicant, submitted its observations on the Sixth Registry Report.¹⁶

12. On 2 May 2024, the Defence filed a reply to the Fourth Registry Transmission and the Sixth Registry Report (the ‘Response’).¹⁷

II. SUBMISSIONS

13. In its Sixth Registry Report, the Registry avers that a/30004/24’s application meets the *prima facie* criteria and is classified as a Group A victim.¹⁸ In particular, the Registry submits that the harm suffered by a/30004/24 results from one of the Incidents included within the scope of the charges.¹⁹

14. The OPCV agrees that a/30004/24 meets the criteria outlined in rule 85 of the Rules, and underlines that a/30004/24 has established his identity, has suffered direct

¹³ 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.

¹⁴ Fourth Registry Transmission of Group A Victim Applications for Participation in Trial Proceedings, 19 April 2024, [ICC-01/14-01/21-747](#), with one confidential annex (the ‘Fourth Registry Transmission’).

¹⁵ Sixth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, 19 April 2024, [ICC-01/14-01/21-748](#), with one confidential annex (the ‘Sixth Registry Report’).

¹⁶ Victims’ observations on the “Sixth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings” (ICC-01/14-01/21-748), 2 May 2024, [ICC-01/14-01/21-753](#) (the ‘OPCV Observations’).

¹⁷ Réponse de la Défense à la « Fourth Registry Transmission of Group A Victim Applications for participation in Trial Proceedings » (ICC-01/14-01/21-747) et à la « Sixth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings » (ICC-01/14-01/21-748), [ICC-01/14-01/21-752-Red](#) (the ‘Defence Response’).

¹⁸ Sixth Registry Report, [ICC-01/14-01/21-748](#), para. 23.

¹⁹ Sixth Registry Report, [ICC-01/14-01/21-748](#), para. 23.

personal harm, and has clearly demonstrated that said harm is the result of events which took place between 12 April 2013 and 30 August 2013.²⁰

15. The Defence does not object to the participation of a/30004/24 in the proceedings and states that there appears to be a *prima facie* basis for accepting that a/30004/24's application relates to Incident (h) of the confirmed charges.²¹

16. However, the Defence submits that the number of redactions made to a/30004/24's application form render its analysis difficult.²² Specifically, the Defence notes that redactions have been applied to the names of individuals who may have been involved in the commission of crimes as well as the circumstances of a/30004/24's arrest.²³ The Defence argues that this information is essential to determine whether the allegations made by a/30004/24 are credible and whether the individuals in question are in fact connected to the charges.²⁴

17. The Defence further argues that, to the extent that the applicant alleges to be a victim of incident (h), it is important that it has access to the unredacted version of the application in order to conduct its own investigations into the incident.²⁵ In particular, the Defence must be able to cross-check the accounts of all the witnesses interviewed by the Office of the Prosecutor (the 'Prosecution') in relation to this incident, regardless of whether they will be called to testify or not.²⁶

18. Finally, the Defence argues that there is no security risk that justifies withholding access to the unredacted copy of a/30004/24's application form.²⁷ In particular, the Defence argues that it is possible to reveal where the applicant was allegedly hurt, the names of the individuals involved in the Incident as well as the date on which the application form was signed.²⁸ Moreover, the Defence claims to have identified

²⁰ OPCV Observations, [ICC-01/14-01/21-753](#), para. 20.

²¹ Defence Response, [ICC-01/14-01/21-752-Red](#), paras 31-32.

²² Defence Response, [ICC-01/14-01/21-752-Red](#), para. 27.

²³ Defence Response, [ICC-01/14-01/21-752-Red](#), paras 28-29.

²⁴ Defence Response, [ICC-01/14-01/21-752-Red](#), para. 28.

²⁵ Defence Response, [ICC-01/14-01/21-752-Red](#), para. 34.

²⁶ Defence Response, [ICC-01/14-01/21-752-Red](#), para. 34.

²⁷ Defence Response, [ICC-01/14-01/21-752-Red](#), para. 28.

²⁸ Defence Response, [ICC-01/14-01/21-752-Red](#), para. 30.

a/30004/24 as one of the witnesses interviewed by the Prosecution during the investigation but who is not being called to testify in the current proceedings.²⁹

III. ANALYSIS

A. a/30004/24's Application

19. The Chamber has analysed a/30004/24's application and is satisfied that the alleged crimes of which a/30004/24 is purported to have been the victim fall within the scope of the charges. In particular, a/30004/22 appears to have been one of the alleged victims of Incident (h). The Chamber therefore authorises a/30004/24 to participate in these proceedings on this basis.

B. The Defence Request for Disclosure of a/30004/24's Unredacted Application

20. The Chamber will now address the additional submissions made by the Defence regarding the disclosure of the unredacted version of a/30004/24's application form.

21. At the outset, the Chamber notes that article 68 of the Statute requires the Court to take appropriate measures to protect the safety and physical and psychological well-being of the victims, and also recalls that any such measures must not prejudice or be inconsistent with the accused's right to a fair trial. As the Defence was able to assess that a/30004/24 is an alleged victim of Incident (h), the Chamber concludes that the redactions applied by the Registry were not disproportionate for the purpose of the victim participation proceedings.

22. In respect of the Defence's argument that the failure to provide it access to a/30004/24's unredacted application form would violate Mr Said's due process and fair trial rights, the Chamber notes that the Appeals Chamber has dismissed arguments asserting that anonymous victim participation constitutes an 'anonymous accusation' against which an accused is unable to fully defend him or herself, especially when the legal representative only makes general submissions on behalf of the participating victims collectively.³⁰ Should a victim be called to appear as a witness or wish to

²⁹ Defence Response, [ICC-01/14-01/21-752-Red](#), para. 31.

³⁰ See Appeals Chamber, *The Prosecutor v. Mathieu Ngudjolo Chui*, Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims, 23 September 2013, [ICC-01/04-02/12-140](#), paras 17-19.

present his or her individual views and concerns, he or she will, in principle, no longer benefit from continued anonymity as doing so could prejudice the accused or be inconsistent with his or her rights to a fair trial.³¹ The Chamber notes, in this regard, that a/30004/24 is not currently set to testify as a witness in the present proceedings.

23. Additionally, the Chamber does not find merit in the Defence's argument that it must be provided with access to a/30004/24's unredacted application form for the purpose of carrying out its own investigation. In this respect, the Chamber observes that, unless and until they have become part of the evidentiary record, factual statements made by the applicants in victim application forms do not constitute evidence, neither against nor in favour of the accused and cannot be relied upon outside of the limited scope of the admission process.³² In particular, the Chamber notes that this Court's jurisprudence provides that, under rule 89(1) of the Rules, victims' applications are not provided for the purpose of allowing the Defence to gather information that may be important for the preparation of its case.³³ In other words, the Registry has no disclosure obligations towards the Defence other than the obligation to provide copies of victim application forms pursuant to rule 89(1) of the Rules.³⁴ This is without prejudice to the Prosecution's separate disclosure obligations under rule 77 of the Rules once the application forms are in their possession.³⁵

³¹ See Appeals Chamber, *The Prosecutor v. Mathieu Ngudjolo Chui*, Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims, 23 September 2013, [ICC-01/04-02/12-140](#), paras 16-17; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Modalities of Victim Participation at Trial, 22 January 2011, [ICC01/04-04/07-1788-tENG](#), paras 92-93; and Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on victims' participation, 18 January 2008, [ICC-01/04-01/06-1119](#), paras 130-131; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Disclosure of Victims' Identities, 17 June 2016, [ICC-02/04-01/15-471](#), paras 13-14.

³² Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Decision establishing the principles applicable to victims' and representation during the Confirmation Hearing, 18 January 2021, [ICC-02/05-01/20-259](#), para. 31.

³³ Appeals Chamber, *The Prosecutor v. Mahamat Said Abdel Kani*, Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled "Decision establishing the principles applicable to victims' applications for participation", 14 September 2021, [ICC-01/14-01/21-171](#), para. 51; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Yekatom Defence Request for an Amendment of the Victim Application Procedure, 27 September 2022, [ICC-01/14-01/18-1586-Red](#), para. 15.

³⁴ Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Yekatom Defence Request for a Judicial Order for the Registry to Disclose Information in relation to Count 29, 4 April 2022, ICC-01/14-01/18-1828, para. 3.

³⁵ Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeal of Mr Laurent Gbagbo against the oral decision on redactions of 29 November 2016, [ICC-02/11-01/15-915-Red](#), 31 July 2017, para. 56.

FOR THESE REASONS, THE CHAMBER HEREBY

AUTHORISES a/30004/24 to participate in these proceedings; and

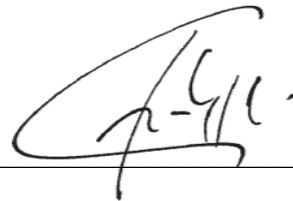
REJECTS the Defence's request to be provided with access to a/30004/24's unredacted victim application form.



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 22 July 2024

At The Hague, The Netherlands