

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/14-01/21
Date: 24 January 2025**

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

Order in relation to the Defence Notification of its Preliminary List of Witnesses

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☒ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☐ **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**

☐ **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 64, 67 and 69 of the Rome Statute (the ‘Statute’), rules 68(2)(b) and 140 of the Rules of Procedure and Evidence (the ‘Rules’), and regulation 28 of the Regulations of the Court (the ‘Regulations’) issues this ‘Order in relation to the Defence Notification of its Preliminary List of Witnesses’.

I. PROCEDURAL HISTORY

1. On 16 September 2022, the Chamber granted the Office of the Prosecutor’s (the ‘Prosecution’) request to allocate 122 hours for the examination-in-chief of the 17 *viva voce* and 26 Rule 68(3) witnesses it intended to call.¹

2. On 8 October 2024, the Chamber issued the Third Directions on the Conduct of Proceedings (the ‘Third Directions’)² in which it, *inter alia*, instructed the Defence to provide a preliminary list of witnesses no later than 17 January 2025; to submit the final list of witnesses and evidence no later than 21 February 2025; and set 3 March 2025 as the deadline for any applications pursuant to rule 68(2) and 68(3) of the Rules.³

3. On 15 November 2024, the Prosecution formally closed the presentation of its evidence.⁴ In total, it used less than 117 hours for the examination-in-chief of 25 *viva voce* and 33 witnesses whose prior recorded testimony was introduced pursuant to rule 68(3) of the Rules.

4. On 17 January 2025, the Defence provided a preliminary list of seven witnesses, one of whom the Defence would call to testify *viva voce* (the ‘Notification’).⁵ For the remaining six witnesses, the Defence currently foresees submitting a request to the Chamber seeking the introduction of their prior recorded testimony pursuant to rule 68(2)(b) of the Rules. The Defence further informed the Chamber that it had been

¹ Additional Directions on the Conduct of Proceedings, 16 September 2022, [ICC-01/14-01/21-479](#) (the ‘Additional Directions’), para. 5.

² Third Directions on the Conduct of Proceedings, 8 October 2024, [ICC-01/14-01/21-873](#).

³ Third Directions, [ICC-01/14-01/21-873](#), para. 13-16.

⁴ Notification of the Conclusion of the Prosecution’s Presentation of Evidence, 15 November 2024, [ICC-01/14-01/21-895](#).

⁵ Liste provisoire des témoins de la Défense, ICC-01/14-01/21-908-Conf-AnxA.

experiencing a number of difficulties in compiling its list of witnesses.⁶ In particular, the Defence avers that: (i) a number of potential witnesses were unavailable during the winter recess and the majority did not resume contact until January; (ii) a number of potential witnesses are reluctant to testify because they fear that doing so may negatively impact their professional and/or personal lives; (iii) the Defence is in the process of determining whether to call certain witnesses *viva voce* or to request the introduction of their prior recorded testimony pursuant to rule 68 of the Rules; and (iv) the final selection of witnesses depends on the disclosure of certain items by the Prosecution as well as the lifting of certain redactions. The Defence and the Prosecution are still in the process of discussing these requests and the Defence intends to seize the Chamber in case there is disagreement between the parties.

II. ANALYSIS

5. The Chamber has taken note of the Notification and the issues raised therein. The Chamber recalls that it urged the Defence in February 2022 to start preparing the necessary cooperation requests and mission plans without delay and not to wait until the Prosecution had completed disclosing all evidence.⁷ Moreover, the Defence indicated in February 2023 that Mr Said had given sufficient instructions to allow the preparation of his defence to continue during his illness, within limits.⁸ On that occasion, the Chamber repeated an earlier invitation to seize it as soon as possible if the Defence deemed there was a need to seek a ruling pursuant to article 57(3)(b) of the Statute.⁹

6. Given the number of oral witnesses projected to testify for the Defence at this stage, the Chamber is concerned by the potential for unnecessary delay in these proceedings if the issues alluded to by the Defence are not followed up on expeditiously. The Chamber notes that the Defence has not informed the Chamber how it intends to deal with the challenges referenced in its Notification with respect to

⁶ Notification de la Défense conformément à la ‘Third Directions on the Conduct of Proceedings’(ICC-01/14-01/21-873) rendue par la Chambre de première instance VI le 8 octobre 2024, 17 January 2025, ICC-01/14-01/21-908-Conf-Exp (the ‘Notification’).

⁷ Decision Setting the Commencement Date of the Trial and Related Deadlines, 21 February 2022, [ICC-01/14-01/21-243](#), para. 19.

⁸ Transcript of hearing, ICC-01/14-01/21-T-047-CONF-ENG, pp. 12-13.

⁹ Transcript of hearing, ICC-01/14-01/21-T-047-CONF-ENG, pp. 13-14.

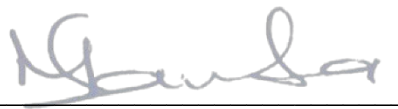
potential witnesses. The Chamber urges the Defence to provide further information to the Chamber in order to ensure the fair and expeditious conduct of proceedings.

FOR THESE REASONS, THE CHAMBER HEREBY

INVITES the Defence to approach the Chamber as soon as possible if it needs support from any organ of the Court with locating and/or calling witnesses;

ORDERS the Defence to inform the Chamber, on an *ex parte* basis if required, by no later than Tuesday 28 January 2025: (i) how many witnesses it is still considering calling, subject to the difficulties mentioned in the Notification; (ii) whether P-0384, P-0405, P-0434, P-1277, P-2872, and P-2926 have already agreed in principle to have their prior recorded testimony introduced pursuant to rule 68(2)(b) of the Rules and, if so, (iii) whether these witnesses have or are expected to make additional statements and/or change the content of the prior recorded testimony that is currently available in e-Court; and

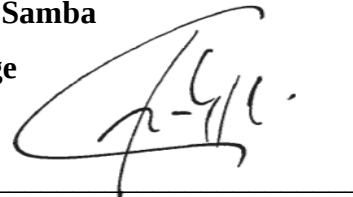
ORDERS the parties to resolve any disputes regarding disclosure or lifting of redactions, or seize the Chamber no later than Thursday 30 January 2025 of any remaining disagreements concerning the disclosure of additional material and/or lifting of redactions.



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 24 January 2025

At The Hague, The Netherlands