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

Date: 5 July 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 Redacted Version of

**Decision on the Prosecution's Request for the Trial to be Held Partially in
Bangui**

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 articles 3(3), 62, 63, 64(2), 67(1)(d) and 68 of the Rome Statute (the ‘Statute’), and rule 100 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Request for the Trial to be Held Partially in Bangui’.

I. PROCEDURAL HISTORY

1. On 30 May 2022, the Office of the Prosecutor (the ‘Prosecution’) requested the Chamber to make a recommendation pursuant to rule 100 of the Rules to hear the opening statements and the first witnesses in whole or in part in Bangui (the ‘Request’).¹
2. On 10 June 2022, the Defence filed its response, arguing that the Chamber should reject the Prosecution’s Request (the ‘Defence’s Response’).² The Defence submits that the Chamber should recommend to the Presidency that opening speeches be held in the Central African Republic (the ‘CAR’) only in the presence of the accused.³
3. On 10 June 2022, the Office of Public Counsel for Victims (the ‘OPCV’) filed its response to the Request (the ‘Victims’ Observations’).⁴ The OPCV largely concurs with the Request, but raises considerations in respect of security, costs and outreach.⁵

II. SUBMISSIONS

4. The Prosecution requests the Chamber to recommend to the Presidency pursuant to rule 100 of the Rules that the opening statements and the first witnesses in whole or in part, or, alternatively, that at least the opening statements, be heard in Bangui.⁶ The Prosecution submits that it is in the interests of justice to hold proceedings in the place

¹ Prosecution’s request for the trial be held partially in Bangui, ICC-01/14-01/21-337-Conf. A public redacted version was filed on 7 June 2022 ([ICC-01/14-01/21-337-Red](#)).

² Réponse de la Défense à la « Prosecution’s request for the trial be held partially in Bangui » (ICC-01/14-01/21-337-Conf) déposée le 30 mai 2022., ICC-01/14-01/21-352-Conf. A public redacted version was filed on 14 June 2022 ([ICC-01/14-01/21-352-Red](#)).

³ [Defence’s Response](#), para. 24.

⁴ Victims’ observations on the “Prosecution’s request for the trial be held partially in Bangui” (ICC-01/14-01/21-337-Conf), ICC-01/14-01/21-355-Conf. A public redacted version was filed on 13 June 2022 ([ICC-01/14-01/21-355-Red](#)), para. 12.

⁵ [Victims’ Observations](#), paras 12, 15, 17-20.

⁶ [Request](#), paras 23-25.

where the alleged crimes were committed, as this would bring the Court closer to the victims and affected communities and render justice more accessible while reinforcing its importance.⁷ It submits that technological and logistical advances now make it possible to hold *in situ* hearings, in whole or in part, including simultaneously between Bangui and The Hague.

5. In the Prosecution's assessment, however, it would not be possible for the accused to be present in Bangui due to the risk of him absconding.⁸ It suggests, therefore, that either: (i) proceedings could be conducted in Bangui, while the accused remains at the seat of the Court with one of his counsel and participates via video link; or (ii) the Chamber and the accused (with one of his counsel) could remain at the seat of the Court, while the parties and participants make their opening statements and question the first witnesses from Bangui connected via video link.⁹ The Prosecution submits that the accused would not be prejudiced by such an arrangement as his rights to be present at trial and to communicate with his counsel would be fully respected through technological means.¹⁰ It notes that the right to be present at trial is not absolute and argues that 'the interests of the affected communities, victims and the Court as a whole must be balanced against the dire security situation in Bangui', which further justifies the accused's virtual presence.¹¹

6. The Defence requests the Chamber to reject both of the Prosecution's proposals because, in its view, dividing the participants in a trial hearing across different locations connected by video link distorts the normal judicial process and the necessary conditions for a fair trial.¹² The Defence argues that the accused's right to be present during the trial is absolute and that presence through video-link in a courtroom far away is appropriate only when the accused waives his right to be present or as a sanction for disruptive behaviour.¹³

⁷ [Request](#), para. 6.

⁸ [Request](#), para. 14.

⁹ [Request](#), paras 16-17.

¹⁰ [Request](#), paras 21-22.

¹¹ [Request](#), para. 21.

¹² [Defence's Response](#), paras 14-20, 24.

¹³ [Defence's Response](#), paras 21-22; 25-32.

7. Nonetheless, the Defence requests the Chamber to consider hearing the opening statements in Bangui if the physical presence of the accused can be ensured.¹⁴ However, it is not in favour of continuing the trial away from the seat of the Court over a longer duration given the resources required, security risks, logistical, technical problems, as well as familial and personal obligations of the team members.¹⁵

8. The OPCV informs Chamber that a large majority of consulted victims support the Prosecution's Request and submits that 'it would bring the Court closer to the victims and the affected communities', 'have a positive impact on the Court's perception, as it would reinforce victims' confidence in the Court, 'have a significant impact on their effective participation in the proceedings', and enhance the transparency and publicity of proceedings.¹⁶

III. ANALYSIS

9. Article 3(3) of the Statute provides that '[t]he Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute'. Rule 100 of the Rules provides that:

In a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State, for such period or periods as may be required, to hear the case in whole or in part. The Chamber, at any time after the initiation of an investigation, may *proprio motu* or at the request of the Prosecutor or the defence, decide to make a recommendation changing the place where the Chamber sits. The judges of the Chamber shall attempt to achieve unanimity in their recommendation, failing which the recommendation shall be made by a majority of the judges. Such a recommendation shall take account of the views of the parties, of the victims and an assessment prepared by the Registry and shall be addressed to the Presidency. [...]

10. At the outset, the Chamber affirms its commitment to the objective of bringing the judicial process closer to victims, the affected communities and those impacted in the situation country as a whole. The Chamber shares the view of the parties and

¹⁴ [Defence's Response](#), para. 24.

¹⁵ [Defence's Response](#), paras 51-62.

¹⁶ [Victims' Observations](#), paras 12-14.

participating victims that this goal could be served by holding hearings *in situ* in the CAR.

11. At the same time, it is the Chamber's duty under article 64(2) of the Statute to ensure that the trial is fair and expeditious and carried out with full respect for the rights of the accused and due regard for the protection of victims and witnesses. In this context, the Chamber notes that article 67(1)(d) of the Statute provides that the accused has the right to be present at trial and article 68(1) of the Statute underscores the Chamber's duty to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. Thus, in determining whether it is in the interests of justice to hear part of the trial in Bangui, the Chamber considers it essential to ascertain whether safety, efficiency and effectiveness can be achieved by holding a partial trial in Bangui.

12. Concerning safety, the Prosecution does not envision any scenario where it would be possible to hold hearings in Bangui with the accused physically present.¹⁷ It submits that the presence of the accused in Bangui carries the risk of [REDACTED] absconding [REDACTED].¹⁸ The OPCV agrees that it would not be advisable to have the accused present in Bangui, 'not only due to an identified risk of absconding, but also due to the impact of his presence on the well-being, safety and security of the witnesses and victims'.¹⁹ For its part, the Defence is opposed to any possibility of the accused remaining at the seat of the Court separated from trial proceedings in Bangui.²⁰

13. In the view of the Chamber, the physical presence of the accused during the opening statements and the examination of the first witnesses at trial is central to realising the objective of bringing the judicial process closer to the affected communities. Based on the information provided by the Prosecution and participating victims, the current security situation in Bangui would not allow for this possibility.

¹⁷ [Request](#), para. 14.

¹⁸ Annex A to the [Request](#), ICC-01/14-01/21-337-Conf-AnxA, paras 6-8, 11.

¹⁹ [Victims' Observations](#), paras 17-18.

²⁰ [Defence's Response](#), paras 14-20, 24.

14. Furthermore, based on the information contained in the [REDACTED]. The Chamber notices that in Annex 1 to the Prosecution's Request, there is information of [REDACTED].²¹ The recent security assessment provided by the Registry for the purposes of the review of Mr Said's [REDACTED].²² In addition, participating victims have expressed concern about their security and have emphasised 'that the situation in Bangui remains volatile and that former members of the Seleka are still very influential, and are even key members of the Government'.²³ The victims 'expect appropriate measures to enable them and their families to participate in complete safety' should the Court sit for part of the trial in Bangui.²⁴

15. Based on the information before it at this stage, the Chamber is not satisfied that the safety of all participants, including the accused, could be assured if part of the trial were to be held in Bangui.

16. Concerning efficiency, in the view of the Chamber, holding hearings in Bangui would likely require an enormous logistical and resource commitment in terms of mobilising the necessary personnel, transporting the necessary equipment and securing lodging and work facilities for all. Given that the trial is due to commence in less than three months, the Chamber finds that efficiency cannot be achieved by recommending that the opening statements be delivered and the first witnesses examined in Bangui at this stage.

17. Finally, where safety and efficiency cannot be assured, the Chamber is not persuaded that having a partial trial take place in Bangui would achieve effectiveness. Given the safety and logistical considerations that have been highlighted, the Chamber considers that it may be difficult for a significant number of victims and the general public to be present at the trial, thereby trumping the objective of bringing the Court closer to the victims and the affected communities. In addition, from the information at

²¹ Annex A to the [Request](#), ICC-01/14-01/21-337-Conf-AnxA, para. 8.

²² Annex A to Brief Report on the Security Situation in the Central African Republic, 17 June 2022, ICC-01/14-01/21-365-Conf-AnxA (the 'Registry Security Assessment'), paras 1, 3.

²³ [Victims' Observations](#), para. 13.

²⁴ [Victims' Observations](#), para. 13.

hand, the [REDACTED].²⁵ Therefore, the Chamber finds that it is unlikely that the trial can be effective in those circumstances.

18. In view of the foregoing, the Chamber finds that it would not be in the interests of justice to hold the opening statements of the trial and the examination of the first witnesses in Bangui at this stage.

19. Nonetheless and noting also that the OPCV has reiterated its request for the Chamber to consider holding a judicial site visit towards the middle or the end of the Prosecution's presentation of evidence,²⁶ the Chamber considers it necessary to keep the situation under review in order to determine the possibilities at a later stage in the proceedings. To this end, the Chamber instructs the Registry to provide periodic reports on the security and political situation in the CAR every three months, beginning on 25 August 2022.

20. The Chamber further notes that the OPCV suggests 'the organisation of live broadcast of the proceedings to the public with the availability of interpretation in Sango' in order to allow victims and affected communities to follow the proceedings.²⁷ The Chamber emphasises that effective outreach activities are essential to ensuring that justice is accessible to the affected communities. Therefore, and in addition to its regular outreach activities, the Registry is instructed, if feasible, to establish one or more venues in Bangui where victims and the public may be able to follow the opening of the trial in Sango.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Prosecution Request;

INSTRUCTS the Registry to provide periodic reports on the security and political situation in the CAR every three months, beginning on 25 August 2022; and

²⁵ Annex A to the [Request](#), ICC-01/14-01/21-337-Conf-AnxA, para. 11.

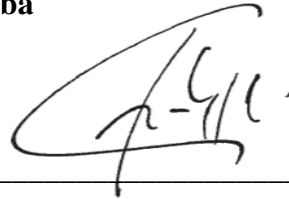
²⁶ [Victims' Observations](#), para. 21.

²⁷ [Victims' Observations](#), para. 13.

INSTRUCTS the Registry, if feasible, to establish one or more venues in Bangui where victims and the public may be able to follow the opening of the trial in Sango.




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 5 July 2022

At The Hague, The Netherlands