



Original: English

**No.: ICC-01/14-01/21
Date: 21 February 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 Redacted

**Decision on the Defence's Request for an Extension of Time to File its Final List
of Witnesses, List of Evidence and Complete Disclosure**

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(2), 67, 69, 57(3)(b) and 93(1) of the Rome Statute (the ‘Statute’), rules 78, 79 of the Rules of Procedure and Evidence (the ‘Rules’), and regulation 35 of the Regulations of the Court (the ‘Regulations’) issues this ‘Decision on the Defence’s Request for an Extension of Time to File its Final List of Witnesses, List of Evidence and Complete Disclosure’.

I. PROCEDURAL HISTORY

1. On 8 October 2024, the Chamber issued the ‘Third Directions on the Conduct of Proceedings’.¹ Therein, the Chamber ordered, *inter alia*, the Defence to file its final list of witnesses, final list of evidence and complete the final disclosure of items it intends to use during its case no later than 21 February 2025.²
2. 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’), noting, *inter alia*, that it had been experiencing a number of difficulties in compiling its list of witnesses.³
3. On 24 January 2025, the Chamber issued the ‘Order in relation to the Defence Notification of its Preliminary List of Witnesses’ (the ‘Order in relation to the Notification’).⁴ Therein the Chamber ordered the Defence to provide further information in respect of the Notification.

¹ Third Directions on the Conduct of Proceedings, 8 October 2024, [ICC-01/14-01/21-873](#).

² Third Directions on the Conduct of Proceedings, [ICC-01/14-01/21-873](#), paras 14-15.

³ Version publique expurgée de la « 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. » ICC-01/14-01/21-908-Conf-Exp. 3 February 2025, [ICC-01/14-01/21-908-Red](#). A confidential *ex parte* version and a confidential redacted version were filed on 17 January 2025 respectively (ICC-01/14-01/21-908-Conf-Exp; ICC-01/14-01/21-908-Conf-Red)

⁴ Order in relation to the Defence Notification of its Preliminary List of Witnesses, 24 January 2025, [ICC-01/14-01/21-909](#).

4. On 30 January 2025, the Defence filed observations in line with the Order in relation to the Notification (the ‘Defence Observations’).⁵ In the Defence Observations, the Defence provided further information and indicated, *inter alia*, that it may have to ask for an extension of time in relation to four witnesses.⁶

5. On 17 February 2025, the Defence filed a request for an extension of time (the ‘Request’).⁷

6. On the same day, the Chamber shortened the deadline for responses to the Request.⁸

7. On 20 February 2025, the Office of the Prosecutor (the ‘Prosecution’)⁹ and the Common Legal Representative of Victims (the ‘CLR’)¹⁰ responded to the Request.

II. SUBMISSIONS

8. In the Request, the Defence reiterates that it has been making every effort to finalise its list of evidence and witnesses by the 21 February 2025 deadline set by the Chamber.¹¹ In this regard, the Defence notes that it will file a list of witnesses and list of evidence by this date.¹² Furthermore, the Defence notes that it will ensure that it will be able to call its first witness on 17 March 2025.¹³

⁵ Version publique expurgée des « Observations de la Défense conformément à l’ordonnance rendue par la Chambre le 24 janvier 2025 (ICC-01/14-01/21-909) ». ICC-01/14-01/21-912-Conf-Exp., 3 February 2025, [ICC-01/14-01/21-912-Red](#). A confidential *ex parte* version was filed on 30 January 2025 (ICC-01/14-01/21-912-Conf-Exp) and a confidential redacted version was filed on 3 February 2025 (ICC-01/14-01/21-912-Conf-Red).

⁶ Defence Observations, [ICC-01/14-01/21-912-Red](#), para. 12

⁷ Version confidentielle expurgée de la « Demande d’extension de délais ciblée pour terminer des actes d’enquêtes en cours conformément à la Norme 35 du Règlement de la Cour ». ICC-01/14-01/21-917-Conf-Exp., 18 February 2025, ICC-01/14-01/21-917-Conf-Red. A confidential *ex parte* version was filed on 17 February 2025 (ICC-01/14-01/21-917-Conf-Exp) with one confidential *ex parte* annex (ICC-01/14-01/21-917-Conf-Exp-AnxA).

⁸ Email from the Chamber to the parties, 18 February 2025, at 10:25.

⁹ Réponse de l’Accusation à la « Demande d’extension de délais ciblée pour terminer des actes d’enquêtes en cours conformément à la Norme 35 du Règlement de la Cour », 20 February 2025, ICC-01/14-01/21-918-Conf (the ‘Response’).

¹⁰ Victims’ Response to the "Version confidentielle expurgée de la 'Demande d’extension de délais ciblée pour terminer des actes d’enquêtes en cours conformément à la Norme 35 du Règlement de la Cour'. ICC-01/14-01/21-917-Conf-Exp" (No. ICC-01/14-01/21-917-Conf-Red), 20 February 2025, ICC-01/14-01/21-919-Conf (the ‘Victims’ Response’).

¹¹ Request, ICC-01/14-01/21-917-Conf-Red, para. 9.

¹² Request, ICC-01/14-01/21-917-Conf-Red, para. 11.

¹³ Request, ICC-01/14-01/21-917-Conf-Red, para. 12.

9. This notwithstanding, the Defence submits that its investigative work depends on the availability of witnesses, which in turn impacts the Defence's possibility to meet strict deadlines.¹⁴ In this regard, the Defence refers to the approach adopted by the Trial Chamber in the case of *The Prosecutor v. M. Ali Muhammed Ali Abd-Al-Rahman* ("Ali Kushayb"), noting that the Trial Chamber in that case adopted a flexible approach and agreed to the disclosure of relevant evidence as the Defence investigations progressed without setting a fixed time limit.¹⁵

10. The Defence submits that it does not seek to request cancellation of the deadline of 21 February 2025, but rather requests to be able to complete a number of investigative acts and disclose any relevant material on a continuous basis.¹⁶

11. In respect of these outstanding investigative acts which need to be completed before the Defence can file a definitive list of witnesses and list of evidence, the Defence makes reference to several issues.

12. First, the Defence notes, in the context of four potential witnesses who may be called to testify following exchanges with the [REDACTED], that such exchanges are still ongoing and it has not been able to finalise matters and interview the relevant individuals.¹⁷ As a result the Defence notes that, at this stage, it is not in a position to put these potential witnesses on its list of witnesses.¹⁸ Furthermore, the Defence submits that in the context of these discussions, it is also waiting to receive additional documents from the [REDACTED].¹⁹ Accordingly, the Defence requests an additional month to complete this ongoing work and, depending on the result, may make a request for additional time to present such evidence.²⁰

13. Second, the Defence further notes that it is in the process of finalising discussions with two potential witnesses who are based in the [REDACTED].²¹ In this regard, the Defence notes that, in light of recent political developments, these witnesses have

¹⁴ Request, ICC-01/14-01/21-917-Conf-Red, para. 13.

¹⁵ Request, ICC-01/14-01/21-917-Conf-Red, paras 14-15.

¹⁶ Request, ICC-01/14-01/21-917-Conf-Red, paras. 16-17.

¹⁷ Request, ICC-01/14-01/21-917-Conf-Red, paras 19-20.

¹⁸ Request, ICC-01/14-01/21-917-Conf-Red, para. 21.

¹⁹ Request, ICC-01/14-01/21-917-Conf-Red, para. 22.

²⁰ Request, ICC-01/14-01/21-917-Conf-Red, para. 23.

²¹ Request, ICC-01/14-01/21-917-Conf-Red, para. 24.

become reluctant to give evidence and are facing issues in this regard.²² The Defence submits that it is making every effort, but notes that it is unlikely to be able to obtain relevant evidence from these witnesses until after the 21 February 2025 deadline.²³ Accordingly, the Defence requests an additional three weeks after the 21 February 2025 deadline to resolve issues with these two potential witnesses and disclose the relevant evidence if necessary.²⁴

14. Third, the Defence submits that for one potential witness, the witness is still waiting to hear whether his employer will create any obstacle to him giving evidence.²⁵ Accordingly, the Defence requests an additional two weeks after the 21 February 2025 deadline to finalise matters in respect of this witness.²⁶

15. Last, the Defence submits that, on 1 October 2024, it submitted a request for cooperation, through the Registry, to the [REDACTED].²⁷ The Defence notes that on 14 February 2025 it received a response in which the [REDACTED] indicated that it was possible to respond favourably to the Defence's request.²⁸ That notwithstanding, the [REDACTED] indicates that an order from the Chamber is required, confirming that the Defence's request can be executed.²⁹ Accordingly, the Defence requests the Chamber to issue an order in this regard as soon as possible.³⁰

16. In the Response, the Prosecution indicates that it does not oppose the Request, but notes that the Request is heavily redacted which renders the Prosecution unable to provide a complete and informed response.³¹ Furthermore, the Prosecution submits that

²² Request, ICC-01/14-01/21-917-Conf-Red, para. 24.

²³ Request, ICC-01/14-01/21-917-Conf-Red, para. 25.

²⁴ Request, ICC-01/14-01/21-917-Conf-Red, para. 26. On 20 February 2025, the Defence further updated the Chamber, via email, that one of the two potential witnesses identified was open to collaboration with the Court and it is hoped that disclosure of any relevant material will take place as early as next week – Email from the Defence to the Chamber, dated 20 February 2025, at 15:32.

²⁵ Request, ICC-01/14-01/21-917-Conf-Red, para. 27.

²⁶ Request, ICC-01/14-01/21-917-Conf-Red, para. 27.

²⁷ Request, ICC-01/14-01/21-917-Conf-Red, para. 28.

²⁸ Request, ICC-01/14-01/21-917-Conf-Red, para. 29. *See also* Annex A to the Request, ICC-01/14-01/21-917-Conf-Exp-AnxA.

²⁹ Request, ICC-01/14-01/21-917-Conf-Red, para. 29. *See also* Annex A to the Request, ICC-01/14-01/21-917-Conf-Exp-AnxA.

³⁰ Request, ICC-01/14-01/21-917-Conf-Red, para. 30.

³¹ Response, ICC-01/14-01/21-918-Conf, para. 3.

it reserves the possibility to seize the Chamber, depending on the nature of the material disclosed, in order to prepare for its cross examinations.³²

17. In the Victims' Response, the CLRV indicates that she is not in a position to determine whether 'good cause' within the meaning of regulation 35 of the Regulations is met, given that the Request is largely redacted.³³ As a result she fully defers to the Chamber's ruling on the matter.³⁴ That notwithstanding, the CLRV notes, with concern, the potential for unnecessary delays to the present proceedings.³⁵ In this regard, the CLRV observes that the extension of time requested by the Defence pertains, in part, to cooperation requests, which leads her to believe that the Defence has disregarded earlier instructions from the Chamber to file such requests as soon as possible.³⁶

III. ANALYSIS

A. Request for Extension of Time

18. At the outset, the Chamber reiterates that it has an obligation to ensure that the proceedings are expeditious and that the accused has a right to adequate time and facilities for the preparation of his defence.

19. The Chamber recalls that it previously set 21 February 2025 as the deadline for the final list of witnesses, list of evidence and for disclosure to be completed. Whilst the Chamber acknowledges the Defence's assurance that it will file a List of Witnesses and List of Evidence by this date, such lists will not be final.

20. The Chamber recalls that it may extend a time limit if 'good cause' has been shown. For the reasons that follow, the Chamber finds that 'good cause' has been shown.

21. As a preliminary matter, the Chamber notes that granting a limited extension at this stage will not delay the start of the Defence's presentation of evidence, noting the Defence's assurances that its first witness will commence testifying as scheduled on

³² Response, ICC-01/14-01/21-918-Conf, para. 6.

³³ Victims' Response, ICC-01/14-01/21-919-Conf, para. 13.

³⁴ Victims' Response, ICC-01/14-01/21-919-Conf, para. 13.

³⁵ Victims' Response, ICC-01/14-01/21-919-Conf, para. 10.

³⁶ Victims' Response, ICC-01/14-01/21-919-Conf, paras 11-12.

17 March 2025. Lastly, the Chamber observes that the Prosecution and CLRV do not oppose the Request.

22. In light of this context, turning to the substance of the Request, first, in respect of the four potential witnesses who may testify following exchanges with the [REDACTED], the Chamber recalls that the Defence previously indicated that it may seek an extension of time in respect of these witnesses³⁷ and that it has been doing everything in its power to secure their testimony. In this regard, the Chamber takes note of the Defence's submissions to the effect that discussions with the [REDACTED] are still ongoing and that it is waiting for the [REDACTED] to confirm, *inter alia*, the dates of meetings with potential witnesses. The Chamber finds that the Defence should be given more time to complete these discussions and that a limited extension will not unduly delay the proceedings.

23. This notwithstanding, the Chamber is concerned that the Defence alludes to requesting a further extension of time in respect of these potential witnesses.³⁸ In this regard, the Defence is ordered to be diligent and, should it anticipate requiring a ruling pursuant to article 57(3)(b) of the Statute, it is ordered to make such a request as soon as possible.

24. Second, in respect of the remaining potential witnesses identified by the Defence in the Request, the Chamber regrets the issues that have arisen in respect of these individuals.³⁹ Nevertheless, the Chamber observes that the cause of the delays appear to be issues which are outside of the Defence's control. Accordingly, the Chamber will grant a limited extension of time for these potential witnesses. Furthermore, the Defence is encouraged to liaise with the VWU to the extent that the latter can assist with the securing of the testimony of these potential witnesses.

25. Whilst the Chamber will grant an extension of time on this occasion, it is concerned about the prospect of delays in the Defence's presentation of evidence and repeated requests for extension of time. Although Mr Said has the right to adequate

³⁷ Defence Observations, [ICC-01/14-01/21-912-Red](#), para. 12

³⁸ See Request, ICC-01/14-01/21-917-Conf-Red, para. 23.

³⁹ Defence Observations, [ICC-01/14-01/21-912-Red](#), para. 12.

time and facilities for the preparation of his defence, this does not mean that the Defence's investigative activities should be unduly prolonged, particularly considering that the Chamber has repeatedly urged the Defence to take the necessary steps to prepare its case for some time.⁴⁰ In this regard, the Chamber expects the Defence to work diligently to complete outstanding investigative activities as soon as possible.

26. Taking the foregoing into consideration, rather than having multiple, staggered deadlines for completion of the investigative acts outlined, the Chamber considers it prudent to grant a general extension of time to 21 March 2025 for the Defence to update its List of Witnesses, List of Evidence and complete disclosure in respect of the outstanding matters identified in the Request. However, the Defence is ordered to keep the Chamber, parties and participants apprised of any relevant updates as they arise, including when certain investigative steps are completed. For the avoidance of doubt, the List of Evidence and List of Witnesses for any other Defence evidence and witnesses must be filed and disclosure must be completed by the original 21 February 2025 deadline.

27. By extension, the Chamber also considers it necessary to vary the deadline for the filing of applications pursuant to rule 68(2) and (3) insofar as these potential witnesses identified in the Request are concerned. Specifically, to the extent that the Defence will rely on these potential witnesses, it is ordered to file any applications pursuant to rule 68(2) and (3) for these witnesses identified in the Request no later than 21 March 2025.

B. Request for Cooperation

28. In respect of the request for cooperation from the [REDACTED], at the outset, the Chamber regrets that the Defence has only notified the Chamber at this late stage of its need for a request for cooperation. As repeatedly stressed, the Chamber has instructed the Defence on numerous occasions to file such requests as soon as possible and without delay.⁴¹

⁴⁰ See Order in relation to the Defence Notification of its Preliminary List of Witnesses, [ICC-01/14-01/21-909](#), para. 5 and references therein.

⁴¹ See Order in relation to the Defence Notification of its Preliminary List of Witnesses, [ICC-01/14-01/21-909](#), para. 5 and references therein.

29. Turning to the applicable law regarding cooperation requests, the Chamber recalls that such requests must meet three cumulative requirements of relevance, specificity and necessity.⁴² In respect of the requirement of specificity, the Chamber notes previous jurisprudence that ‘broad categories of documents without any type of limitation do not meet the conditions of specificity’. Whilst it would appear that the [REDACTED] has indicated that it can respond favourably to the Defence’s request, the Chamber notes that the Defence has not identified which documents it has requested cooperation in respect of. In this regard, the Chamber finds that the requirement of specificity has not been met as the Defence has not identified, at least to the Chamber, which specific category of documents, with sufficient clarity so as to enable ready identification, it requires.

30. Accordingly, the Chamber will not grant a request for cooperation at this stage. If the Defence wishes to make a renewed request to the Chamber, addressing the relevant requirements for requests for cooperation, it must do so no later than 26 February 2025.

⁴² See, for example, Decision on the Prosecution’s Request to Issue a Summons for P-0975, 2 April 2024, ICC-01/14-01/21-735-Conf, para. 14; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Yekatom Defence Request for Cooperation from the Special Criminal Court in the Central African Republic, 7 November 2023, ICC-01/14-01/18-2192, para. 3; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Yekatom Defence Request for Cooperation from Ireland, 28 July 2022, ICC-01/14-01/18-1531-Conf-Exp, confidential *ex parte*, only available to the Yekatom Defence, the Registry and the Competent Authorities of Ireland (confidential redacted version notified on 10 August 2022, ICC-01/14-01/18-1531-Conf-Red), paras 3-4 and the references cited therein.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request in part;

ORDERS the Defence to file a List of Witnesses and List of Evidence on 21 February 2025;

AUTHORISES the Defence to update its List of Witnesses and List of Evidence and complete disclosure in respect of the outstanding matters identified in the Request no later than 21 March 2025;

ORDERS the Defence to file any applications pursuant to rule 68(2) and (3) of the Rules for the outstanding potential witnesses identified in the Request no later than 21 March 2025;

REJECTS the Defence's request for cooperation; and

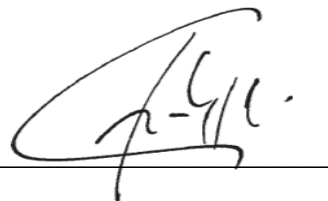
ORDERS the Defence to file a renewed request for cooperation, in accordance with the requirements for such requests as noted in paragraph 29 above, no later than 26 February 2025.



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 21 February 2025

At The Hague, The Netherlands