

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 13 June 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

**Public Redacted Version of “Victims’ observations on the ‘Prosecution’s request for the trial be held partially in Bangui’ (ICC-01/14-01/21-337-Conf)”
No. ICC-01/14-01/21-355-Conf, dated 10 June 2022**

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 Mame Mandiaye Niang

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of the Victims

Ms Sarah Pellet

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

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings and participating victims (the “Legal Representative”),¹ hereby submits her observations on the “Prosecution’s request for the trial to be held partially in Bangui” (the “Request”).²

II. PROCEDURAL BACKGROUND

2. On 14 January 2022, Trial Chamber VI (the “Chamber”) issued an order convening the first Status Conference, and instructing the parties, participants and the Registry to file submissions on listed items in preparation of the trial.³

3. On 21 January 2022, the Prosecution,⁴ the Defence,⁵ the Legal Representative,⁶ and the Registry⁷ filed their respective submissions on the items identified by the Chamber.

4. On 28 January 2022, the first Status Conference was held,⁸ during which the Chamber, *inter alia*, instructed the Registry to submit the parameters to be considered

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG CT](#), p. 47, lines 12-24; the “Decision on matters relating to the participation of victims during the trial”, [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; and the “Decision authorising 20 victims to participate in the proceedings”, [No. ICC-01/14-01/21-311](#), 27 May 2022.

² See the “Prosecution’s request for the trial be held partially in Bangui”, with Confidential Annex A, [No. ICC-01/14-01/21-337-Conf](#) and [No. ICC-01/14-01/21-337-Red](#), 30 May 2022 (the “Request”),

³ See the “Order Scheduling the First Status Conference” (Trial Chamber VI), [No. ICC-01/14-01/21-226](#), 14 January 2022.

⁴ 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.

⁵ See the “Version confidentielle expurgée des ‘Observations de la Défense de Monsieur Saïd en application de l’ ‘Order Scheduling the First Status Conference’ (ICC01/14-01/21-226)’”, [No. ICC-01/14-01/21-231-Conf-Red](#) and [No. ICC-01/14-01/21-231-Red2](#), 21 January 2022.

⁶ 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)”, [No. ICC-01/14-01/21-228](#), 21 January 2022.

⁷ See the “Registry Submissions in view of the 28 January 2022 Status Conference”, [No. ICC-01/14-01/21-229](#), 21 January 2022.

⁸ See the transcript of the hearing held on 28 January 2022, *supra* note 1.

by the Chamber to allow for the subsequent Registry's feasibility assessment on the organisation of a judicial site visit, if ordered by the Chamber.⁹

5. On 17 February 2022, the Registry filed its submission on the parameters for the organisation of a judicial site visit (the "Registry Submission").¹⁰

6. On 21 February 2022, Trial Chamber VI (the "Chamber") issued its "Decision Setting the Commencement Date of the Trial and Related Deadlines",¹¹ and notably decided that it would not be opportune to organise hearings *in situ* at that point and that it will keep the possibility of conducting a site visit later in the proceedings under review (*i.e.* after the start of the trial).¹²

7. On 28 February 2022, victims submitted their observations on the Registry Submission.¹³

8. On 30 May 2022, the Prosecution filed the Request, together with a redacted version thereof on 7 June 2022.¹⁴

9. From 7 June 2022, the Legal Representative consulted a representative panel of 11 victims she represents in order to gather their views on this important issue. Considering the fact that the Chamber specifically prohibited her to communicate any confidential information to participating victims,¹⁵ said consultation is limited to information known to the public.

⁹ *Idem*, p. 42, lines 2-11.

¹⁰ See the "Registry Submission on the parameters for the organisation of a judicial site visit", [No. ICC-01/14-01/21-241-Conf](#), 17 February 2022.

¹¹ 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.

¹² *Idem*, paras. 31-33.

¹³ See 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.

¹⁴ See the Request, *supra* note 2.

¹⁵ See the "Decision on matters relating to the participation of victims during the trial", [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 36.

III. CLASSIFICATION

10. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, the present filing is classified as “confidential”, since it responds to a document which was filed with the same classification and contains information not known to the public at this stage. A public redacted version will be filed in due course.

IV. SUBMISSIONS

11. The Legal Representative notes that, in deciding whether it is in the interests of justice to hold proceedings away from the seat of the Court, a Chamber must balance the benefit of bringing the Court closer to those affected by the case with other pertinent factors, including: (i) security issues;¹⁶ (ii) logistical considerations, such as the costs of holding proceedings elsewhere;¹⁷ (iii) whether the potential host State

¹⁶ See the “Decision Concerning the Requests to Recommend Holding Proceedings *In Situ* and to Conduct a Judicial Site Visit in Northern Uganda” (Trial Chamber IX), [No. ICC-02/04-01/15-499](#), 18 July 2016, para. 3; the “Decision on the Gbagbo Defence Request to hold opening statements in Abidjan or Arusha” (Trial Chamber I), [No. ICC-02/11-01/15-316](#), 26 October 2015, para. 15; the “Public redacted version of the Decision on the recommendation to the Presidency on holding part of the trial in the State concerned” (Presidency), [No. ICC-01/04-02/06-645-Red](#), 15 June 2015, paras. 18 and 20; the “Recommendation to the Presidency on holding part of the trial in the State concerned” (Trial Chamber VI), [No. ICC-01/04-02/06-526](#), 19 March 2015, para. 24; the “Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*” (Presidency), [No. ICC-01/09-01/11-875-Anx](#), 26 August 2013, para. 12-13, 18, 20, 22, and 24; and the “Recommendation to the Presidency on where the Court shall sit for trial” (Trial Chamber V(A)), [No. ICC-01/09-01/11-763](#), 3 June 2013, para. 10.

¹⁷ See the “Decision Concerning the Requests to Recommend Holding Proceedings *In Situ* and to Conduct a Judicial Site Visit in Northern Uganda”, *supra* note 16, para. 3; the “Decision on the Gbagbo Defence Request to hold opening statements in Abidjan or Arusha”, *supra* note 16, para. 15; the “Public redacted version of the Decision on the recommendation to the Presidency on holding part of the trial in the State concerned”, *supra* note 16, paras. 18, 21 and 23; the “Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*”, *supra* note 16, paras. 12-13, 17, and 23; and the “Recommendation to the Presidency on where the Court shall sit for trial”, *supra* note 16, para. 10.

would support the request;¹⁸ (iv) the potential impact upon victims and witnesses;¹⁹ and (v) the potential impact on the perception of the Court.²⁰

12. The Legal Representative concurs with the Prosecution that it would be in the interests of justice to hold the trial partially in Bangui as it would bring the Court closer to the victims and the affected communities,²¹ thereby providing access to a large public.²² Indeed, she submits that this course of action would have a positive impact on the Court's perception, as it would reinforce victims' confidence in the Court, which is all the more important considering the lack of trust they have demonstrated lately.²³ She also reiterates that it would have a significant impact on their effective

¹⁸ See rule 100(3) of the Rules of Procedure and Evidence: "*The Presidency shall consult the State where the Court intends to sit. If that State agrees that the Court can sit in that State, then the decision to sit in a State other than the host State shall be taken by the judges, in plenary session, by a two-thirds majority*". See also the "Decision on the Gbagbo Defence Request to hold opening statements in Abidjan or Arusha", *supra* note 16, para. 15; the "Public redacted version of the Decision on the recommendation to the Presidency on holding part of the trial in the State concerned", *supra* note 16, para. 17; the "Recommendation to the Presidency on holding part of the trial in the State concerned", *supra* note 16, para. 19; the "Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*", *supra* note 16, paras. 11 and 18; and the "Recommendation to the Presidency on where the Court shall sit for trial", *supra* note 16, para. 10.

¹⁹ See the "Decision Concerning the Requests to Recommend Holding Proceedings *In Situ* and to Conduct a Judicial Site Visit in Northern Uganda", *supra* note 16, para. 3; the "Public redacted version of the Decision on the recommendation to the Presidency on holding part of the trial in the State concerned", *supra* note 16, paras. 18, 20, 22-24, and 26; the "Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*", *supra* note 16, paras. 12-13, 18, and 22; and the "Recommendation to the Presidency on where the Court shall sit for trial", *supra* note 16, para. 10.

²⁰ See the "Public redacted version of the Decision on the recommendation to the Presidency on holding part of the trial in the State concerned", *supra* note 16, paras. 18, 24, and 26; and the "Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*", *supra* note 16, paras. 12-13, 15, 19, and 24.

²¹ See the "Decision Concerning the Requests to Recommend Holding Proceedings *In Situ* and to Conduct a Judicial Site Visit in Northern Uganda", *supra* note 16, para. 3; the "Decision on the Gbagbo Defence Request to hold opening statements in Abidjan or Arusha", *supra* note 16, para. 15; the "Public redacted version of the Decision on the recommendation to the Presidency on holding part of the trial in the State concerned", *supra* note 16, para. 26; the "Recommendation to the Presidency on holding part of the trial in the State concerned", *supra* note 16, paras. 21, and 23; the "Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*", *supra* note 16, paras. 10, 15, and 21; and the "Recommendation to the Presidency on where the Court shall sit for trial", *supra* note 16, para. 10.

²² See the Request, *supra* note 2, paras. 1 and 6.

²³ See the transcript of the hearing held on 28 January 2022, *supra* note 1, p. 42, lines 5-12.

participation in the proceedings insofar as they will feel that their concerns are duly taken into account and that justice is being done.²⁴ This is especially the case since the relevant authorities' of the Central African Republic (the "CAR") [REDACTED] have expressed their willingness to accommodate the Request and to provide their full support and coordination in its implementation.²⁵

13. A large majority of the consulted victims support the holding of part of the proceedings in Bangui, arguing that such a course of action would demonstrate that justice is being done and that the fight against impunity is not limited to members of the Anti-Balaka. When consulted however, they all raised concerns regarding the potential security issues, insisting that the situation in Bangui remains volatile and that former members of the Seleka are still very influential, and are even key members of the Government. If part of the proceedings were to take place in Bangui, victims all expect appropriate measures to enable them and their families to participate in complete safety.

14. Holding part of the proceedings *in situ* also contributes to the transparency of the proceedings, as well as to a large dissemination of information and to making justice more visible for victims.²⁶ In this regard, the Legal Representative submits that the publicity of proceedings is one of the core elements of justice enshrined throughout the Rome Statute (the "Statute"), as well as one of the main factors to be taken into account by a relevant Chamber when considering whether to "*sit elsewhere*" in accordance with article 3(3) of the Statute. Furthermore, the Registry is under the obligation to "*take necessary measures to give adequate publicity to the proceedings*".²⁷

15. In order for the *in situ* proceedings to produce the desired effect of transparency, accessibility and visibility of justice, the Legal Representative finds it crucial that the Registry ensures effective outreach and media strategies, preferably in consultation

²⁴ See also 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 6, paras. 46 and 48.

²⁵ See the Request, *supra* note 2, paras. 3 and 8.

²⁶ *Idem*, para. 46.

²⁷ See rule 92(8) of the [Rules of Procedure and Evidence](#).

with the parties and participants. Such consultation should however be limited to the formulation of suggestions and comments, with a view to ensuring a clear and fair representation of the proceedings to the public, and without undue interference with the Registry's work. As a neutral organ of the Court, the Registry should retain the power to decide on the specific outreach activities to be conducted in the field, in accordance with the guidelines set out by the Chamber. Likewise, the Registry must maintain discretion in respect of the dissemination of photographs, videos and other media materials pertaining to *in situ* hearings.

16. At this stage, the Legal Representative would already like to suggest the organisation of live broadcast of the proceedings to the public with the availability of interpretation in Sango. Indeed, without said modalities, it would be impossible for most victims and affected communities to follow the proceedings, thus defeating the purpose of the *in situ* hearings.

17. The Legal Representative further agrees with the Prosecution that it is not recommended to have Mr Mahamat Saïd Abdel Kani ("Mr Saïd" or the "Accused") present in Bangui for *in situ* proceedings, not only due to an identified risk of absconding,²⁸ but also due to the impact of his presence on the well-being, safety and security of the witnesses and victims.²⁹ Pursuant to rule 86 of the Rules of Procedure and Evidence, "[a] Chamber in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses in accordance with article 68 [of the Rome Statute]". She recalls in this regard her previous submissions stating that the presence of the Accused "*would discourage victims and their communities to make use of the enhanced access to the Court and its proceedings*",³⁰ and would thus have "*a detrimental impact on the effective participation*

²⁸ See the Request, *supra* note 2, para. 14.

²⁹ See also "Annex A to the Prosecution's request for the trial be held partially in Bangui", [No. ICC-01/14-01/21-337-Conf-AnxA](#), 30 May 2022, paras. 9-11.

³⁰ See 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)", *supra* note 13, para. 15.

of victims in the proceedings insofar as they will feel that their security concerns are not duly taken into account".³¹

18. Indeed, the consulted victims raised concerns as to the potential negative impact of the Accused's presence on their security and well-being and their families'. They also had difficulties to reconcile his presence with the real possibility for him to abscond in these circumstances, not the least because some former members of the Seleka are key members of the government. For them, said concerns and difficulties outweigh the benefits of having Mr Saïd present in Bangui, such as sending a strong signal that all individuals, no matter which side they belong to, will one day be held accountable for their acts.

19. Although the Legal Representative discussed the possibility of hearing witnesses *in situ* in Bangui with the Prosecution,³² she was cautious about the concrete modalities of such a proposal. Indeed, security is, once more, a key aspect in this respect, and she was not, and is still not, in a position to submit meaningful observations on this issue nor to blankly agree on this proposal, given the absence of concrete proposals to mitigate the security risks entailed. She nevertheless welcomes the Prosecution's consideration that this would only be possible for witnesses with the appropriate protection and security profile in accordance with article 68(1) of the Statute,³³ and insists that this would thus necessarily exclude crime-based witnesses.

20. Additionally, the Legal Representative stresses the relevance of other – currently unknown – factors, such as the costs of holding a part of the trial in Bangui. Indeed, the estimated costs of holding proceedings in Bangui need to be reasonable not to outweigh the benefits thereof,³⁴ as discussed *supra*. Thus, she reserves the right

³¹ *Idem*, para. 16.

³² See the Request, *supra* note 2, para. 2.

³³ *Idem*, para. 15.

³⁴ See, *inter alia*, the "Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*", *supra* note 16, para. 13.

to submit further observations on the matter, following a detailed report from the Registry thereon.

21. Finally, if the Chamber were to decide to hold *in situ* hearings, the Legal Representative is available to take part in such hearings. Should the Chamber instead decide not to hold proceedings in the Central African Republic due to security or other constraints, the Legal Representative reiterates her request for the Chamber to consider holding a judicial site visit – towards the middle or the end of the Prosecution’s presentation of evidence, once it will be fully acquainted with the Prosecution’s case.³⁵

Respectfully submitted,



Sarah Pellet

Dated this 13th day of June 2022

At The Hague, The Netherlands

³⁵ 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 6, para. 47.