



Original: English

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

Public

**Decision on Defence Request for Extension of Time for Responses to Rule 68
Applications and Bar Table Motion (ICC-01/14-01/21-333-Conf)**

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 Mame Mandiaye Niang

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*, having regard to regulations 24 and 35 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on Defence Request for Extension of Time for Responses to Rule 68 Applications and Bar Table Motion (ICC-01/14-01/21-333-Conf)’.

I. PROCEDURAL HISTORY

1. On 23 May 2022, the Office of the Prosecutor (the ‘Prosecution’) filed its first and second applications to introduce prior recorded testimony pursuant to rule 68(3) of the Rules of Procedure and Evidence (the ‘Rules’) relating to one witness and three witnesses respectively, its fifth and sixth applications to introduce prior recorded testimony pursuant to rule 68(2)(b) of the Rules relating to two witnesses and nine witnesses respectively, and its sixth bar table motion requesting the Chamber to recognise as formally submitted 153 items of evidence from the bar table.¹
2. On 30 May 2022, the Defence requested an extension of time to respond to: (i) the sixth bar table motion by 13 June 2022; (ii) the first rule 68(3) application and the fifth rule 68(2)(b) application by 8 July 2022; and (iii) the second rule 68(3) application and the sixth rule 68(2)(b) application by 20 July 2022 (the ‘Defence Request for Extension of Time’).²
3. On 1 June 2022, the Prosecution informed the Chamber that it would not submit a response to the Defence Request for Extension of Time.³ On the same day, the Office of Public Counsel for Victims (the ‘OPCV’) submitted its response (the ‘OPCV

¹ Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3), dated 20 May 2022 and notified on 23 May 2022, ICC-01/14-01/21-322-Red; Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(3), 27 May 2022, ICC-01/14-01/21-326-Red; Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(2)(b), 27 May 2022, ICC-01/14-01/21-323-Red; Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b), 27 May 2022, ICC-01/14-01/21-328-Red; Prosecution’s Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9), 30 May 2022, ICC-01/14-01/21-325-Red.

² *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., 30 May 2022, ICC-01/14-01/21-334-Conf.

³ Email received on 1 June 2022 at 08:26.

Response’).⁴ The OPCV does not oppose the request but asks to be granted an equivalent extension.

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 applications to introduce prior recorded testimony pursuant to rule 68 and bar table motions requires detailed work and an analysis of a large volume of evidence.⁵ The Defence underlines the significant impact of rule 68(2) applications and bar table motions on the conduct of proceedings and the fairness of the trial, as well as its competing workload in preparing for trial.⁶ It highlights that the Prosecution filed four rule 68 applications, two bar table motions and the French translation of its request for amendment of the charges on the same day, which triggered the same deadline for responses to all seven applications.⁷ On this basis, the Defence argues that there is good cause for extension of the time limits for its responses to the sixth bar table motion, the first and second rule 68(3) applications and the fifth and sixth rule 68(2)(b) applications.⁸

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 and bar table motions to be carefully considered. It takes note of the Defence’s comments regarding 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

⁴ 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), ICC-01/14-01/21-339-Conf.

⁵ Defence Request for Extension of Time, paras 22-24; 29-38.

⁶ Defence Request for Extension of Time, paras 39-46.

⁷ Defence Request for Extension of Time, paras 20, 48.

⁸ Defence Request for Extension of Time, p. 14.

required an extension of time limit.⁹ 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 sixth bar table motion, the first and second rule 68(3) applications and the fifth and sixth rule 68(2)(b) applications.

7. The Chamber considers that the rule 68(2)(b) applications have a bigger impact on trial management than the rule 68(3) applications as the decisions on the former determine whether a witness's prior recorded testimony may be introduced in written form or whether the witness must be called to testify in person. Therefore, while the Chamber considers the staggered deadlines for responses proposed by the Defence (13 June 2022, 8 July 2022 and 20 July 2022) to be reasonable, it considers it necessary for the effective management of proceedings to prioritise the responses to the rule 68(2)(b) applications. Accordingly, the Chamber grants extensions of the time limits for the Defence responses as follows: (i) the response to the sixth bar table motion to be filed by 13 June 2022; (ii) the responses to the fifth and sixth rule 68(2)(b) applications to be filed by 8 July 2022; and (iii) the responses to the first and second rule 68(3) applications to be filed by 20 July 2022.

8. Finally, the Chamber notes that the OPCV has requested an equivalent extension of time on the ground that this is in the interest of fairness because otherwise the Defence would, in effect, be given an opportunity to 'reply' to the OPCV's submissions.¹⁰ The Chamber is not persuaded by this argument. The OPCV's reference to regulation 24(5) of the Regulations is inapposite, as this provision deals primarily with replies to responses by the participant making the initial request. The OPCV has also not explained why the interests of the victims would be negatively affected if the Defence is able to prepare its response with knowledge of the OPCV submissions. Accordingly, noting that the OPCV has not provided any other reasons justifying its request, the

⁹ [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.

¹⁰ OPCV Response, paras 7-8.

Chamber considers that good cause has not been shown for the requested extension of time.

FOR THESE REASONS, THE CHAMBER HEREBY

EXTENDS the time limit for the Defence's response to the sixth bar table motion to 13 June 2022;

EXTENDS the time limit for the Defence's responses to the fifth and sixth rule 68(2)(b) applications to 8 July 2022;

EXTENDS the time limit for the Defence's responses to the first and second rule 68(3) applications to 20 July 2022; and

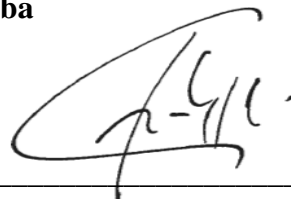
REJECTS the OPCV's request for extension of time limits.



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 1 June 2022

At The Hague, The Netherlands