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

Date: 19 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 Defence Request for Extension of Time for Responses to Rule
68(2)(b) Applications (ICC-01/14-01/21-313-Conf-Exp)**

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
Mr Tars van Litsenborgh

**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 regulation 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on Defence Request for Extension of Time for Responses to Rule 68(2)(b) Applications (ICC-01/14-01/21-313-Conf-Exp)’.

I. PROCEDURAL HISTORY

1. On 13 May 2022, the Office of the Prosecutor (the ‘Prosecution’) filed its second and third requests to introduce prior recorded testimony under rule 68(2)(b) of the Rules relating to seven witnesses and four witnesses respectively.¹
2. On 17 May 2022, the Defence requested an extension of time to respond to the second rule 68(2)(b) application by 23 June 2022 and the third rule 68(2)(b) application by 8 July 2022 (the ‘Defence Request for Extension of Time’).²
3. On 18 May 2022, the Prosecution and the Office of Public Counsel for Victims informed the Chamber that they did not intend to respond to the Defence Request for Extension of Time.³

II. ANALYSIS

4. Regulation 35(2) of the Regulations of the Court provides that the Chamber may extend a time limit if good cause is shown.
5. The Defence submits that an extension of time is justified on the basis that responding to the rule 68 applications requires detailed work and an analysis of a large

¹ Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-307-Conf; Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(2)(b), ICC-01/14-01/21-308-Conf.

² *Requête de prorogation du délai de réponse à la « Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(2)(b) » (ICC-01/14-01/21- 307-Conf) et à la « Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(2)(b) » (ICC-01/14-01/21-308-Conf) en vertu de la Norme 35 du Règlement de la Cour*, 18 May 2022, ICC-01/14-01/21-313-Conf-Red (confidential *ex parte* version notified on 17 May 2022).

³ Email received from the Prosecution at 13:46; email received from the Office of Public Counsel for Victims at 15:04.

volume of evidence some of which has yet to be disclosed to the Defence.⁴ 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.⁵ On this basis, the Defence argues that there is good cause for extension of the time limits for its responses to the second rule 68(2)(b) application to 23 June 2022 and the third rule 68(2)(b) application to 8 July 2022.⁶

6. 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 detailed work that responding to applications pursuant to rule 68 of the Rules entails. In this regard, the Chamber is mindful of the fact that the Prosecution has been unable to file the rule 68 applications within the time frame originally envisaged and has itself required an extension of time limit.⁷ In these circumstances, the Chamber considers that good cause has been shown to extend the time limit set for the filing of the Defence responses to the second and third rule 68(2)(b) applications.

7. The Chamber considers that the requested extension until 23 June 2022 to respond to the second rule 68(2)(b) application will not impact on the expeditiousness of proceedings at this stage and it considers the requested extension to be reasonable. Accordingly, the Chamber grants the Defence request for an extension of the time limit for its response to the second rule 68(2)(b) application to 23 June 2022.

8. On the other hand, the Chamber considers that the length of the extension requested for the Defence response to the third rule 68(2)(b) application (until 8 July 2022) is excessive. The application concerns only four witnesses whose statements (with the exception of one translation) were disclosed to the Defence prior to the hearing on the confirmation of charges. In these circumstances, the Chamber considers

⁴ Defence Request for Extension of Time, paras 11-26.

⁵ Defence Request for Extension of Time, paras 27-40.

⁶ Defence Request for Extension of Time, p. 14.

⁷ [Decision on Requests to Vary the Time Limits pertaining to the Introduction of Prior Recorded Testimony of Witnesses pursuant to Rule 68 \(ICC-01/14-01/21-300-Conf-Red and ICC-01/14-01/21-291\)](#), 11 May 2022, ICC-01/14-01/21-305, in which the Chamber extended the original deadline of 23 May 2022 until 13 June for 10 rule 68(3) applications and until 27 June for the remaining rule 68(3) witnesses.

that a shorter extension of time is reasonable. Therefore, it grants the Defence an extension of time for its response to the third rule 68(2)(b) application to 1 July 2022.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Defence request for an extension of the time limit for its response to the second rule 68(2)(b) application to 23 June 2022; and

EXTENDS the time limit for the Defence's response to the third rule 68(2)(b) application to 1 July 2022.



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 19 May 2022

At The Hague, The Netherlands