

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

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

**Date: 15 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**

**Decision on the Defence's Request for an Extension of Time to File Motions  
Pursuant to Rule 134 of the Rules and Submit its Trial Brief**

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  
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**The Office of Public Counsel  
for the Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

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**TRIAL CHAMBER VI** of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to regulations 35 and 77(4)(b) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Defence’s Request for an Extension of Time to File Motions Pursuant to Rule 134 of the Rules and Submit its Trial Brief’.

## I. PROCEDURAL HISTORY

1. On 21 February 2022, the Chamber issued its Decision Setting the Commencement Date of the Trial and Related Deadlines.<sup>1</sup> Therein the Chamber ordered, *inter alia*, that: (i) motions requiring resolution prior to the commencement of the trial pursuant to rule 134 of the Rules should be filed by 22 July 2022; and (ii) the Defence Trial Brief should be filed by 12 August 2022.<sup>2</sup>

2. On 6 July 2022, the Defence filed a request pursuant to regulation 35 of the Regulations to extend the time limit for: (i) the filing of motions pursuant to rule 134 of the Rules to 26 August 2022; and (ii) the filing of its Trial Brief to 4 September 2022 (the ‘Request’).<sup>3</sup>

3. On 12 July 2022, the Office of the Prosecutor (the ‘Prosecution’) filed its response to the Request (the ‘Response’).<sup>4</sup> Therein, the Prosecution requested that the Request should be rejected, although it indicated that it was not opposed to ‘a minimal extension of no more than one week for the Defence’s trial brief’.<sup>5</sup>

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<sup>1</sup> [Decision Setting the Commencement Date of the Trial and Related Deadlines](#), 21 February 2022, ICC-01/14-01/21-243 (the ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’).

<sup>2</sup> [Decision Setting the Commencement Date of the Trial and Related Deadlines](#), p. 13.

<sup>3</sup> [Requête en vertu de la Norme 35 du Règlement de la Cour visant à obtenir la prorogation des délais prévus pour déposer les requêtes portant sur des questions devant être résolues avant le début du procès et pour déposer le mémoire de la Défense](#), 5 July 2022, ICC-01/14-01/21-390.

<sup>4</sup> [Prosecution’s response to the Defence request to vary time limits \(ICC-01/14-01/21-390\)](#), 12 July 2022, ICC-01/14-01/21-402.

<sup>5</sup> [Response](#), para. 3.

4. On 12 July 2022, the Office of Public Counsel for Victims (the ‘OPCV’) submitted its response to the Request (the ‘Victims’ Response’).<sup>6</sup> In the Victims’ Response, the OPCV similarly submits that the Request be denied.<sup>7</sup>

## II. SUBMISSIONS

5. In the Request, the Defence submits that it requires sufficient time to undertake the various tasks required for the preparation of the trial, in particular: (i) investigating; (ii) preparing field missions; (iii) responding to requests from the Prosecution (in particular motions pertaining to rule 68 of the Rules, material to introduced other than through a witness, protective measures and the use of video links); (iv) analysing all the incriminating, exculpatory, and rule 77 material as well as the Prosecution’s Trial Brief; (v) preparing the Defence Trial Brief, the cross examination of the first witnesses and, if it deems appropriate, an opening statement.<sup>8</sup>

6. In particular, the Defence submits that it should not suffer due to specific choices made by the Prosecution during the preparation of the trial, referencing the fact that the Prosecution has decided to submit its requests pursuant to rule 68 of the Rules at the end of the time limit set by the Chamber, rather than on a rolling basis.<sup>9</sup> In addition, the Defence avers that as a result of the volume of work required for, *inter alia*, its responses to motions relating to rule 68 of the Rules, that the time originally granted to the Defence to prepare its trial brief and any rule 134 motions has been significantly reduced.<sup>10</sup>

7. The Defence also submits that its workload has increased exponentially since 13 June 2022 because it has had to analyse in detail the Prosecution’s Trial Brief and adapt

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<sup>6</sup> Victims’ Response to the “Requête en vertu de la Norme 35 du Règlement de la Cour visant à obtenir la prorogation des délais prévus pour déposer les requêtes portant sur des questions devant être résolues avant le début du procès et pour déposer le mémoire de la Défense”(ICC-01/14-01/21-390), 12 July 2022, ICC-01/14-01/21-401.

<sup>7</sup> Victims’ Response, p. 6.

<sup>8</sup> [Request](#), para. 4.

<sup>9</sup> [Request](#), para. 5.

<sup>10</sup> [Request](#), paras 7, 11, 16, 17, 18, 25.

its trial preparation accordingly.<sup>11</sup> In this regard, the Defence argues that the Prosecution's Trial Brief is fundamental in allowing the Defence to understand the nature of the Prosecution's case and therefore preparation must start from 13 June 2022 and continue uninterrupted until 26 September 2022.<sup>12</sup>

8. In respect of the deadline for motions pursuant to rule 134 of the Rules, the Defence submits it will not be possible to meet this deadline because it requires an opportunity to analyse the Prosecution's evidence, as well as conducting relevant research on all matters in order to decide whether it should file a motion pursuant to rule 134 of the Rules.<sup>13</sup>

9. In respect of the deadline for submission of its Trial Brief, the Defence submits that in the period of time granted by the Chamber it is not possible for the Defence to determine the content of and draft a possible Defence Trial Brief.<sup>14</sup> In this regard, the Defence argues that it cannot work on an ongoing basis to determine what is in dispute or not.<sup>15</sup> Similarly, the Defence submits that the task of preparing a trial brief requires advanced analysis of the Prosecution's Trial Brief, which, *inter alia*, requires legal research and strategic evaluation as to how to present potential arguments, as well as discussion with Mr Said who only received a draft French translation of the Prosecution's Trial Brief on 4 July 2022.<sup>16</sup>

10. In particular, the Defence asks the Chamber to grant an extension of time for motions pursuant to rule 134 of the Rules to 26 August 2022, one month before the commencement of the trial.<sup>17</sup> In respect of the Defence Trial Brief, the Defence requests that the Chamber grant an extension to 4 September 2022, noting that this will not affect the preparation of the trial as the Prosecution will have the Defence's Trial Brief several weeks before the commencement of the trial and, that in any event, the Prosecution has no right to know the Defence case before the commencement of the trial.<sup>18</sup>

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<sup>11</sup> [Request](#), para. 14.

<sup>12</sup> [Request](#), para. 15.

<sup>13</sup> [Request](#), paras 20-21.

<sup>14</sup> [Request](#), paras 22-23.

<sup>15</sup> [Request](#), para. 23.

<sup>16</sup> [Request](#), paras 23-24.

<sup>17</sup> [Request](#), para. 25.

<sup>18</sup> [Request](#), para. 27.

11. In the Response, the Prosecution submits that the Defence has failed to establish ‘good cause’ as required by regulation 35(2) of the Regulations, and the Request should be rejected. The Prosecution avers that ‘[m]uch of the Defence’s work referenced in the Request could have been carried out well before 13 June 2022’ and that ‘granting the Request in full would negatively impact on the fairness and expeditiousness of the proceedings as it would affect the trial preparation of the Prosecution, OPCV, Registry, and Chamber.’<sup>19</sup>

12. Specifically, the Prosecution submits that the Defence’s argument regarding an ‘unexpected significant increase in its workload is unfounded’ because, contrary to the Defence’s submission, it did submit its rule 68 motions and motions relating to material to be introduced other than through a witness on a ‘rolling basis.’<sup>20</sup> Similarly in this regard, the Prosecution submits that it was an ‘unrealistic expectation’ to require the Prosecution to file its bar table and rule 68 motions immediately after the Decision Setting the Commencement Date of the Trial and Related Deadlines,<sup>21</sup> and in any event, the Prosecution’s ‘work in the period leading up to early April 2022 has led to a more streamlined presentation of its case.’<sup>22</sup>

13. The Prosecution also submits that the Defence’s argument that it was ‘only able to carry out substantial work after it received the Prosecution’s Trial Brief’ is ‘problematic’ as, *inter alia*, ‘[t]he Court’s legal framework clearly envisions that the Parties can advance their preparation work independently of, or in advance of, a Trial Brief from the Prosecution’ and ‘the Prosecution relies on a small set of witnesses in its Trial Brief who were not cited in its Pre-Confirmation Brief, with only a few other new names included on the trial list of witnesses.’<sup>23</sup> Furthermore, the Prosecution argues that ‘most of the underlying evidence related to the witnesses covered in the rule 68 motions was available to the Defence for its scrutiny substantially before [the rule 68] motions were made’.<sup>24</sup>

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<sup>19</sup> [Response](#), para. 2.

<sup>20</sup> [Response](#), para. 5.

<sup>21</sup> [Response](#), paras 6-8.

<sup>22</sup> [Response](#), para. 9.

<sup>23</sup> [Response](#), paras 11-12

<sup>24</sup> [Response](#), para. 16.

14. Last, the Prosecution submits that the variation of the deadlines would ‘negatively impact on the Prosecution’s trial preparation’ and might impact ‘logistical arrangements for witness testimony’. Specifically in respect of the rule 134 deadline, the Prosecution submits that it would not be ‘fair to reduce the Prosecution’s normal 10-day deadline to response to motions of this nature’ and would leave ‘only three weeks’ for the Chamber to consider the Parties’ submission and rule on the matters, which may in turn be ‘insufficient time for a proper consideration of the issues raised’.<sup>25</sup>

15. The OPCV submits that ‘consistently seeking extensions for all responses might defeat the purpose of sufficiently spreading the workload’.<sup>26</sup> Notably, the OPCV avers that ‘the Defence has been on notice of the deadlines for which it now requests an extension since 21 February 2022.’<sup>27</sup> Furthermore, the OPCV argues that, if the Request were to be granted, ‘any subsequent deadline should remain unaffected, in particular, the one set for the commencement of the trial.’<sup>28</sup>

### III. ANALYSIS

16. The issue before the Chamber is whether the deadlines for filing motions pursuant to rule 134 of the Rules and the Defence Trial Brief should be extended. At the outset, the Chamber recalls, pursuant to regulation 35(2) of the Regulations, that it may grant an extension of time where ‘good cause’ is shown. For the reasons that follow, the Chamber finds that ‘good cause’ within the meaning of regulation 35(2) of the Regulations has not been shown.

17. First, the Chamber notes that the Defence has been on notice of the various deadlines and the procedural calendar in this case for a significant period of time, namely since 21 February 2022. As a result, the Defence has been in a position to plan its work accordingly. Similarly, in setting those deadlines the Chamber took into account the fact that the parties would be working on a number of filings in the lead up to the commencement of trial, including requests pursuant to rule 68 of the Rules and

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<sup>25</sup> [Response](#), para. 19.

<sup>26</sup> Victims’ Response, para. 5.

<sup>27</sup> Victims’ Response, para. 6.

<sup>28</sup> Victims’ Response, para. 7.

motions to introduce evidence other than through a witness. This was one of the reasons that the Chamber staggered the various deadlines in the Decision Setting the Commencement Date of the Trial and Related Deadlines.

18. Furthermore, in connection with the above, whilst the Chamber acknowledges that a limited number of the Prosecution's requests pursuant to rule 68 of the Rules were filed after the original deadline,<sup>29</sup> the Chamber notes that it has already considered this and granted a number of requests from the Defence for an extension of time for its responses.<sup>30</sup> In granting those requests the Chamber took into account, *inter alia*, the Defence's workload.<sup>31</sup> Accordingly, the Chamber finds that the Defence has been given sufficient time to prepare its case, and has been in a position to determine how to allocate its available time and resources, particularly given that the Defence was aware that the deadlines which it now seeks an extension of, remained in place.

19. Second, the Chamber rejects the Defence's submissions to the effect that it was not in a position to properly prepare its case until after receipt of the Prosecution's Trial Brief. The Chamber observes that it recently rejected similar arguments in its 'Decision on Defence Request for Suspension of Deadline for Response to the Trial Brief and Postponement of Commencement of Trial pending Translation of Trial Brief'.<sup>32</sup> Indeed, as also noted in that Decision,<sup>33</sup> the Chamber finds that the Defence's submissions neglect the fact that the document containing the charges for the purposes of the confirmation proceedings was notified on 16 August 2021<sup>34</sup> and the pre-confirmation

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<sup>29</sup> See [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.

<sup>30</sup> See for example, [Decision on Defence Request for Extension of Time for Responses to Rule 68 Applications and Bar Table Motion \(ICC-01/14-01/21-333-Conf\)](#), 1 June 2022, ICC-01/14-01/21-341 (the 'First Decision on Extension of Time'); [Decision on the Defence Request for an Extension of Time](#), 28 June 2022, ICC-01/14-01/21-379 (the 'Second Decision on Extension of Time').

<sup>31</sup> [First Decision on Extension of Time](#), para. 6; [Second Decision on Extension of Time](#), para. 15.

<sup>32</sup> Decision on Defence Request for Suspension of Deadline for Response to the Trial Brief and Postponement of Commencement of Trial pending Translation of Trial Brief, 14 July 2022, ICC-01/14-01/21-408 (the 'Decision on Suspension of Deadline for Response to the Trial Brief').

<sup>33</sup> See Decision on Suspension of Deadline for Response to the Trial Brief, para. 14.

<sup>34</sup> Document Containing the Charges, 16 August 2021, ICC-01/14-01/21-144-Conf. A corrected version was notified on 26 October 2021 (ICC-01/14-01/21-144-Conf-Corr). A public redacted version and its corrected version were notified, respectively, on 16 August 2021 (ICC-01/14-01/21-144-Red) and 27 October 2021 ([ICC-01/14-01/21-144-Red-Corr](#)).

brief was notified on 30 August 2021.<sup>35</sup> Similarly, the Chamber notes that the decision confirming part of the charges for the purposes of trial was issued on 9 December 2021.<sup>36</sup> In short, the Chamber finds that the Defence has been in possession of detailed information regarding the Prosecution's case for a significant period of time.

20. In respect of the Defence's submissions that it must discuss matters with Mr Said,<sup>37</sup> the Chamber recalls that all of the aforementioned documents have been translated into French for the accused.<sup>38</sup> Similarly, in respect of the Prosecution's Trial Brief, the Chamber notes that a draft translation into French has been produced and was made available to the accused on 4 July 2022.<sup>39</sup> Furthermore, the Chamber recalls that the accused is in possession of French versions of all witness statements and the main documentary evidence in the case<sup>40</sup> and that, in any event, the Defence has been in possession of the vast majority of the evidence that the Prosecution seeks to rely on at trial for a significant period of time, notably since the confirmation stage. Accordingly, the Chamber finds that the Defence's submissions to the effect that it has not been able to properly prepare until after notification of the Prosecution's Trial Brief are unconvincing and must be rejected.

21. Third, the Chamber notes that the Request is speculative in that the Defence indicates that it has not yet decided, and is not in a position to decide, whether it will even file motions pursuant to rule 134 of the Rules<sup>41</sup> and what the content of a possible Defence Trial Brief might include.<sup>42</sup> The Defence indicates that the reason for this is, *inter alia*, due to the need to conduct legal research and that it did not have sufficient

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<sup>35</sup> Pre-Confirmation Brief, 30 August 2021, ICC-01/14-01/21-155-Conf. A public redacted version was notified on 21 September 2021 ([ICC-01/14-01/21-155-Red](#)).

<sup>36</sup> Decision on the confirmation of charges against Mahamat Said Abdel Kani, 9 December 2021, ICC-01/14-01/21-218-Conf. A public redacted version was notified on the same date ([ICC-01/14-01/21-218-Red](#)). A French translation of the confidential version of the decision was notified on 24 January 2022 (ICC-01/14-01/21-218-Conf-tFRA) and a French translation of the public redacted version was notified on 1 February 2022 ([ICC-01/14-01/21-218-Red-tFRA](#)).

<sup>37</sup> [Request](#), para. 23.

<sup>38</sup> See Decision on Suspension of Deadline for Response to the Trial Brief, para. 14 and references therein.

<sup>39</sup> See [Request](#), para. 23.

<sup>40</sup> See [Response](#), para. 16. See also [Prosecution's response to the Defence requests to vary the time limit and for postponement of the trial \(ICC-01/14-01/21-367-Conf\)](#), 28 June 2022, ICC-01/14-01/21-381, para. 1.

<sup>41</sup> See [Request](#), para. 21.

<sup>42</sup> See [Request](#), paras 22, 27.

time to conduct such research due to competing priorities.<sup>43</sup> The Chamber rejects this submission. As noted above,<sup>44</sup> the Chamber is of the view that the Defence has had sufficient time and it would have expected the Defence to have identified any issue which would require a motion pursuant to rule 134 of the Rules or inclusion in its Trial Brief already. In any event, the Chamber notes that, pursuant to regulation 77(4)(b) of the Regulations, the Office of Public Counsel for the Defence was able to provide legal research assistance if required.

22. Accordingly, based on the foregoing, the Chamber finds that the Defence has not shown 'good cause' as required by regulation 35(2) of the Regulations and rejects the Request.

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<sup>43</sup> [Request](#), paras 14, 21, 24.

<sup>44</sup> See paragraphs 17-18 above.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Request.



**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 15 July 2022

At The Hague, The Netherlands