

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/21
Date: 18 October 2024

TRIAL CHAMBER VI

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Victims' observations pursuant to the Third Directions on the Conduct of
Proceedings**

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, applicants and participating victims (the “Common Legal Representative”)¹ hereby submits her observations pursuant to the Third Directions on the Conduct of Proceedings.²

2. The Common Legal Representative posits that she was unable to seek leave to call witnesses, in light of the instruction by Trial Chamber VI (the “Chamber”) to do so five days after the opening statements. Indeed, at this unprecedentedly early point in time, she was in no position to make a determination in the matter.

3. She also informs the Chamber that she does not intend to seek leave to call victims to present their views and concerns orally, owing notably to the facts that: (i) 85% of her clients are dual status witnesses whose narrative is already available on the case-record; and (ii) her other clients expressed fear that their involvement with the Court be known to their family and community. In these circumstances, the Common Legal Representative does not deem it appropriate to require them to go through the traumatic process of recounting once again the events they experienced, considering that the Chamber has enough information on the victimisation in the present case.

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 (the “Victims’ Participation Decision”), 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”); the “Second Decision Authorising Victims to Participate in the Proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-640-Conf](#) and [No. ICC-01/14-01/21-640-Red](#), 8 November 2023; and the “Fourth Decision Authorising Victims to Participate in Proceedings”, [No. ICC-01/14-01/21-812](#), 22 July 2024.

² See the “Third Directions on the Conduct of Proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-873](#), 8 October 2024 (“Third Directions on the Conduct of Proceedings”).

II. PROCEDURAL BACKGROUND

4. On 8 March 2022, the Chamber issued the Directions on the Conduct of Proceedings, ruling that the Common Legal Representative could present evidence only upon leave being granted by the Chamber.³

5. On 13 April 2022, the Chamber issued the Decision on matters relating to the participation of victims during the trial (“Victims’ Participation Decision”), (i) ruling that the Common Legal Representative should file any request for leave to call witnesses *“as soon as possible after the Prosecution has submitted its final list of witnesses and, in any case, no later than five days after the opening statement(s) at the commencement of the trial”*;⁴ and (ii) directing the Common Legal Representative to seek permission before the end of the Prosecution’s case if individual victims wish to make statements presenting their views and concerns at trial.⁵

6. On 8 October 2024, the Chamber issued the Third Directions on the Conduct of Proceedings, in which it: (i) noted that the Common Legal Representative did not request leave to call any witnesses;⁶ and (ii) directed the Common Legal Representative to request leave to call individual victims to present their views and concerns by 22 October 2024.⁷

³ See the “Directions on the Conduct of Proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-251](#), 9 March 2022, paras. 10(ii), 12 and 14.

⁴ See the Victims’ Participation Decision, *supra* note 1, para. 48.

⁵ *Idem*, para. 42.

⁶ See the Third Directions on the Conduct of Proceedings, *supra* note 2, para. 7.

⁷ *Idem*, para. 8.

III. OBSERVATIONS

A. On the fact that the Common Legal Representative did not request leave to call any witnesses

7. In the Victims' Participation Decision, the Chamber directed the Common Legal Representative to file any request for leave to call witnesses **no later than five days after the opening statement(s) at the commencement of the trial**.⁸

8. Said instruction prevented the Common Legal Representative from seeking leave to present evidence because at the time – not having heard the Prosecution's evidence – she could not reasonably make a determination about the opportunity to call witnesses on behalf of the victims she represents nor argue on the criteria set by the Chamber to grant such leave. In particular, she notes that the evidence to be presented by the legal representative cannot be duplicative of that which was already presented by the Prosecution, as developed *infra*.⁹

9. Ever since 2009, in the *Lubanga* case, trial chambers of this Court have authorised legal representatives of victims to make such requests much later in time, *i.e.* in most cases **towards the end of the Prosecution case**,¹⁰ or, in one instance, **after the presentation of evidence by the Defence**.¹¹ This is the first case in the history of

⁸ See the Victims' Participation Decision, *supra* note 1, para. 48.

⁹ See *infra* para. 10.

¹⁰ See the "Decision on the request by victims a/ 0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial", (Trial Chamber I), [No. ICC-01/04-01/06-2032-Anx](#), 26 June 2009 ruling on a request made in April 2009, *i.e.* during the presentation of evidence by the Prosecution; the "Order regarding applications by victims to present their views and concerns or to present evidence" (Trial Chamber III), [No. ICC-01/05-01/08-1935](#), 22 November 2011 (the "*Bemba* Order"), paras. 3(d) and 3(f), issued during the presentation of evidence by the Prosecution; the "Decision on victims' representation and participation" (Trial Chamber V), [No. ICC-01/09-01/11-460](#), 3 October 2012, para. 77; the "Decision on the conduct of proceedings" (Trial Chamber VI), [No. ICC-01/04-02/06-619](#), 2 June 2015, para. 69; the Transcript of hearing of 28 August 2017, [No. ICC-02/11-01/15-T-181-ENG CT WT](#) (Trial Chamber I), page 2, lines 11-16; the "Annex A to the Directions on the conduct of proceedings" (Trial Chamber X), [No. ICC-01/12-01/18-789-AnxA](#), 6 May 2020, para. 24; the "Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence)", [No. ICC-01/14-01/18-1892](#), 29 May 2023, para. 11.

¹¹ See the "Decision on the Modalities of Victim Participation at Trial" (Trial Chamber II), [No. ICC-01/04-01/07-1788-tENG](#), para. 95, upheld by the Appeals Chamber. See the "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled 'Decision on the

this Court in which such an early time limit was imposed on a legal representative to indicate whether he/she wishes to call witnesses.

10. Requiring legal representatives to make such requests at a later stage in the proceedings enables the judges, as well as all parties and participants, to determine whether the request is justified, in accordance with the criteria developed by chambers of this Court, and upheld by the Appeals Chamber.¹²

11. The Common Legal Representative notes that the Chamber explicitly endorsed these criteria in the Victims' Participation Decision.¹³ Yet, without hearing the parties' and participants' views on said matter,¹⁴ the Chamber elected to impose a very early time limit to file a request to seek authorisation to present evidence. Said ruling rendered it virtually impossible for her to abide by the Chamber's decision, as she was not able to argue on the criteria set by the Chamber itself for such a request to be authorised.

12. In this regard, the Common Legal Representative notes that five days after the opening statements, she was in no position to evaluate how the expected testimonies of witnesses she would propose to call would *"relate to other evidence that has already been submitted to the Chamber and why it is not cumulative"*,¹⁵ nor whether said expected testimonies would be *"necessary for the determination of the truth"*, or *"appropriate"*, as required by the Chamber.¹⁶

Modalities of Victim Participation at Trial" (Appeals Chamber) (the "Katanga Appeals Judgement"), [No. ICC-01/04-01/07-2288 OA11](#), 16 July 2010, paras. 37 and 49-55.

¹² See 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. 3-4, 93-104; the Katanga Appeals Judgement, *supra* note 11, paras. 3-114. See also "Decision on LRVs requests to present evidence and views and concerns" (Trial Chamber X), [No. ICC-01/12-01/18-2063-Red](#), 9 December 2021, para. 12; the "Public Redacted Version of Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests" (Trial Chamber IX), [No. ICC-02/04-01/15-1199-Red](#), 6 March 2018, para. 17; and the Bemba Order, *supra* note 10, para. 3.

¹³ See the Victims' Participation Decision, *supra* note 1, paras. 45 and 49.

¹⁴ 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](#), pp. 1-61.

¹⁵ See the Victims' Participation Decision, *supra* note 1, para. 47, sub-paragraph 6.

¹⁶ *Idem*, para. 45.

13. Specifically, the Common Legal Representative considered whether calling an expert on the long-term impact of the harm caused by the treatment received by some of her clients detained at the OCRB would be of added value for the Chamber. However, prior to having heard the Prosecution's witnesses, and prior to having questioned dual status individuals, she could not evaluate the extent of the instructions to be provided to the expert for a comprehensive report on the victimisation, and she could also not make an assessment as to the added value of having an expert testify at trial. At this juncture, the Common Legal Representative reserves the right to make such request, if any, at the sentencing or reparations phase(s) of the proceedings, as appropriate.

14. Therefore, while the Victims' Participation Decision provided the Common Legal Representative with the possibility to request authorisation to call witnesses, the time limit imposed unfortunately *de facto* deprived the victims from effectively exercising said right.

B. On the fact that the Common Legal Representative will not request leave to call victims to present their views and concerns

15. The Common Legal Representative does not intend to call any victims to present their views and concerns.

16. This decision directly stems from the approach adopted by the Chamber in relation to the charges and to the participation of victims. Indeed, in electing to limit the scope of the charges to specific incidents listed as mere examples by Pre-Trial Chamber II in the Confirmation Decision,¹⁷ and in electing to reassess all victims'

¹⁷ See the "Decision on the scope of the charges" (Trial Chamber VI), [No. ICC-01/14-01/21-472](#), 6 September 2022. See also 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, para. 29, of the operative part, making it clear that the incident confirmed were mere examples. See also the "Decision on the 'Prosecution's application to amend the charges'" (Pre-Trial Chamber II), [No. ICC-01/14-01/21-396](#), 8 July 2022, reaffirming the same and in particular that "[t]he Chamber's indication of specific examples relating to the victims of the confirmed crimes in the Confirmation Decision [...] therefore ought not to be understood as limitative or restrictive: the indication of examples is not a finding that there can be no further instances beyond those specifically mentioned" (para. 16) and that "the

applications in this light,¹⁸ the Chamber created an entirely unprecedented situation in which 85% of victims (*i.e.* 27 individuals) authorised to participate in the proceedings are also Prosecution witnesses.¹⁹ This starkly contrasts with all other cases before this Court, in which only a marginal proportion of the represented victims are also Prosecution witnesses.

17. Over the course of the trial, the Common Legal Representative has already questioned all dual status individuals, thereby collecting valuable information for the purpose of understanding the extent of the victimisation and prejudice suffered. Accordingly, she posits that calling back any of them to present views and concerns while their evidence is already in the case record, may only be detrimental for their well-being.²⁰

18. In relation to the Common Legal Representative's four clients who are not dual status individuals, she reviewed their respective participation forms and consulted with them. All expressed fear that their involvement with the Court be known by their family and/or community. In addition, one is an indirect victim who was very young at the time of the events.

19. Accordingly, the Common Legal Representative does not deem it appropriate to seek leave to call these victims to orally share their views and concerns with the Chamber at this stage. It would indeed require them to go through the traumatic process of recounting yet again the events they experienced, exposing them to re-traumatisation, as well as to possible stigmatisation from their family and

Chamber recognised that the extent of the victimisation in connection with the confirmed charges was broader than the individual examples it specifically mentioned in the operative part of the Confirmation Decision through the explicit language by which such examples are introduced, namely the word 'including' (para. 20).

¹⁸ See the "Order for the Reassessment of Victims Applications" (Trial Chamber VI), [No. ICC-01/14-01/21-490](#), 27 September 2022, para. 8.

¹⁹ Of these individuals, 18 are witnesses who were called at trial or whose statements were submitted under Rule 68(2)(b) of the Rules of Procedure and Evidence and nine are witnesses whom the Prosecution elected not to call but whose statements are nonetheless available in the case record.

²⁰ See the Victims' Participation Decision, *supra* note 1, paras. 39-43. See also the "Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims" (Trial Chamber III), [No. ICC-01/05-01/08-2027](#), 21 December 2011, para. 12(iii).

community. Considering that the Chamber is already privy to ample information on the victimisation in the present case, she, therefore, will not request leave for victims to present their views and concerns.

20. In short, while the Decision on the Conduct of the Proceedings, the Victims' Participation Decision and the Third Decision on the Conduct of the Proceedings provide victims with some limited rights to participate in the proceedings, these remain symbolic and cannot be effectively exercised as a result of, on the one hand, the time limit imposed by the Chamber and, on the other hand, the Decision on the Scope of the Charges.

Respectfully submitted,

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

Sarah Pellet

Dated this 18th day of October 2024

At The Hague, The Netherlands