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

Date: 11 May 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 Requests to Vary the Time Limits pertaining to the Introduction of
Prior Recorded Testimony of Witnesses pursuant to Rule 68 (ICC-01/14-01/21-
300-Conf-Red and ICC-01/14-01/21-291)**

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
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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*, pursuant to regulations 23 bis, 24(5) and 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on Requests to Vary the Time Limits pertaining to the Introduction of Prior Recorded Testimony of Witnesses pursuant to Rule 68 (ICC-01/14-01/21-300-Conf-Red and ICC-01/14-01/21-291)’.

I. PROCEDURAL HISTORY

1. On 21 February 2022, the Chamber instructed the Office of the Prosecutor (the ‘Prosecution’) ‘to file its applications pursuant to Rule 68 of the Rules on a rolling basis and no later than 23 May 2022’.¹ It further specified that ‘[a]ny application which cannot be finalised by this date, due to ongoing investigations or other exceptional circumstances, must be filed by 13 June 2022 at the latest’.²
2. On 29 April 2022, the Prosecution filed an application under rule 68(2)(b) of the Rules to introduce the prior recorded testimony of eleven witnesses (the ‘Rule 68(2)(b) Application’) and an application under rule 68(2)(c) of the Rules to introduce the prior recorded testimony of six witnesses (the ‘Rule 68(2)(c) Application’).³
3. On the same date, the Prosecution requested an extension of time pursuant to regulation 35 of the Regulations ‘until 13 June 2022 to file rule 68 applications for 10 witnesses, and a further extension until 27 June 2022 to file applications for its last remaining 10 witnesses’ (the ‘Prosecution Request for Extension of Time’).⁴
4. On 6 May 2022, the Office of Public Counsel for Victims (the ‘OPCV’) informed the Chamber that it did not object to the Prosecution Request for Extension of Time.⁵

¹ Decision Setting the Commencement Date of the Trial and Related Deadlines, [ICC-01/14-01/21-243](#) (the ‘Decision Setting Deadlines’), para. 28.

² [Decision Setting Deadlines](#), para. 28.

³ Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-289-Conf; Prosecution Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses, ICC-01/14-01/21-290-Conf (public redacted version notified on 9 May 2022, [ICC-01/14-01/21-290-Red](#)).

⁴ Prosecution’s Request to vary the time limit for applications to introduce the prior recorded testimony of 20 witnesses pursuant to Rule 68, ICC-01/14-01/21-291-Conf.

⁵ Email received at 10:43 on 6 May 2022.

5. On 6 May 2022, the Defence requested an extension of time to respond to the Rule 68(2)(c) Application by 1 June 2022 and the Rule 68(2)(b) Application by 9 June 2022 (the ‘Defence Request for Extension of Time’).⁶
6. On 9 May 2022, the Prosecution informed the Chamber by email that the Prosecution Request for Extension of Time could be reclassified as public.⁷
7. On 10 May 2022, the OPCV informed the Chamber that it did not intend to respond to the Defence Request for Extension of Time, but requested that an equivalent time extension be granted to it, should the Chamber be minded to grant the request (the ‘OPCV Request for Extension of Time’).⁸
8. On 10 May 2022, the Prosecution responded to the Defence Request for Extension of Time (the ‘Prosecution Response’).⁹
9. On 10 May 2022, the Defence responded to the Prosecution Request for Extension of Time (the ‘Defence Response’).¹⁰
10. On 11 May 2022, the Defence filed a request for leave to reply to the Prosecution Response (the ‘Request for Leave to Reply’).¹¹

⁶ *Version confidentielle expurgée de la « Requête de prorogation du délai de réponse à la « Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(2)(b) » (ICC-01/14-01/21-289-Conf), à la « Prosecution Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses » (ICC-01/14-01/21-290-Conf) et à la « Prosecution’s Request to vary the time limit for applications to introduce the prior recorded testimony of 20 witnesses pursuant to Rule 68 » (ICC-01/14-01/21-291-Conf) en vertu de la Norme 35 du Règlement de la Cour », ICC-01/14-01/21-300-Conf-Red (confidential *ex parte* version notified same day).*

⁷ Email received at 12:01 on 9 May 2022.

⁸ Email received at 09:51 on 10 May 2022.

⁹ Prosecution’s response to Defence extension request (ICC-01/14-01/21-300-Conf-Red), ICC-01/14-01/21-302-Conf. The deadline for response was shortened to 10 May 2022 by the Chamber (Email sent by Trial Chamber VI at 13:56 on 9 May 2022).

¹⁰ *Observations de la Défense sur la « Prosecution’s Request to vary the time limit for applications to introduce the prior recorded testimony of 20 witnesses pursuant to Rule 68 » (ICC-01/14-01/21-291-Conf), ICC-01/14-01/21-303-Conf-Red (confidential *ex parte* version notified same day). The deadline for response was shortened to 9 May 2022 by the Chamber and subsequently extended to 10 May 2022 (Emails sent by Trial Chamber VI at 09:22 and 17:45 on 6 May 2022).*

¹¹ *Demande d’autorisation de répliquer à la « Prosecution’s response to Defence extension request (ICC-01/14-01/21-300-Conf-Red) » (ICC-01/14-01/21-302-Conf) déposée le 10 mai 2022, ICC-01/14-01/21-304-Conf.*

II. ANALYSIS

11. Regulation 35(2) of the Regulations of the Court provides that the Chamber may extend a time limit if good cause is shown.

A. Prosecution Request for Extension of Time

12. The Prosecution submits that it cannot reasonably meet its trial preparation obligations by the deadline of 13 June 2022 given its limited resources.¹² It argues that rule 68 applications require careful assessment in order to provide a Chamber with sufficient information to carry out the analysis required and that ‘generalised applications which may be more achievable in a shorter period risk insufficient substantiation of the relevant factors’.¹³ The Prosecution further submits that granting the Prosecution Request for Extension of Time will not cause any undue prejudice as the applications will be filed three months in advance of the start of trial and the evidence in question has already been disclosed to the Defence.¹⁴ The Prosecution further suggests that the Chamber may wish to defer the submission of applications pursuant to rule 68 of the Rules for three witnesses scheduled to testify in the case of *The Prosecutor v Alfred Yekatom and Patrice-Edouard Ngaissona* in the coming months.¹⁵

13. The Defence highlights the proportion of witnesses whose statements the Prosecution seeks to submit under rule 68 of the Rules, the lack of clarity as to the precise number of such applications the Prosecution intends to file, the Prosecution’s delay in submitting such applications on a rolling basis and the impact that this will have on the Defence’s trial preparation and the competing trial preparation work with which the Defence will be occupied at the same time as it will be required to respond to the remaining rule 68 applications.¹⁶ Nonetheless, the Defence does not object to the Prosecution Request for Extension of Time.¹⁷

¹² Prosecution Request for Extension of Time, paras 7-9.

¹³ Prosecution Request for Extension of Time, para. 10.

¹⁴ Prosecution Request for Extension of Time, paras 12-14.

¹⁵ Prosecution Request for Extension of Time, para. 11.

¹⁶ Defence Response, paras 13-38.

¹⁷ Defence Response, paras 39-40.

14. The Chamber considers it to be in the interests of effective and fair proceedings for applications under rule 68 of the Rules to be well reasoned and carefully considered. It takes note of the Prosecution's workload in preparation for trial, the number of applications it intends to submit pursuant to rule 68 of the Rules and the detailed work that this entails. In these circumstances, the Chamber considers that good cause has been shown to extend the time limit set for the filing of 20 applications pursuant to rule 68 of the Rules. Without prejudice to any other decision that it may take regarding future requests for time extensions for such applications, the Chamber considers the requested extension until 13 June 2022 for ten witnesses, and the further extension until 27 June 2022 for the remaining ten witnesses to be reasonable.

15. The Prosecution indicates that it will make 20 applications under rule 68(3) of the Rules, that it will continue to file applications on a rolling basis and will prioritise the rule 68(2) applications that have yet to be made.¹⁸ The Chamber notes that rule 68(2) witnesses will not appear before the Chamber; thus these applications are of greater significance from the perspective of the rights of the accused and have more of an impact on trial management. Therefore, it considers it appropriate to limit the extension of time granted to the 20 rule 68(3) applications that the Prosecution has indicated an intention to file. The remaining applications under rule 68(2) of the Rules are to be filed on a rolling basis up to and at the latest by 23 May 2022 (except as provided in paragraph 17 below).

16. The Chamber therefore grants the Prosecution Request for Extension of Time until 13 June 2022 for ten rule 68(3) witnesses, and the further extension until 27 June 2022 for the remaining rule 68(3) witnesses.

17. The Chamber further notes that three of the witnesses whose statements the Prosecution seeks to submit under rule 68 of the Rules are scheduled to testify in the case of *The Prosecutor v Alfred Yekatom and Patrice-Edouard Ngaiisona* in the coming months (P-0975, P-1339 and P-2269).¹⁹ In these circumstances and in the interests of efficiency, the Chamber considers it necessary to extend the time limit for applications pursuant to rule 68 of the Rules in relation to these three witnesses to 20

¹⁸ Prosecution Request for Extension of Time, para. 7, footnote 6.

¹⁹ Prosecution Request for Extension of Time, para. 11.

days after completion of their respective testimony. However, if it becomes clear that the three witnesses will not complete their testimony before Trial Chamber V before the start of the trial, the Prosecution shall immediately inform the Chamber as well as the parties and participants.

18. Finally, the Chamber notes that there is no basis for the Prosecution Request for Extension of Time to be classified as confidential. Therefore, pursuant to regulation 23 *bis* of the Regulations of the Court, the Chamber reclassifies the Prosecution Request for Extension of Time as public.

B. Defence Request for Extension of Time for Responses to the Rule 68(2)(c) Application and the Rule 68(2)(b) Application

19. The Defence submits that an extension of time is justified on the basis that detailed work and an analysis of a large volume of evidence is required in order to prepare a meaningful response to rule 68 applications.²⁰ The Defence underlines the significant impact of rule 68(2) applications on the conduct of proceedings and the fairness of the trial, and its competing workload in preparing for trial.²¹ On this basis, the Defence argues that there is good cause for extension of the time limits for its response to the Rule 68(2)(c) Application to 1 June 2022 and its response to the Rule 68(2)(b) Application to 9 June 2022.

20. The Prosecution emphasises the importance of the Chamber deciding on the rule 68 applications expeditiously and in advance of the trial.²² While the Prosecution does not object to the Defence request for a limited extension of time in respect of the Rule 68(2)(c) Application, it requests that the Chamber deny the Defence request for an extension of time for the Rule 68(2)(b) Application, or, alternatively, grant a limited extension until 18 May 2022.²³

21. The Chamber considers that the efficacy of proceedings is best served by allowing sufficient time for responses to applications under rule 68 of the Rules to be carefully considered. It takes note of the Defence's workload in preparing for trial and the

²⁰ Request for Extension of Time, paras 22-23.

²¹ Request for Extension of Time, paras 28-37.

²² Prosecution Response, para. 4.

²³ Prosecution Response, para. 8.

detailed work that responding to applications pursuant to rule 68 of the Rules entails. In these circumstances, the Chamber considers that good cause has been shown to extend the time limit set for the filing of the Defence response to the Rule 68(2)(c) Application and the Defence response to the Rule 68(2)(b) Application.

22. The Chamber notes the Prosecution's submissions that 'it would be in the interests of justice and fairness that it has the opportunity to respond to any general arguments the Defence may raise in relation to rule 68(2) applications before [the] deadline [for its remaining applications]' and in particular to address any unanticipated legal arguments.²⁴ However, the Chamber is not persuaded that allowing the Prosecution the opportunity to respond to Defence arguments in subsequent rule 68 requests is a reason to refuse the requested extension of time.

23. The Chamber considers that the requested extension until 1 June 2022 to respond to the Rule 68(2)(c) Application, and the further extension until 9 June 2022 to respond to the Rule 68(2)(b) Application will not impact on trial preparations or the expeditiousness of proceedings at this stage. In these circumstances, the Chamber considers the requested extension to be reasonable. Accordingly, the Chamber grants the Defence Request for Extension of Time.

24. Finally, the Chamber notes that the OPCV has requested an equivalent extension of time to respond to the Rule 68(2)(c) Application and the Rule 68(2)(b) Application. However, noting that the OPCV has not provided any reasons justifying its request, the Chamber considers that good cause has not been shown for the requested extension of time. Accordingly, the OPCV Request for Extension of Time is rejected.

C. Defence Request for Leave to Reply

25. Regulation 24(5) provides that a participant may only reply to a response with the leave of the Chamber. The Chamber considers that the further submissions outlined by the Defence will not assist in its determination of the Defence Request for Extension of Time. Therefore, the Defence Request for Leave to Reply is rejected.

²⁴ Prosecution Response, para. 6.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Prosecution Request for Extension of Time until 13 June 2022 for ten rule 68(3) witnesses, and the further extension until 27 June 2022 for the remaining rule 68(3) witnesses;

EXTENDS the time limit for the submission of applications pursuant to rule 68 of the Rules for the witness statements of P-0975, P-1339 and P-2269 until 20 days after completion of their respective testimony in the case of *The Prosecutor v Alfred Yekatom and Patrice-Edouard Ngäïssona*;

RECLASSIFIES the Prosecution Request for Extension of Time as public;

GRANTS the Defence Request for Extension of Time;

REJECTS the OPCV Request for Extension of Time; and

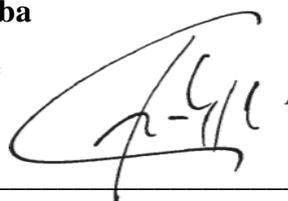
REJECTS the Defence Request for Leave to Reply.



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 11 May 2022

At The Hague, The Netherlands