

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 August 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 "Observations on the 'Registry Report in Relation to the Legal Representation of Victims in Trial Proceedings' (ICC-01/14-01/21-424)"
No. ICC-01/14-01/21-441-Conf, dated 4 August 2022**

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 as well as of applicants in the proceedings and participating victims (the “Legal Representative”),¹ hereby submits her observations on the “Registry Report in Relation to the Legal Representation of Victims in Trial Proceedings” (the “Report”).²

2. The Legal Representative welcomes the Registry’s efforts to ensure effective legal representation of victims in the proceedings and shares said efforts, as demonstrated by the legal assistance provided so far to applicants and participating victims. However, she posits that the Registry’s proposed “*monitoring scheme*”³ goes far beyond the Chamber’s instructions, and lacks any legal and operational basis whilst potentially negatively impacting on a range of legal guarantees enshrined in the Court’s legal framework. More precisely, said monitoring scheme is not justified; jeopardises the independence of counsel representing victims, as well as in the present proceedings, and the independence of the Office of Public Counsel for Victims (the “Office” or “OPCV”); and is redundant considering the Code of Professional Conduct for Counsel (the “Code of Conduct”) to which counsel are bound. Therefore, she submits that the practice already applied in other proceedings – in which regular reports are provided to the relevant Trial Chamber – guarantees adequate coordination between the Registry and the appointed legal representative, the possibility for victims to regularly express their concerns about the proceedings, as well as the ability of Trial Chamber VI (the “Chamber”) to be informed of matters which may require its determination.

¹ 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; 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 “Decision”), para. 29; and the “Decision authorising 20 victims to participate in the proceedings” (Trial Chamber VI), [No. ICC-01/14-01/21-331](#), 27 May 2022.

² See the “Registry Report in Relation to the Legal Representation of Victims in Trial Proceedings”, [No. ICC-01/14-01/21-424](#), 22 July 2022 (dated 21 July 2022) (the “Report”).

³ *Idem*, paras. 26-29.

3. Therefore, the Legal Representative submits that the Registry's proposed "monitoring scheme", effectively implying that the legal representation of victims is kept under review throughout the proceedings, should be rejected outright.

II. PROCEDURAL BACKGROUND

4. On 6 October 2021, the Single Judge acting on behalf of Pre-Trial Chamber II authorised 27 victims to participate in the present case and appointed Counsel of the OPCV to act as common legal representative for the authorised victims.⁴

5. On 9 December 2021, Pre-Trial Chamber II confirmed part of the charges against Mahamat Saïd Abdel Kani relating to crimes allegedly committed at the *Office Central de Répression du Banditisme* between 12 April and 30 August 2013 (the "Confirmation Decision").⁵

6. On 21 February 2022, the Chamber set the start date of the trial on 26 September 2022.⁶

7. On 13 April 2022, the Chamber issued its "Decision on matters relating to the participation of victims during the trial" (the "Decision"), in which it, *inter alia*, requested the victims, once they have been authorised to participate, to choose a Common Legal Representative with the assistance of the Registry in accordance with rule 90(2) of the Rules of Procedure and Evidence.⁷

8. On 27 May 2022, the Chamber authorised 20 victims to participate in the proceedings.⁸

⁴ See the "Decision on victim applications for participation in the proceedings and on legal representation of victims" (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-199](#), 6 October 2021.

⁵ See the "Decision on the confirmation of charges against Mahamat Saïd 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 "Decision Setting the Commencement Date of the Trial and Related Deadlines" (Trial Chamber VI), [No. ICC-01/14-01/21-243](#), 21 February 2022.

⁷ See the Decision, *supra* note 1.

⁸ See the "Decision authorising 20 victims to participate in the proceedings", *supra* note 1.

9. On 22 July 2022, the Report was notified.⁹

III. CLASSIFICATION

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

IV. SUBMISSIONS

11. First, the Legal Representative posits that the Registry somehow misapprehended the Chamber’s instructions. Indeed, the Chamber instructed the Registry “to inform the victims upon 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”,¹⁰ and stressed 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”.¹¹ In the Legal Representative’s understanding, the Chamber clearly limited the Registry’s role to the receipt of, and reporting on, complaints from victims. Instead, the Registry goes beyond the Chamber’s instructions by developing a “monitoring scheme”.

12. In this regard, the Legal Representative recalls that the Chamber’s instructions were based on the Registry’s previous information that a group of victims consulted at pre-trial stage “expressed the view that the CLR should be accountable to the victims and that the latter should be in a position to inform the Chamber if they are not satisfied with the services of the CLR”.¹² As the Registry rightly points out, “none of these victims are participating in the trial proceedings” following the Confirmation Decision.¹³ Concerning the victims participating at the present stage of proceedings, the Registry states that

⁹ See the Report, *supra* note 2.

¹⁰ See the Decision, *supra* note 1, para. 31.

¹¹ *Ibid.*

¹² *Idem*, para. 30, referring to “Annex II to the Registry Report on Legal Representation of Victims and Observations on the Defence Requests”, [No. ICC-01/14-01/21-80-AnxII-Red](#), 21 May 2021 (the “Registry Annex”), para. 35.

¹³ See the Report, *supra* note 2, para. 12

18 victims stressed the need for the legal representative to be competent/diligent, whilst 5 victims expressed the need to be informed by him or her about the proceedings.¹⁴ The Registry does not mention any other needs or concerns raised by victims that would warrant the implementation of the proposed “*monitoring scheme*”.

13. Second, the Registry’s proposed “*monitoring scheme*” has no support in the Court’s practice. Indeed, the reporting system implemented in other cases referred to by the Registry¹⁵ is effectively limited to recording victims’ eventual complaints and reporting such complaints to the Chamber, after consultations with the concerned legal representative. Such reporting system does not imply what is proposed in the present instance, namely the Registry’s intended role to hold periodical communications/meetings with the counsel to be appointed to represent the victims in the present case, with a view of hearing any challenges met by said counsel, and of identifying areas where the Registry may be of assistance;¹⁶ and to periodically seek victims’ views and concerns on their participation to identify areas that may require special attention and improvements, and to propose any adjustments.¹⁷

14. Third, the Legal Representative contends that the envisaged “*monitoring scheme*” – apart from not being justified – is also in violation of the Court’s legal framework, particularly the fundamental principle of independence of counsel; and is conflicting with the requirement for the Registry to maintain its neutral position at all times.

15. Specifically, since the Registry supports the appointment of a counsel from the OPCV, the Legal Representative recalls regulation 81(2) of the Regulations of the Court (the “*Regulations*”), which states that “*the Office of Public Counsel for Victims shall fall within the remit of the Registry solely for administrative purposes [...] and it shall function in its substantive work as a wholly independent office. Counsel and assistants within the Office*

¹⁴ *Idem*, para. 17.

¹⁵ *Idem*, para. 29.

¹⁶ *Idem*, para. 27.

¹⁷ *Idem*, para. 28.

shall act independently".¹⁸ The independence of the Office's members is further established under regulation 115 of the Regulations of the Registry, according to which they "*shall not receive any instructions from the Registrar in relation to the conduct of the discharge of their tasks as referred to in regulations 80 and 81 of the Regulations of the Court*".¹⁹

16. When appointed to represent victims in proceedings before the Court, counsel of the Office – as any other lawyer appointed to represent victims – are bound by the Code of Conduct,²⁰ which prevails over any other code of ethics or professional responsibility which counsel are bound to honour.²¹ The Code of Conduct sets out ethical and professional standards, requiring counsel, *inter alia*, to act in good faith, with fairness, integrity and candour when dealing with clients, as the basis for a relationship "*of candid exchange and trust*";²² to consult clients and abide by their decisions;²³ and to keep clients informed about the progress of the proceedings and any relevant legal or factual issues that may concern them.²⁴

17. Therefore, the Legal Representative contends that the Registry, as the organ of the Court providing non-judicial administrative and operational support,²⁵ is not in a position to act as a *de facto* oversight mechanism or scrutineer of any counsel appointed to represent victims in proceedings before the Court. Under no circumstance is the Registry to intervene in counsel's activities and legal representation – even under the guise of "*periodical communications/meetings*" or "*periodic consultations*" with counsel,²⁶ as said course of action would ultimately lead to the Registry's interference in counsel's independence and to a discriminatory differentiation between counsel since the defence's counsel would not be subjected to any monitoring scheme.

¹⁸ See regulation 81(2) of the Regulations.

¹⁹ See regulation 115(1) of the Regulations of the Registry.

²⁰ See regulation 115(2) of the Regulations of the Registry.

²¹ See article 4 of the Code of Professional Conduct for Counsel (the "Code of Conduct").

²² See article 14(1) of the Code of Conduct.

²³ See article 14(2) of the Code of Conduct.

²⁴ See article 15(1) of the Code of Conduct.

²⁵ See, *inter alia*, article 43(1) of the Rome Statute.

²⁶ See the Report, *supra* note 2, paras. 27-28.

18. Fourth, the Legal Representative further recalls that the Code of Conduct already envisages a scheme of complaint that would encompass eventual issues related to victims' non-satisfaction with their legal representation²⁷ – a *lex specialis* which must be followed in these circumstances.²⁸ As such, the Code of Conduct ensures the Legal Representative's accountability to victims,²⁹ and obviates the need for a separate monitoring scheme.

19. Fifth, it is worth mentioning that the Registry did not consult the Legal Representative regarding the monitoring and review of common legal representation,³⁰ although it initially envisaged consultation on this issue “*on a continuous basis*” during the pre-trial stage, including after the confirmation of charges.³¹ The Registry then informed that it “*would monitor the situation and propose any adjustments necessary for the next phase of proceedings*” – with the caveat that “*this would be the primary responsibility of the legal teams to request such adjustments depending on their needs*”.³² Instead of respecting the Legal Representative's primary responsibility on the matter, the Registry now takes the initiative to propose a “*monitoring scheme*”.

20. Sixth, regarding the different components of the “*monitoring scheme*”, the Legal Representative wishes to point out that “*spot checks*” as a means to seek victims' views³³ seem highly inappropriate, [REDACTED]. Indeed, proceeding to random consultations with victims without careful planning and prior communication would significantly increase the risk of exposing them in an already volatile security

²⁷ See Chapter 4 (Disciplinary regime) of the Code of Conduct, in particular article 34.

²⁸ See, *mutatis mutandis*, the “PUBLIC REDACTED VERSION OF ICC-01/05-01/08-295-Conf Decision on the Prosecutor's Applications to Open an Inquiry with Respect to Witnesses [REDACTED]” (Pre-Trial Chamber III), [No. ICC-01/05-01/08-295-Red](#), 22 September 2009 (dated 27 November 2008), paras. 14-15. See also the “Decision on the ‘Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge’” (Pre-Trial Chamber I), [No. ICC-01/11-01/11-200](#), 9 August 2012, para. 14.

²⁹ See also the Decision, *supra* note 1, para. 30, referring to the Registry Annex, *supra* note 12, para. 35.

³⁰ The Legal Representative was merely requested to confirm that she intended to continue to represent victims in the case with a presence in the field of an assistant. See the email from the VPRS to the Legal Representative, entitled “Said case \ VPRS next report on legal representation”, dated 13 July 2022 at 21:47. See also the Report, *supra* note 2, para. 20 and footnote 30.

³¹ See the Registry Annex, *supra* note 12, para. 95.

³² *Ibid.*. See also footnote 70.

³³ See the Report, *supra* note 2, para. 28.

environment.³⁴ Moreover, the multiplication of interlocutors clearly affects the victims' well-being. The Legal Representative notes that this confusion is already an issue and that protocols binding the Office of the Prosecutor, counsel for the defence and legal representatives of victims have been adopted with a view of solving this issue.³⁵

21. Lastly, regarding the proposal to hold regular communications/meetings,³⁶ the Legal Representative recalls that legal representatives of victims are bound to professional secrecy and confidentiality under the Code of Conduct.³⁷ In this regard, the Legal Representative submits that the practice already applied in other proceedings – in which regular reports are provided to the relevant Trial Chamber³⁸ – guarantees adequate coordination between the Registry and the legal representatives of victims, the possibility for victims to regularly express their concerns about the proceedings and the ability of the Chamber to be informed of matters which may require its determination. She, therefore, suggests that the same practice be applied in the present case.

³⁴ See, *inter alia*, the “Victims’ response to the ‘Prosecution’s Request for In-Court Protective Measures’ (ICC-01/14-01/21-356-Red)”, [No. ICC-01/14-01/21-377-Conf](#) and [No. ICC-01/14-01/21-377-Red](#), 27 June 2022, paras. 18-20.

³⁵ See, *inter alia*, 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; the “Decision adopting mechanisms for exchange of information on individuals enjoying dual status” (Trial Chamber I), [No. ICC-02/11-01/15-199](#), 1 September 2015 (dated 31 August 2015); the “Decision on Protocols to be Adopted at Trial” (Trial Chamber IX), [No. ICC-02/04-01/15-504](#), 22 July 2016; the “Decision on the ‘Protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant’, the ‘Dual Status Witness Protocol’, and related matters” (Trial Chamber X), [No. ICC-01/12-01/18-674](#), 19 March 2020; the “Decision on Protocols at Trial” (Trial Chamber V), [No. ICC-01/14-01/18-677](#), 8 October 2020; the “Decision adopting a dual status witness protocol” (Trial Chamber I), [No. ICC-02/05-01/20-618](#), 7 March 2022; and the “Decision adopting an updated protocol on the handling of confidential information and contact with witnesses” (Trial Chamber I), [No. ICC-02/05-01/20-691](#), 18 May 2022. See also “Annex: Protocol on the handling of confidential information during investigations and contact between a party or participants and witnesses of the opposing party or of a participant” to the [Chambers Practice Manual](#), fifth edition adopted in the judges’ retreat in November 2021 and published on 25 March 2022.

³⁶ See the Report, *supra* note 2, para. 27.

³⁷ See article 8 of the Code of Conduct.

³⁸ See, *inter alia*, in the *Ntaganda* case, the “Thirteenth Periodic Report on Victims in the Case and their General Situation”, [No. ICC-01/04-02/06-2353](#), 6 June 2019; and, in the *Yekatom & Ngaïssona* case, the “Third Periodic Report on the Victims Admitted to Participate in the Proceedings”, [No. ICC-01/14-01/18-1209](#), 13 December 2021.

Respectfully submitted,

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

Sarah Pellet

Dated this 5th day of August 2022

At The Hague, The Netherlands