

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/21**
Date: **21 February 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 Setting the Commencement Date of the Trial and Related Deadlines

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

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Presidency

TRIAL CHAMBER VI of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, pursuant to Article 64(3) of the Rome Statute (the ‘Statute’); Rules 39, 69, 79, 80, 101, 132 and 134 of the Rules of Procedure and Evidence (the ‘Rules’); and Regulations 16 and 44 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’.

I. PROCEDURAL HISTORY

1. On 26 October 2021, the Prosecution filed its Corrected Version of the Document Containing the Charges (the ‘DCC’).¹ In the DCC, the Prosecution levelled 14 counts against Mr Said Abdel Kani, involving alleged crimes committed in two different detention facilities in Bagui: the *Office Central de Répression du Banditisme* (‘OCRB’) and the *Comité Extraordinaire pour la Défense des Acquis Démocratiques* (‘CEDAD’).
2. On 9 December 2021, Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) issued the decision on the confirmation of charges against Mahamat Said Abdel Kani (the ‘Confirmation Decision’),² in which it confirmed all charges related to crimes allegedly committed at the OCRB but declined to confirm any of the charges related to crimes allegedly committed at the CEDAD. The Pre-Trial Chamber also suspended the time limit for filing any application for leave to appeal until the translation of the Confirmation Decision into French had been submitted by the Registry in the record of the case.³ Furthermore, the Pre-Trial Chamber also ordered the Registry to transmit the Confirmation Decision and the record of the proceedings to the Presidency.
3. On 10 December 2021, the Registry transmitted the record of the confirmation proceedings to the Presidency.⁴

¹ [Public Redacted version of ‘Corrected Version of the Document Containing the Charges’](#), 1 December 2021, ICC-01/14-01/21-144-Corr-Red.

² [Decision on the confirmation of charges against Mahamat Said Abdel Kani](#), 9 December 2021, ICC-01/14-01/21-218-Red (hereinafter: ‘Confirmation Decision’).

³ [Confirmation Decision](#), para. 154.

⁴ Transmission to the Presidency of the record of the proceedings, including the Decision on the confirmation of charges against Mahamat Said Abdel Kani, ICC-01/14-01/21-218-Conf, dated 9 December 2021, 10 December 2021, ICC-01/14-01/21-219-Conf.

4. On 14 December 2021, the Presidency constituted Trial Chamber VI (the ‘Chamber’) in its current composition and referred the case against Mr Said Abdel Kani to it.⁵
5. On 14 January 2022, the Chamber issued an order convening the first Status Conference and instructing the parties, participants and the Registry to make submissions on a number of issues.⁶
6. On 21 January 2022, the Prosecution,⁷ the Defence,⁸ the Office of Public Counsel for Victims⁹ and the Registry¹⁰ filed their submissions.
7. On 28 January 2022, the first Status Conference was held,¹¹ during which the Chamber invited the Defence to make further written submissions regarding its ongoing investigations.
8. On 7 February 2022, the Defence submitted *ex parte* submissions concerning its ongoing and planned investigations.¹²

I. ANALYSIS

9. In the present decision, the Chamber will discuss the main parameters which the Chamber has considered in determining when the trial can start in full respect of the parties’ rights and set the commencement date and the attendant schedule for the intermediate procedural steps leading up to this date.

⁵ [Decision constituting Trial Chamber VI and referring to it the case of The Prosecutor v. Mahamat Said Abdel Kani](#), 14 December 2021, ICC-01/14-01/21-220.

⁶ Order Convening the First Status Conference, ICC-01/14-01/21-226.

⁷ Prosecution’s submissions pursuant to the “Order scheduling first status conference”, ICC-01/14-01/21-230-Conf (‘Prosecution Submissions’). A public redacted version was filed on 24 January 2022 ([ICC-01/14-01/21-230-Red](#)).

⁸ Observations de la Défense de Monsieur Saïd en application de l’ « Order Scheduling the First Status Conference » (ICC-01/14-01/21-226), ICC-01/14-01/21-231-Conf-Exp (‘Defence Submissions’). A public redacted version was filed on the same day ([ICC-01/14-01/21-231-Red2](#)).

⁹ [Submissions on behalf of victims on the matters identified in the “Order Scheduling the First Status Conference” \(ICC-01/14-01/21-226\)](#), ICC-01/14-01/21-228 (‘Victims Submissions’).

¹⁰ Registry Submissions in view of the 28 January 2022 Status Conference, ICC-01/14-01/21-229 (‘Registry Submissions’). The Registry also attached two confidential *ex parte* annexes to its submissions.

¹¹ Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-7-CONF-ENG.

¹² Éléments d’information sur les enquêtes en cours de la Défense dans les suites de la conférence de mise en état du 28 janvier 2022, ICC-01/14-01/21-237-Conf-Exp (‘Defence Additional Submissions’).

A. Anticipated evidence

10. The Chamber notes that the Prosecution has provided information as regards the estimated number of witnesses to be called and number of hours of *viva voce* testimony, use of expert witnesses as well as an estimate as to the volume of documentary or other non-testimonial evidence to be relied upon at trial.¹³ The Chamber notes that, according to the Prosecution, the anticipated trial witness list is ‘considered preliminary and subject to further review’. However, the Prosecution also submits that it is ‘diligently assessing its evidence to further streamline the presentations of its case and proceedings’.¹⁴ Furthermore, the Prosecution indicates that it is still in the process of completing essential steps of its investigation, a process that may take ‘a number of months’.¹⁵ Nevertheless, the Prosecution submits that its investigations would be completed ‘sufficiently in advance of the proposed date for the commencement of the trial, in order not to prejudice the Defence’.¹⁶ In any event, given the limited nature and uncertain outcome of the investigative steps that are still envisaged, the Chamber considers that this cannot be grounds for delaying the start of the trial.

B. Disclosure of outstanding material in the Prosecution’s possession and related issues

11. The Chamber notes that the Prosecution has already disclosed what it considers ‘the core evidence and most of the essential material’ necessary for the Defence’s preparation.¹⁷ The Prosecution indicates that it has already reviewed ‘all materials directly relevant to the charged incident’ and that of the total CAR II situation database, containing over 136,000 items, around 9% of which have already been disclosed to the Defence.¹⁸ Nevertheless, the Prosecution notes that the ‘unprecedented size’ of the evidence collection means that reviewing the entirety of the situation database for disclosure purposes will be ‘an unavoidably time-consuming exercise.’¹⁹ The Prosecution also indicates that it still is in the process of informing 172 witnesses whose

¹³ [Prosecution Submissions](#), paras 8-11.

¹⁴ [Prosecution Submissions](#), para. 9.

¹⁵ [Prosecution Submissions](#), paras 23-27; Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-7-CONF-ENG, pp. 16-19.

¹⁶ [Prosecution Submissions](#), para. 27.

¹⁷ [Prosecution Submissions](#), para. 29.

¹⁸ [Prosecution Submissions](#), para. 28.

¹⁹ [Prosecution Submissions](#), para. 29.

materials the Prosecution has identified as falling under Rule 77 of the Rules and making the necessary security assessments prior to disclosure.²⁰

12. The Prosecution further informs the Chamber that it is in the process of reviewing approximately 40,000 items of non-witness related evidence, which ‘are not expected to have any direct connection to the charges against Mr Said but are nevertheless reviewed to ensure that no information, which could be material to the preparation of the Defence has been overlooked.’²¹

13. Lastly, the Prosecution notes that is still in the process of reviewing the security situation of a number of witnesses, but that it does not anticipate any difficulty in putting the necessary protective measures in place by the beginning of July 2022.²²

C. Disclosure by the Defence, including whether it intends to advance a defence in accordance with Rules 79 and 80 of the Rules

14. There are currently no indications that the Defence will invoke any alibi or grounds for excluding criminal responsibility. Should the Defence wish to raise either an alibi or any grounds for excluding criminal responsibility pursuant to Articles 31, 32, or 33 of the Statute, it must inform the Prosecution and the Chamber no later than 15 July 2022.

D. Agreed facts

15. The parties indicate that they have hitherto not been able to reach an agreement as to evidence but assure the Chamber that the process to reach such agreements is ongoing.²³ During the Status Conference, the Defence indicated that it would be in a better position to assess the feasibility of agreeing to facts pursuant to Rule 69 of the Rules after notification of the Prosecution’s Trial Brief.²⁴

16. The Chamber welcomes this constructive attitude and encourages the filing of regular joint submissions on agreed facts as discussions between the parties progress. More generally, the Chamber expects the parties to continue liaising throughout the

²⁰ [Prosecution Submissions](#), para. 31.

²¹ [Prosecution Submissions](#), para. 32.

²² [Prosecution Submissions](#), para. 36.

²³ [Prosecution Submissions](#), para. 19, [Defence Submissions](#), para. 47

²⁴ Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-7-CONF-ENG, p. 5

trial to continue exploring possible agreements as to the evidence. In particular, the Chamber instructs the parties to indicate for each witness which parts of the anticipated testimony they contest and which parts they accept.

17. In order to streamline the trial as much as possible, the Chamber also instructs the parties to submit a formal report on agreed facts by 12 August 2022. The Legal Representative(s) for Victims will be allowed to submit observations on the formal report one week later.

E. Defence investigation prior to the commencement of the trial

18. The Defence indicates that it intends to conduct investigations in the Central African Republic ('CAR') but that it will only be in a position to plan them effectively after having received the bulk of the Prosecution's evidence as well as its Trial Brief.²⁵ During the Status Conference, the Chamber indicated to the Defence that it did not consider this a viable strategy and asked for more detailed information about the Defence's planning and preparation of on-site investigations.²⁶

19. The Chamber has taken note of the Defence Additional Submissions. It commends the Defence's efforts to carefully prepare and streamline its investigations in order to minimise the number of missions needed. However, the Chamber urges the Defence to start preparing the necessary cooperation requests and mission plans without delay and not to wait until the Prosecution has fully disclosed every last item of evidence. As the Prosecution has indicated, the Defence already possesses the core of the evidence which the Prosecution intends to rely upon at trial.²⁷ The Defence should therefore already be in a position to start preparing its main investigative steps. The Chamber recalls that the Defence may seek a formal request for cooperation pursuant to Article 57(3)(b) of the Statute, if the requirements are fulfilled. The Chamber cautions the Defence, however, that it should not wait until the last moment to petition the Chamber in this regard.

²⁵ [Defence Submissions](#), para. 24.

²⁶ Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-7-CONF-ENG, pp. 33-34.

²⁷ [Prosecution Submissions](#), para. 29; Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-7-CONF-ENG, p. 24.

F. Commencement date of the trial

20. The Chamber has considered all the above information and has noted the parties' preferences in terms of when they would like the trial to commence.²⁸ In light of the information received from the parties and bearing in mind certain logistical and other constraints, the Chamber considers it both feasible and desirable to commence the trial on 26 September 2022.

21. In making this determination, the Chamber has taken into account its obligations to ensure: (i) that the trial is fair and expeditious in accordance with Article 64(2) of the Statute; (ii) the protection of victims and witnesses pursuant to Article 68(1) of the Statute; and (iii) the victims' right to justice.²⁹ The Chamber also considered its duty to ensure that the Accused has adequate time and facilities for the preparation of his defence. The Chamber notes, in this regard, that the trial will likely take place in alternation with other ongoing cases, which would leave sufficient time between evidentiary blocks for the Defence to further prepare, should they need to. The Chamber is also of the view that the time available between the deadline for the Prosecution to submit its Trial Brief and finalise disclosure of all incriminating evidence and the commencement of the trial is sufficient for the Defence to complete and possibly complement any pending investigations.

22. Finally, the Chamber observes that the starting date of the trial cannot be beholden to the completion of the disclosure of every item of Rule 77 material. Experience in other ICC trials has shown that the disclosure process of items falling under Article 67(2) or Rule 77 continues throughout the proceedings and cannot be constrained by artificial deadlines. The Chamber is of the view that, as long as the Accused has received all the relevant and significant materials in the Prosecution's possession, there will be no prejudice to the rights of the Accused by proceeding to trial before the Prosecution has reviewed every last item of evidence in its database.

²⁸ The Prosecution indicated its preference for starting the trial no earlier than on 10 October 2022 (*see Prosecution Submissions*, para. 3). The Defence indicated that in light of the available evidence, it would be possible to schedule the opening statements towards the end of 2022, a few weeks before starting with hearing witness testimonies in February 2023 (*see Defence Submissions*, para. 41).

²⁹ *See e.g. Pre-Trial Chamber I, The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case*, 13 May 2008. ICC-01/04-01/07-474, paras 37-44; ECHR, *Case of Mutimura v. France*, no. 46621/99, 8 June 2004.

G. Trial Brief and related documents

23. The Chamber notes that the Prosecution intends to provide a trial brief.³⁰ The Chamber also deems it necessary for the Prosecution to file a detailed Trial Brief and notes that the Defence must have at least three months to prepare after receiving the Trial Brief. Accordingly, the Trial Brief should be filed no later than 13 June 2022.

24. The Prosecution is further instructed to file a list of Prosecution witnesses no later than 13 June 2022. The list of witnesses should include the following information:

- the witness pseudonym and identity (including different spellings if applicable);
- known kinship or other relationship to other witnesses or other relevant persons in this case;
- summary of anticipated testimony;
- projected order of calling;
- estimated length of questioning by the Prosecution;
- anticipated in-court protective measures to be sought, if any;
- anticipated requests under Rule 74 of the Rules; and
- anticipated language of testimony.

25. The Prosecution must also file a list of all items it plans to submit as evidence during the trial (the ‘List of Evidence’) by 13 June 2022.

26. Witnesses and evidence may be added to these lists after the deadline only with leave of the Chamber.

27. The Chamber takes note of the submissions of the Defence regarding the filing of a trial brief.³¹ However, the Chamber considers that filing of such brief would be useful and that this does not affect the presumption of innocence nor oblige the Defence to reveal its strategy. Accordingly, the Chamber invites the Defence to file a Defence Trial Brief by 12 August 2022.

³⁰ [Prosecution Submissions](#), para. 44.

³¹ [Defence Submissions](#), para. 70.

H. Rule 68 requests

28. The Chamber has considered the parties' submissions with regard to potential Prosecution motions under Rule 68 of the Rules.³² In this regard, the Chamber notes that the Prosecution currently intends to make the following requests: that (i) of the 46 witnesses giving live testimony, 16 will be heard pursuant to Rule 68(3) of the Rules; and (ii) the previously recorded evidence of approximately 56 witnesses will be introduced under Rule 68(2)(b) or (c) of the Rules.³³ The Chamber notes that it would be preferable for any requests pursuant to Rule 68 of the Rules to be filed as soon as possible. Accordingly, the Chamber instructs the Prosecution to file its applications pursuant to Rule 68 of the Rules on a rolling basis and no later than 23 May 2022. Any application which cannot be finalised by this date, due to ongoing investigations or other exceptional circumstances, must be filed by 13 June 2022 at the latest.

I. Motions to introduce evidence other than through a witness

29. In order to streamline the trial preparations and to allow the Defence to focus its attention on finalising its evidentiary analysis and investigations once it has received the Prosecution's Trial Brief, the Chamber considers it desirable to process any motions to introduce evidence other than through a witness as early as possible. To that end, the Prosecution is instructed to file all applications to introduce evidence other than through a witness on a rolling basis and no later than 23 May 2022. This is without prejudice to the Prosecution's right to submit additional requests once the trial has commenced.

J. Motions requiring resolution prior to the commencement of trial

30. As has been the practice in previous cases,³⁴ and in order to ensure that no issues affecting the commencement of the trial are left until the final moment, the Chamber considers it appropriate to set a deadline for the filing of all motions which require

³² See e.g. [Prosecution Submissions](#), paras 16-18; Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-007-CONF-ENG, pp. 53-55.

³³ [Prosecution Submissions](#), paras 16-17.

³⁴ See e.g. Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision Setting the Commencement Date of the Trial](#), 6 January 2020, ICC-01/12-01/18-548, para. 19; Trial Chamber IX, *Ongwen case*, [Decision Setting the Commencement Date of the Trial](#), 30 May 2016, ICC-02/04-01/15-449, para. 11; Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Order setting the commencement date for trial](#), 7 May 2015, ICC-02/11-01/15-58, para. 28; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Order setting the commencement date for trial](#), 22 May 2015, ICC-01/05-01/13-960, para. 14; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, [Decision on the conduct of proceedings](#), 2 June 2015, ICC-01/04-02/06-619, para. 8.

resolution prior to the commencement of trial pursuant to Rule 134 of the Rules. In light of the Court's practice in this regard and bearing in mind the summer recess, the parties are hereby instructed to file such motions, if any, no later than 22 July 2022. After this date, the parties will only be allowed to raise issues that have arisen between this deadline and the start of the trial.

K. Site visit and hearings *in situ*

31. In their written and oral submissions, the Prosecution and the Defence argued in favour of conducting a fact-finding site visit to the CAR at the start of the trial.³⁵ The OPCV further advocated for holding judicial proceedings in the country in order to promote the transparency and accessibility of the proceedings.³⁶ Although the Defence does not support holding evidentiary hearings *in situ*, it favours giving the opening statements in the CAR.³⁷

32. The Chamber has also received an initial briefing report from the Registry in which it outlines the necessary steps for the further planning of a site visit.³⁸

33. The Chamber has considered these submissions and the information provided by the Registry and is of the view that, in light of the security, logistical and public health considerations involved, it would not be opportune to organise hearings *in situ* at this point. The Chamber also does not consider it sufficiently beneficial to conduct a forensic site visit before the start of the trial but it will keep the possibility of conducting such a visit later in the proceedings under review.

L. Appointment of alternate judge

34. The Chamber has taken note of the Prosecution's suggestion to appoint an alternate judge.³⁹ The Chamber remarks that the power to appoint an alternate judge lies with the Presidency⁴⁰ and thus leaves the matter to be decided according to their discretion.

³⁵ [Prosecution Submissions](#), para. 51; [Defence Submissions](#), para. 72; Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-7-CONF-ENG, pp. 38-41.

³⁶ [Victims Submissions](#), paras 46-48; Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-7-CONF-ENG, p. 41.

³⁷ Transcript of hearing, 28 January 2022, ICC-01/14-01/21-T-7-CONF-ENG, p. 40.

³⁸ Registry Submission on the parameters for the organisation of a judicial site visit, 17 February 2022, ICC-01/14-01/21-241-Conf.

³⁹ [Prosecution Submissions](#), para. 50

⁴⁰ Article 74(1) of the Statute, Rule 39 of the Rules and Regulation 16 of the Regulations.

M. Experts

35. The Prosecution indicated its intention to call two expert witnesses and that it endeavours to jointly instruct these experts with the Defence.⁴¹ The Chamber approves of this approach and hereby instructs the participants to jointly instruct all experts in this case pursuant to Regulation 44(2) of the Regulations.

⁴¹ [Prosecution Submissions](#), paras 12-13.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that the trial will commence on Monday **26 September 2022**;

SETS the following deadlines leading up to the trial commencement:

23 May 2022: Prosecution requests pursuant to Rule 68 of the Rules and motions to introduce evidence other than through a witness in accordance with paragraph 28 above;

13 June 2022: (i) Disclosure of all evidence and material on which the Prosecution intends to rely at trial, (ii) list of Prosecution witnesses, (iii) Prosecution List of Evidence, (iv) any remaining applications pursuant to Rule 68 of the Rules and (v) Prosecution Trial Brief;

15 July 2022: Disclosure by the Defence of intent to invoke an alibi or ground(s) for excluding criminal responsibility (Rule 79 and 80 of the Rules);

22 July 2022: Motions requiring resolution prior to the commencement of trial;

12 August 2022: Defence Trial Brief and formal report on agreed facts; and

DIRECTS the participants to jointly instruct any experts to be called in this case.

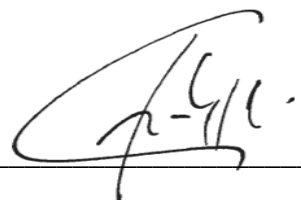
Done in both English and French, the English version being authoritative.



Judge Miatta Maria Samba
Presiding Judge



Judge Socorro Flores Liera Judge



Sergio Ugalde Godínez

Dated 21 February 2022

At The Hague, The Netherlands