

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 July 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

With Public Annex I and Confidential Annex II

**Registry Report in Relation to the Legal Representation of Victims in Trial
Proceedings**

Source: Registry

Document 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

Mr Mame Mandiaye Niang

Counsel for Said Kani

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

(Participation/Reparation)

The Office of the Public Counsel for Victims

Ms Sarah Pellet

The Office of the Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Mr Philipp Ambach

Other

I. Introduction

1. On 13 April 2022, Trial Chamber VI ("Chamber") issued its "Decision on matters relating to the participation of victims during the trial" ("Decision")¹ in the case of *The Prosecutor v. Mahamat Said Abdel Kani* ("Case"), in which it *inter alia* "request[ed] the victims, once they have been authorised to participate, to choose a C[ommon] L[egal] R[epresentative] [(“CLR”)] with the assistance of the Registry in accordance with Rule 90(2) of the Rules".² In the event that victims are unable to choose a CLR, the Chamber further instructed the Registry to "appoint a suitable CLR with full consideration of the views of the victims and the need to respect local traditions", with the CLR selected no later than 22 July 2022.³
2. Pursuant to the Decision, the Registry hereby transmits its report on the legal representation of victims ("Report"), together with two annexes.⁴

II. Procedural History

3. On 6 October 2021, the Single Judge of Pre-Trial Chamber II ("PTC") authorised 27 victims to participate in the Case and appointed the Office of Public Counsel for Victims ("OPCV") to act as common legal representatives for the authorised victims.⁵
4. On 9 December 2021, the PTC confirmed part of the charges against Mr Said ("Confirmation Decision").⁶

¹ Trial Chamber VI, "Decision on matters relating to the participation of victims during the trial", 13 April 2022, ICC-01/14-01/21-278.

² Decision, para. 29.

³ *Ibid.*

⁴ Annex I is the template used by the Registry to collect victims' supplementary declarations pertaining to their choice of legal representation, *see* para. 15; Annex II is the template of an incident report as part of the proposed Registry monitoring role under para. 31 of the Decision.

⁵ Pre-Trial Chamber II, "Decision on victim applications for participation in the proceedings and on legal representation of victims", 6 October 2021, ICC-01/14-01/21-199, p.18.

⁶ Pre-Trial Chamber II, "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.

5. On 21 January 2022, the Registry submitted its observations in view of the 28 January 2022 Status Conference, which included *inter alia* (i) an update and forecast on additional victim applications for participation in the Case; and (ii) observations on legal representation (“Registry Update”).⁷
6. On 21 February 2022, the Chamber set the start date of trial on 26 September 2022.⁸
7. On 13 April 2022, the Chamber issued the Decision.
8. On 27 May 2022, the Chamber authorised 20 applicants to participate in the proceedings (“First Decision on Participation”).⁹
9. On 13 July 2022, the Registry transmitted a further 19 applications for participation in the proceedings (“Second Transmission”).¹⁰

III. Classification

10. In accordance with regulation 23*bis*(1) of the Regulations of the Court (“RoC”), Annex II to the present Report is classified confidential as it contains an internal working document.

IV. Applicable Law

11. The submissions in the present Report are made on the basis of article 68(1) and (3) of the Rome Statute, rules 16 (1) and 90 of the Rules of Procedure and Evidence (“Rules”), regulations 67,79 and 81 of the RoC, regulations 112 and 113 of the Regulations of the Registry (“RoR”) and the Decision.

⁷ Registry, “Submissions in view of the 28 January 2022 Status Conference”, 21 January 2022, ICC-01/14-01/21-229. Annex II contains the Registry submissions on victim participation (This document was notified, in confidential *ex parte* version, available only to the Registry and in public redacted version, ICC-01/14-01/21-229-AnxII-Red).

⁸ Trial Chamber VI, “Decision Setting the Commencement Date of the Trial and Related Deadlines”, 21 February 2022, ICC-01/14-01/21-243.

⁹ Trial Chamber VI, “Decision authorising 20 victims to participate in the proceedings”, 27 May 2022, ICC-01/14-01/21-331.

¹⁰ Registry, “Second Registry Transmission of Group A and Group C Victim Applications for Participation in Trial Proceedings”, 13 July 2022, ICC-01/14-01/21-406.

V. Submissions

A. Consultation of victims

Scope of the consultation

12. As previously reported to the Chamber, following the review by the Victims Participation and Reparation Section (“VPRS”) of all applications of victims authorized to participate at the pre-trial stage of the proceedings, the Registry concluded that the entirety of participating victims were adversely impacted by the Confirmation Decision findings. As a result, none of these victims are participating in the trial proceedings.¹¹
13. The victims’ views presented in this report are therefore those of victims who have not participated in the Case proceedings to date, and who, for the majority,¹² have recently submitted applications for participation in the trial proceedings.
14. Among a total of 39 victims that were consulted by the Registry to date:
- J 14 are applicants who were assisted to complete their application forms by the Registry. Three of them have since been accepted to participate in the trial proceedings,¹³ and 11 have their status currently pending before the Chamber.¹⁴ In line with the Decision,¹⁵ Registry staff informed all applicants of the Chamber’s request for them to choose a common legal representative with the assistance of the Registry, in accordance with rule 90(2) of the Rules and regulation 112 of the RoR; and

¹¹ Registry Update, Annex II, para. 6.

¹² The Registry submitted to the Chamber three applications for participation which had been rejected at the pre-trial stage, following receipt of additional information.

¹³ First Decision on Participation.

¹⁴ In this regard, eight applications have been transmitted under “Group A” and three applications have been transmitted under “Group C”. See Second Transmission.

¹⁵ Decision, para. 29.

25 are applicants who were assisted by the OPCV to complete their application forms.¹⁶ 17 of these applicants have since been accepted to participate in the proceedings,¹⁷ and eight have their status currently pending before the Chamber.¹⁸

Methodology of Consultations

15. The views of victims on their legal representation were sought through a series of questions in their applications for participation.¹⁹ In addition, the Registry conducted individual follow up consultations²⁰ with some of the applicants in order to clarify their views²¹ and/or assist the victims to organize their common legal representation.²² In those cases, their views were recorded in a supplementary declaration. The template of such declaration is provided in Annex I to the present Report.

Results of the Consultations

16. The Registry found that:

All 14 victims who have been assisted by Registry staff to complete their application forms for participation in the proceedings accepted to be

¹⁶ Some of these victims have designated the OPCV as their legal representative in their application forms. The Chamber has also assigned the OPCV to represent the collective interests of future applicants as well as those authorised victims who have not selected a legal representative, pending the selection of a CLR. *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; Decision, para. 29.

¹⁷ First Decision on Participation.

¹⁸ Second Transmission.

¹⁹ *See* the [Standard Application Form](#), at Section 15, on p. 3 (Accessed July 2022).

²⁰ Eleven victims were met face-to-face individually by Registry staff between 10 and 17 May 2022 in Bangui. During these follow up meetings, in addition to sharing general information regarding the legal representation of victims before the Court, which the Registry systematically provides to all applicants, the Registry staff informed the victims about the Decision and the preference expressed so far by the majority of victims in the Case to be represented by Ms Pellet/OPCV. The applicants were then asked whether they agreed to be represented by the same Counsel from the OPCV, and invited to provide any further views.

²¹ For example, if they had provided contradictory answers in Section 15 of the application form.

²² For example, if they had chosen another legal representative at the pre-trial stage.

represented by Ms Sarah Pellet/Counsel from the OPCV²³ in the proceedings.

) All 25 victims whose applications have been brought to the VPRS by the OPCV either designated Ms Pellet (two victims) or accepted to be represented by Counsel from the OPCV (23 victims)²⁴ in the proceedings.

17. Furthermore, in their applications for participation in the proceedings,²⁵ victims stressed that they wanted a CLR who is competent/diligent,²⁶ and that he or she should inform them about the proceedings.²⁷ No potential divergent or conflicting interests were raised by any victim that would have warranted the contemplation of distinct victims' groups.

18. Finally, all victims interviewed to date have answered that they are unable to pay for their legal representation.²⁸

Conclusion on victims' choice of a CLR at the trial stage

19. All 20 victims admitted to participate in the Case, as well as potentially up to 19 victims whose applications for participation are currently pending before the Chamber have designated or agreed to be represented by Ms Sarah Pellet/Counsel of the OPCV during the trial proceedings. The Registry considers therefore that, through their agreement on a CLR, the victims (participating and applicants) have organized their own legal representation in application of rule 90(2) of the Rules.

²³ These victims either answered positively to question 15.V a) of the standard application form, which asks the following: "If the victim is unrepresented [...], does the victim wish to be represented by a lawyer from the [OPCV]? (an independent office of lawyers within the Court, representing victims in proceedings)" or they indicated in a supplementary declaration that they accepted to be represented by Ms Pellet/Counsel from the OPCV.

²⁴ These victims answered positively to question 15.V a) of the standard application form.

²⁵ Question 15. IV of the standard application form asks the applicant to provide "[c]haracteristics and qualities that the victim considers necessary in a lawyer representing them in the proceedings".

²⁶ Expressed by 18 victims.

²⁷ Expressed by 5 victims.

²⁸ In response to question 15. II of the standard application form: "Does the victim have financial resources to pay for a lawyer?"

20. Furthermore, in accordance with the Decision,²⁹ Ms Pellet has confirmed to the Registry that she has been working at the pre-trial stage with an assistant located in the field, who speaks Sango and possesses knowledge of the victims' local traditions. She will therefore be able to rely on a pre-constituted team with existing and tested methods for communicating with victims.³⁰
21. Lastly, the Registry notes that Counsel of the OPCV has been involved in the proceedings since the pre-trial stage of the Case - albeit representing a different group of victims before the start of the trial - and is thus familiar with the Case file, including the disclosure by the parties to date.³¹
22. For these reasons, the Registry presently does not see the need to deviate from the victims' choice expressed as reported above, nor to proceed with the selection of a common legal representative under rule 90(3) of the Rules.
23. The Registry notes that more victims may submit application forms in the future. When they do, the Registry will inform them about the victim representation scheme in effect in the Case, as the Chamber may find appropriate to confirm. In the event that any victim does not accept to be represented by Ms Pellet, the Registry would inform the Chamber accordingly, and make appropriate recommendations.

B. Monitoring of legal representation of victims

24. In the Decision, the Chamber considered the importance of a relationship of trust and effective communication between victims and their legal representative. It thus instructed the Registry "to inform the victims upon

²⁹ Decision, paras. 29 and 31.

³⁰ Email from Ms Pellet to the VPRS, 14 July 2022 at 9:25.

³¹ The Registry notes in this regard the principle of continuity of legal representation to avoid gaps in legal representation of victims, recognised by the Appeals Chamber in *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, "Decision on the Application of the Victims' Representative pursuant to Article 83 of the Regulations", 23 April 2012, ICC-01/09-01/11-409 OA3 OA4, paras 20-21. In that regard, the Appeals Chamber recalled that, pursuant to Article 17(1) of the Code of Professional Conduct for counsel, "Counsel shall advise and represent a client until: (a) The case before the Court has been finally determined, including all appeals; (b) Counsel has withdrawn from the agreement in accordance with article 16 or 18 of this Code; or (c) A counsel assigned by the Court has been withdrawn". See also, Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, "Second decision on victims' participation in trial proceedings", 16 June 2015, ICC-01/04-02/06-650, para. 28.

authorisation to participate that they may approach the VPRS if they face any issue that may seriously affect the relationship of trust with the CLR”.³²

25. On this premise, when assisting victims to apply for participation and informing them of their participatory rights, Registry staff provides information on victim counsel’s duties, and what victims can expect from their legal representative as per the Court’s framework. One expectation often communicated by victims during consultations, including in this Case, has been that counsel informs his/her clients of procedural developments and provides them with the explanations needed for them to participate in proceedings in an informed manner.
26. To ensure that it is in a position to report to the Chamber any significant issues victims may face in relation to their legal representation,³³ the Registry submits for the Chamber’s consideration the following monitoring scheme that it proposes to implement in the present Case:
27. First, the Registry will hold periodical communications/meetings with the CLR and her team, both at Headquarters and in the field.³⁴ These regular communications will allow the Registry to inquire on the general situation of the CLR’s clients, hear about any challenges met by the CLR, and potentially identify areas where the Registry may be of assistance.
28. Secondly, in consultation with the CLR, the Registry will seek victims’ views on their participation in a periodical manner through “spot checks”. These periodic consultations will inform the Registry about the victims’ overall level of satisfaction with their CLR and the effectiveness of their communication.³⁵ The feedback provided by participating victims in this context will allow the

³² Decision, para. 31.

³³ In the Decision at para. 31, the Chamber ruled that “[t]he VPRS should at all times maintain its neutral position and is instructed to report to the Chamber if it has received significant complaints”.

³⁴ Consultations in the field will be carried out through Country Office staff.

³⁵ As part of a more general survey of victims’ views on their participation in the ICC proceedings. In this context, and prior to any inquiry, the participating victims will be provided with information about the Registry services and the legal representation of victims at the ICC, and what they can expect from both entities. Victims will also be explained that the Registry will not inquire on matters that are covered by the client-counsel relationship.

Registry to identify areas that may require special attention and improvements, and to propose, in consultation with the CLR, any adjustments if need be. Prior to any follow-up action being taken, any feedback received from the victims in this context will be relayed and discussed with the CLR.

29. Lastly, regarding any potential significant concern pertaining to victims' legal representation, the Registry proposes to rely on a reporting system previously implemented in other cases: the Registry systematically (i) records any incident or concern in relation to the legal representation of victims that comes to its attention; (ii) it performs an objective assessment of the incident or concern;³⁶ and (iii) based on the result of the assessment, following communication with the CLR, the Registry channels it to the Chamber, as appropriate. A template of an incident report is annexed to the Report (Annex II).
30. In coordination with the CLR, the Registry will prepare and disseminate to all participating victims information notes on the above consultation scheme, including the details on how to reach the Registry.
31. In accordance with the Decision,³⁷ the Registry will keep the Chamber abreast of any significant issue or concern relayed by participating victims that reaches such a level to trigger a report to the Chamber.

³⁶ Different factors are taken into account to assess incidents. This includes, for example, who is affected, the seriousness of the incident/event, its frequency, as well as other contextual factors. The Registry may seek additional information at this juncture of anybody involved, observing rules of confidentiality, safety and security.

³⁷ Decision, para. 31.

C. Conclusion

32. Based on the above and pursuant to rule 90(2) of the Rules, the Registry respectfully informs the Chamber that victims authorised to participate in the Case, as well as those victims whose applications for participation are currently pending before the Chamber, have chosen Ms Sarah Pellet/Counsel from the OPCV to represent them in the trial proceedings.

p.p.



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 21 July 2022

At The Hague, The Netherlands