

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 June 2021

THE APPEALS CHAMBER

Before: Judge Gocha Lordkipanidze, Presiding
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

**Request to appear before the Appeals Chamber pursuant to
regulation 81(4)(b) of the Regulations of the Court**

Source: Office of Public Counsel for Victims

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

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. Pursuant to regulation 81(4) of the Regulations of the Court (the “Regulations”), Counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) respectfully requests to appear before the Appeals Chamber to represent the general interest of the victims in the appeal of the Defence¹ against the 16 April 2021 Decision establishing the principles applicable to victims’ applications for participation.²

2. Lacking the appointment at this stage of the proceedings of a Legal Representative of Victims in the case, and since the issues raised by the Defence in its Appeal Brief have a clear bearing on the interests of victims, Counsel’s appearance will be instrumental to duly represent the victims’ general interest and ensure that the rights of victims are fully taken into account.

3. Counsel clarifies that this request is introduced at this juncture, after fully considered the arguments raised in the Defence’s appeal brief, with a view of providing the Appeals Chamber with a meaningful contribution on the issue from the victims’ prospective while ensuring that the expeditiousness and efficiency of the proceedings is safeguarded.

II. PROCEDURAL BACKGROUND

4. On 16 April 2021 the Single Judge, acting on behalf of Pre-Trial Chamber II, issued the “Decision establishing the principles applicable to victims’ applications for participation” (the “Decision”).³

5. On 26 April 2021 the Defence filed its request for leave to appeal the Decision.⁴

¹ See the “Mémoire d’appel de la Défense au soutien de son appel contre la ‘Decision establishing the principles applicable to victims’ applications for participation’ (ICC-01/14-01/21-56) du Juge Unique rendue le 16 avril 2021”, [No. ICC-01/14-01/21-88](#), 3 June 2021.

² See the “Decision establishing the principles applicable to victims’ applications for participation” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-56](#), 16 April 2021 (the “Decision”).

³ *Ibid.*

6. On 21 May 2021, the Single Judge granted the Defence's Request for leave to appeal.⁵

7. On 3 June 2021, the Defence filed the "Mémoire d'appel de la Défense au soutien de son appel contre la 'Decision establishing the principes applicable to victims' applications for participation' (ICC-01/14-01/21-56) du Juge Unique rendue le 16 avril 2021".⁶

III. SUBMISSIONS

8. In accordance with regulation 81(4) of the Regulations "[t]he tasks of the Office of Public Counsel for victims shall include: [...] (b) Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues".⁷ The provision has been amended to reflect the relevant practice of the Court and specifies, in its revised version, that the OPCV's appearance can be triggered either upon request of the Office itself or by instructions of the Chamber. Trial Chamber I confirmed that the opportunity for the OPCV to appear in respect of specific issues can be initiated, *inter alia*, by "the Office, following an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)".⁸

9. In the past, the Office requested, and was granted, leave to appear on specific issues pertaining to the general interest of the victims.⁹ In other instances, the Office

⁴ See the "Demande d'autorisation d'interjeter appel de la 'Decision establishing the principes applicable to victims' applications for participation (ICC-01/14-01/21-56)", [No. ICC-01/14-01/21-63](#), 26 April 2021.

⁵ See the "Order on the conduct of the appeal proceedings" (Appeals Chamber), [No. ICC-02/05-01/20-345](#), 16 April 2021.

⁶ See *supra* note 1.

⁷ See Regulation 81(4) of the Regulations of the Court, [Doc. ICC-BD/01-05-16](#).

⁸ See the "Decision on the role of the Office of Public Counsel for Victims and its request for access to documents" (Trial Chamber I), [No. ICC-01/04-01/06-1211](#), 6 March 2008, para. 35.

⁹ See, *inter alia*, the "Order on the Office of Public Counsel for Victims' request filed on 21 November 2007 (Trial Chamber I), [No. ICC-01/04-01/06-1046](#), 27 November 2007, para. 2. See also the "Order on Written Submissions on the Interpretation of Regulation 42 of the Regulations of the Court (Regulation 28 of the Regulations of the Court)" (Trial Chamber II), [No. ICC-01/04-01/07-1205](#), 12 June 2009, which *inter alia* decided on the OPCV's Request to appear filed on 20 May 2009

appeared at the request of the Chambers of this Court.¹⁰ Said practice reflects the obligation binding on the OPCV to provide, where appropriate, assistance to victims by, *inter alia*, appearing before the Chamber in respect of specific issues, in accordance with regulation 81(4) of the Regulations.

10. In this regard, Counsel recalls that the OPCV was established as an independent permanent body within the Court “able to provide expert advice and assistance” on victims’ issues.¹¹ Since the Office’s inception, the practice of the Court and the responsibilities entrusted with the OPCV by both the Chambers and the victims have greatly contributed to the development of such expertise.

11. In the Abd-Al-Rahman (*‘Ali Kushayb’*) case, Pre-Trial Chamber II noted, in particular, that: “besides legal representation *stricto sensu*, the OPCV can be, and regularly is, also tasked with the broader responsibility to provide ‘general support and assistance’ to the benefit not only of applicant or admitted victims but also of their legal representatives; the time frame between the submission of the applications and the Chamber’s determination of its merits is one of those stages where those responsibilities can indeed prove critical”.¹²

12. More recently, the Appeals Chamber granted a similar request for the OPCV to appear before it finding that a request under regulation 81(4) of the Regulations “reflects the specific role of the OPCV, as established in the Regulations and recognised in the

(“Demande du BCPV afin d’être autorisé en vertu de la norme 81-4-b du Règlement de la Cour à comparaître devant la Chambre dans le cadre de questions spécifiques liées aux mesures de protection au bénéfice du témoin W-007”, [No. ICC-01/04-01/07-1160](#), 20 May 2009). See also the “Decision on the OPCV’s ‘Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims’ application process’” (Pre-Trial Chamber III), [No. ICC-02/11-01/11-57](#), 13 March 2012; and the “Decision on the OPCV’s request to participate in the reparations proceedings” (Trial Chamber I), [No. ICC-01/04-01/06-2858](#), 5 April 2012.

¹⁰ See, *inter alia*, the Transcripts of the hearing held on 30 October 2007, [No. ICC-01/04-01/06-T-58-ENG-ET WT](#), p. 13, lines 4 to 18; and the Transcripts of the hearing held on 4 December 2007, [No. ICC-01/04-01/06-T-62-ENG-ET WT](#), pp. 53 to 54.

¹¹ In this sense see FULFORD (A.), “The role of the Office of Public Counsel for Victims in trial proceedings”, in OPCV, [Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities](#), 2010, pp. 4-5.

¹² See the “Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-277](#), 5 February 2021, para. 18.

decisions of the Pre-Trial Chamber, inter alia in situations where applications under rule 89 of the Rules are still pending".¹³

13. The subject-matter of the present appeal affects the general interests of the victims because it involves a review of the Court's practice on the overall transmission and admission of victims' applications at pre-trial and trial stage of the proceedings. In particular, the issue raised by the Defence touches upon the victims' rights to participate safely and meaningfully in the proceedings before the Court. The system as currently adopted has the benefit of limiting the disclosure of victims' sensitive information by focusing the debates on "*unclear or borderline*"¹⁴ issues arising from a limited number of applications that pose assessment problems.¹⁵

14. In addition, the adopted system is conducive to the fair and expeditious conduct of the proceedings and enables the greatest number of victims to apply to participate. Trial Chamber I found that "*protective and special measures for victims are often the legal means by which the Court can secure the participation of victims in the proceedings, because they are a necessary step in order to safeguard their safety, physical and psychological well-being, dignity and private life in accordance with article 68(1) of the Statute*".¹⁶ Accordingly, "*protective measures are not favours but are instead the rights of victims, enshrined in article 68(1) of the Statute. The participation of victims and their protection are included in the same statutory provision, namely article 68 in its paragraphs 1 and 3, and to a real extent they complement each other*".¹⁷

¹³ See the "Decision on the Office of Public Counsel for victims' request to appear and file observations in the present appeal" (Appeals Chamber), [No. ICC-02/05-01/20-375 OA7](#), 3 May 2021.

¹⁴ See the "Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings", [No. ICC-01/14-01/21-25](#), 26 February 2021, para. 8.

¹⁵ *I.e.* Only relevant examples from the Group C applications submitted to the Chamber and the parties.

¹⁶ See the "Decision on victims' participation" (Trial Chamber I), [No. ICC-01/04-01/06-1119](#), 18 January 2008, para. 128.

¹⁷ *Idem*, para. 129.

15. Lastly, it is recalled that the right to a fair trial is enjoyed by all parties to the proceedings.¹⁸ Judge Eboe-Osuji extended this right to the victims in the *Ruto* case, finding that “[a] trial must be fair to all the parties and participants in the case - the Defence and the Prosecution alike. And the victims, too”.¹⁹

16. Since the appeal has the potential of greatly affecting the victims’ general interest in all future proceedings before the Court, the appearance of Counsel from the OPCV before the Appeals Chamber will allow for the victims’ rights to be duly taken into account.

IV. CONCLUSION

17. For the foregoing reasons, Counsel respectfully requests the Appeals Chamber to be allowed to appear on the issue on appeal and to file observations within the deadline established by the Chamber.



Paolina Massidda
Principal Counsel

Dated this 7th day of June 2021

At The Hague, The Netherlands

¹⁸ See the “Judgment on the Prosecutor’s Appeal against the Decision of Trial Chamber II entitled ‘Judgment Pursuant to Article 74 of the Statute’ - Joint Dissenting Opinion of Judge Ekaterina Trendafilova and Judge Cuno Tarfusser”, No. [ICC-01/04-02/12-271-AnxA A](#), 27 February 2015, paras. 6, 12.

¹⁹ See the “Public redacted version of Decision on Defence Applications for Judgments of Acquittal” (Trial Chamber V(a)), No. [ICC-01/09-01/11-2027-Red-Corr](#), 16 June 2016, Reasons of Judge Eboe-Osuji, para. 190.