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

Date: 08 October 2024

TRIAL CHAMBER VI

Before:

**Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez
Judge Keebong Paek, Alternate Judge**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

Third Directions on the Conduct of Proceedings

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 Ms Holo Makwaia	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 Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit Mr Nigel Verrill	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 articles 31, 32, 33, 64(2), 66, 67, and 69 of the Rome Statute (the ‘Statute’), rules 68(3), 78, 79, 80 and 140 of the Rules of Procedure and Evidence (the ‘Rules’), and regulation 43 of the Regulations of the Court (the ‘Regulations’), issues these ‘Third Directions on the Conduct of the Proceedings’.

1. By 6 November 2024, it is anticipated that the Office of the Prosecutor (the ‘Prosecution’) will have called all of its *viva voce* witnesses¹ at which point it is expected that the Prosecution will complete its presentation of evidence.
2. With a view to ensuring a streamlined continuation of the proceedings and facilitating the preparation of all participants, the Chamber considers it appropriate to issue further directions on the conduct of the proceedings, in addition to its previously issued directions,² by providing for certain time limits, as laid out below.
3. The time limits below are set in accordance with the Prosecution’s estimates for the remainder of its presentation of evidence, subject to reconsideration by the Chamber. The Chamber may reconsider these time limits if there are significant changes to the expected conclusion of the Prosecution’s presentation of evidence, or in case of other unforeseen developments.

I. End of the Prosecution’s presentation of evidence

4. The Chamber previously set out the procedures and deadlines for the submission of evidence other than through a witness³ and for the filing of applications pursuant to rule 68 of the Rules.⁴ Should the Prosecution wish to file any further requests for the introduction of evidence as part of its case (other than through the remaining witnesses it plans to call) or any further requests pursuant to rule 68(2) of the Rules, it must do so

¹ See Email from the Prosecution to the Chamber and Parties, 25 September 2024, at 18:02. See also Prosecution assurance to Chamber regarding its capability of presenting all of its witnesses by October 2024, ICC-01/14-01/21-T-089-CONF-ENG CT, p. 50.

² Directions on the Conduct of Proceedings, 9 March 2022, [ICC-01/14-01/21-251](#) (the ‘Directions on the Conduct of Proceedings’); Additional Directions on the Conduct of Proceedings, 16 September 2022, [ICC-01/14-01/21-479](#) (the ‘Additional Directions on the Conduct of Proceedings’).

³ Decision Setting the Commencement Date of the Trial and Related Deadlines, 21 February 2022, [ICC-01/14-01/21-243](#) (the ‘Decision Setting Deadlines’).

⁴ See for example, Decision Setting Deadlines, [ICC-01/14-01/21-243](#), para. 28.

within **one week** after the conclusion of the oral testimony of the Prosecution's last witness. Given that the deadlines for the introduction of such evidence have expired (with the exception of the evidence of P-0975, which is regulated below), any such request must contain a justification for variation of the time limit as required by regulation 35 of the Regulations.

5. Regarding P-0975, the Chamber notes that no deadline was set for the introduction of this witness's evidence given the specific circumstances pertaining to his availability. The situation regarding the availability of this witness remains unclear. If the Prosecution intends to present the testimony of P-0975 in person, it must inform the Chamber as soon as possible and no later than **23 October 2024**.

6. The Prosecution shall notify the conclusion of its presentation of evidence by way of a formal notice to be filed in the case record. This notice must be filed promptly **one week** after the conclusion of the oral testimony of the Prosecution's last witness.

II. Presentation of evidence by the CLRV

7. The Chamber recalls that the Directions on the Conduct of Proceedings provide for presentation of evidence by the Common Legal Representative of Victims ('CLRV') 'should leave be granted.'⁵ In addition, the Chamber further recalls that in its decision on matters relating to the participation of victims during the trial (the 'Participation Decision'), it ordered the CLRV to file any request for leave to call witnesses 'as soon as possible after the Prosecution has submitted its final list of witnesses and, in any case, no later than five days after the opening statement(s) at the commencement of the trial'.⁶ The Chamber notes that the CLRV did not request leave to call any witnesses.

8. In respect of time for presentation of views and concerns by individual victims, as noted in the Participation Decision, the Chamber recalls its instruction to the CLRV to seek permission before the end of the Prosecution's case if individual victims wish to make statements presenting their views and concerns at trial.⁷ Accordingly, the

⁵ Directions on the Conduct of Proceedings, [ICC-01/14-01/21-251](#), paras 12, 14.

⁶ Decision on matters relating to the participation of victims during the trial, 13 April 2022, [ICC-01/14-01/21-278](#), para. 46 (the 'Participation Decision').

⁷ Participation Decision, [ICC-01/14-01/21-278](#), para. 42.

Chamber orders the CLRV to request leave of the Chamber by **22 October 2024** if individual victims wish to make statements presenting their views and concerns at trial. In line with the directions set out in the Participation Decision, the application must provide at least the following information:

- the identity of the victims and their application number;
- the topic(s) they wish to address;
- an explanation why it is considered important for the victims to present their views and concerns orally before the Court;
- estimated time needed for the victims to present their views and concerns;
- whether the victims wish for their views and concerns to be presented publicly, or whether they wish to be afforded in-court protective measures.⁸

9. The Prosecution and Defence are to file their observations within five (5) days of notification of any such request by the CLRV.

III. Presentation of evidence by the Defence

10. The Chamber recalls that, pursuant to article 66(2) of the Statute, the onus is on the Prosecution to prove the guilt of the accused. In contrast, pursuant to article 67(1)(g) of the Statute, the accused has the right to remain silent and not to be compelled to testify, and may elect not to present evidence.

11. The Chamber observes that for its opening statement at the beginning of these proceedings, the Defence requested 4.5 hours, which was the same amount of time allocated to the Prosecution for its opening statement.⁹ The Defence made its opening statement on 27 September 2022.¹⁰ The Chamber notes that the Defence previously requested the Chamber's leave to deliver its opening statement in two parts, the first at the beginning of the trial and the second at the beginning of its presentation of

⁸ See Participation Decision, [ICC-01/14-01/21-278](#), para. 42.

⁹ Additional Directions on the Conduct of Proceedings, [ICC-01/14-01/21-479](#), para. 3.

¹⁰ Transcript of hearing, 27 September 2022, ICC-01/14-01/21-T-011-ENG CT.

evidence.¹¹ In this regard, the Chamber recalls that it previously stated that, in the interest of streamlining the presentation of opening statements, an opening statement must be presented all at one time, and that, the '[...] Defence are not allowed to reserve unused time from their opening statements and continue them later during the trial'.¹²

12. With a view to facilitating the fair and expeditious continuation of proceedings, the Defence is directed to file a notice as to whether it intends to present evidence by **12 December 2024**. By the same deadline, the Defence is to indicate whether the accused intends to exercise his right under article 67(1)(h) of the Statute to make an unsworn oral or written statement.

13. In case the notice is in the affirmative, the Defence is ordered to provide, by **17 January 2025**, a preliminary list of witnesses and an estimate of the total number of hours it considers will be necessary to question all of its witnesses. This preliminary list of witnesses is to include the following information: (i) the type of witness (e.g. fact, expert, insider witness, etc.); (ii) the number of hours required for the questioning of *each* witness; and (iii) the intended mode of testimony (*i.e. viva voce* or rule 68 of the Rules, including for which witnesses they intend to use video-link).

14. The Chamber further notes that the disclosure obligations that are applicable to the Defence and the Prosecution differ significantly under the Court's statutory framework. Nevertheless, the Defence must permit the inspection of any books, documents, photographs and other tangible objects in its possession or control, which it intends to use as evidence for the purposes of the trial, in accordance with rule 78 of the Rules. The Chamber takes note of the Defence disclosure already effected to date and instructs that further disclosure should take place on a rolling basis beginning as

¹¹ Version publique expurgée de la « Demande de reconsidération ou, subsidiairement, demande d'autorisation d'interjeter appel des « Directions on the Conduct of Proceedings » (ICC-01/14-01/21-251) » déposées le 9 mars 2022 » (ICC-01/14-01/21-259-Conf) déposée le 15 mars 2022, 21 March 2022, [ICC-01/14-01/21-259-Red](#), paras 24-27 (the Chamber notes that the Defence previously submitted that, if it were able to divide its opening statements between the beginning of the Prosecution's case and the beginning of its evidence, it would still stay within the time limit defined by the Judges: [...] la Défense soumet à la Chambre qu'à partir du moment où elle décide d'accorder une durée limitée à la Défense pour ses discours d'ouverture, le fait de diviser les discours n'aura aucun impact sur le bon déroulé de ces discours et de la procédure de manière générale. La Défense se conformera bien évidemment à la durée indiquée par les Juges, par conséquent le fait de diviser le discours d'ouverture ne ferait pas perdre de temps à la Cour').

¹² Directions on the Conduct of Proceedings, [ICC-01/14-01/21-251](#), para. 7.

soon as possible but no later than **17 January 2025**, with final disclosure of items the Defence intends to use by **21 February 2025**.

15. In order to ensure sufficient time to prepare, the Defence is directed by **21 February 2025** to:

- (i) file their final lists of witnesses and of evidence. The final lists of witnesses should include the following: (a) the witness pseudonym and identity (including different spellings if applicable); (b) known kinship or other relationship to other witnesses or other relevant persons in this case; (c) type of witness (e.g. fact, expert, insider witness, etc.); (d) intended mode of testimony (*i.e. viva voce* or rule 68 of the Rules, at the Court or through video-link); (e) projected order of calling; (f) estimated length of questioning by the Defence; (g) anticipated in-court protective measures to be sought, if any, as well as any issues of self-incrimination; and (h) anticipated language of testimony; and
- (ii) summaries of the anticipated testimony for all witnesses and witness statements (if available); the summaries should be sufficiently detailed and comprehensive to enable the participants and the Chamber to meaningfully prepare and should explain or otherwise make apparent the expected relevance of the witness's testimony to the charges in terms of the specific legal and factual issues the testimony is expected to relate to.

16. The Chamber sets **3 March 2025** as the deadline for the Defence to file any applications pursuant to rule 68(2) and (3) of the Rules, as well as any request for protective measures in respect of *viva voce* witnesses, without this precluding later applications under rule 68(2)(c) of the Rules, should a witness become unavailable.

17. The Chamber will issue a separate decision on the length and timing of the presentation of evidence by the Defence in due course.

18. On **17 March 2025**, the Defence is to call its first witness.

19. Should the Defence intend to file any applications for the submission of evidence other than through a witness it must do so no later than one week after the last Defence witness has finished testifying.

20. Finally, and unless otherwise specified by the Chamber in these directions, the presentation of evidence by the Defence, if any, will be governed by the Directions on the Conduct of Proceedings¹³ and the Additional Directions on the Conduct of Proceedings,¹⁴ as well as any amendments or additions thereto.¹⁵

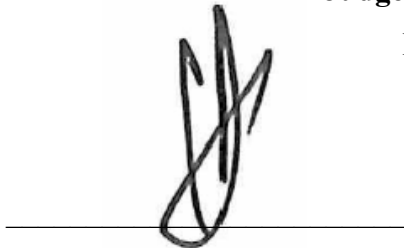
FOR THESE REASONS, THE CHAMBER HEREBY

ADOPTS the above Third Directions on the Conduct of the Proceedings.

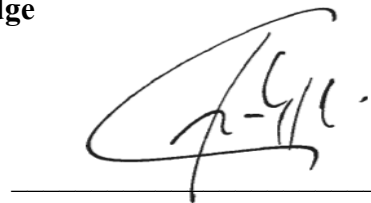


Judge Miatta Maria Samba

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 08 October 2024

At The Hague, The Netherlands

¹³ Directions on the Conduct of Proceedings, [ICC-01/14-01/21-251](#).

¹⁴ Additional Directions on the Conduct of Proceedings, [ICC-01/14-01/21-479](#).

¹⁵ *See, for example*, Email from the Chamber to the Parties dated 22 September 2022, at 18:34; Email from the Chamber regarding Streamlined Procedure for the formal submission of evidence through witnesses, 2 April 2024, at 13:41.