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

Date: 28 April 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

Decision on Defence Request for Leave to Appeal Order on Page Limits (ICC-01/14-01/21-280)

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
Mr Eric MacDonald

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet
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**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 (the ‘Chamber’), in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to article 82(1)(d) of the Rome Statute (the ‘Statute’), issues this ‘Decision on Defence Request for Leave to Appeal Order on Page Limits (ICC-01/14-01/21-280)’.

I. PROCEDURAL HISTORY

1. On 11 April 2022, the Chamber issued an order limiting documents filed with the Registry in this case to 12 pages (excluding the notification and cover page) without prejudice to its discretion to extend the page limit in exceptional circumstances (the ‘Order’).¹
2. On 19 April 2022, the Defence filed a request for leave to appeal two issues arising from the Order (the ‘Request for Leave to Appeal’).²
3. On 22 April 2022, the Office of the Prosecutor (the ‘Prosecution’) filed a response to the Request for Leave to Appeal.³
4. The Office of Public Counsel for Victims did not file observations on the Request for Leave to Appeal.

II. ANALYSIS

5. The Chamber recalls previous jurisprudence regarding the application of article 82(1)(d) of the Statute.⁴ Thus, in considering the Request for Leave to Appeal, the

¹ Order on page limits pursuant to regulation 37(1) of the Regulations of the Court, [ICC-01/14-01/21-277](#).

² *Demande d’autorisation d’interjeter appel de la « Order on page limits pursuant to regulation 37(1) of the Regulations of the Court »* (ICC-01/14-01/21-277) *notifiée le 11 avril 2022*, [ICC-01/14-01/21-280](#).

³ Prosecution Response to Defence Request for Leave to Appeal the Order on Page Limits Pursuant to Regulation 37(1) of the Regulation of the Court, [ICC-01/14-01/21-284](#) (the ‘Response’).

⁴ Decision on Defence Request for Reconsideration or Leave to Appeal the ‘Directions on the Conduct of Proceedings’ (ICC-01/14-01/21-251), [ICC-01/14-01/21-275](#), paras 9-11; Decision on Defence Request for Leave to Appeal the ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’ (ICC-01/14-01/21-243), 15 March 2022, [ICC-01/14-01/21-258](#), paras 11-15; *See also* Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the Demande d’autorisation d’interjeter appel de la ‘Decision on the request for suspension of the time limit to respond to the Prosecutor’s Trial Brief submitted by the Defence for Mr Gbagbo’ (ICC-02-11-01/15-1141), 13 April 2018, [ICC-02/11-01/15-1150](#), para. 8; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Defence request for leave to appeal the decision appointing experts on reparations, 29 June 2017, [ICC-01/05-01/08-3536](#) (the ‘Bemba Gombo Decision’), paras 4-7; Trial

Chamber must have regard to whether: (i) the matter is an ‘appealable issue’; (ii) the issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (iii) in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.⁵

6. The three criteria under article 82(1)(d) of the Statute are cumulative.⁶ Therefore, failure to fulfil one or more of the criteria will result in dismissal of the Request for Leave to Appeal.⁷ In particular, the Chamber notes that article 82(1)(d) of the Statute ‘cannot be used to litigate abstract or hypothetical issues’.⁸

7. The Defence argues that regulation 37 of the Regulations of the Court (the ‘Regulations’) represents a decision of all of the Judges that 20 pages is the adequate number of pages for a party to properly convey their submissions on any given issue.⁹ They contend that the parties in this case should be on an equal footing with the parties in all other cases before the Court.¹⁰ The Defence requests leave to appeal the following two issues: (i) the Order lacks a legal basis, as regulation 37(1) of the Regulations does not allow a Chamber to reduce the page limit applicable to filings by the parties; and (ii) regulation 37(1) of the Regulations does not permit the Chamber to reduce the applicable page limit for all filings in a general manner and without reasoning.¹¹

8. The Defence submits that the Order could materially affect the fair conduct of proceedings since: (i) the parties may not have the necessary means to allow their arguments to be fully ventilated and the Defence’s ability to exercise its rights is restricted;¹² (ii) a reduced page limit is particularly discriminatory when one party writes in French, which requires more words to properly convey the same meaning as

Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 5 September 2018, [ICC-02/04-01/15-1331](#) (the ‘Ongwen Decision’), para. 8.

⁵ [Bemba Gombo Decision](#), para. 4; [Ongwen Decision](#), para. 8.

⁶ [Bemba Gombo Decision](#), para. 5; [Ongwen Decision](#), para. 8.

⁷ [Bemba Gombo Decision](#), para. 5; [Ongwen Decision](#), para. 8.

⁸ [Bemba Gombo Decision](#), para. 6.

⁹ [Request for Leave to Appeal](#), paras 14, 34.

¹⁰ [Request for Leave to Appeal](#), para. 15.

¹¹ [Request for Leave to Appeal](#), paras 17-27.

¹² [Request for Leave to Appeal](#), paras 28-31.

an English text;¹³ and (iii) the Order imposes an additional workload on the parties by requiring them to submit many requests to increase the page limit.¹⁴ The Defence further contends that the immediate resolution of the issues raised would purge the process of an error likely to taint the fairness of proceedings or affect the outcome of the trial and this is necessary as it will not be possible to remedy any prejudice caused by the Order at the end of the trial.¹⁵

9. The Prosecution argues that the issues proposed for appeal would not ‘significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial nor [...] would their immediate resolution by the Appeals Chamber materially advance the proceedings’.¹⁶

10. The Chamber is not persuaded that the issues identified in the Request for Leave to Appeal meet the cumulative criteria under article 82(1)(d) of the Statute. The Chamber notes that while the Order was indeed issued without motivation, the fact is that the Order underlines to the parties the possibility to extend the page limit, and therefore in the Chamber’s view there will not be any significant prejudice to the fair and expeditious conduct of the proceedings or the outcome of the trial as explained below. First, the Defence’s assertion that regulation 37(1) of the Regulations provides an inherent right to the parties to file documents of up to 20 pages long is without basis, and runs contrary to the ordinary meaning of the regulation, namely that the parties can file 20-page documents unless the Chamber -in exercise of its powers and discretion- orders otherwise. Second, the Defence’s view that the Order will negatively affect the fair and expeditious conduct of the proceedings because the parties may not be allowed to properly, exhaustively and completely put forward their legal and factual arguments is incorrect. Rather, the Chamber considers that the Order will enhance the expeditiousness of the proceedings by fostering concision and focus in the parties’ argumentation without excessive repetition. Where a party may show that a legal argument may reasonably require more room, the Chamber will consider such request. Hence, in the Chamber’s opinion, the Order preserves the fairness of proceedings by

¹³ [Request for Leave to Appeal](#), para. 32.

¹⁴ [Request for Leave to Appeal](#), para. 33.


¹⁵ [Request for Leave to Appeal](#), paras 35-37.

¹⁶ [Response](#), para. 3. *See also* paras 4-13.

affording the parties the opportunity to request additional pages should this be necessary in respect of a particular filing. The Chamber considers that this possibility will not create an additional workload for the parties such that the fairness of proceedings or the outcome of the trial could be affected. Accordingly, given that at least one of the requirements set out in article 82(1)(d) of the Statute is not met, the Request for Leave to Appeal must be rejected.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Appeal.



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 28 April 2022

At The Hague, The Netherlands