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

Date: 14 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 Suspension of Deadline for Response to the
Trial Brief and Postponement of Commencement of Trial pending Translation of
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
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, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to article 67 of the Rome Statute (the ‘Statute’) and regulation 35(2) of the Regulations of the Court, issues this ‘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’.

I. PROCEDURAL HISTORY

1. On 21 February 2022, the Chamber decided that the trial would commence on 26 September 2022 and set various deadlines leading up to the trial commencement.¹ In particular, the Chamber decided that the Prosecution trial brief should be filed on 13 June 2022 in order to allow the Defence to have at least three months to prepare for trial after receiving this document.²
2. On 13 June 2022, the Prosecution filed its trial brief (the ‘Trial Brief’).³
3. On 17 June 2022, the Defence requested that the time limit for its response to the Prosecution’s Trial Brief be suspended until the official French translation of the latter, and that the commencement of the trial be postponed until three months and 13 days after notification of the official French translation of the Trial Brief (the ‘Request’).⁴
4. On 22 June 2022, the Chamber suspended the deadline for responding to the Trial Brief pending resolution of the Request.⁵

¹ Decision Setting the Commencement Date of the Trial and Related Deadlines, 21 February 2022, [ICC-01/14-01/21-243](#) (the ‘Decision Setting Deadlines’), p. 13.

² [Decision Setting Deadlines](#), para. 23.

³ Prosecution’s Trial Brief, 13 June 2022, ICC-01/14-01/21-359-Conf.

⁴ Requête en suspension du délai de réponse au mémoire de première instance jusqu’à transmission de la traduction française du mémoire de première instance déposé par l’Accusation le 13 juin 2022 (ICC-01/14-01/21-359-Conf) et demande de report de la date de début du procès qui devra être fixée au moins 3 mois et 13 jours (73 jours ouvrés) après la transmission de la traduction française de ce mémoire de première instance., 17 June 2022, ICC-01/14-01/21-367-Conf. A public redacted version was filed on 27 June 2022 ([ICC-01/14-01/21-367-Red](#)).

⁵ Email sent on 22 June 2022 at 16:06.

5. On 28 June 2022, the Prosecution responded, requesting that the Request be rejected (the ‘Prosecution Response’).⁶

6. On 30 June 2022, the Office of Public Counsel for Victims (the ‘OPCV’) responded, requesting that the Chamber dismiss the Defence’s request for extension of time to respond to the Trial Brief *in limine* and dismiss the remainder of the Request.⁷

II. SUBMISSIONS

7. The Defence argues that the Trial Brief complements the decision confirming the charges that allows the accused to understand the nature of the Prosecution case to be presented at trial.⁸ The Defence states that, in its view, only the Trial Brief allows the Defence to understand what use the Prosecution intends to make of its hundreds of pieces of evidence and the statements of its witnesses.⁹ The Defence submits that the Trial Brief gives form to the charges confirmed by the Pre-Trial Chamber and meaning to the evidence and witness statements disclosed.¹⁰ The Defence posits that understanding the evidence and witness statements without the Trial Brief would be akin to trying to make a puzzle of several hundred pieces without knowing what image is to be created.¹¹

8. On this basis, the Defence submits that the Trial Brief needs not only to be translated into French – the language that the accused fully understands – but, that the notification of the French version needs to be done sufficiently in advance of the start of the trial as a condition for the respect of his rights and for the fairness of the trial.¹² The Defence further avers that it can only effectively prepare Mr Said’s defence from the time when it receives a full official translation in French, because working on

⁶ 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](#), p. 7.

⁷ Victims’ observations the Defence’s requests to vary the time limit and to postpone the commencement date of the trial (No. ICC-01/14-01/21-367-Red), 30 June 2022, [ICC-01/14-01/21-383](#) (the ‘Victims’ Response’), p. 9.

⁸ [Request](#), para. 22.

⁹ [Request](#), para. 23.

¹⁰ [Request](#), para. 24.

¹¹ [Request](#), para. 24.

¹² [Request](#), paras 26-34.

unfinished drafts in French could lead to inaccuracies detrimental to the Defence's work.¹³

9. The Defence submits that it will receive a draft translation of the first part of the Trial Brief on 24 June 2022, and a draft translation of the second part on 1 July 2022 and will only receive the official translation of the document in French on or about 5 August 2022.¹⁴ It argues that this leaves a limited number of days to fully prepare Mr Said's defence and that this shortened period of time will be prejudicial to his rights. In its view, this justifies its request that the start of the trial be delayed to three months and 13 days following notification of the official translation of the trial brief into French.¹⁵

10. The Prosecution requests the rejection of the Defence's requests on the basis that the Trial Brief is only an auxiliary document.¹⁶ It avers that 'the Confirmation Decision sets out the material facts underlying the legal elements of the alleged crimes (including contextual) and modes of liability, and the legal characterisations of those facts', and that

the Prosecution's Trial Brief merely summarises the main evidence in support of the charges to assist the Chamber, Parties and Participants and cannot be considered a statutory document serving to inform the accused of the "*nature, cause and content of the charge*." It is "*an auxiliary tool to the benefit of both the Chamber and the parties and participants*" and not an essential document, as claimed by the Defence".¹⁷

11. The Prosecution submits that, even though these documents do not require translation, in the instant case they are being translated and made available to Mr Said and the Defence well in advance of the start of the trial, and that ultimately, the Defence has not shown good cause to justify the postponement of the start of the trial, as Mr Said will not be unduly prejudiced.¹⁸

¹³ [Request](#), paras 26-29.

¹⁴ [Request](#), paras 26, 31.

¹⁵ [Request](#), paras 37-38.

¹⁶ [Prosecution Response](#), paras 2-3.

¹⁷ [Prosecution Response](#), paras 2-3.

¹⁸ [Prosecution Response](#), paras 6-9.

12. The OPCV submits that ‘the Defence’s Request for extension of time to respond to the Trial Brief must be dismissed *in limine*’ as a written response from the Defence was not envisaged by the Chamber and is not warranted.¹⁹ The OPCV also opposes the request for postponement of the start of the trial, arguing that the accused has full knowledge of the scope of the case against him and that there is no need for the Defence to receive a French translation of the Trial Brief.²⁰ The OPCV submits that postponing the commencement ‘of the trial would further delay the realisation of the Victims’ right to truth, to have those responsible for those crimes held accountable and to receive just reparations for the harm suffered.’²¹ It argues that fair trial guarantees should not be considered from the Defence standpoint only and that the rights and interests of victims must also be taken into account when deciding on requests for postponement of proceedings.²²

III. ANALYSIS

13. The issue before the Chamber is whether fair trial considerations and respect for the rights of the accused justify a postponement of the trial until more than three months after the official translation of the Trial Brief becomes available to Mr Said and whether good cause has been shown for an extension of the deadline for filing a response to the Trial Brief until such translation has been provided.

14. The Chamber notes that Mr Said has been in possession of detailed information regarding the Prosecution’s case against him for some time. The document containing the charges for the purposes of the confirmation proceedings was notified on 16 August 2021 and the pre-confirmation brief was notified on 30 August 2021; both documents were translated into French for the accused.²³ The decision confirming part of the

¹⁹ [Victims’ Response](#), paras 3, 10-11.

²⁰ [Victims’ Response](#), paras 12-16.

²¹ [Victims’ Response](#), para. 17.

²² [Victims’ Response](#), para. 18.

²³ ICC-01/14-01/21-144-Conf (public redacted version and its corrected version 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); corrected confidential version and its public redacted version notified, respectively, on 26 October 2021 (ICC-01/14-01/21-144-Conf-Corr) and 1 December 2021 ([ICC-01/14-01/21-144-Corr-Red](#))), with confidential annexes A and B (corrected confidential version of annex B notified on 20 August 2021 (ICC-01/14-01/21-144-Conf-AnxB-Corr); corrected confidential and public redacted versions of annex A notified on 27 October 2021 (ICC-01/14-01/21-144-Conf-AnxA-Corr; [ICC-01/14-01/21-144-AnxA-](#)

charges for the purposes of trial was issued on 9 December 2021 and an official French translation of this decision was notified to the accused on 24 January 2022.²⁴ The Prosecution also confirms that the accused is in possession of French versions of all witness statements and the main documentary evidence in the case.²⁵ In the view of the Chamber, the information already available to Mr Said should enable him to effectively participate in the preparation of his defence.

15. The Chamber further notes that Mr Said is assisted by a Defence team who have demonstrated their capacity to read and analyse documents in English and who are in a position to share and explain all relevant aspects of the case to him in French. While the Defence claims that its working language is French, one of the two working languages of the Court, and that there is no requirement that Defence counsel should have to work in English,²⁶ the Chamber underlines that the provision of any translation is for the benefit of the accused and not his defence team.²⁷ Therefore, the fact that the defence team works in the French language does not justify the requested postponement of the commencement of trial.

16. The Chamber understands that a draft translation of the Trial Brief was provided on 1 July 2022 and an official translation will be provided by 5 August 2022, almost two months before the commencement of the trial. The Chamber considers that this will allow Mr. Said to actively participate in his Defence, since he is able to read and

[Red-Corr](#)); ICC-01/14-01/21-155-Conf (first and second public redacted versions notified, respectively, on 21 September 2021 (ICC-01/14-01/21-155-Red) and 9 December 2021 ([ICC-01/14-01/21-155-AnxA-Red3](#))), with confidential annexes A-D (public redacted version of annex A notified on 22 September 2021 (ICC-01/14-01/21-155-AnxA-Red) and 9 December 2021 (ICC-01/14-01/21-155-AnxA-Red3); corrected version of annex B notified on 26 October 2021 (ICC-01/14-01/21-155-Conf-AnxB-Corr)).

²⁴ 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](#)).

²⁵ [Prosecution Response](#), para. 1.

²⁶ [Request](#), para. 30.

²⁷ As the Appeals Chamber has previously observed, ‘article 67(1)(a) and (f) of the Statute relates to the language ability and knowledge of the suspect and/or accused, not of his/her [c]ounsel and/or defence team’: *The Prosecutor v. Callixte Mbarushimana*, Decision on the “Requête urgente aux fins de reconsidération de la décision n°ICC-01/04-01/10 OA4, de protestation et de reserve”, 23 March 2012, [ICC-01/04-01/10-505](#), para. 10.

understand the Trial Brief and provide relevant input and instructions in relation to the preparation of his defence.

17. In view of the foregoing, the Chamber considers that the Defence is in a position to convey to Mr. Said the contents of the Trial Brief and confer with him on its import from the moment it was notified on 13 June 2022. In the view of the Chamber, an official translation into French of the Trial Brief is not a precondition for such work to have commenced and present circumstances do not prevent Mr Said from setting out the elements and strategy of his defence. Therefore, the Chamber finds that the circumstances before it do not show any prejudice to the rights of Mr Said and the fairness of the trial.

18. The Chamber also finds that the foregoing considerations apply, *mutatis mutandis*, to the Defence's request to suspend the time limit for its response to the Trial Brief.

19. Accordingly, the Chamber rejects the Defence request to postpone the commencement of the trial and finds that good cause has not been shown to delay the filing of a response to the Trial Brief as requested by the Defence. Notwithstanding the latter, the Chamber will allow the filing of a response to the Trial Brief, should the Defence wish to submit one, and determines that the time limit for same shall begin to run from the date of notification of the present decision.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

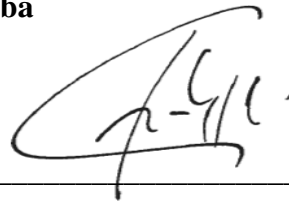
ORDERS that the time limit for the filing of any response to the Trial Brief shall begin to run from the date of notification of the present decision.



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 14 July 2022

At The Hague, The Netherlands