

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 March 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

Fourth Directions on the Conduct of Proceedings

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), 140, 141 of the Rules of Procedure and Evidence (the ‘Rules’), and regulation 40 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 9 March 2022, the Chamber issued the first set of directions on the conduct of proceedings (the ‘First Directions’).²
3. On 2 September 2022, the Chamber adopted the Protocol on the practices to be used to familiarise witnesses for giving evidence³ and the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses.⁴
4. On 16 September 2022, the Chamber issued a second set of directions (the ‘Second Directions’).⁵
5. On 8 October 2024, the Chamber issued the Third Directions on the Conduct of Proceedings (the ‘Third Directions’)⁶ 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

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

² Directions on the Conduct of Proceedings, 9 March 2022, [ICC-01/14-01/21-251](#). Attached to the Directions was the Witness Preparation Protocol, [ICC-01/14-01/21-251-AnxA](#).

³ Decision on the Adoption of Two Witness-Related Protocols, [ICC-01/14-01/21-446-AnxI](#).

⁴ Decision on the Adoption of Two Witness-Related Protocols, [ICC-01/14-01/21-446-AnxII](#).

⁵ Additional Directions.

⁶ Third Directions on the Conduct of Proceedings, 8 October 2024, [ICC-01/14-01/21-873](#).

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.⁷

6. On 15 November 2024, the Prosecution formally closed the presentation of its evidence.⁸ 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.

7. On 17 January 2025, the Defence provided a preliminary list of seven witnesses, one of whom the Defence would call to testify *viva voce* and the remainder it would seek the introduction of the prior recorded testimony pursuant to rule 68(2)(b) of the Rules (the ‘Notification’).⁹

8. On 24 January 2025, the Chamber ordered the parties to resolve any outstanding disputes concerning disclosure and lifting of redactions by 30 January 2025 and instructed the Defence to provide the Chamber with more information about the witnesses it was considering calling.

9. On 30 January 2025, the Defence filed a request for the Chamber to resolve a large number of outstanding disclosure disputes,¹⁰ to which the Prosecution responded on 9 February 2025.¹¹

⁷ Third Directions, [ICC-01/14-01/21-873](#), paras 13-16.

⁸ Notification of the Conclusion of the Prosecution’s Presentation of Evidence, 15 November 2024, [ICC-01/14-01/21-895](#).

⁹ Liste préliminaire des témoins 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-AnxA.

¹⁰ Version publique expurgée de la « Demande consolidée de la Défense visant à obtenir la divulgation d’éléments nécessaires à la préparation de la Défense conformément à la Règle 77 du Règlement de procédure et de preuve et visant à obtenir la levée d’un certain nombre d’expurgations », filed 30 January 2025 (ICC-01/14-01/21-913-Conf), 5 February 2025, [ICC-01/14-01/21-913-Red](#), with 38 confidential annexes.

¹¹ Prosecution Response to Defence Consolidated Request “Demande consolidée de la Défense visant à obtenir la divulgation d’éléments nécessaires à la préparation de la Défense conformément à la Règle 77 du Règlement de procédure et de preuve et visant à obtenir la levée d’un certain nombre d’expurgations”, (ICC-01/14-01/21-913-Conf), 7 February 2025, [ICC-01/14-01/21-914](#).

10. On 17 February 2025, the Defence filed a request for partial extension of some of the time limits imposed in the Third Directions.¹²

11. On 21 February 2025, the Defence filed its List of Evidence and its List of Witnesses.¹³

12. On 21 February 2025, the Chamber authorised the Defence to update its List of Evidence and List of Witnesses by 21 March 2025 and allowed it to file additional requests pursuant to rule 68 of the Rules in relation to a limited number of identified potential witnesses.¹⁴

13. On 25 February 2025, the Chamber issued a first ruling on some of the disclosure disputes between the parties and invited further submissions.¹⁵

14. On 3 March 2025, the Defence filed a request to introduce the testimony of four witnesses pursuant to rule 68(2)(b) of the Rules (the ‘Rule 68(2)(b) Request’).¹⁶

II. ANALYSIS

A. Requests pursuant to Rule 68(2)(b) of the Rules

15. The Chamber notes that the Defence plans to introduce a the prior recorded testimony of a number of witnesses, including witnesses that were interviewed or called by the Prosecution in another case, but has not given any indication as to whether these witnesses have consented to introduce their statements for the Defence or to testify in

¹² Version publique 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), 24 February 2025, [ICC-01/14-01/21-917-Red](#). The Prosecution and the Common Legal Representative responded on 20 February 2025: 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; 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), 20 February 2025, ICC-01/14-01/21-919-Conf.

¹³ Notification de la liste de témoins et de la liste des éléments de preuve 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, 21 February 2025, [ICC-01/14-01/21-921](#).

¹⁴ Decision on the Defence’s Request for an Extension of Time to File its Final List of Witnesses, List of Evidence and Complete Disclosure, 21 February 2025, [ICC-01/14-01/21-920-Red](#).

¹⁵ Decision on Disclosure Disputes, 25 February 2025, [ICC-01/14-01/21-925](#).

¹⁶ Requête visant à introduire la Déclaration Antérieure des témoins P-0015, P-0025, P-2926 et P-0405 en vertu de la Règle 68(2)(b) du Règlement de procédure et de preuve, 3 March 2025, ICC-01/14-01/21-931-Conf (with one confidential annex).

person in case the Chamber does not allow the introduction of their prior recorded testimony. In order to avoid delays, the Defence is instructed to ask the witnesses whether they would be prepared to testify in person if the Chamber were to reject the Rule 68(2)(b) Request.

- a. If the witness is prepared to testify, the Defence must prepare a Witness Information Form (the ‘WIF’)¹⁷ as soon as possible and submit it to the VWU on a provisional basis in order to allow the latter to respond as quickly as possible in case the Chamber rejects the Rule 68(2)(b) Request.
- b. If the witness is not prepared to testify, the Defence must inform the Chamber whether it intends to ask the Chamber to summons him or her as soon as possible if the Chamber rejects the Rule 68(2)(b) Request.

B. Closing of the Defence Case

16. Given the relatively limited number of witnesses called by the Defence and the comparatively larger number of witnesses whose testimony the Defence wishes to introduce pursuant to rule 68(2)(b) of the Rules, it is expected that the last witness will finish testifying before the conditions of rule 68(2)(b) of the Rules have been complied with. There is also a possibility that hearings may have to resume if the conditions of rule 68(2)(b) of the Rules are not met and the Chamber revokes the provisional authorisation of the introduction of the prior recorded testimony of particular witnesses.

17. However, for the purpose of avoiding loss of time, the Defence is instructed to file any application for the submission of evidence other than through a witness one week after the first block of witness(es). To the extent that the Defence may obtain additional evidence after the deadline as a result of its ongoing investigations which it has brought to the Chamber’s attention, it shall make additional requests to submit such evidence as soon as feasible.

¹⁷ Protocol on the practices to be used to familiarise witnesses for giving testimony at trial, 10 August 2022, [ICC-01/14-01/21-446-AnxI](#).

18. The Defence presentation of evidence will be closed after the last witness has testified, the Chamber has made a final ruling on all Rule 68(2) Requests, and the Chamber has ruled on all requests to introduce evidence other than through a witness.

C. Rebuttal Evidence

19. As noted in the First Directions, parties must seek the Chamber's leave to present evidence in rebuttal or rejoinder.¹⁸ If the Prosecution wishes to seek such leave, it must do so no later than one week after the closure of the Defence's presentation of evidence. The Defence must respond to such request no later than three days after being notified. In its response, the Defence must also indicate whether or not it wishes to submit evidence in rejoinder to the Prosecution's rebuttal evidence, unless the Prosecution seeks to call one or more witnesses to testify.

D. Evidence Called by the Chamber

20. At this moment, the Chamber does not intend to exercise its power under articles 64(6)(d) and 69(3) of the Statute to call for additional evidence. However, the Chamber may still do so after the conclusion of the Defence presentation of evidence.

E. Submission of Closing Briefs

1. Timing and Sequence

21. Given the relatively limited number of witnesses called by the Defence, the Chamber considers that the Prosecution and the CLRV must submit their Closing Briefs two weeks after the closure of the evidentiary phase of the proceedings pursuant to rule 141 of the Rules.

22. The Defence must submit its Closing Brief no later than two weeks after Mr Said has received a non-revised French translation of the Prosecution Brief.

2. Translation

23. It is expected that the Prosecution and the CLRV will submit their Closing Briefs in English. Although Mr Said is not entitled to receive a formal translation of the

¹⁸ First Directions, [ICC-01/14-01/21-251](#), para. 11.

Closing Briefs,¹⁹ the Chamber is of the view that providing him with a non-revised translation of the Prosecution's Closing Brief would be beneficial.²⁰

24. The Prosecution is instructed to liaise with the Registry in advance of the deadline for submitting its Closing Brief in order to arrange translation. The Prosecution is also instructed to provide a Word version of its Closing Brief to the Registry at the latest on the day of filing. To the extent possible, it would be beneficial if translation of certain parts of the Prosecution's Closing Brief could be provided to the Defence on a rolling basis before the filing deadline. The Defence is instructed to inform the Registry as to the parts of the Closing Brief that should be prioritised.

3. *CLRV Submissions*

25. Given that the burden of proof rests solely on the Prosecution, the Chamber requests the CLRV to focus her submissions on matters that are relevant to the personal interests of the victims.²¹ She may also make submissions in relation to the impact of the alleged crimes on the victims, including the harm they suffered either directly or indirectly as a result of the crimes alleged against Mr Said.

4. *Reference to both language versions of transcripts and prior recorded testimony*

26. Since the parties and participants are working in different working languages of the Court, the Chamber expects them to make reference to both the English and the French versions of any transcripts in their Closing Briefs. The parties and participants are also expected to refer to both English and French versions (to the extent they exist) of any prior recorded testimony they rely on.

¹⁹ Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, Decision on Mr Gbagbo's request for translation and an extension of time for the filing of a response to the document in support of the appeal, 22 August 2013, [ICC-02/11-01/11-489](#); Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the request for suspension of the time limit to respond to the Prosecutor's Trial Brief submitted by the Defence for Mr Gbagbo, 27 March 2018, [ICC-02/11-01/15-1141](#).

²⁰ See, ceteris paribus, Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the Defence requests relating to the Prosecution's Pre-Trial Brief, 16 September 2015, [ICC-02/11-01/15-224](#); Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on Mr Gbagbo's Request for revised and corrected translations of the Trial Brief and related orders, 7 June 2018, [ICC-02/11-01/15-1177](#).

²¹ Decision on matters relating to the participation of victims during the trial, 13 April 2022, [ICC-01/14-01/21-278](#), paras 33, 38, and 44.

F. Reference to Submitted Evidence

27. The Chamber recalls that it has followed the submission approach and has postponed ruling on the admissibility of the evidence submitted by the parties until the deliberation phase. Moreover, the parties were allowed to submit items of evidence without going through a witness. This has already resulted in a large number of items of evidence being submitted into the case record. Article 74(2) of the Statute requires the Chamber to base its judgment on evidence that has been submitted and discussed before it at the trial. This has been interpreted to mean that the parties must at least have had a genuine opportunity to make arguments on the evidence, regardless of whether they have actually availed themselves of this opportunity.²² The opportunity to ‘discuss’ the evidence can take the form of written submissions as well as oral submissions before the Chamber.²³

28. The Chamber further recalls that, in the context of the Prosecution’s bar table motions, the Chamber noted that the Prosecution sought to submit more than 450 items of evidence that were not mentioned in the Prosecution’s Trial Brief and that the Prosecution’s explanations in terms of relevance was often quite vague and general.²⁴ The Chamber also observed that the fact that an item of evidence was already recognised as formally submitted would not prevent the parties from making further arguments on the admissibility of the evidence.²⁵ Although the parties did discuss a large number of items during the trial hearings, in some instances, they also submitted items of evidence in bulk.²⁶

²² Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, 8 March 2018, [ICC-01/05-01/13-2275-Red](#), footnote 1256; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Trial Judgment, 4 February 2021, [ICC-02/04-01/15-1762-Red](#), para. 249.

²³ Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, 21 March 2013, [ICC-01/05-01/08-3343](#), para. 224.

²⁴ Decision on the Prosecution’s Applications for Submission of Documents from the Bar Table, 13 February 2024, [ICC-01/14-01/21-694](#), paras 64-65.

²⁵ Decision on the Prosecution’s Applications for Submission of Documents from the Bar Table, 13 February 2024, [ICC-01/14-01/21-694](#), para. 67.

²⁶ For example, Transcript of hearing, ICC-01/14-01/21-T-122-CONF-ENG CT, 14 October 2024, pp. 24-25.

29. The Chamber therefore informs the parties that, if they wish the Chamber to consider a particular item of evidence, they must reference it specifically (where relevant, identify the pertinent passage(s) within the item) and provide a short explanation of the point or points they wish to raise in relation to such item if this is not already clear from the context. Similarly, although the Chamber will consider the totality of the testimonial evidence submitted in this case, it is incumbent upon the parties to indicate the parts of the testimony which they consider relevant to their case and ensure that its relevance and probative value are clear. When the parties rely on circumstantial evidence, it will assist the Chamber if they explain which inference they wish the Chamber to draw from the specific evidence relied upon in relation to a particular proposition.

G. Closing Arguments

30. In principle, the Chamber intends to hold hearings to allow the parties to make oral closing arguments two weeks after the Defence has submitted its Closing Brief. The Prosecution will be given 90 minutes to respond to any specific points raised in the Defence's Closing Brief, followed by 60 minutes to summarise its case and make final submissions. The Common Legal Representative will then have 30 minutes for her final submissions. After this, the Chamber will adjourn and the following day, the Defence will be given 90 minutes to respond to any specific points raised by the Prosecution, followed by 60 minutes to summarise its case and make final submissions.

31. The Chamber hereby informs the parties and participants that it may ask for clarifications from the parties. In addition, the Chamber would consider it useful if the parties and participants provide a table of authorities, transcripts and any formally submitted evidence to which they intend to refer during closing arguments. The table should include full citations for each authority and excerpts of evidence that will be referenced during the hearing.

32. Finally, the Chamber expects the parties and participants to ensure that their submissions can be made in open session.

FOR THESE REASONS, THE CHAMBER HEREBY

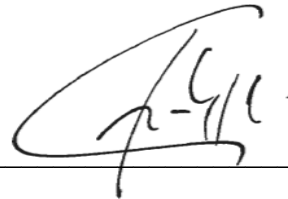
ADOPTS the aforementioned directions on the conduct of proceedings.



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 5 March 2025

At The Hague, The Netherlands