



Original: English

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

Date: 27 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 Defence Request for Leave to Appeal (ICC-01/14-01/21-415)

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 Nian

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

**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 article 82(1)(d) of the Rome Statute (the ‘Statute’), issues this ‘Decision on Defence Request for Leave to Appeal (ICC-01/14-01/21-415).

I. PROCEDURAL HISTORY

1. On 14 July 2022, the Chamber decided to reject the Defence request for the deadline for its response to the trial brief filed by the Office of the Prosecutor (the ‘Prosecution’) to be suspended and for the commencement of trial to be postponed pending translation of the trial brief into the language that Mr Said fully understands and speaks (the ‘Impugned Decision’).¹
2. On 15 July 2022, the Defence requested leave to appeal the Impugned Decision and identified four issues for appeal (the ‘Request’).²
3. On 22 July 2022, the Prosecution filed a response to the Request, arguing that none of the issues for which leave to appeal is sought are appealable issues (the ‘Response’).³
4. On 22 July 2022, the Common Legal Representative of Victims informed the Chamber that she did not intend to respond to the Request.⁴

¹ 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](#).

² Demande d’autorisation d’interjeter appel de la « 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 » (ICC-01/14-01/21-408), 15 July 2022, [ICC-01/14-01/21-415](#).

³ Prosecution’s Response to “Demande d’interjeter appel de la ‘Decision on the Prosecution’s application to amend the charges’” (ICC-01/14-01/21-416), 22 July 2022, [ICC-01/14-01/21-428](#).

⁴ Email received from the Common Legal Representative of Victims at 14:17 on 22 July 2022.

II. ANALYSIS

5. The Chamber recalls previous jurisprudence regarding the application of article 82(1)(d) of the Statute.⁵ Thus, in considering the Request, the Chamber must have regard to whether: (i) the matter is an ‘appealable issue’; (ii) the issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (iii) in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.⁶

6. The three criteria under article 82(1)(d) of the Statute are cumulative.⁷ Therefore, failure to fulfil one or more of the criteria will result in dismissal of the Request.⁸ In particular, the Chamber notes that article 82(1)(d) of the Statute ‘cannot be used to litigate abstract or hypothetical issues’.⁹

7. The Defence identifies four issues arising from the Impugned Decision. For the reasons set out in more detail below, the Chamber considers that these issues do not arise from the Impugned Decision because they either do not accurately reflect the Chamber’s reasoning or erroneously treat individual strands of the Chamber’s reasoning as providing the sole justification for its overall conclusion.

8. First, the Defence argues that the Chamber erred in law by not determining that the trial brief should be notified to the accused in a language which he fully understands

⁵ Decision on Defence Request for Reconsideration or Leave to Appeal the ‘Directions on the Conduct of Proceedings’ (ICC-01/14-01/21-251), [ICC-01/14-01/21-275](#), paras 9-11; Decision on Defence Request for Leave to Appeal the ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’ (ICC-01/14-01/21-243), 15 March 2022, [ICC-01/14-01/21-258](#), paras 11-15; *See also* Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the Demande d’autorisation d’interjeter appel de la ‘Decision on the request for suspension of the time limit to respond to the Prosecutor’s Trial Brief submitted by the Defence for Mr Gbagbo’ (ICC-02-11-01/15-1141), 13 April 2018, [ICC-02/11-01/15-1150](#), para. 8; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Defence request for leave to appeal the decision appointing experts on reparations, 29 June 2017, [ICC-01/05-01/08-3536](#) (the ‘*Bemba Gombo* Decision’), paras 4-7; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 5 September 2018, [ICC-02/04-01/15-1331](#) (the ‘*Ongwen* Decision’), para. 8.

⁶ [Bemba Gombo Decision](#), para. 4; [Ongwen Decision](#), para. 8.

⁷ [Bemba Gombo Decision](#), para. 5; [Ongwen Decision](#), para. 8.

⁸ [Bemba Gombo Decision](#), para. 5; [Ongwen Decision](#), para. 8.

⁹ [Bemba Gombo Decision](#), para. 6.

in order to ensure respect for his right to be informed of the detail of the charges in a language which he understands.¹⁰

9. In the Impugned Decision, the Chamber noted that a draft translation of the trial brief was provided to Mr Said on 1 July 2022 and that an official translation will be provided by 5 August 2022.¹¹ Thus, Mr Said will receive a translation of the trial brief in the language that he fully understands and speaks prior to the commencement of the trial irrespective of whether he is legally entitled to such a translation. The question before the Chamber was whether Mr Said had sufficient time following receipt of the translated trial brief in order to prepare his defence. The issue of whether he was legally entitled to the translation was irrelevant to the determination made by the Chamber, was not the subject of the Defence request and, as a result, was not discussed in the Impugned Decision. As such, the Chamber considers that the issue identified by the Defence does not arise from the Impugned Decision and is not an appealable issue.

10. Second, the Defence argues that the Chamber erred in law in determining that the assistance of the Defence team could compensate for the non-disclosure of the trial brief in French.¹² The Chamber considers that the Defence construction of the Chamber's determination does not accurately represent its reasoning in the Impugned Decision. While the Chamber considered that the Defence team is in a position to share and explain all relevant aspects of the case to Mr Said in French, it did not suggest that the Defence team's linguistic abilities could or should compensate for the total absence of a translation of the trial brief. Indeed, as previously indicated, the Impugned Decision was also based on the understanding that a draft translation of the trial brief was provided to Mr Said on 1 July 2022 and that an official translation will be provided by 5 August 2022. As a result, the Chamber considers that the issue as framed by the Defence does not accurately reflect the Chamber's reasoning. As such, it does not arise from the Impugned Decision and is not an appealable issue.

¹⁰ [Request](#), paras 19-30.

¹¹ [Impugned Decision](#), para. 16.

¹² [Request](#), paras 31-32.

11. Third, the Defence submits that the Chamber erred in fact in finding that the Defence could work effectively based on a non-official translation of the trial brief.¹³ The Chamber considers that this issue partially represents the Chamber's reasoning which was also based on the understanding that: (i) an official translation will be provided by 5 August 2022, almost two months before the commencement of the trial; (ii) detailed information regarding the Prosecution's case against Mr Said had been provided a considerable time before the trial brief was disclosed; and (iii) the Defence team is capable of explaining the case to him based on the English and French documents provided. As a result, the Chamber considers that the issue as framed by the Defence does not accurately reflect the Chamber's reasoning. As such, it does not arise from the Impugned Decision and is not an appealable issue.

12. Fourth, the Defence submits that the Chamber erred in fact and in law in not allowing it more time to prepare.¹⁴ It argues that the Chamber acknowledged that Mr Said could only actively participate in the preparation of his Defence from the notification of the official French translation of the trial brief from 5 August 2022.¹⁵ It submits that the Chamber previously indicated that the trial brief must be provided three months and 13 days before the commencement of the trial and that it must follow its own logic and grant this period of time to prepare from the provision of the trial brief in French.¹⁶

13. The Chamber considers that the Defence submissions on this issue are inaccurate. First, regarding the Chamber's earlier determination that the Defence must have at least three months to prepare after receiving the trial brief, the Chamber underlines that this three month preparation time did not extend to the provision of a French translation of the trial brief to Mr Said. Second, although in the Impugned Decision the Chamber took into account the fact that the official translation of the trial brief would be provided on 5 August 2022, it did not find that Mr Said could only actively participate in the preparation of his Defence as of this date. To the contrary, the Chamber considered

¹³ [Request](#), paras 33-35.

¹⁴ [Request](#), paras 36-38.

¹⁵ [Request](#), para. 36.

¹⁶ [Request](#), paras 37-38.

that: (i) Mr Said should currently be able to effectively participate in the preparation of his defence based on the detailed information regarding the Prosecution's case already available to him in French;¹⁷ (ii) the Defence team is in a position to share and explain all relevant aspects of the case to Mr Said in French;¹⁸ and (iii) a draft translation of the trial brief was provided on 1 July 2022.¹⁹ As a result, the Chamber considers that the issue as framed by the Defence does not accurately reflect the Chamber's reasoning. As such, it does not arise from the Impugned Decision and is not an appealable issue.

14. Accordingly, as the four issues identified for appeal do not constitute appealable issues, the Request must be rejected.

FOR THESE REASONS, THE CHAMBER HEREBY

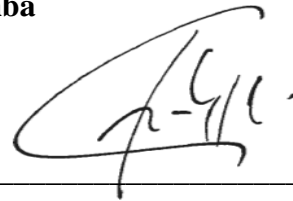
REJECTS the Request.



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 27 July 2022

At The Hague, The Netherlands

¹⁷ [Impugned Decision](#), para. 14.

¹⁸ [Impugned Decision](#), para. 15.

¹⁹ [Impugned Decision](#), para. 16.