

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/14-01/21
Date: 16 September 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

Additional Directions on the Conduct of Proceedings

Decision 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
Ms Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**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

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to article 64(8)(b) of the Rome Statute (the ‘Statute’) issues the ‘Additional Directions on the Conduct of Proceedings’.

I. INTRODUCTION

1. On 9 March 2022, the Chamber issued the Directions on the Conduct of Proceedings.¹ In these directions, the Chamber announced that it would issue a separate decision on the length and timing of the presentation of evidence by the Office of the Prosecutor (the ‘Prosecution’) after receipt of the Prosecution’s final list of witnesses.² It also gave notice that it may issue further directions at a later stage.³

II. READING OF THE CHARGES AND OPENING STATEMENTS BY THE DEFENCE AND COMMON LEGAL REPRESENTATIVE OF VICTIMS

2. At the commencement of the trial, the Court Officer will read the confirmed charges to the accused and will afford him the opportunity to make an admission of guilt in accordance with article 65 of the Statute.

3. In line with the Chamber’s instruction in the Directions on the Conduct of Proceedings, the Defence and the Common Legal Representative of Victims confirmed that they wish to make opening statements at the commencement of the trial.⁴ The Defence indicates that it will require the same amount of time as the Prosecution, i.e. 4.5 hours. The Chamber previously granted the Common Legal Representative a maximum of one hour.⁵

¹ Directions on the Conduct of Proceedings, 9 March 2022, ICC-01/14-01/21-251 (the ‘Directions on the Conduct of Proceedings’).

² Directions on the Conduct of Proceedings, para. 13

³ Directions on the Conduct of Proceedings, para. 12.

⁴ Email from the Defence of 12 September 2022 at 15:56; Email from the Common Legal Representative of 14 September 2022 at 11:47.

⁵ Directions on the Conduct of Proceedings, para. 5.

4. The Chamber takes note of this and grants the Defence 4.5 hours to make its opening statement, immediately after the Common Legal Representative finishes her presentation.

III. LENGTH OF THE PROSECUTION CASE

5. The Chamber has considered the Prosecution's List of Evidence and List of Witnesses and notes that the Prosecution indicates that it would need 122 hours to complete the examination-in-chief of 17 full *viva voce* as well as 26 witnesses whose prior recorded testimony it wants to introduce pursuant to rule 68(3) of the Rules. The Chamber also notes that the Prosecution requested the introduction of the prior recorded testimony of a further 36 witnesses pursuant to rule 68(2)(b) of the Rules. Subject to the Chamber's ruling on the various requests pursuant to rule 68 of the Rules, the Chamber grants a maximum of 122 hours for the examination-in-chief of the witnesses called by the Prosecution.

6. However, the Chamber emphasises the need for the Prosecution to do everything within its powers to use considerably less than the maximum time allotted. The Chamber will therefore strictly enforce the instructions set out in section VII below.

IV. STANDARD HEARING SCHEDULE

7. The standard schedule for the hearings shall be 4.5 hours per day, divided in three sessions: 9:30-11:00; 11:30-13:00; and 14:30-16:00. This schedule is subject to change on short notice and the Chamber may sit extended hours as may be agreed upon with the parties and participants. In principle, the Chamber will sit during all working days.

V. WITNESS SCHEDULE

8. The Chamber has taken note of the identity of the witnesses the Prosecution intends to call and the order in which they will appear.⁶ In principle, the Chamber will defer to the parties' choices in respect of the order of appearance, subject to the

⁶ Prosecution's Notification of an Updated Order of Appearance, 5 September 2022, ICC-01/14-01/21-470-Conf-AnxA.

Chamber's responsibility to ensure the fairness and expeditiousness of the proceedings under article 64(2) of the Statute.

9. The Chamber also understands that, despite all the best efforts of the parties and the Registry, it may be necessary to sometimes change the order of appearance of the witnesses. To the extent possible, any changes in the order of appearance should be determined in consultation with and, where possible, agreement of the non-calling party and taking into account the views of the Registry, particularly the Victims and Witnesses Unit (the 'VWU').

10. In order to ensure foreseeability to the greatest extent possible, the calling party shall provide and continuously update a Witness Schedule in the same format as 'Annex A to the Prosecution's List of Witnesses, Proposed Order of Appearance, and Summaries of Anticipated Testimony', organised according to the projected order of appearance.⁷ The calling party shall make its best effort to ensure that the Witness Schedule is at all times accurate for at least one month going forward.⁸ Whenever there is a variation in the order of appearance or any other relevant change, the calling party shall email an updated version of the Witness Schedule to the Chamber and other parties and participants.

11. The Chamber expects the calling party to organise the order of appearance in such a manner that there will be no gaps between witnesses and that the next witness will be available to commence testifying as soon as the previous one has finished. To this end, the calling party shall, to the extent possible and in close consultation with the VWU, identify alternative witnesses in the Witness Schedule to ensure that no unnecessary gaps are created by last minute cancellations or early conclusion of a witness's testimony.

12. Finally, the Chamber directs that submissions on procedural issues related to specific upcoming witnesses be raised by the parties and participants at the earliest

⁷ ICC-01/14-01/21-354-Conf-AnxA.

⁸ This is without prejudice to unforeseen, last-moment changes.

opportunity and preferably in writing, via email where appropriate. This will facilitate time management and ensure that courtroom time is used to hear evidence.

VI. ADVANCE NOTICE OF TOPICS FOR PRIVATE AND/OR CLOSED SESSIONS

13. To implement paragraph 53 of the Directions on the Conduct of Proceedings, the calling party shall submit, together with the list of material it intends to use in its examination of the witness (the 'List of Material'), a copy of the Summary of Anticipated Testimony, highlighting the information which needs to be discussed in private session.⁹ This applies to the entire testimony and not just the evidence which the calling party intends to elicit from the witness. The Chamber will indicate prior to the start of the testimony if any of the highlighted areas/topics should be addressed in open session. The provision of the highlighted summaries is without prejudice to the parties requesting private sessions for particular aspects of a non-highlighted area. However, the parties should be prepared to provide a clear and well-founded explanation.

14. When submitting the List of Material, the parties and participants are instructed to indicate the expected level of confidentiality (public or confidential) of all items included. In respect of items assessed as being confidential, the relevant party or participant should keep under review before and during the testimony whether the item can be broadcast publicly during the testimony. If so, the relevant party or participant is to instruct the Court Officer at the relevant moment to broadcast the item publicly. If not, the party or participant should be prepared to provide a specific justification as to why a certain item may not be broadcast to the public.

VII. EXAMINATION-IN-CHIEF AND CROSS-EXAMINATION

15. The Chamber expects the parties and participants to at all times focus questioning on those topics that are of greatest relevance to the confirmed charges and on truly contentious issues. The Chamber also reiterates and emphasises its instruction to the

⁹ E.g. ICC-01/14-01/21-354-Conf-AnxC. When no summary is available or the summary is insufficiently detailed, the calling party may also send a list of topics that, in its view, must be addressed in private or closed session.

non-calling party to indicate for each witness which parts of the anticipated testimony they contest and which parts they accept.¹⁰ This instruction applies to full *viva voce* witnesses and rule 68(3) witnesses alike. The non-calling party is therefore instructed to send a copy of the Summary of the Anticipated Testimony¹¹ or the prior recorded statement(s) to the calling party and the Chamber and highlight portions that are not contested. The Chamber may call upon the non-calling party to explain the extent of and the grounds for the contestation.

16. Cross-examination of full *viva voce* witnesses shall not last longer than the questioning by the calling party. In exceptional circumstances, the Chamber may, upon specific and motivated request, decide that additional time is warranted for cross-examination of a specific witness. Such requests shall be made at the earliest opportunity after the questioning by the calling party has finished. The Chamber will not entertain the indiscriminate use of such requests and expects the parties to be judicious in requesting additional time.

17. With regard to witnesses whose prior recorded testimony is introduced pursuant to rule 68(3) of the Rules, it shall be the Prosecution's initial time estimates (duration of the examination-in-chief without use of rule 68(3) of the Rules),¹² and not the duration of its limited supplementary examination, which will serve as a reference point for the calculation of the duration of the cross-examination. This is without prejudice to the Defence requesting further time for cross-examination, as outlined above.

18. Questions shall be focused on matters that are known to the witness and parties and participants shall refrain from asking the witness to speculate or to provide opinion, including about the credibility of other witnesses. It is the responsibility of examining counsel to elicit the basis of the witness' knowledge for every relevant matter.

19. The parties and participants may put to a witness another witness' prior recorded or in-court testimony, but without revealing that witness's identity. When doing so,

¹⁰ Decision Setting the Commencement Date of the Trial and Related Deadlines, ICC-01/14-01/21-243, para. 16.

¹¹ ICC-01/14-01/21-354-Conf-AnxC

¹² These can be found in the Prosecution's applications pursuant to rule 68(3) of the Rules.

counsel questioning the witness shall quote the relevant passages directly and provide precise references.

20. In principle, witnesses must be given the opportunity to respond to questions on the basis of their memory. Counsel questioning a witness shall therefore refrain from putting parts of the witness's statement to the witness without having established a legitimate purpose for doing so, namely to either refresh the witness's memory, or to confront the witness with contradictions between the prior testimony and the in-court testimony. In addition, the non-calling party may refer to the prior recorded testimony when cross-examining witnesses whose evidence was introduced via rule 68(3) of the Rules in order to situate its questions.

21. Where necessary for the understanding of a question, counsel shall quote the relevant passage from the statement or transcript and indicate the exact page numbers, paragraph numbers, and/or relevant lines.

22. The Presiding Judge may intervene at any time to stop or redirect the examination of witnesses and will do so, in particular, when she is of the view that the examination is insufficiently focused, becomes repetitive, or strays into irrelevant or insignificant topics.

FOR THESE REASONS, THE CHAMBER HEREBY

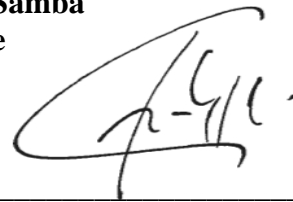
ADOPTS these additional directions on the conduct of proceedings.



Judge Miatta Maria Samba
Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 16 September 2022

At The Hague, The Netherlands