

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/21**
Date: **21 January 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

**Submissions on behalf of victims on the matters identified
in the “Order Scheduling the First Status Conference” (ICC-01/14-01/21-226)**

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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Detention Section

**Victims Participation and Reparations
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Other

I. PROCEDURAL BACKGROUND

1. On 7 January 2019, Pre-Trial Chamber II issued a warrant of arrest against Mr Mahamat Saïd Abdel Kani.¹

2. On 9 July 2021, the Single Judge issued the “Decision on legal representation of victims and related matters”, *inter alia*, “assign[ing] the OPCV to represent the collective interests of victims, with a view to protect the interests of, and provide assistance and support to all applicant victims pending completion of the transmission of their applications to the Chamber”.²

3. On 6 October 2021, Pre-Trial Chamber II issued the “Decision on victim applications for participation in the proceedings and on legal representation of victims” authorising 27 victims to participate in the proceedings and appointing OPCV Counsel to act as the common legal representative of the victims.³

4. On 9 December 2021, Pre-Trial Chamber II issued the “Decision on the confirmation of charges against Mahamat Said Abdel Kani”.⁴

5. On 10 December 2021, the Registrar transmitted the record of the proceedings to the Presidency, including the Decision on the confirmation of charges against Mahamat Said Abdel Kani.⁵

¹ See the “Public Redacted Version of ‘Warrant of Arrest for Mahamat Said Abdel Kani’, 7 January 2019, ICC-01/14-01/21-2-US-Exp”, [No. ICC-01/14-01/21-2-Red2](#), 17 February 2021.

² See the “Decision on legal representation of victims and related matters” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-119](#), 9 July 2021, para. 30. See also the “Notification pursuant to the ‘Decision on legal representation of victims and related matters’ (No. ICC-01/14-01/21-119)”, [No. ICC-01/14-01/21-121](#), 12 July 2021.

³ See the “Decision on victim applications for participation in the proceedings and on legal representation of victims” (Pre-Trial Chamber II), [No. ICC-01/14-01/21-199](#), 6 October 2021.

⁴ 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 (the “Impugned Decision”).

⁵ See the “Transmission to the Presidency 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-01/14-01/21-219-Conf](#), 10 December 2021.

6. On 14 December 2021, the Presidency referred the case to the newly constituted Trial Chamber VI (the “Chamber”).⁶ The following day, the Trial Chamber elected its Presiding Judge and its Single Judge.⁷

7. On 21 December 2021, the Registrar transmitted the record of the proceedings to the Chamber.⁸

8. On 14 January 2022, the Chamber issued the “Order Scheduling the First Status Conference” (the “Order”)⁹ on 28 January 2022, and instructing the parties, participants and the Registry to file their submissions on the following matters by 21 January 2022:

- A. Commencement date of the trial.
- B. Anticipated evidence.
- C. Agreed facts under Rule 69 of the Rules.
- D. Translation at trial: languages to be used by the parties, participants, and the witnesses the parties intend to call.
- E. Disclosure of outstanding material in the Prosecution’s possession and related issues.
- F. Disclosure by the Defence, including whether the Defence intends to advance a defence in accordance with Rules 79 and 80 of the Rules.
- G. Provision of pre-trial briefs.
- H. Motions requiring resolution prior to the commencement of trial.
- I. Estimated length of opening statements.
- J. Update and forecast on (additional) applications by victims to participate in the proceedings.

⁶ 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.

⁷ See 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 “Transmission to Trial Chamber VI of the record of the proceedings, including the Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC01/14-01/21-218-Conf, dated 09 December 2021”, [No. ICC-01/14-01/21-223-Conf](#), 21 December 2021.

⁹ See the “Order Scheduling the First Status Conference” (Trial Chamber VI), [No. ICC-01/14-01/21-226](#), 14 January 2022 (the “Order”).

9. In addition, the Chamber indicated that the parties and participants may *“express their wish to add further items to the list and indicate whether parts of the status conference should be held ex parte and/or in private session”*.¹⁰

10. It further instructed that *“should the parties and participants be of the view that any matters ought to be resolved before the status conference, they should bring these to the Chamber’s attention promptly”*.¹¹

11. Pursuant to the Order, Counsel representing the victims participating in the proceedings,¹² as well as the collective interests of victims,¹³ (the “Legal Representative”) submits her observations on the matters identified by the Chamber.

II. SUBMISSIONS

A. Matters under items E. (Disclosure of outstanding material in the Prosecution’s possession and related issues), F. (Disclosure by the Defence), and H. (Motions requiring resolution prior to the commencement of the trial)

12. The Legal Representative has no submissions to make on matters under items (E), (F) and (H) of the Order which are to be primarily addressed by the Prosecution and the Defence. The Legal Representative reserves her right to make observations during the Status Conference on these items, following the Parties’ relevant submissions.

B. Matters under item A. (Commencement of the trial)

13. The Legal Representative acknowledges the current situation in light of the COVID-19 pandemic and its impact on the proceedings – including on the preparation for trial of the parties, the participants and the Registry alike and leaves it at the discretion of the Chamber to set the commencement date of the Trial.

¹⁰ *Idem*, para. 3.

¹¹ *Idem*, para. 4.

¹² See the “Decision on victim applications for participation in the proceedings and on legal representation of victims”, *supra* note 3.

¹³ See the “Decision on legal representation of victims and related matters”, *supra* note 2.

14. Notwithstanding, she insists that the interest of the victims is for the trial to start as soon as practicable and without undue delay, and that the trial proceedings be carried out in an expeditious manner. Victims have indeed been waiting for justice for almost 10 years.

15. The Legal Representative reserves her right to present to the Chamber specific views and concerns expressed by the victims regarding the commencement date of the trial once the parties have presented submissions in this regard.

C. Matters under item B. (Anticipated evidence)

16. The Legal Representative is not currently in a position to indicate whether in due course she will seek authorisation to call victims as witnesses or otherwise to appear in person to present views and concerns. This determination will be made at a later stage, after having considered the extent and type of evidence the Prosecution will present at trial and the interests of the victims.

17. In this regard, the Legal Representative recalls the significant distinction that the Court's jurisprudence has drawn between the right for legal representatives to call victims to provide evidence and the right of victims to present their views and concerns through an unsworn statement before the Chamber.¹⁴ In the *Lubanga* case, Trial Chamber I recognised "[t]he unequivocal statutory right for victims to present their views and concerns in person when their personal interests are affected [...] if the Court considers that course appropriate [and in as much as it does not] undermine the integrity of these criminal proceedings".¹⁵ Trial Chamber II also distinguished the process of victims expressing their views and concerns from the process of victims giving evidence.¹⁶

18. In the *Bemba* case, legal representatives were allowed to both apply for some of their clients to present their views and concerns in person before the Chamber and

¹⁴ See, *inter alia*, the "Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08" (Trial Chamber III), [No. ICC-01/05-01/08-2220](#), 24 May 2012, paras. 7-8, and 9-11.

¹⁵ See the "Decision on the request by victims a/ 0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial" (Trial Chamber I), [No. ICC-01/04-01/06-2032-Anx](#), 26 June 2009, paras. 17, and 25-27.

¹⁶ *Idem*. See also, the "Decision on the Modalities of Victim Participation at Trial" (Trial Chamber II), [No. ICC-01/04-01/07-1788-tENG](#), 22 January 2010, paras. 69-71.

some to provide evidence at trial.¹⁷ Trial Chamber III emphasised that the “[t]hreshold to grant applications by victims to give evidence is significantly higher than the threshold applicable to applications by victims to express their views and concerns in person. For this reason, victims who fail to reach the threshold to be authorised to give evidence may still be permitted to express their views and concerns in person”,¹⁸ in the form of unsworn statements.¹⁹ The presentation of views and concerns of six victims was also authorised in the *Ntaganda* case and the Chamber noted “their alleged harms suffered, and the temporal and geographical proximity of the alleged events in relation to the charges”.²⁰

19. Concerning the presentation of views and concerns, the Chamber may envisage the possibility for victims to either present their views in person, or in writing. In the case of the appearance in person, the Legal Representative suggests adopting the procedure established in the *Bemba* and *Ntaganda* cases. The legal representative would guide the victims through their presentation by facilitating it through a few questions, and the victims will not be questioned by the parties, but only by the judges.²¹ In light of the importance for victims to be able to express their views and to share their experience with the judges, the Legal Representative favours their appearance in person (either by video-link or at the seat of the Court) rather than in writing.

¹⁷ See the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims” (Trial Chamber III), [No. ICC-01/05-01/08-2138](#), 22 February 2012, para. 20. See also, the “Decision on victims’ representation and participation” (Trial Chamber V), [No. ICC-01/09-01/11-460](#), 3 October 2012, paras. 56-58; the “Decision on victims’ representation and participation” (Trial Chamber V), [No. ICC-01/09-02/11-498](#), 3 October 2012, paras. 55-57; and the “Decision on the participation of victims in the trial proceedings” (Trial Chamber IV), [No. ICC-02/05-03/09-545](#), 20 March 2014, paras. 22-41.

¹⁸ See the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims”, *supra* note 17, para. 20. See also, the “Public redacted version of ‘Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns’ (10 February 2017, ICC-01/04-02/06-1780-Conf)” (Trial Chamber VI), [No. ICC-01/04-02/06-1780-Red](#), 15 February 2017, para. 10.

¹⁹ See the “Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08”, *supra* note 14, para. 7.

²⁰ See the “Public redacted version of ‘Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns’ (10 February 2017, ICC-01/04-02/06-1780-Conf)” *supra* note 18, para. 49.

²¹ See the “Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08”, *supra* note 14, paras. 7-8. See also, the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims”, *supra* note 17, para. 7; and the transcripts of the hearing held on 1 March 2017, [No. ICC-01/04-02/06-T-198-Red2-ENG WT](#) p. 3, lines 8-20.

20. As *per* the Court's established jurisprudence, victims are to relinquish their anonymity when appearing to give evidence as witnesses.²² On the contrary, the Legal Representative submits that the victims appearing to present their views and concerns before the Chamber through unsworn statements should not automatically be required to lift their anonymity. Instead, the Legal Representative suggests that the Chamber assesses such necessity on a case-by-case basis, depending on the circumstances of the victims concerned, coupled with the evolving security situation in the Central African Republic.

21. In relation to the right to call witnesses, the Legal Representative will request the appearance before the Chamber only of those victims who are best-placed to (i) assist the Chamber in the determination of the truth; (ii) be able to present evidence and/or views and concerns that affect the personal interests of the greatest number of participating victims; and (ii) present testimony that will not be cumulative of that which has already been presented by the Prosecution in the case.²³

22. In relation to the right to call witnesses other than victims, the Legal Representative will request leave to call those who are able to provide important information that is not hitherto included in the evidence presented by the parties, and shall make a genuine contribution to the determination of the truth.²⁴ In granting such right, Trial Chamber I considered whether the testimony "[i] *affects the victim's personal interests; (ii) is relevant to the issues of the case; (iii) contributes to the determination of the truth; and (iv) whether the testimony would be consistent with the rights of the accused, in particular the right to adequate time and facilities to prepare a defence*".²⁵

²² See the "Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims" (Trial Chamber III), [No. ICC-01/05-01/08-2027](#), 21 December 2011, paras. 12-15, and 19.

²³ *Idem*, paras. 12-15. See the "Public redacted version of 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns'", *supra* note 20, para. 10.

²⁴ See the "Decision on the Modalities of Victim Participation at Trial", *supra* note 16, paras. 94-97. Trial Chamber I appointed an expert on names and other social conventions in the DRC following the legal representatives' submissions in this regard. See the "Instructions to the Court's expert on names and other social conventions in the Democratic Republic of Congo" (Trial Chamber I), [No. ICC-01/04-01/06-1934](#), 5 June 2009, para. 12.

²⁵ See the "Decision on the participation of victims in the trial proceedings", *supra* note 17, para. 25.

23. As for the procedure to be followed, the jurisprudence of the Court demonstrates that legal representatives have consistently been instructed to file a written request towards the expected end of the Prosecution case,²⁶ explaining the relevance of the victim's evidence/views and concerns for the proceedings; how the victim's evidence/views and concerns would assist in the Chamber's determination of the truth; the estimated time for the appearance, and whether they need to be afforded in-court protective measures. Such requests included a detailed summary of the topics to be addressed by each relevant victim.²⁷ The Legal Representative posits that there is no reason to depart from the procedure adopted in previous cases and respectfully submits that said procedure should be followed.

24. In relation to expert witnesses, the Legal Representative submits that in accordance with the legal texts of the Court as widely supported by the current jurisprudence of the Court, victims may be invited to take part in the selection process and in the instructions to be given to expert witnesses, should their personal interests be concerned by said expert testimony.

25. Indeed, regulation 44 of the Regulations of the Court does not limit to the parties only the possibility to take part in the selection process and in the instructions to be given to expert witnesses. In particular, the "*joint instruction*" of expert witnesses contemplated in regulation 44(2) specifically covers all "*the participants*" in the proceedings. This reading of regulation 44 of the Regulations of the Court is supported by the well-developed practice of different Trial Chambers. Indeed, in the Kenyan

²⁶ See, *inter alia*, the "Directions on the conduct of proceedings" (Trial Chamber X), [No. ICC-01/12-01/18-789-AnxA](#), 6 May 2020, para. 24; and the "Preliminary Directions for any LRV or Defence Evidence Presentation" (Trial Chamber IX), [No. ICC-02/04-01/15-1021](#), 13 October 2017. See also, the "Decision on the conduct of proceedings" (Trial Chamber VI), [No. ICC-01/04-02/06-619](#), 2 June 2015 (the "*Ntaganda* Decision on the Conduct of Proceedings", para. 69; the "Initial Directions on the Conduct of the Proceedings" (Trial Chamber IX), [No. ICC-02/04-01/15-497](#), 13 July 2016 (the "*Ongwen* Initial Directions on the Conduct of the Proceedings"), para. 9; the "Order regarding applications by victims to present their views and concerns or to present evidence" (Trial Chamber III), [No. ICC-01/05-01/08-1935](#), 21 November 2011, para. 3; the "Decision on Directions for the Conduct of the Proceedings" (Trial Chamber III), [No. ICC-01/05-01/08-1023](#), 19 November 2010, para. 5; and the "Decision adopting amended and supplemented directions on the conduct of the proceedings" (Trial Chamber I), [No. ICC-02/11-01/15-498-Anx A](#), 4 May 2016, paras. 18-21.

²⁷ See the "Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims", *supra* note 22, paras. 12-15.

cases, Trial Chamber V determined that “[t]o the extent that the victims are participating on an issue or as regards evidence which is to be the subject of expert evidence, they are to be given an opportunity to contribute to the expert’s instruction”.²⁸ Likewise, in the *Bemba* case, the legal representatives of victims contributed, jointly with the Prosecution, to the selection of three expert witnesses.²⁹ The selection process included an agreement on the names of the experts to be jointly instructed and on the *curriculum vitae* for each expert.³⁰ In the same case, victims were also afforded the opportunity to make separate instructions.³¹

26. Moreover, Trial Chamber IX, in the *Ongwen* case, authorised the Legal Representatives of victims to call four experts to present evidence on different topics – namely on the impact of conflict on victim communities; issues related to children, youth and in particular former child soldiers; issues related to rape, sexual and gender-based crimes; and the Acholi culture.³² In the context of the present case, there are many topics on which experts could potentially testify, the majority of which are of a direct relevance to the interests of the victims. Said subject-matters may include, *inter alia*, the calling of experts on the immediate and long-term consequences of victimisation – such as psychological trauma, post-traumatic disorder and intergenerational harm.

27. Regarding the issue of submission of documentary and other non-testimonial evidence, the principles according to which they shall be relevant to the victims’

²⁸ See the “Decision on the schedule leading up to trial” (Trial Chamber V), [No. ICC-01/09-02/11-451](#), 9 July 2012, footnote 29; and the “Decision on the schedule leading up to trial” (Trial Chamber V), [No. ICC-01/09-01/11-440](#), 9 July 2012, footnote 9.

²⁹ See the “Prosecution’s Request for Approval of its Proposed Experts and Joint Instructions by the Prosecution and Legal Representatives”, [No. ICC-01/05-01/08-681](#), 28 January 2010.

³⁰ *Idem*.

³¹ See the “Decision on the procedures to be adopted for instructing expert witnesses” (Trial Chamber III), [No. ICC-01/05-01/08-695](#), 12 February 2010, p. 8. See also the “Decision on the procedures to be adopted for instructing expert witnesses” (Trial Chamber I), [No. ICC-01/04-01/06-1069](#), 10 December 2007.

³² See the “Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests” (Trial Chamber IX), [No. ICC-02/04-01/15-1199-Red](#), 6 March 2018.

interests, non-duplicative, and contributing to the determination of the truth identified *supra* should equally apply.³³

28. Lastly, the Legal Representative has no observation on the use of prior recorded testimony pursuant to rule 68 of the Rules of Procedure and Evidence (the “Rules”), and requests that the procedure adopted in other cases is followed in the present case.³⁴ The introduction of prior recorded testimony is a useful tool to expedite the proceedings; such practice is supported by the victims as long as the admission requirements, as identified by the Chambers of this Court,³⁵ are met.

D. Matters under item C. (Agreed facts)

29. The Legal Representative contends that the need to consider the interests of the victims with regard to any agreement between the Parties as to facts or evidence in a given case is clearly reflected in rule 69 of the Rules. Pursuant to said provision, the “Chamber may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interest of justice, in particular the interests of the victims”.³⁶ Accordingly, no agreement between the parties may become effective and binding in a manner detrimental to the victims’ interests. Furthermore, it falls squarely within the power of a Trial Chamber under article 69(3) of the Statute “to request the submission of all evidence that it considers necessary for the determination of the truth”.

30. This reading of rule 69 is also supported by the jurisprudence of the Court. In the *Lubanga* case, Trial Chamber I ordered the parties to prepare a draft schedule of agreed facts which then will be served on participating victims.³⁷ Victims were

³³ See the “Decision adopting amended and supplemented directions on the conduct of the proceedings” *supra* note 26, para. 20.

³⁴ See, *inter alia*, the “Decision on the Prosecution’s Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules” (Trial Chamber IX), [No. ICC-02/04-01/15-596-Red](#), 18 November 2016, paras. 4-20; and the “Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules” (Trial Chamber V), [No. ICC-01/14-01/18-685](#), 16 October 2020, paras. 20-34.

³⁵ *Ibid.*

³⁶ See rule 69 of the Rules of Procedure and Evidence (emphasis added).

³⁷ See the “Decision on agreements between the parties” (Trial Chamber I), [No. ICC-01/04-01/06-1179](#), 20 February 2008, para. 11.

authorised to submit their observations on the facts and evidence agreed between the parties.³⁸ Victims also submitted their observations on agreed facts in other pending cases.³⁹

31. This approach is in line with the legal framework of the Court. It enables victims to comprehend issues covered by any agreements between the parties and to envisage the potential impact that said agreements could have on their interests, as well as on the proceedings as a whole. The notification of agreements to victims prior to any decision on the merits by the Chamber will also contribute to the effective and meaningful participation of victims at trial. Lastly, providing victims with the possibility to submit their views and concerns in relation to such agreed facts will also contribute to the overall fairness of the proceedings. While the Legal Representative does not consider necessary to be included in the discussions amongst the Parties, any agreement reached between them under rule 69 should thus be timely notified to the Legal Representative for observations.

E. Matters under item D. (Translation/Interpretation at trial)

32. The Legal Representative informs the Chamber that the languages mostly spoken by the victims are French and Sango. In case of appearance before the Chamber, it is most likely that they will use one of these two languages.

F. Matters under item G. (Trial briefs)

33. Concerning the provision of trial briefs, the Legal Representative notes the practice in previous cases of authorising legal representatives to file their own briefs should they wish to do so.⁴⁰ The Legal Representative posits that there is no reason to

³⁸ *Idem*, para. 13.

³⁹ See, *inter alia*, the “Notification on behalf of Applicant Victims on the ‘Joint Prosecution and Defence submission on agreed facts’”, [No. ICC-02/05-01/20-304](#), 16 March 2021; the “Notification on behalf of Applicant Victims on the ‘Second Joint Prosecution and Defence submission on agreed facts’”, [No. ICC-02/05-01/20-352](#), 19 April 2021; and the “Notification on behalf of Applicant Victims [sic] on the ‘Third Joint Prosecution and Defence submission on agreed facts’”, [No. ICC-02/05-01/20-514](#), 9 November 2021. See also the “Legal Representative’s Observations on the Prosecution’s Submission on Agreed facts”, [No. ICC-01/05-01/08-940](#), 11 October 2010.

⁴⁰ See the “Decision Setting the Commencement Date of the Trial” (Trial Chamber IX), [No. ICC-02/04-01/15-449](#), 30 May 2016, para. 8. See also, the “Decision Setting the Commencement Date of the Trial”

depart from the procedure adopted in previous instances and respectfully submits that said possibility should also be granted in the present case.

G. Matters under item I. (Opening statements)

34. With regard to the length of opening statements, the Legal Representative estimates that one hour in total will be sufficient to present the views of the victims. The opening statements represent a unique opportunity for them to convey their views and concerns to the Chamber, and particularly to make use of their right to explain the reasons for and significance of their participation.

35. In accordance with the practice developed in other cases, all participants are usually directed to disclose, before the start of the trial, copies of the material they intend to rely on during their opening statements, unless said material is on the Prosecution's list of evidence.⁴¹ In addition, participants are normally requested to make written objections, if any, in relation to said material.⁴² The Legal Representative posits that said procedure should be followed in the present case and she should also benefit from said disclosure and from the possibility to make objections, if necessary.

H. Matters under item J. (Update and forecast on victims' applications)

36. The Legal Representative believes that the VPRS is best placed to provide an accurate update and forecast on applications by victims to participate in the proceedings. She also notes that the Registry has been tasked with the responsibility

(Trial Chamber V), [No. ICC-01/14-01/18-589](#), 16 July 2020 (the "*Yekatom & Ngaïssona* Decision Setting the Commencement Date of the Trial"), para. 16, and the "Directions on the conduct of proceedings" (Trial Chamber I), [No. ICC-02/05-01/20-478](#), 4 October 2021 (the "*Adb-Al-Rahman* Directions on the Conduct of Proceedings"), para. 9.

⁴¹ See the *Adb-Al-Rahman* Directions on the Conduct of Proceedings, *supra* note 40, para. 17. See also, *inter alia*, the *Ongwen* Initial Directions on the Conduct of the Proceedings, *supra* note 26, para. 8; the *Ntaganda* Decision on the conduct of Proceedings, *supra* note 26, para. 10; the "Decision on the Conduct of Trial Proceedings (General Directions)" (Trial Chamber V(A)), [No. ICC-01/09-01/11-847-Corr](#), 9 August 2013, para. 4; and the instruction issued by Trial Chamber I, transcripts of the hearing held on 16 January 2009, [No. ICC-01/04-01/06-T-104-ENG ET WT](#), pp. 45-47.

⁴² See the *Adb-Al-Rahman* Directions on the Conduct of Proceedings, *supra* note 40, para. 17. See also, *inter alia*, the "Decision No. 2 on the Conduct of Trial Proceedings (General Directions)" (Trial Chamber V(A)), [No. ICC-01/09-01/11-900](#), 3 September 2013, para. 11; and the instruction issued by Trial Chamber I, transcripts of the hearing held on 16 January 2009, *idem*, pp. 45-47.

to “prepare a brief report on the impact of the confirmation decision (ICC-01/14-01/21-218-Conf) on the number of victims who are authorised to participate in the trial proceedings”.⁴³

37. More generally, concerning any new applications for participation received after the confirmation proceedings, the Legal Representative favours the approach already adopted at the pre-trial stage concerning the procedure for admission of victims to participate in the proceedings.⁴⁴ As recognised by the Appeals Chamber, said approach allows for the handling of victims’ applications in an efficient manner and expedites the proceedings.⁴⁵

38. This being said, concerning the collection of applications, the Legal Representative stresses that based on her interactions with victims, and as explained during the confirmation of the charges hearings, 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”.⁴⁶ In such a context, the Legal Representative posits that there is a need for the Registry to reinforce its outreach efforts with very clear messages to allow the victims to overcome their legitimate fear.

39. In this regard, 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*⁴⁷ coupled with

⁴³ See the email communication from Trial Chamber VI to the Chief of the VPRS, 24 December 2021 at 09:46.

⁴⁴ The Legal Representative refers in particular to the adoption of the system in which applications are assessed as falling in Categories A, B or C. See the “Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing” (Pre-Trial Chamber II), [No. ICC-02/05-01/20-259](#), 18 January 2021.

⁴⁵ 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](#), 14 September 2021, paras. 5, and 81-82.

⁴⁶ See the transcripts of the hearing held on 12 October 2021, [No. ICC-01/14-01/21-T-004-Red2-ENG CT](#), p. 23, lines 20-23.

⁴⁷ See *supra*, para. 38.

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. This approach has been adopted in the most recent cases.⁴⁸ For the purpose of proper administration of new applications presented during the trial, the Legal Representative suggests that the Registry is instructed to transmit (i) to the Chamber the complete applications under Category A immediately and, (ii) to the parties any application under Category C, on a rotating basis.

I. Other matters

40. In light of the invitation of the Chamber to add further items to the list,⁴⁹ the Legal Representative wishes to address few matters related to the conduct of the proceedings.

• Protocols to be adopted at trial

41. The Legal Representative has no observations on the E-Court Protocol⁵⁰ and 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,⁵¹ as already adopted at the pre-trial stage of the case.

42. In relation to a protocol on redactions to be adopted at trial by the Chamber, the practice has shown that in the course of the proceedings – and particularly at trial – lifting of redactions in application forms or in documents attached to application forms or related to victims may become a live issue. Therefore, the Legal Representative suggests that certain categories of information such as contact information of victims

⁴⁸ 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 *Yekatom & Ngaïssona* Decision Setting the Commencement Date of the Trial, para. 20.

⁴⁹ See the Order, *supra* note 9, para. 3.

⁵⁰ See the “Public redacted version of ‘Order on disclosure and related matters’, 7 April 2021, ICC-01/14-01/21-50-Conf” (Pre-Trial Chamber II), [No. ICC-01/14-01/21-50-Red](#), 12 May 2021, para. 26.

⁵¹ *Idem*, para. 37.

and information identifying intermediaries should be considered as falling in the standard category redactions without the need for specific approval by the Chamber. In addition, in accordance with the established practice and regulation 42 of the Regulations of the Court,⁵² the Legal Representative indicates that she should be consulted on any request for lifting redactions which may impact on previous rulings granting said redactions in application forms and related material of victims and that they shall be afforded an opportunity to challenge any such request before the Chamber.

43. The Legal Representative also favours the adoption of a Protocol on dual status individuals as implemented in other cases before the Court.⁵³ Said protocols reflect the efforts of various Chambers to create a uniform practice and have proved to be workable Court-wide. They also take into account the specific circumstances of individuals enjoying dual status of participating victims and witnesses. Furthermore, the *Chambers Practice Manual* recommends that a protocol specifically governing dual status individuals may be appropriate.⁵⁴ In this regard, Trial Chamber IX also emphasised that: “[...] *special considerations apply to such witnesses and that something like a protocol is required to regulate the exchange of information regarding them*”.⁵⁵ Accordingly, the Legal Representative suggests that the Chamber adopts a protocol on dual status

⁵² See, *inter alia*, the “Decision on Prosecutor’s requests for lifting of certain redactions in victim application forms (ICC-02/11-01/15-465 and ICC-02/11-01/15-493)” (Trial Chamber I), [No. ICC-02/11-01/15-506](#), 9 May 2016. See also, the “Decision on Defence request for lifting of redactions in documents related to victims authorised to present evidence”(Trial Chamber VI), [No. ICC-01/04-02/06-1835](#), 24 March 2017.

⁵³ See 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; and the “Victims and Witnesses Unit’s submission of the proposed mechanisms for exchange of information on individuals enjoying dual status pursuant to Order n° ICC-01/04-02/06-416”, [No. ICC-01/04-02/06-430](#), with [Anx1](#), 23 January 2015. See also, the “Decision adopting mechanisms for exchange of information on individuals enjoying dual status”, with one public annex (Trial Chamber I), [No. ICC-02/11-01/15-199](#) and [Anx](#), 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 “*Ongwen* Decision on Protocols to be Adopted at Trial”); 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.

⁵⁴ See the [Chambers Practice Manual](#), 4th Edition, 29 November 2019, para. 79.

⁵⁵ See the *Ongwen* Decision on Protocols to be Adopted at Trial, *supra* note 53, para. 31.

individuals similar to the one adopted in the *Ongwen*⁵⁶ and in the *Yekatom & Ngaïssona* cases.⁵⁷

44. Furthermore, the Legal Representative highlights the need to protect the safety and well-being of witnesses in the present case, including participating victims. As Trial Chamber V noted in the *Ruto & Sang* and the *Kenyatta* cases, much of a witness' apprehension about testifying may result from "[...] anxiety about giving evidence in what may feel like a foreign and even hostile environment, a lack of confidence in their ability to communicate and articulate their experiences, and/or apprehension over the unfamiliar experience of being challenged during cross-examination".⁵⁸

45. In the particular circumstances of the present case, it is likely that a significant number of witnesses will be highly vulnerable. Witness familiarisation is thus essential to reduce the psychological burden of testifying in an environment completely different from the one in which witnesses live and that they are used to. The protocol adopted in the *Ongwen* case "[...] reflects the jurisprudence on familiarisation and its related procedures and also takes into account the practices and experiences concerning witnesses appearing before the Court. The protocol aims to outline the procedures that serve the best interests of witnesses and provide for sustainable working solutions for all entities involved".⁵⁹ In this regard, the *Chambers Practice Manual* also recommends that the Trial Chamber adopt a "familiarisation protocol governing the period of time shortly before a witness commences his/her testimony".⁶⁰ The Legal Representative suggests that the Chamber also adopt a similar Witness Familiarisation Protocol in these proceedings.

⁵⁶ See the Annex 2 to the *Ongwen* Decision on Protocols to be Adopted at Trial, [No. ICC-02/04-01/15-504-Anx2](#), 22 July 2016.

⁵⁷ See Annex 2 to the "Decision on Protocols at Trial" (Trial Chamber V), [ICC-01/14-01/18-677-Anx2](#), 8 October 2020.

⁵⁸ See the "Decision on witness preparation" (Trial Chamber V), [No. ICC-01/09-01/11-524](#), 2 January 2013, para. 37; and the "Decision on witness preparation" (Trial Chamber V), [No. ICC-01/09-02/11-588](#), 2 January 2013, para. 41.

⁵⁹ See Annex 1 of the *Ongwen* Decision on Protocols to be Adopted at Trial, [No. ICC-02/04-01/15-504-Anx1](#), 22 July 2016, para. 2.

⁶⁰ See the [Chambers Practice Manual](#), 4th Edition, 29 November 2019, para. 78.

- ***In situ proceedings/Site visit***

46. The Legal Representative stresses the importance of holding judicial proceedings in the country where the crimes were committed – thereby providing maximum access to a large public, including victims and affected communities. This also contributes to the transparency and accessibility of the proceedings, as well as to a wide dissemination of information and a more visible justice to the victims. In this regard, the Legal Representative requests the Chamber to consider holding the opening statements and some critical parts of the proceedings in the Central African Republic.

47. In case holding proceedings in the Central African Republic is not possible due to security or health constraints, the Legal Representative requests 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. In the *Ongwen* case, Trial Chamber IX considered that holding a site visit “*would be useful and appropriate*”⁶¹ after having heard part of the evidence presented at trial and taking note of the parties’ and participants’ observations, and proceeded accordingly.⁶² The same hold true in the *Katanga & Ngudjolo Chui* case.⁶³

48. This course of events will have a significant impact on the effective participation of victims in the proceedings insofar as they will feel that their concerns are duly taken into account and that justice is being done.

- ***Matters related to the conduct of the proceedings***

49. Finally, in relation to the modalities of participation of victims at trial, the Legal Representative favours the orality of the proceedings – where the arguments of the

⁶¹ See the “Decision on Judicial Site Visit to the Republic of Uganda” (Trial Chamber IX), [No. ICC-02/04-01/15-1020](#), 13 October 2017, para. 5.

⁶² See the “Annex to the Registration into the Record of the Case of the Site Visit Report pursuant to Trial Chamber Decision ICC-02/04-01/15-1211 of 27 March 2018” (Trial Chamber X), [No. ICC-02/04-01/15-1292-Anx](#), 27 June 2018.

⁶³ See the “Decision on a judicial site visit to the Democratic Republic of the Congo” (Trial Chamber II), [No. ICC-01/04-01/07-3203-tENG](#), 18 November 2011. See also the “Order on the *procès-verbal* of the judicial site visit to the Democratic Republic of the Congo” (Trial Chamber II), [No. ICC-01/04-01/07-3233-tENG](#), 2 February 2012.

parties and participants and their requests are presented in the courtroom as much as feasible.⁶⁴

50. In this vein, the Legal Representative advocates for the simplified practice to request to question witnesses;⁶⁵ the mode of questioning,⁶⁶ and use of documents.⁶⁷ In particular, she suggests to adopt the procedure implemented in the *Ongwen*, the *Yekatom & Ngaïssona*, and the *Abd-Al-Rahman (Kushayb)* cases in which the legal representatives “[were] *not required to provide an advance written note of any questions they intend to ask – applications to question may be presented orally just prior to questioning, and the necessity or propriety of questions asked will be addressed on a case-by-case basis*”.⁶⁸ This approach has proved to be effective, while ensuring a fair and expeditious trial for both parties and participants.

51. The Legal Representative notes that Trial Chamber I recently elaborated on the scope of the questions to be asked on behalf of the victims.⁶⁹ Whereas she agrees with Trial Chamber I that the role of the victims is different from the Prosecution’s, she posits that matters relevant to the personal interests of the victims goes far beyond the “*questions about harms which the witness personally suffered or harms of other victims which the witness observed. Such questions may also relate to any future reparations proceedings which may occur*”.⁷⁰ Therefore, she submits that the Chamber should not provide any guidance in the abstract but rather deliberate on a case-by-case basis, as also envisaged by Trial Chamber I.⁷¹

⁶⁴ See the oral decision issued by Trial Chamber I, transcripts of the hearing held on 28 January 2016, [No. ICC-02/11-01/15-T-9-ENG ET](#), p. 36, lines 10-18.

⁶⁵ See the oral decision issued by Trial Chamber I, transcripts of the hearing held on 3 February 2016, [No. ICC-02/11-01/15-T-13-Red3-ENG CT](#), p. 2, lines 17-25.

⁶⁶ See the “Decision adopting amended and supplemented directions on the conduct of the proceedings” *supra* note 26, para. 15-17, and 27-32.

⁶⁷ *Idem*, paras. 34-38 and 43-47.

⁶⁸ See the *Ongwen* Initial Directions on the Conduct of the Proceedings, *supra* note 26, para. 10; the “Initial Directions on the Conduct of the Proceedings” (Trial Chamber V, Single Judge), [No. ICC-01/14-01/18-631](#), 26 August 2020, para. 18; and the *Adb-Al-Rahman* Directions on the Conduct of Proceedings, *supra* note 40, para. 35.

⁶⁹ See the *Adb-Al-Rahman* Directions on the Conduct of Proceedings, *supra* note 40, para. 36.

⁷⁰ *Idem*.

⁷¹ *Ibid.*, para. 35 : “*The necessity or propriety of questions asked will be addressed on a case-by-case basis*”.

52. Last but not least, the Legal Representative informs the Chamber of her availability to continue to represent the interests of the participating victims at the trial stage, and pending any decision of the Chamber on the participation of victims and their legal representation, to continue representing the collective interests of victims.

Respectfully submitted,

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

Sarah Pellet

Dated this 21st day of January 2022

At The Hague, The Netherlands