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**International
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Date: **18 March 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

Victims' response to the "Demande de la Défense se fondant sur les informations actualisées portant sur le nombre de demandes de participation de victimes déposées et anticipées dans la présente affaire visant à ce que ces demandes soient communiquées aux Parties en application du Jugement d'appel du 14 septembre 2021 (ICC-01/14-01/21-171)"

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**

Mr Karim A.A. Khan
 Mr James Stewart
 Mr Eric MacDonald

Counsel for the Defence

Ms Jennifer Naouri
 Mr Dov Jacobs

Legal Representatives of the Victims

Ms Sarah Pellet
 Ms Caroline Walter
 Mr Tars Van Litsenborgh

Legal Representatives of the Applicants**Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for
Victims****The Office of Public Counsel for the
Defence****States' Representatives****Amicus Curiae****REGISTRY****Registrar**

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit**

Mr Nigel Verrill

Detention Section**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. In accordance with regulations 24(2) and 34(b) of the Regulations of the Court, Counsel representing the collective interests of future applicants as well as of applicants in the proceedings (the “Legal Representative”),¹ hereby submits her response to the *“Demande de la Défense se fondant sur les informations actualisées portant sur le nombre de demandes de participation de victimes déposées et anticipées dans la présente affaire visant à ce que ces demandes soient communiquées aux Parties en application du Jugement d’appel du 14 septembre 2021 (ICC-01/14-01/21-171)”* (the “Defence Request”).²

2. The Legal Representative posits that it is for the Chamber to assess which procedure for the admission of victims is the most appropriate at trial, and to ensure that the well-being and safety of victims is safeguarded by implementing the necessary redactions to the victims’ applications prior to their transmission to the parties.

II. PROCEDURAL BACKGROUND³

3. On 14 September 2021, the Appeals Chamber issued the “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’”, confirming the Pre-Trial Decision (the “Appeals Chamber Judgment”).⁴

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG ET](#), p. 47, lines 1-13.

² See the *“Demande de la Défense se fondant sur les informations actualisées portant sur le nombre de demandes de participation de victimes déposées et anticipées dans la présente affaire visant à ce que ces demandes soient communiquées aux Parties en application du Jugement d’appel du 14 septembre 2021 (ICC-01/14-01/21-171)”*, [No. ICC-01/14-01/21-255](#), 11 March 2022 (the “Defence Request”).

³ The procedural background included in these submissions is non-exhaustive and primarily focuses on the procedure relevant to the present submissions.

⁴ See the “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’” (Appeals Chamber), [No. ICC-01/14-01/21-171 OA2](#), 14 September 2021 (the “Appeals Chamber Judgment”).

4. On 9 December 2021, Pre-Trial Chamber II issued the “Decision on the confirmation of charges against Mahamat Said Abdel Kani”.⁵
5. On 21 December 2021, the Registrar transmitted the record of the proceedings⁶ to the newly constituted Trial Chamber VI (the “Chamber”).⁷
6. On 14 January 2022, the Chamber issued an order convening the first Status Conference⁸ and instructing the parties, participants and the Registry to file submissions on listed items in preparation of the trial.⁹
7. On 28 January 2022, the first Status Conference was held,¹⁰ during which the Chamber, *inter alia*, appointed the Office of Public Counsel for Victims to represent the collective interests of future applicants in the proceedings until one or more common legal representatives is or are appointed to represent victims in trial proceedings.¹¹
8. On 21 February 2022, the Chamber issued a decision setting the date of the commencement of the trial to 26 September 2022.¹² On 28 February 2022, the Defence

⁵ See 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.

⁶ See the “Transmission to Trial Chamber VI of the record of the proceedings, including the Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC-01/14-01/21-218-Conf, dated 09 December 2021”, [No. ICC-01/14-01/21-223-Conf](#), 21 December 2021.

⁷ See the “Decision constituting Trial Chamber VI and referring to it the case of *The Prosecutor v. Mahamat Said Abdel Kani*” (Presidency), [No. ICC-01/14-01/21-220](#), 14 December 2021. See also the “Decision notifying the election of the Presiding Judge and Single Judge” (Trial Chamber VI), [No. ICC-01/14-01/21-221](#), 15 December 2021.

⁸ See the “Order Scheduling the First Status Conference” (Trial Chamber VI), [No. ICC-01/14-01/21-226](#), 14 January 2022.

⁹ See the “Prosecution’s submissions pursuant to the ‘Order scheduling first status conference’”, [No. ICC-01/14-01/21-230-Conf](#) and [No. ICC-01/14-01/21-230-Red](#), 21 January 2022; the “Version confidentielle expurgée des ‘Observations de la Défense de Monsieur Saïd en application de l’ ‘Order Scheduling the First Status Conference’ (ICC-01/14-01/21-226)”, [No. ICC-01/14-01/21-231-Conf-Red](#) and [No. ICC-01/14-01/21-231-Red2](#), 21 January 2022; the “Submissions on behalf of victims on the matters identified in the ‘Order Scheduling the First Status Conference’ (ICC-01/14-01/21-226)”, [No. ICC-01/14-01/21-228](#), 21 January 2022; and the “Registry Submissions in view of the 28 January 2022 Status Conference”, [No. ICC-01/14-01/21-229](#), 21 January 2022.

¹⁰ See the transcript of the hearing held on 28 January 2022, *supra* note 1.

¹¹ *Idem*, p. 47, lines 1-13.

¹² See the “Decision Setting the Commencement Date of the Trial and Related Deadlines” (Trial Chamber VI), [No. ICC-01/14-01/21-243](#), 21 February 2022.

requested leave to appeal said decision,¹³ which was rejected by the Chamber on 15 March 2022.¹⁴

9. On 8 March 2022, the Chamber issued the “Directions on the Conduct of Proceedings”.¹⁵ The Defence requested leave to appeal said Directions on 15 March 2022.¹⁶

10. On 11 March 2022, the Defence filed its Request.¹⁷ On 18 March 2022, the Prosecution filed its response to said Request.¹⁸

III. RESPONSE TO THE REQUEST

A. The procedure chosen for the admission of victims at the trial stage

11. The Legal Representative preliminary notes that the Appeals Chamber Judgment does not automatically set a procedure for the admission of victims at trial, contrary to what the Defence appears to suggest.¹⁹ Instead, the Appeals Chamber confirmed the validity of the “A-B-C Approach” put in place by the Pre-Trial Chamber, and merely referred to another *possible* procedure when the number of applicants is *expected* to remain low.²⁰

¹³ See the “*Demande d’autorisation d’interjeter appel de la ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’* (ICC-01/14-01/21-243) *rendue le 21 février 2022*”, [No. ICC-01/14-01/21-246](#), 28 February 2022. See also the “*Prosecution Response to ‘Demande d’autorisation d’interjeter appel de la ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’* (ICC-01/14-01/21-243) *rendue le 21 février 2022*”, [No. ICC-01/14-01/21-249](#), 4 March 2022; and the “*Victims’ response to the Defence’s request for leave to appeal the Decision on the Commencement Date of the Trial* (ICC-01/14-01/21-246), [No. ICC-01/14-01/21-248](#), 4 March 2022.

¹⁴ See the “*Decision on Defence Request for Leave to Appeal the ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’* (ICC-01/14-01/21-243)”, [No. ICC-01/14-01/21-258](#), 15 March 2022.

¹⁵ See the “*Directions on the Conduct of Proceedings*” (Trial Chamber VI), [No. ICC-01/14-01/21-251](#), 9 March 2022.

¹⁶ See the “*Demande de reconsidération ou, subsidiairement, demande d’autorisation d’interjeter appel des ‘Directions on the Conduct of Proceedings’* (ICC-01/14-01/21-251) *déposées le 9 mars 2022*”, [No. ICC-01/14-01/21-259-Conf](#), 15 March 2022.

¹⁷ See the Defence Request, *supra* note 2.

¹⁸ See the “*Prosecution’s Response to Defence’s Request Seeking Updated Information on Victims Participation* (ICC-01/14-01/21-255)”, [No. ICC-01/14-01/21-261](#), 18 March 2022.

¹⁹ See the Defence Request, *supra* note 2, paras. 38, 44, and 58.

²⁰ See the Appeals Chamber Judgment, *supra* note 4, paras. 1-5, 17-21, and 48-83.

12. In this regard, the Legal Representative confirms that, starting 7 February 2022, she has transmitted 13 applications for participation of victims to the Registry and expects that she will transmit another 10 applications in the coming weeks. In addition, the Registry, through the Victims Participation and Reparations Section (the “VPRS”), has just transmitted to her team 6 applications for participation of individuals already in contact with the Court at the pre-trial stage but for whom supplementary information was needed, together with another 3 new applications for participation. She further notes that the Registry indicated to the Chamber that it foresees that about 50 new applications for participation may realistically be received in the first semester of this year,²¹ and presumably some more afterwards. The Legal Representative leaves it therefore to the discretion of the Chamber to appreciate whether the potential number of victims participating at trial is likely to increase or not.

13. Notwithstanding, the Legal Representative respectfully underlines that it is for the Chamber to decide which procedure it wishes to adopt regarding the transmission and admission of victims’ applications to participate at trial. She further notes that the Registry might be in a position to make a recommendation in this regard, as it did at the pre-trial stage of the present case, as well as in other cases before this Court.²²

14. Finally, she finds it regrettable that the Defence seems to understand the possibility of providing observations on victims’ applications as a process in which the aim of the parties is to oppose victims’ requests leading to the rejection of said requests by the Chamber.²³ The Legal Representative submits that such a position is at odds with the spirit of the Rome Statute regarding victims’ participation in proceedings before the Court, and that the parties are only to challenge the admission of victims to participate when deemed necessary,²⁴ and not as a default position.

²¹ See the transcript of the hearing held on 28 January 2022, *supra* note 1, p. 44, lines 4-11.

²² 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. See also, *inter alia*, the “Registry Observations on Aspects Related to the Admission of Victims for Participation in Proceedings”, [No. ICC-02/05-01/20-203](#), 17 November 2020.

²³ See the Defence Request, *supra* note 2, paras. 58-59.

²⁴ See the Appeals Chamber Judgment, *supra* note 4, paras. 82.

B. The right of victims to their privacy, well-being and safety, and the use of redactions of their identifying information as a proportionate measure

15. Should the Chamber grant the Defence Request and adopt a different procedure than the one used at the pre-trial stage of the present case, the Legal Representative requests the implementation of the necessary redactions on victims applications in conformity with, on the one hand, the continuous jurisprudence of the Court for victims who are not dual status victims,²⁵ and, on the other hand, the protocols on dual status victims for individuals in this category (for instance regarding their contact details notably for individuals in the ICCPP).²⁶ She further submits, as developed *infra*, that redactions applied to identifying information of participating victims not enjoying dual status is justified in the circumstances of the case and does not jeopardise the rights of the Accused.²⁷

16. The Legal Representative further notes that the Defence appears to assume, without consulting the Registry, that the latter is in a position to proceed with all necessary redactions.²⁸ Upon confirmation from the Registry, should the Chamber order the VPRS to proceed with the redactions, the Legal Representative respectfully

²⁵ The Appeals Chamber has upheld the permissibility of anonymous victim participation. See the “Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims”(Appeals Chamber), [No. ICC-01/04-02/12-140 A](#), 23 September 2013, para. 17. See also, *inter alia*, the “Decision on victims’ participation and legal representation in trial proceedings” (Trial Chamber I), [No. ICC-02/05-01/20-494](#), 19 October 2021, para. 15; and the “Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-259](#), 18 January 2021; the “Decision on Disclosure of Victims’ Identities” (Trial Chamber IX), [No. ICC-02/04-01/15-471](#), 17 June 2016; the “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants” (Trial Chamber III), [No. ICC-01/05-01/08-699](#), 22 February 2010, para. 24; and the “Decision on victims’ participation” (Trial Chamber I), [No. ICC-01/04-01/06-1119](#), 18 January 2008, paras. 128-129.

²⁶ See, *inter alia*, the “Order on disclosure and related matters” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-50-Red](#), 7 April 2021, para. 34; the “Decision adopting a dual status witness protocol” (Trial Chamber I), [No. ICC-02/05-01/20-618](#), 7 March 2022 (applying the the dual status witness protocol adopted in the *Yekatom & Ngaïssona* case, which generally follows the protocols in the *Ongwen* and *Al Hassan* cases); and the “Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses”(Trial Chamber VI), [No. ICC-01/04-02/06-464](#), 18 February 2015.

²⁷ See *infra*, paras. 15-20.

²⁸ See the Defence Request, *supra* note 2, paras. 48, 52, and 53.

requests to be consulted before the transmission of the applications to the parties, and therefore informs the Chamber that she is available for consultation in this regard.

17. The Legal Representative underlines that redactions on the victims' applications for participation are not exceptional in nature, as alleged by the Defence,²⁹ but indeed need to be proportional to the interests protected.³⁰ In this regard, she submits that the Defence's request for the inclusion of a specific justification on a case-by-case basis as to the *rationale* behind each redaction applied to a particular victim's application is unreasonable,³¹ and for the sake of transparency, efficiency and predictability of the proceedings, she requests that the Chamber adopts the *rationale* for redactions in all victims' applications as a basis to proceed, including all identifying information of victims or their family members. The Legal Representative further underlines that such practice is in conformity with the constant jurisprudence of the Court in this regard.³²

18. The Legal Representative contends that, considering the concerns expressed by her clients, mainly related to the continued criminal activities in and around Bangui, participating victims in the present case should be presumed to remain anonymous *vis-à-vis* the Defence, unless they have expressly indicated otherwise. Indeed, as per the constant jurisprudence of this Court and pursuant to article 68(1) of the Rome Statute, the Court is under an obligation to take appropriate measures to protect, *inter alia*, the safety, privacy, physical and psychological well-being of the victims, including

²⁹ See the Defence Request, *supra* note 2, paras. 54-57.

³⁰ *Idem*, para. 55.

³¹ *Idem*, paras. 54-57. She also notes that this position is at odds with the Defence statement at the pre-trial stage, when underlining the attention it drew itself "*to the importance of ensuring the implementation of article 68(1) in the context of the victim participation regime*". See the "Defence Consolidated Response to the 'Submissions in the general interest of victims in the Defence's Appeal against the 'Decision establishing the principles applicable to victims' applications for participation (ICC-01/14-01/21-56)' (ICC-01/14-01/21-105)' and to the 'Registry Observations in the Defence Appeal against the 'Decision establishing the principles applicable to victims' applications for participation (ICC-01/14-01/21-56)' (ICC-01/14-01/21-106)'" , [No. ICC-01/14-01/21-109-t-ENG](#), 28 June 2021, para. 19.

³² See *supra*, note 25.

through ordering the non-disclosure of victims' identifying information.³³ Non-disclosure of victims' identifying information is a protective measure by which the Court can legally secure their participation in the proceedings, and, in this respect, constitutes one of the victims' rights enshrined in the Rome Statute.³⁴ She further recalls the constant jurisprudence of Chambers of this Court granting anonymity for participating victims' – who are not dual status individuals – *vis-à-vis* the Defence, while ruling that such a measure is not inconsistent with the right of the accused to a fair trial.³⁵ In this regard, the Legal Representative underlines that victims' applications for participation “[u]nlike evidence collected to support or challenge the substantive criminal charges in the case, [...] are administrative in nature and [...] are intended to serve a limited purpose: to provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings”.³⁶

19. Finally, she notes that the current stage of the proceedings also carries a reasonable uncertainty as to the outcome of the trial. Should Mr Saïd not be convicted of the crimes he is charged with, victims fear that the disclosure of their identities to the Defence will compromise their security and may lead to acts of retaliation. She further recalls in this regard her previous submissions as to the remaining volatile situation on the ground, and the correlated vulnerable position of victims, leading to

³³ See, *inter alia*, the Decision establishing the principles applicable to victims' and representation during the Confirmation Hearing, *supra* note 25, paras. 25 and 34; the “Public redacted version of 'Decision on Victim Participation at Trial and on Common Legal Representation of Victims'” (Trial Chamber VIII), [No. ICC-01/12-01/15-97-Red](#), 8 June 2016, paras. 7 and 13; the “Decision on victims' participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber II), [No. ICC-01/04-02/06-211](#), 15 January 2014, paras. 45-46; the “Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/09-01/11-249](#), 5 August 2011, paras. 108-113.

³⁴ See the “Decision on victims' participation”, *supra* note 25, paras. 128-129; and the “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants”, *supra* note 25, para. 24.

³⁵ *Ibid.*

³⁶ See the “Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011” (Trial Chamber III), [No. ICC-01/05-01/08-2012-Red](#), 9 February 2012, para. 100. See also para. 101: “[t]he probative value of the application forms is limited. Unlike evidence collected to support or challenge the substantive criminal charges in the case, the application forms are administrative in nature and are created through a relationship of confidence between a potential victim and the Registry of the Court”. See also the Decision establishing the principles applicable to victims' and representation during the Confirmation Hearing, *supra* note 25, paras. 30-31.

the permanent fear they are living in, as expressed several times.³⁷ She submits that, considering the current situation in Bangui, victims are already demonstrating a lot of courage when coming forward in these proceedings and she highlights that the Court has a corresponding duty to protect them, as much as feasible. As a result, notwithstanding the rights of the Defence, she echoes the Appeals Chamber in underlying that *“the safety and well-being of the victims may be more appropriately safeguarded by implementing necessary redactions to the victims’ applications prior to their transmission to the parties”*,³⁸ in accordance with the Chamber’s duty stemming out of article 68(1) of the Rome Statute to protect the safety, physical and psychological well-being, dignity, and privacy of the victims.

20. She further recalls that one of the recognised goals of the *“A-B-C Approach”* is notably to facilitate the Registry’s role to protect victims in interaction with the Court by limiting the transmission of applications to the parties,³⁹ and therefore underlines that, should transmissions occur as a rule at trial, the only appropriate and necessary mitigating measure that the Court will be able to take is to implement necessary redactions prior to said transmissions.

C. The meaningful participation of victims at trial

21. Lastly, the Legal Representative notes the additional request formulated by the Defence for all victims’ applications for participation to be received by the Registry at the latest 30 days before the commencement date of the trial.⁴⁰ She reiterates in this

³⁷ See, *inter alia*, the “Victims’ observations on the ‘Registry Submission on the parameters for the organisation of a judicial site visit’ (ICC-01/14-01/21-241-Conf)”, [No. ICC-01/14-01/21-245-Conf](#), 28 February 2022, para. 14; and the transcript of the hearing held on 12 October 2021, [No. ICC-01/14-01/21-T-004-Red2-ENG](#), p. 23, lines 20-23: “[victims] are terrorised. They live in constant fear of being arrested in the streets in Bangui or to be recognised by their torturers [...], some of whom, continue to serve within the internal security forces or within the Central African Armed Forces, while others hold high offices within the Central African administration”.

³⁸ See the Appeals Chamber Judgment, *supra* note 4, paras. 3, 5, 27, 53, 54, 56, 58, 60, 67, 69, 81, and 82.

³⁹ *Idem*, para. 69.

⁴⁰ See the Defence Request, *supra* note 2, p. 16.

regard her position expressed in her 21 January 2022 Submissions, which mirrors the approach adopted in the most recent cases before the Court,⁴¹ and according to which:

“while in accordance with regulation 85(3) of the Regulations of the Court, victims are encouraged to file their applications before the start of the stage of the proceedings to which they wish to participate, they can also do so throughout the proceedings. In light of the victims’ legitimate fear described supra coupled with the current COVID-19 pandemic – and in order not to prejudice the right of victims to participate in the proceedings – the Legal Representative suggests that the Chamber sets an adequate initial deadline for victims to file their applications prior to the start of the trial and, in addition, leaves open the possibility for victims to do so throughout the trial, at least until the end of the presentation of evidence by the Prosecution”.⁴²

22. She therefore opposes the Defence’s request and respectfully asks the Chamber to set a procedure enabling victims to submit applications for participation at trial until the end of the Prosecution case.

FOR THESE REASONS, the Legal Representative respectfully requests the Chamber:

(i) to assess which procedure for the admission of victims is the most appropriate at trial; (ii) to ensure that the well-being and safety of victims are safeguarded, notably by implementing necessary standard redactions to the victims’ applications prior to their transmission to the parties; and (iii) to allow the submissions of victims’ applications for participation until the end of the Prosecution case.



Sarah Pellet

Dated this 18th day of March 2022

At The Hague, The Netherlands

⁴¹ See, *inter alia*, the “Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial” (Trial Chamber X), [No. ICC-01/12-01/18-880](#), 12 June 2020, para. 13; and the “Decision Setting the Commencement Date of the Trial” (Trial Chamber V), [No. ICC-01/14-01/18-589](#), 16 July 2020, para. 20.

⁴² See the “Submissions on behalf of victims on the matters identified in the ‘Order Scheduling the First Status Conference’ (ICC-01/14-01/21-226)”, *supra* note 9, para. 39 (footnote omitted).