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

Date: **27 May 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 *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Public Redacted Version of “Prosecution’s Observations on the “First Registry
Assessment Report on Victim Applications for Participation in Trial Proceedings”
(ICC-01/14-01/21-297), ICC-01/14-01/21-315-Conf, dated 19 May 2022**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby provides its observations regarding the Victims Participation and Reparations Section’s (“VPRS”) First Assessment Report on Victim Applications for Participation in Trial Proceedings (“First Assessment Report”).¹

2. The VPRS seeks the reconsideration from Trial Chamber VI (“Chamber”) regarding three applications² previously filed during the pre-trial proceedings and rejected by Pre-Trial Chamber II.³ The Three Applications have discrepancies between the dates provided by the applicants in their initial application notified in September 2021 and the supplementary information they provided in early 2022. The Prosecution submits that these discrepancies and the date on which the supplementary information was provided, call for the serious consideration of the Chamber.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, these observations are filed as confidential as they refer to the content of Registry filings of the same designation. A public redacted version will be filed as soon as possible.

III. SUBMISSIONS

4. The VPRS seeks reconsideration from the Chamber regarding applications a/20599/21, a/20601/21 and a/20602/21 that were filed under Group C for participation during the Pre-Trial proceedings.⁴

¹ ICC-01/14-01/21-297.

² Hereinafter “Three Applications” or “Three Applicants”.

³ ICC-01/14-01/21-199. See further, ICC-01/14-01/21-297, para. 15. See also ICC-01/14-01/21-296-Conf-Anx1-Red, p. 6, ICC-01/14-01/21-296-Conf-Anx2-Red, p. 6 and ICC-01/14-01/21-296-Conf-Anx3-Red, p. 7.

⁴ ICC-01/14-01/21-168-Conf; ICC-01/14-01/21-168-Conf-Anx, p. 2 (OCRB – issue of temporal scope).

A) Background

5. On 9 September 2021, issues as to the temporal scope of the Three Applications were raised by the VPRS and provided to Pre-Trial Chamber II.⁵ The VPRS noted that applicant a/20599/21 was referring to his detention at the OCRB from [REDACTED] October to [REDACTED] November 2013. Applicant a/20601/21 was referring to a detention at the OCRB from [REDACTED] September 2013. Applicant a/20602/21 would have been arrested and detained for one day on [REDACTED] October 2013 at the OCRB.⁶

6. On 6 October 2021, Pre-Trial Chamber II did not authorise the Three Applicants to participate in the proceedings “as the difference between the date of the incident which caused the alleged personal harm and the periods relevant to the crimes charged in relation to the OCRB [...], is too significant.”⁷

7. On 9 December 2021, Pre-Trial Chamber II confirmed the crimes charged as committed at the OCRB between 12 April 2013 and 30 August 2013.⁸

8. Sometime in 2022,⁹ the VPRS notified the Three Applicants of the precise reasons Pre-Trial Chamber II had not authorised them to participate. Specifically, the Three Applicants were told that the Chamber had found that the dates communicated in their application were “*trop éloignée*” from the temporal scope of the charges.¹⁰

⁵ ICC-01/14-01/21-168-Conf.

⁶ ICC-01/14-01/21-168-Conf-Anx, p. 2 (OCRB – issue of temporal scope).

⁷ ICC-01/14-01/21-199, para. 43.

⁸ ICC-01/14-01/21-218-Red, pp. 50-61.

⁹ The exact dates are redacted from the Parties.

¹⁰ ICC-01/14-01/21-296-Conf-Anx1-Red, p. 6, ICC-01/14-01/21-296-Conf-Anx2-Red, p. 6 and ICC-01/14-01/21-296-Conf-Anx3-Red, p. 7.

B) The revised dates of the Three Applications

9. Sometime in 2022, the Three Applicants provided revised dates as to their arrest and detention at the OCRB which now fall within the temporal scope of the charges as confirmed.¹¹

i) Application a/20599/21

10. Applicant a/20599/21 alleges that since his detention at the OCRB and subsequent hospitalisation, he suffers from psychological health issues. That would explain the reasons he was mistaken as to the date of his detention in his initial application. [REDACTED] who is also his guardian, now attests that the applicant was detained at the OCRB on [REDACTED] August 2013.¹² The Prosecution notes that unlike the initial application, the revised account does not indicate the length of the detention of the applicant. The Prosecution also observes that the applicant would have been shot and detained for well over three weeks at the OCRB. Further, as a result of his wounds, the applicant would have been hospitalised at the [REDACTED] for two weeks. However, no medical record or document from the hospital in question have been provided nor any mention of an attempt to do so in support of the application and the new date of the events.

ii) Application a/20601/21

11. The revised date of application a/20601/21 would be due to a miscommunication with the intermediary who would not have accurately noted the date of the events. The application would not have been read back to the applicant who simply would have signed it without taking notice of its content. The applicant now states having

¹¹ ICC-01/14-01/21-296-Conf-Anx1-Red, pp. 7-8 (revised date of [REDACTED] August 2013), ICC-01/14-01/21-296-Conf-Anx2-Red, pp. 7-8 (revised date of April 2013) and ICC-01/14-01/21-296-Conf-Anx3-Red, pp. 8-9. (revised date of [REDACTED]).

¹² ICC-01/14-01/21-296-Conf-Anx1-Red (revised date of [REDACTED] August 2013).

been arrested and detained at the OCRB in April 2013.¹³ The Prosecution observes that in 2021, the applicant stated having been arrested on the specific date of [REDACTED]September and detained for [REDACTED] days. Now the applicant does not provide any specific date or the number of days or length of the detention.

iii) Application a/20602/21

12. The revised date of application a/20602/21 would be due to an issue of misrepresentation on the part of a lawyer. The applicant was surprised that the date written on the application was [REDACTED] October since he would have mentioned to the lawyer that he did not remember the date of the events. However, the applicant now remembers that the events took place [REDACTED]¹⁴ or [REDACTED],¹⁵ meaning on [REDACTED]. The Prosecution notes that no details are provided as to how the application was completed, read back or signed. Only that a lawyer wrote a date which is not accurate. The Prosecution also observes that the applicant would have been stabbed at the time of his arrest and sustained serious injuries requiring his hospitalisation.¹⁶ However, no medical record or document from the hospital have been provided nor any mention of an attempt to do so in support of the application and the new date of the events.

C) The reliability of the revised applications

13. The discrepancy between the dates and the reasons provided in support of the new dates raise serious concerns as to the reliability of the information provided by the Three Applicants. The Prosecution concurs with the VPRS's assessment which considers that there are inevitable inherent risks of discrepancies appearing between

¹³ ICC-01/14-01/21-296-Conf-Anx2-Red (revised date of April 2013).

¹⁴ ICC-01/14-01/21-296-Conf-Anx3-Red, p. 8.

¹⁵ ICC-01/14-01/21-296-Conf-Anx3-Red, p. 9. [REDACTED].

¹⁶ ICC-01/14-01/21-296-Conf-Anx3-Red, p. 5.

narratives written down at different times by different persons. Discrepancies do not systematically constitute reasons to doubt the reliability of the information provided at a later stage.¹⁷ However, the Prosecution believes that, in the present circumstances, these discrepancies call for serious considerations.

14. The revised dates of the alleged detentions at the OCRB were provided after the confirmation decision was issued on 9 December 2022. The Prosecution has also reviewed its records and can confirm that 1) none of the Three Applicants are Prosecution witnesses or were interviewed by the Prosecution and, 2) it is not in possession of evidence to support or corroborate the presence of the Three Applicants at the OCRB at the alleged time they now provide. The applications describe events that are unknown to the Prosecution at this stage of its investigation.

15. The Prosecution also submits that all Three Applicants do not provide sufficient information that their arrest, detention and mistreatment at the OCRB was because they were perceived to be pro-BOZIZE supporters or based on any other persecutory grounds.¹⁸ The Prosecution recalls that Pre-Trial Chamber II did not confirm the incident described at paragraph 33(a) of the Document Containing the Charges because the Prosecution had failed “to provide sufficient evidence on the identities of the alleged victims or *whether they were targeted as perceived Bozizé supporters*” (emphasis added).¹⁹

¹⁷ ICC-01/14-01/21-297, para. 15.

¹⁸ ICC-01/14-01/21-218-Red, para. 25.

¹⁹ *Ibid.*, para. 83.

CONCLUSION

iv) For the above reasons, the Chamber should exercise caution and seek additional information, if necessary, before allowing applicants a/20599/21, a/20601/21, and a/20602/21 to participate in the proceedings.



Karim A. A. Khan QC, Prosecutor

Dated this 27th day of May 2022
At The Hague, The Netherland