

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 15 October 2026

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba , Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godinez
Judge Keebong Paek , Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

Prosecution response to Defence request for leave to appeal the Decision on its request concerning the sentencing procedure (ICC-01/14-01/21-1058)

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) respectfully requests the Chamber to reject the Defence application for leave to appeal (“Application for leave to appeal”)¹ the Decision on the Defence Requests concerning the Sentencing Procedure (“Decision”).² None of the five issues proposed for certification constitutes “appealable issues” nor do they satisfy the cumulative criteria for leave to appeal under article 82(1)(d) of the Rome Statute (“Statute”).

II. PROCEDURAL BACKGROUND

2. On 23 September 2026, the Chamber delivered its judgment pursuant to article 74 of the Statute and convicted Mahamat Said Al Kani (“Mr Said”) of several crimes against humanity (“Trial Judgment”).³
3. On the same day, the Chamber issued a decision setting *inter alia*, time limits for the Parties and Participants to file any requests for additional evidence by 7 October 2026 and responses thereto by 14 October 2026 (“Decision on the Sentencing Procedure”).⁴
4. On 1 October 2026, the Defence filed a request (“Defence Request”) seeking (i) a suspension of time limits for filing any requests for submission of additional evidence before the Chamber until Mr Said is notified of the Trial Judgment, or relevant parts thereof, in French (“Request for Suspension”); (ii) a variation in schedule to allow for sequential filings of requests for additional evidence and written submissions from the Prosecution and the Common Legal Representatives for Victims⁵ (“Request for Variation of Schedule”) and, in the alternative, (iii) a

¹ ICC-01/14-01/21-1063-Conf.

² Decision on the Defence’s Requests concerning the Sentencing Procedure, ICC-01/14-01/21-1058.

³ ICC-01/14-01/21-1054-Red.

⁴ ICC-01/14-01/21-1055, paras 5-7.

⁵ (“CLRV”).

postponement by at least three weeks of the various procedural deadlines provided for in the Decision on the Sentencing Procedure (“Request for Postponement”).⁶

5. On 5 October 2026, the Prosecution responded that it did not have any objection to the Defence Request. It requested a ‘reciprocal and proportional extension of time’, if granted to the Defence.⁷ On the same date, the CLRV informed the Chamber that she did not intend to respond to the Defence Request.⁸
6. On 6 October 2026, the Chamber rejected the Request for Suspension; ordered the Registry to provide the Defence with the draft translation of identified portions of the Trial Judgment, identified in paragraphs 17-18, at latest by 27 October 2026; partially granted the Request for Variation of Schedule and the Request for Postponement.⁹

III. SUBMISSIONS

A. The issues raised by the Defence are not appealable issues within the terms of article 82(1)(d) of the Statute.

7. For the purposes of article 82(1)(d),¹⁰ an issue constitutes “an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion.”¹¹ No appealable issue arises if a party misreads or misrepresents the decision or record.¹² Moreover, the resolution of the issue must be “essential for the determination of matters arising under the judicial cause under examination”.¹³

⁶ Demande de prorogation des délais et demande d’amendement des étapes du calendrier fixé par la Decision on the Sentencing Procedure du 23 septembre 2026 (ICC-01/14-01/21-1055), ICC-01/14-01/21-1056-Conf-Exp (public redacted version notified the same day, ICC-01/14-01/21-1056-Red), p. 12.

⁷ Prosecution Response, ICC-01/14-01/21-1057-Conf, para. 6.

⁸ Email from the CLRV to the Chamber, 5 October 2026, at 10h22.

⁹ Decision on the Defence’s Requests concerning the Sentencing Procedure, ICC-01/14-01/21-1058, para. 32.

¹⁰ ICC-01/04-168 OA3, paras. 9-10. *See also* ICC-01/04-01/06-1433 OA11, Dissenting Opinion of Judge Song, para. 4, specifying that “[a] decision “involves” an issue if the question of law or fact constituting the issue was essential for the determination or ruling that was made.”

¹¹ ICC-01/04-168 OA3, para. 9.

¹² *See e.g.*, ICC-01/04-01/10-487, paras. 32-33; ICC-01/05-01/13-1489, paras. 9, 10; ICC-01/05-01/08-75, para. 32.

¹³ ICC-01/04-168 OA3, para. 9.

8. The Defence identifies five issues (collectively referred to as the “Issues”) for which it seeks leave to appeal: (i) *“la Chambre a-t-elle commis une erreur de fait en estimant que la Défense aurait été suffisamment informée des délais préssentis pour la procédure relative à la peine ?”*; (ii) *“la Chambre a-t-elle commis une erreur de droit et de fait en déterminant que le résumé du Jugement, interprété en français et en sango, était suffisant pour satisfaire aux droits de l’Accusé”*; (iii) *“la Chambre a-t-elle commis une erreur de droit en ne reconnaissant pas le droit à l’Accusé de bénéficier du Jugement dans une langue qu’il comprend avant de poursuivre la procédure”*; (iv) *“la Chambre a-t-elle commis une erreur de droit en considérant que le changement de Conseil n’affecte pas le cours de la procédure?”*; and (v) *“la Chambre a-t-elle commis une erreur de droit et de fait en ne motivant pas sa décision sur l’absence de « good cause » au sens de la Norme 35?”*
9. As set forth below, the Prosecution respectfully submits that the Defence fails to identify any appealable issue arising from the Decision. Instead, the Defence reiterates arguments previously presented in support of its Request and merely disagrees with the Decision. Considering that the requirements of article 82(1)(d) of the Statute are cumulative and that failure to fulfil one of the requirements is fatal to an application for leave to appeal,¹⁴ the Prosecution respectfully submits that the Application for leave to appeal be rejected on this basis.

i. The First Issue - la Chambre a-t-elle commis une erreur de fait en estimant que la Défense aurait été suffisamment informée des délais préssentis pour la procédure relative à la peine?

10. The Defence argues that the Chamber erred in fact by finding that its prior findings from the hearing of 25 November 2025 that it intended to proceed to the sentencing phase "as expeditiously as possible"¹⁵ had put the Defence on adequate advance notice for the deadlines later issued on 23 September 2026.¹⁶ The Prosecution respectfully submits that this is not an appealable issue arising from the Decision. Rather, it is a disagreement with the Chamber's assessment of the relevant factual

¹⁴ ICC-01/05-01/08-3273, para. 8; ICC-02/11-01/15-117, para. 26; ICC-02/11-01/15-132, para. 5.

¹⁵ Transcript of hearing, ICC-01/14-01/21-T-141, p. 48.

¹⁶ The Application for leave to appeal, para. 22.

context in these proceedings. The Prosecution submits that, the Decision on this aspect¹⁷ is well reasoned and explicitly states the reasons why the Defence had sufficient time and indications to proceed with their investigation. Moreover, the Chamber possesses inherent authority to regulate its own proceedings under article 64(3)(a). The Chamber's finding that the Defence was on notice that it should prepare for potential sentencing investigations concurrently with trial closure is a reasonable case-management deduction, not an appealable issue within the meaning of article 82(1)(d). In light of these considerations, the first Issue should be rejected.

ii. The Second Issue - la Chambre a-t-elle commis une erreur de droit et de fait en déterminant que le résumé du Jugement, interprété en français et en sango, était suffisant pour satisfaire aux droits de l'Accusé ?

11. The Defence contends that the Chamber erred in fact and in law by ruling that an oral summary of the Trial Judgment in French and Sango was sufficient for the Defence to advise Mr. Said on his sentencing filings. In this regard, the Defence claims that the Chamber itself admitted the summary was just a "holistic overview" that omitted individual incident analyses to save time.¹⁸ The Prosecution respectfully submits that again, the Defence's argument illustrates a mere disagreement with the Decision. The Defence had already raised this issue in the Defence's Request¹⁹ and this has been duly thrashed out by the Chamber by holding *inter alia* that "[e]ven if the summary did not mention the Chamber's position on each of the incidents individually, it set out its summary of the factual and legal findings on Mr Said's participation and intent as well as the harm suffered by the victims."²⁰ Accordingly, the second issue is not an appealable issue arising from the Decision and it should be rejected.

¹⁷ The Decision, paras. 8 and 10.

¹⁸ The Decision, para. 25.

¹⁹ The Defence Request, para. 38.

²⁰ The Decision, para. 11.

iii. The Third Issue: la Chambre a-t-elle commis une erreur de droit en ne reconnaissant pas le droit à l'Accusé de bénéficier du Jugement dans une langue qu'il comprend avant de poursuivre la procédure" ?

12. The Defence argues that the Chamber committed multiple errors of law and fact by denying Mr Said a French translation of the Trial Judgment in time to effectively participate in his sentencing proceedings.²¹ The Prosecution respectfully submits that the Chamber properly applied the clear Appeals Chamber precedent established in the *Ongwen* Sentencing Appeal, which explicitly holds that an accused's right to receive a translation of a conviction decision is not absolute for the purposes of sentencing, provided that the convicted person, assisted by counsel, can sufficiently understand the decision for those purposes.²²
13. The Chamber further made a fact-specific assessment that the oral and transcribed summary delivered in Sango and French, paired with its order directing the Registry to provide rolling draft translations of paragraphs 905–1074 and 1583–1787 by 27 October 2026,²³ adequately safeguards Mr. Said's core rights. The Defence's insistence that a full translation is legally required is a disagreement with the clear legal standard set by the Appeals Chamber and the manner in which the Chamber applied this standard in the present case.
14. The Defence submissions regarding the proposed issue is therefore premised on an incorrect interpretation of the Decision and is not appealable. It should therefore be rejected.

²¹ The Defence Request, para. 33.

²² The Defence Request, para. 7. Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled "Sentence", 15 December 2022, ICC-02/04-01/15-2023 (the '*Ongwen* Sentencing Appeal'), paras 59, 61.

²³ The Decision, para. 18.

iv. The Fourth Issue: la Chambre a-t-elle commis une erreur de droit en considérant que le changement de Conseil n'affecte pas le cours de la procédure?

15. Under the fourth issue, the Defence contends that the Chamber committed errors of law and fact by failing to properly consider the impact of a change in Lead Counsel on the Defence team's organization and strategy. This contention is procedurally barred and legally untenable. The Prosecution respectfully submits that this matter is *res judicata* and has already been thoroughly litigated and adjudicated by this Chamber in its decision of 26 March 2025.²⁴ Further, in its Decision on the Prosecution's request for an order to exclude Defence Counsel,²⁵ the Chamber explicitly determined that Mr Jacobs was not a mere member of the Defence team, that his appointment in April 2021 clearly states that Mr Jacobs has been appointed as Associate Counsel for Mr Said to represent him in proceedings before the Court.²⁶ The Chamber further noted that Mr Jacobs has carried out a number of activities in furtherance of his mandate as Associate Counsel.²⁷ These settled findings were reiterated in the Chamber's Decision regarding Ms Naouri's temporary suspension of her right to practice before the Court following a decision of the Disciplinary Appeals Board.²⁸

16. Given that the core factual and legal premises governing Mr. Jacobs' continuous representative capacity are settled law of the case, the Prosecution submits that the Defence's fourth proposed issue lacks any objective judicial foundation. It constitutes an attempt to relitigate a determined matter and reflects a mere

²⁴ Decision on Defence Request for Leave to Appeal Decision on the Prosecution's Request for an Order to Exclude Defence Counsel from the Defence's List of Witnesses and Evidence, ICC-01/14-01/21-952.

²⁵ Decision on the Prosecution's Request for an Order to Exclude Defence Counsel from the Defence's List of Witnesses and Evidence, ICC-01/14-01/21-935, 11 March 2025.

²⁶ ICC-01/14-01/21-935, para. 37.

²⁷ 'including, inter alia: (i) leading the cross-examination of a significant number of Prosecution witnesses in this case; (ii) making regular submissions before the Chamber on a number of procedural and substantive issues throughout the course of this trial; and (iii) standing in for lead counsel on a number of occasions during her absence from the courtroom', Para. 38, ICC-01/14-01/21-935.

²⁸ ICC-01/14-01/1048-Red, para. 14.

disagreement with the Chamber's evidentiary weight-assessment, which fails the strict threshold for a certifiable issue under article 82(1)(d).

17. Moreover, as demonstrated above, the Fourth Issue does not arise from this Decision, but from prior decisions of the Chamber. It should therefore be rejected.

v. The Fifth Issue: la Chambre a-t-elle commis une erreur de droit et de fait en ne motivant pas sa décision sur l'absence de « good cause » au sens de la Norme 35?

18. The Defence claims the Chamber failed to provide adequate reasoning for finding an absence of "good cause" under regulation 35(2). This assertion is contradicted by a plain reading of paragraphs 13 and 15 of the Decision. The Chamber explicitly evaluated the Defence's arguments regarding technical issues, international sanctions, and workload, properly finding that these generalized difficulties apply to all staff, contractors, and most defence teams transitioning to post-judgment phases. The Chamber provided sufficient reasoning for its conclusions, which the Defence disregards.

19. Moreover, instead of identifying a valid, certifiable "issue," the Defence merely articulates its profound disagreement with the Chamber's exercise of its discretion and case-management powers. This issue is therefore not an appealable issue arising from the Decision and it should be rejected.

B. The Issues do not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

20. Even *arguendo* if the Chamber were to consider that the Issues identified by the Defence are appealable, the Defence fails to satisfy the remaining limbs of article 82(1)(d).

i. Fairness

21. The Prosecution respectfully submits that the Chamber has actively protected the fairness of the proceedings by partial accommodation. It extended the deadline for

the submission of additional evidence by two days, provided an exceptional mechanism for the Defence to request sequential evidence filings after reviewing the Prosecution and CLRV filings, and ordered expedited, targeted translations of the core factual and legal sections of the Trial Judgment.

22. The Defence contends that by ignoring the specific circumstances of this case, the Decision violates the rights of the Accused under article 67(1)(b). The Prosecution submits that the Defence is merely reiterating an argument previously submitted²⁹ and the related claim reflects as a result, a mere disagreement with the Decision. Further, the contention, as formulated, is broad and falls short of distinctly linking this criteria to the specific Issues, as required by the jurisprudence.³⁰

ii. Expeditiousness

23. The oral sentencing hearings are set for the week of 9 to 13 November 2026. Written submissions are completely optional and designed solely as an auxiliary aid to the Chamber. The Defence retains its absolute right to present all sentencing arguments orally and maintains the traditional "right to the last word" during those scheduled hearings. The Prosecution submits that suspending the proceedings at this stage to seek an interlocutory appeal on localized case-management deadlines would severely disrupt, rather than advance, the expeditious conclusion of this trial.

C. The immediate resolution of the Issues by the Appeals Chamber will not materially advance the proceedings.

24. The Prosecution respectfully submits that the immediate resolution of any of the Issues by the Appeals Chamber will not materially advance the proceedings. The Defence argues that only an immediate resolution by the Appeals Chamber can ensure the proceedings comply with the fundamental rights of the accused, and

²⁹ The Defence Request, para.48-57.

³⁰ *Prosecutor v. Gbagbo & Blé Goudé*, Decision on request for leave to appeal the 'Fourth decision on matters related to disclosure and amendments to the List of Evidence' and other issues related to the presentation of evidence by the Office of the Prosecutor, ICC-02/11-01/15-524, 13 May 2016, para. 16 ("It is not the duty of the Chamber to identify specific issues to appeal from broadly formulated requests. A broad reference to the fundamental rights of the accused and how the alleged violation necessarily has an impact on the fairness of the proceedings, without more, cannot satisfy the leave to appeal.").

that prompt intervention is necessary to purge the judicial process of errors that threaten trial fairness or compromise the outcome.³¹ This contention is unfounded and based on a mischaracterization of the Decision. The Decision represents a balanced, reasonable exercise of the Chamber's discretion to manage its docket while adequately insulating the accused's statutory protections.

25. The Prosecution further submits that the Defence's Application for leave to appeal the Decision fails to cross the legal threshold required by article 82(1)(d) and amounts to an attempt to relitigate case-management timelines. Consequently, the Defence's arguments on the need for an immediate appellate resolution of the Issues should be rejected.

IV. CONCLUSION

26. For the foregoing reasons, the Prosecution respectfully requests the Chamber to reject the Defence's Application for leave to appeal, in its entirety.



Mame Mandiaye Niang, Acting Prosecutor

Dated this 15th day of October 2026

At The Hague, The Netherlands

³¹ The Defence Request, para. 48.