

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 1 June 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**

Confidential

Victims' response to the "*Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l'Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la 'Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)' (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022*" (ICC-01/14-01/21-334-Conf)

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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**Victims Participation and Reparations
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I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings and participating victims (the “Legal Representative”),¹ hereby submits her response to the “*Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022*” (the “Defence Request”).²

II. PROCEDURAL BACKGROUND

2. On 23 May 2022, the Prosecution filed the “Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3)” (the “First Rule 68(3) Application”),³ the “Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(2)(b)” (the “Fifth Rule 68(2)(b) Application”),⁴ the “Prosecution’s Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)” (the “Sixth Article 64(9) Application”),⁵ the “Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(3)” (the “Second Rule 68(3)

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG CT](#), p. 47, lines 1-13; the “Decision on matters relating to the participation of victims during the trial”, [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; and the “Decision authorising 20 victims to participate in the proceedings”, [No. ICC-01/14-01/21-311](#), 27 May 2022.

² See the “*Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325- Conf) notifiées à la Défense le 23 mai 2022*”, [No. ICC-01/14-01/21-334-Conf](#), 30 May 2022 (the “Defence Request”).

³ See the “Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3)”, with [Confidential Annex A](#), [No. ICC-01/14-01/21-322-Conf](#) and [No. ICC-01/14-01/21-322-Red](#), 23 May 2022.

⁴ See the “Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, with [Confidential Annex A](#), [No. ICC-01/14-01/21-323-Conf](#) and [No. ICC-01/14-01/21-323-Red](#), 23 May 2022.

⁵ See the “Prosecution’s Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, with [Confidential Annexes A](#) and [B](#), [No. ICC-01/14-01/21-325-Conf](#) and [No. ICC-01/14-01/21-325-Red](#), 23 May 2022.

Application”),⁶ and the “Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b)” (the “Sixth Rule 68(2)(b) Application) (jointly, the “Applications”).⁷

3. On 30 May 2022, the Defence requested an extension of time to respond to the Sixth Article 64(9) Application by 13 June 2022, the First Rule 68(3) Application and the Fifth Rule 68(2)(b) Application by 8 July 2022, and the Second Rule 68(3) Application and the Sixth Rule 68(2)(b) Application by 20 July 2022.⁸

4. On the same day, Trial Chamber VI (the “Chamber”) instructed the Prosecution and the Legal Representative to file any responses to the Defence Request by no later than 1 June 2022, given the proximity of the deadline for which extension is sought.⁹

III. CLASSIFICATION

5. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, the present filing is classified as “confidential”, since it refers to a document which was filed with the same classification. A public redacted version will be filed in due course.

IV. SUBMISSIONS

6. The Legal Representative understands the Defence’s considerations regarding the high workload as a result of the Prosecution’s simultaneous Applications, in addition to the continuous workload related to the preparation of the trial,¹⁰ and thus does not oppose the Defence Request, despite its tardiness. She notes however that consistently seeking extensions for all responses might defeat the purpose of

⁶ See the “Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(3)”, with [Confidential Annex A](#), [No. ICC-01/14-01/21-326-Conf](#) and [No. ICC-01/14-01/21-326-Red](#), 23 May 2022.

⁷ See the “Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, with [Confidential Annex A](#), [No. ICC-01/14-01/21-328-Conf](#) and [No. ICC-01/14-01/21-328-Red](#), 23 May 2022.

⁸ See the Defence Request, *supra* note 2.

⁹ See the email from Trial Chamber VI to the parties and participants entitled “Decision reducing time limit for response to Defence filing ICC-01/14-01/21-344-Conf”, 30 May 2022 at 15:02.

¹⁰ See the Defence Request, *supra* note 2, paras. 25 and 46.

sufficiently spreading said workload, since all responses would be due in June and July, with the commencement of the trial gradually approaching. Indeed, she recalls that the Chamber already extended two other response deadlines to June and July.¹¹

7. The Legal Representative further recalls the general and consistent practice of the Court to extend deadlines equally for all parties and participants, “*in the interests of fairness*” or “*to remain on the same filing schedule*”.¹² She submits that these grounds suffice as good cause under regulation 35 of the Regulations of the Court (the “Regulations”) for an equivalent extension of time to be granted to her without a need to demonstrate the same.

8. Moreover, systematically differentiating in time between the Legal Representative’s deadlines and similar Defence’s deadlines would *de facto* grant the Defence with an automatic right to reply to the Legal Representative’s responses to requests made by, in the present instance, the Prosecution. This in turn would be in conflict with regulation 24(5) of the Regulations which provides for the possibility for the Defence to request leave to reply to the Legal Representative’s responses to requests made by the parties.¹³ As very recently argued by the Defence, such requests can only be granted, including when “*des raisons valables de répliquer ont été démontrées, lorsque la réplique peut avoir une incidence sur la suite de la procédure ou lorsqu’un point important est soulevé*”.¹⁴

¹¹ See the “Decision on Defence Request for Extension of Time for Responses to Rule 68(2)(b) Applications (ICC-01/14-01/21-313-Conf-Exp)” (Trial Chamber VI), [No. ICC-01/14-01/21-314](#), 19 May 2022.

¹² See, *inter alia*, most recently the “Decision on the Victims’ Request for an extension of the time limit to submit their observations on reparation proceedings” (Trial Chamber IX), [No. ICC-02/04-01/15-1910](#), 18 November 2021, para. 11; and the “Decision on the Prosecutor’s request to extend the time limit for the Prosecution’s written submissions on the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi” (Appeals Chamber), [No. ICC-01/12-01/15-412](#), 31 August 2021, p. 6. *Contra* see the “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)” (Trial Chamber VI), [No. ICC-01/14-01/21-305](#), 11 May 2022, para. 24.

¹³ See, in this sense, Annex 5 to the “Registry Report Filing on the Case Record Decisions issued by way of e-mail from 27 March 2020 to 3 September 2020”, [No. ICC-01/14-01/18-775-Anx5](#), 16 December 2020.

¹⁴ See the “*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*”, [No. ICC-01/14-](#)

FOR THESE REASONS, the Legal Representative does not oppose the Defence Request and respectfully requests the Chamber, should it be minded to grant the Defence an extension of time, to grant an equivalent extension to her.



Sarah Pellet

Dated this 1st day of June 2022

At The Hague, The Netherlands

[01/304-Conf](#), 11 May 2022 (reclassified as public pursuant to the Single Judge's instruction dated 18 May 2022), para. 12.