

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**No.: ICC-01/14-01/21
Date: 9 September 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

**Decision on the Defence's Request for Leave to Appeal the 'Decision on Three
Defence Requests for the Submission of Evidence from the Bar Table'**

Decision 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 article 82(1)(d) of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Defence’s Request for Leave to Appeal the ‘Decision on Three Defence Requests for the Submission of Evidence from the Bar Table’.

I. PROCEDURAL HISTORY

1. On 13 February 2024, the Chamber issued the ‘Decision on the Prosecution’s Applications for Submission of Documents from the Bar Table’ (the ‘Prosecution Bar Table Decision’).¹
2. On 17 April 2025, the Defence filed its first request to submit evidence from the Bar Table (the ‘First Request’).²
3. On 2 May 2025, the Defence filed its second request to submit evidence from the Bar Table (the ‘Second Request’).³
4. On 30 June 2025, the Defence filed its third request to introduce evidence from the Bar Table (the ‘Third Request’).⁴
5. On 30 July 2025, the Defence filed additional submissions in respect of a number of items produced by a member of the Defence team, Mr Florian François-Jacquemin, contained in the First Request (the ‘Defence Additional Submissions’).⁵

¹ Decision on the Prosecution’s Applications for Submission of Documents from the Bar Table, 13 February 2024, [ICC-01/14-01/21-694](#), with two public annexes.

² Requête de la Défense afin de soumettre des éléments de preuve par le biais d’une Bar Table, 17 April 2025, [ICC-01/14-01/21-966](#), with one confidential annex (ICC-01/14-01/21-966-Conf-AnxA).

³ Version publique expurgée de la « Deuxième Requête de la Défense afin de soumettre des éléments de preuve par le biais d’une Bar Table », 5 May 2025, [ICC-01/14-01/21-973-Red](#), with one confidential annex (ICC-01/14-01/21-973-Conf-AnxA). A confidential version was filed on 2 May 2025 (ICC-01/14-01/21-973-Conf).

⁴ Version publique expurgée de la « Troisième requête de la Défense afin de soumettre un élément de preuve par le biais d’une Bar Table », 7 July 2025, ICC-01/14-01/21-989-Red, with one confidential annex (ICC-01/14-01/21-989-Conf-AnxA). A confidential version was notified on 30 June 2025 (ICC-01/14-01/21-989-Conf).

⁵ Version publique expurgée de la « Demande visant à obtenir des clarifications calendaires concernant le moment où la Défense pourra être fixée sur la demande pendante du 17 avril 2025 (ICC-01/14-01/21-

6. On 22 August 2025, the Chamber issued the ‘Decision on Three Defence Requests for the Submission of Evidence from the Bar Table (ICC-01/14-01/21-966; ICC-01/14-01/21-973; ICC-01/14-01/21-989)’ (the ‘Impugned Decision’).⁶ The Impugned Decision, *inter alia*, rejected the introduction of CAR-D33-0015-0742 (a report prepared by Mr Florian François-Jacquemin) (the ‘Report’), as well as its associated material, on grounds that its prejudicial effect outweighed the probative value of the material.⁷ In addition, the Chamber held that it was not appropriate to allow Mr François-Jacquemin to testify as a Defence witness, and rejected the Defence Additional Submissions.⁸ The Impugned Decision also rejected the introduction of 11 items related to certain Prosecution witnesses which were in the possession of the Defence prior to their testimony, but not used by the Defence in court during their respective cross-examination.⁹

7. On 1 September 2025, the Defence requested leave to appeal the Impugned Decision, identifying two issues for leave to appeal (the ‘Request for Leave to Appeal’).¹⁰

966) spécifiquement concernant la soumission par Bar Table du rapport CAR-D33-0015-0742 et des éléments y afférents afin que la Défense puisse en tirer les conséquences procédurales dans les délais impartis. », 13 August 2025, ICC-01/14-01/21-1004-Red. A confidential version was filed on 30 July 2025 (ICC-01/14-01/21-1004-Red).

⁶ Decision on Three Defence Requests for the Submission of Evidence from the Bar Table (ICC-01/14-01/21-966; ICC-01/14-01/21-973; ICC-01/14-01/21- 989), 22 August 2025, ICC-01/14-01/21-1011-Red, with two public annexes. A confidential version was filed simultaneously (ICC-01/14-01/21-1011-Conf).

⁷ Impugned Decision, ICC-01/14-01/21-1011-Red, paras 85-91. This concerns Report, CAR-D33-0015-0742 and associated items CAR-D33-0015-0725; CAR-D33-0015-0726; CAR-D33-0015-0727; CAR-D33-0015-0728; CAR-D33-0015-0729; CAR-D33-0015-0730; CAR-D33-0015-0731; CAR-D33-0015-0732; CAR-D33-0015-0733; CAR-D33-0015-0734; CAR-D33-0015-0735; CAR-D33-0015-0736; CAR-D33-0015-0737; CAR-D33-0015-0738; CAR-D33-0015-0739; CAR-D33-0015-0740; CAR-D33-0015-0741.

⁸ Impugned Decision, ICC-01/14-01/21-1011-Red, para. 93.

⁹ Impugned Decision, ICC-01/14-01/21-1011-Red, paras 63-69. This concerns CAR-D33-0014-1284; CAR-D33-0014-1374; CAR-OTP-00001147; CAR-D33-0014-0658; CAR-OTP-2127-0778; CAR-D29-0001-0115; CAR-D29-0001-0122; CAR-OTP-2101-3413; CAR-D33-0014-0374; CAR-D33-0014-0381; CAR-OTP-2066-1422.

¹⁰ Demande d’autorisation d’interjeter appel de la “Decision on Three Defence Requests for the Submission of Evidence from the Bar Table (ICC-01/14-01/21-966; ICC-01/14-01/21-973; ICC-01/14-01/21-989)” (ICC-01/14-01/21-1011), 1 September 2025, ICC-01/14-01/21-1018-Conf.

8. On 4 September 2025, the Office of the Prosecutor (the ‘Prosecution’) filed a response to the Request for Leave to Appeal (the ‘Response to the Request for Leave to Appeal’).¹¹

9. The Common Legal Representative of Victims did not respond to the Request for Leave to Appeal.

II. SUBMISSIONS

10. In the Request for Leave to Appeal, the Defence identifies two issues for appeal: (i) whether the Chamber erred in law by refusing the introduction of the Report and its related material through the Bar Table, and prohibiting the Defence team member from testifying; and (ii) whether the Chamber erred in law by refusing to introduce 11 items relating to fully *viva voce* or rule 68(3) witnesses.

1. *First Issue*

11. In support of its submission that the Chamber erred in law by refusing the introduction of the Report and its related material through the Bar Table, and prohibiting the Defence team member from testifying, the Defence makes a number of discrete arguments.

12. First, the Defence submits that in rejecting the introduction of the Report and its related material, the Chamber applied criteria that it did not apply when considering the Prosecution’s Bar Table motions.¹² In this regard, the Defence avers that in the Prosecution Bar Table Decision, the Chamber merely relied, at the request of the Defence, on the fact that the Prosecution was already planning on calling some of its investigators to testify, and thus it was logical that the related items should be submitted through them instead of the Bar Table.¹³ The Defence submits that there is nothing in the Prosecution Bar Table Decision to suggest that the Chamber could prohibit a party from filing evidence by the Bar Table forcing it to add a person to its witness list.¹⁴

¹¹ Prosecution’s response to Defence’s request for leave to appeal the “Decision on Three Defence Requests for the Submission of Evidence from the Bar Table (ICC-01/14-01/21-966; ICC-01/14-01/21-973; ICC-01/14-01/21-989)” (ICC-01/14-01/21-1011), 4 September 2025, ICC-01/14-01/21-1023-Conf.

¹² Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 21.

¹³ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 22.

¹⁴ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, paras 22-23.

13. The Defence further posits that the Prosecution submitted a large amount of evidence through the Bar Table, when individuals could have been identified to provide useful evidence on those items.¹⁵

14. Second, the Defence argues that there is a fundamental difference in treatment between it and the Prosecution as the Prosecution obtained a decision on its Bar Table motions before its witnesses testified and therefore the Prosecution was able to introduce evidence rejected in the Prosecution Bar Table Decision through its witnesses.¹⁶ The Defence submits that it suffers irreparable prejudice because the Impugned Decision was rendered after the witnesses have already testified, which in turn is a violation of the principle of equality of arms.¹⁷

15. Third, the Defence submits that the Chamber applied criteria to its assessment of the Report which relate to its admission rather than its submission.¹⁸ The Defence avers that these criteria are not relevant for rejecting the submission of evidence and if the Chamber was going to take this approach then it should give the Parties its position on the credibility of all witnesses and the Prosecution's evidence, rather than just this item.¹⁹

16. Fourth, the Defence avers that at the time of the mission to Bangui it was not aware of the criteria for the introduction of reports by team members because such criteria do not exist in the Court's legal framework, noting that they were only formalised following decisions by the Chamber, which were rendered after the mission took place.²⁰ In this regard, the Defence submits that the Chamber's approach causes unfairness to the Defence.²¹

17. Fifth, the Defence submits that the Chamber has prevented it from calling the member of the Defence team on the basis of criteria that are not provided for in the legal framework of the Court.²² In this regard, the Defence notes that Mr François-

¹⁵ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, paras 24-25.

¹⁶ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 27.

¹⁷ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 27.

¹⁸ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 28.

¹⁹ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 28.

²⁰ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 29.

²¹ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 29.

²² Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 30.

Jacquemin is not counsel in the present case and therefore the Chamber's earlier decision finding that co-counsel could not testify does not apply to Mr François-Jacquemin.²³ Furthermore, the Defence submits that the other identified criteria set out by the Chamber for not allowing Mr François-Jacquemin to testify are new and have no legal basis.²⁴ In this vein, the Defence avers that the Chamber did not carry out any similar assessment for Prosecution witnesses who are members of the Prosecution team, making reference to P-3108 and P-3114.²⁵

18. In sum, the Defence submits that the Chamber has applied criteria to Mr François-Jacquemin's items which have no legal basis and call into question the principle of equality of arms, thus invalidating the Impugned Decision.²⁶

19. In the Response to the Request for Leave to Appeal, the Prosecution submits that the First Issue should be rejected as the Defence 'merely expresses its disagreement' with the Impugned Decision.²⁷ The Prosecution avers that the Chamber based its decision on Mr François-Jacquemin's items 'impartially and irrespective of which Party submitted them.'²⁸ The Prosecution submits that the Chamber 'clearly distinguished' between the status and involvement of Prosecution investigators and Mr François-Jacquemin and, in view of the particular nature of the evidence, 'deemed it fit to assess the admissibility and probative value' of the items.²⁹ In this regard, the Prosecution posits that the Chamber acted within the scope of the Directions on the Conduct of Proceedings, whereby 'it retained the discretion to decide to rule on any specific objection in advance of the judgment'.³⁰

20. In respect of the Defence's submission that it suffers prejudice given that the Impugned Decision was issued after the Defence had already called its witnesses, the Prosecution submits that the Chamber already dealt with this issue in the Impugned Decision.³¹ In this regard, the Prosecution argues that the Chamber reiterated that the

²³ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 30.

²⁴ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 30.

²⁵ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 30.

²⁶ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 31.

²⁷ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 21.

²⁸ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 23.

²⁹ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, paras 24-25.

³⁰ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 25.

³¹ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 28.

‘Defence has had ample opportunity and resources to carry out its investigative missions’, and makes reference, *inter alia*, to the timing of the Defence mission, the Chamber’s earlier holding regarding the Court’s Legal Aid Policy and regulation 139(2) of the Regulations of the Registry.³²

2. *Second Issue*

21. The Defence submits that the Chamber erred in law by refusing to introduce 11 items of evidence relating to fully *viva voce* and rule 68(3) witnesses.³³ In this regard, the Defence submits that the Chamber took into consideration irrelevant criteria, namely that a witness could have commented on the items of evidence, noting that if such criteria exist then should have been applied to all items sought to be introduced through the Bar Table.³⁴ The Defence avers that, at this stage of the proceedings, the only relevant criteria for the submission of evidence are *prima facie* relevance and authenticity and not what a witness may have hypothetically said about an item.³⁵ The Defence submits that the fact that a witness could have said something about an item should not serve as a reason to reject its submission.³⁶

22. The Defence further posits that there is unequal treatment between the Prosecution and Defence, noting that the Prosecution was allowed to submit evidence through the Bar Table that was clearly related to witnesses.³⁷ Furthermore, the Defence argues that the fact that the Prosecution Bar Table Decision was rendered prior to the testimony of its witnesses allowed it the opportunity to introduce items which the Chamber rejected in the Prosecution Bar Table Decision.³⁸ The Defence submits that the Impugned Decision therefore causes the Defence irreparable prejudice because it has been rendered after the witnesses have testified and the Defence has no remedy for submitting evidence that is useful to its case.³⁹

³² Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 28.

³³ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 32.

³⁴ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 33.

³⁵ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 33.

³⁶ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 33.

³⁷ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 34.

³⁸ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 34.

³⁹ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 34.

23. Last, the Defence submits that the Chamber's assertion that the Defence should have submitted the evidence in court does not take into account that the time for cross-examination was limited and the Defence had to make choices on the items discussed with witnesses.⁴⁰ The Defence avers that it was diligent in submitting the vast majority of evidence through witnesses, which is evidenced by the fact that there are only 11 items in this category which it sought introduction of through the Bar Table.⁴¹

24. In the Response to the Request for Leave to Appeal, the Prosecution submits that the Second Issue should be rejected because the Defence expresses a 'mere disagreement' with the Impugned Decision.⁴² In respect of the Defence's submission that the Chamber relied on irrelevant criteria, the Prosecution submits that the Defence merely disagrees with the Impugned Decision and the Chamber 'clearly identifies the factors' it considered in its assessment of the formal submission of items.⁴³ In this regard, the Prosecution recalls that 'the Chamber clearly informed the Parties, during the Prosecution case, that it could disallow the introduction of an item of evidence via the Bar Table if it were of the view that a witness who can meaningfully comment on the relevance, authenticity, and probative value of an item of evidence had been identified.'⁴⁴ The Prosecution concludes that 'the evidence presented by the Parties was assessed in the same manner, thereby raising no issue of inequality of arms.'⁴⁵

25. In respect of the Defence's submission that it was unable to tender the items through the related witnesses, the Prosecution avers that 'the Defence fails to identify any error of law and rather, expresses its mere disagreement with prior decisions of the Chamber on time allocation for cross-examination of witnesses, and additionally fails to point to specific examples.'⁴⁶

26. In respect of the requirements that the identified issues significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, the Defence submits that the Impugned Decision prevents an individual exercising investigative

⁴⁰ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 35.

⁴¹ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 35.

⁴² Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 29.

⁴³ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 31.

⁴⁴ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 31.

⁴⁵ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 31.

⁴⁶ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 32.

functions from testifying, violating the equality of arms between the Parties and the fairness of the proceedings.⁴⁷ Furthermore, the Defence argues that the outcome of the trial could be affected because the Defence is now not allowed to present evidence on the topography of the PK9 barrier, which is a location covered by the charges.⁴⁸ In the same vein, the Defence submits that by prohibiting the Defence from submitting relevant evidence, it deprives the Defence of its right to present a full defence.⁴⁹

27. Last, the Defence avers that an immediate resolution by the Appeals Chamber of the issues identified for leave to appeal would materially advance proceedings because if the Appeals Chamber is not seized then the Judgment could be rendered without the Defence having the opportunity to present all necessary evidence to ascertain the truth.⁵⁰

28. In the Response to the Request for Leave to Appeal, the Prosecution submits that the Defence ‘reiterates its previous arguments’, and ‘the Defence does not address explicitly the issue of the expeditious conduct of the proceedings.’⁵¹ In respect of the requirement that immediate resolution by the Appeals Chamber may materially advance the proceedings, the Prosecution avers that the Defence’s contentions are ‘unfounded’, that the Impugned Decision ‘duly considered the fairness of the proceedings’, and the Chamber ‘provided the Defence with adequate time to present the findings of its investigations.’⁵²

⁴⁷ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 38

⁴⁸ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 38.

⁴⁹ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 39.

⁵⁰ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, paras 40-41.

⁵¹ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 34.

⁵² Response to the Request for Leave to Appeal, ICC-01/14-01/21-1023-Conf, para. 37.

III. APPLICABLE LAW

29. The Chamber recalls its previous decisions,⁵³ as well as prior jurisprudence of the Court, regarding the application of article 82(1)(d) of the Statute.⁵⁴ For the purposes of the present decision, the Chamber adopts its findings as set out in its previous decisions on requests for leave to appeal.

IV. ANALYSIS

30. For the reasons articulated below, the Chamber finds that none of the issues identified for leave to appeal satisfy the cumulative requirements of article 82(1)(d) of the Statute.

31. In respect of the First Issue, at the outset, the Chamber observes that the Defence repeats, almost verbatim, submissions made in the Defence Additional Submissions. For example, the Defence reiterates submissions to the effect that the Prosecution submitted a large number of documents through the Bar Table even though individuals (who were not witnesses) could have provided useful information about those documents, and there is no reason that evidence collected by a member of a defence

⁵³ See, *inter alia*, Decision on the Defence's Request for Leave to Appeal the 'Decision on the Prosecution's Third Request for In-Court Protective Measures', 19 March 2024, [ICC-01/14-01/21-725](#), para. 19; Decision on the Defence's Request for Reconsideration of or Leave to Appeal the Decision on the Prosecution's Fifth Request under Rule 68(2)(b), 16 December 2022, [ICC-01/14-01/21-575](#), paras 20-23; Decision on the Defence's Request for Leave to Appeal the 'Decision on the Prosecution's First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules' (ICC-01/14-01/21-507-Conf), 28 November 2022, [ICC-01/14-01/21-562](#), paras 16-18; Decision on Defence Request for Leave to Appeal (ICC-01/14-01/21-440) and Reasons for Decision Rejecting Leave to Appeal (ICC-01/14-01/21-425), 6 September 2022, [ICC-01/14-01/21-473](#), paras 11-13; Decision on Defence Request for Reconsideration or Leave to Appeal the 'Directions on the Conduct of Proceedings' (ICC-01/14-01/21-251), [ICC-01/14-01/21-275](#), paras 9-11; Decision on Defence Request for Leave to Appeal the 'Decision Setting the Commencement Date of the Trial and Related Deadlines' (ICC-01/14-01/21-243), 15 March 2022, [ICC-01/14-01/21-258](#), paras 11-15; Decision on Defence Request for Leave to Appeal Decision on the Prosecution's Request for an Order to Exclude Defence Counsel from the Defence's List of Witnesses and Evidence, 26 March 2025, [ICC-01/14-01/21-952](#); Decision on Defence Request for Leave to Appeal the Decision on Request for Clarification of the Decision on a Request for Cooperation by the Defence, 2 May 2025, [ICC-01/14-01/21-972](#), para. 13.

⁵⁴ See Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the Demande d'autorisation d'interjeter appel de la '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' (ICC-02-11-01/15-1141), 13 April 2018, [ICC-02/11-01/15-1150](#), para. 8; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Defence request for leave to appeal the decision appointing experts on reparations, 29 June 2017, [ICC-01/05-01/08-3536](#), paras 4-7; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 5 September 2018, [ICC-02/04-01/15-1331](#), para. 8.

team cannot be introduced through the Bar Table if it is not planned that this individual will testify.⁵⁵ The Chamber notes that all these submissions were considered in the Impugned Decision,⁵⁶ and the Defence's submissions therefore represent a mere disagreement with the Chamber's reasoning.

32. The Chamber notes that the Defence makes a number of submissions in support of the First Issue regarding unequal treatment between the Defence and Prosecution, making reference, *inter alia*, to the apparent difference in timing of the Impugned Decision, compared with the Prosecution Bar Table Decision, and the fact that the Chamber assessed the admissibility of the Report in the Impugned Decision and did not do so for the Prosecution's items.⁵⁷

33. The Chamber finds that these submissions are inapposite and misrepresent the fact that both Parties were on notice of the Chamber's approach to the introduction of evidence through the Bar Table following the rendering of the Prosecution Bar Table Decision in February 2024.⁵⁸ In this regard, when the Defence made its Bar Table requests in 2025, it did so in full knowledge of the legal framework, which was reiterated and applied in the Impugned Decision.⁵⁹

34. Furthermore, the Chamber notes, as stated in the Directions on the Conduct of Proceedings and repeated in the Prosecution Bar Table Decision, and in the Impugned Decision, that it retains the discretion to pronounce on the admissibility of items of evidence at this stage of the proceedings.⁶⁰ Contrary to the Defence's implication,⁶¹ exercise of that discretion in relation to a particular item does not mean that the Chamber must give its position on the admissibility of *all* items at this stage of the proceedings.

⁵⁵ See Defence Additional Submissions, ICC-01/14-01/21-1004-Red, paras 17-21; Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, paras 22-25.

⁵⁶ See Impugned Decision, ICC-01/14-01/21-1011-Red, para. 84.

⁵⁷ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, paras 27-28.

⁵⁸ See Prosecution Bar Table Decision, [ICC-01/14-01/21-694](#), paras 38-40, 42-44.

⁵⁹ See Impugned Decision, ICC-01/14-01/21-1011-Red, paras 38-43. *See also* paras 65-66.

⁶⁰ See Directions on the Conduct of Proceedings, [ICC-01/14-01/21-251](#), para. 21; Prosecution Bar Table Decision, [ICC-01/14-01/21-694](#), para. 38; Impugned Decision, ICC-01/14-01/21-1011-Red, para. 38.

⁶¹ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 28.

35. Accordingly, the Chamber finds the Defence's submissions regarding unequal treatment in the Chamber's approach misrepresents the Impugned Decision and the procedure relating to the submission of evidence in the present case.

36. The Defence also asserts that it was unfair for the Chamber to require the Defence to comply with criteria for the admission of reports by a member of the Defence team, given that these criteria are not set out in the legal framework or jurisprudence of the Court and became clear to the Defence only in the Impugned Decision.⁶² The Chamber finds that the Defence's arguments misrepresent and reflect a mere disagreement with the Impugned Decision or misunderstand principles applicable to the admission and assessment of evidence under article 69(4) of the Statute. In assessing the standard evidentiary criteria in relation to the Report, the Chamber took into account, *inter alia*, the status of the source of the information and the nature of his relationship to the accused.⁶³ The Chamber considers, in this regard, that the Defence's arguments do not engage with the substance of the Impugned Decision and accordingly rejects the Defence's submissions.

37. Last, the Chamber notes that the Defence makes a number of submissions equating the position of Mr François-Jacquemin with Prosecution investigators who testified in the case, arguing that the Chamber did not apply the same considerations to their evidence.⁶⁴ The Chamber recalls that it clearly stated in the Impugned Decision that 'Mr François-Jacquemin's position is not analogous to a Prosecution investigator or analyst who does not examine witnesses in court on behalf of the Prosecution.'⁶⁵ Accordingly, the Chamber finds the Defence's submissions represent a mere disagreement with the Impugned Decision.

38. Taking the foregoing together, the Chamber finds that the First Issue does not constitute an appealable issue within the meaning of article 82(1)(d) of the Statute.

39. In respect of the Second Issue, the Chamber notes that the Defence submits that the Chamber applied irrelevant criteria in assessing whether evidence could be

⁶² Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, paras 29-30.

⁶³ See Impugned Decision, ICC-01/14-01/21-1011-Red, paras 86-91.

⁶⁴ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 30.

⁶⁵ Impugned Decision, ICC-01/14-01/21-1011-Red, para. 90.

introduced through the Bar Table.⁶⁶ The Chamber finds that this misrepresents the Impugned Decision.

40. First, as also set out in the Prosecution Bar Table Decision, the Chamber held that if a witness could be identified who can *meaningfully* comment on the relevance, authenticity or probative value of the item of evidence then it may disallow the introduction of that item via the Bar Table.⁶⁷ In this regard, the Chamber did not, as suggested by the Defence, reject the introduction of the items on the basis that witnesses could have hypothetically commented on them.⁶⁸

41. Second, the Chamber held that it was the responsibility of the Parties to assert whether a related witness exists through whom an item of evidence should be submitted and the Chamber would not independently enquire as to whether a related witness could be identified.⁶⁹ In the present instance, the Chamber recalls that the Prosecution identified that a number of items were connected with the testimony of certain witnesses.⁷⁰ The Chamber then duly assessed those items and found that the identified witnesses could have meaningfully commented on the items as they concerned the witnesses personally or the substance of the witnesses' testimony.⁷¹ The Chamber recalls that this approach is consistent with the approach taken in the Prosecution Bar Table Decision, where the Defence identified that a number of Prosecution witnesses could meaningfully comment on a number of items sought introduction of through the Bar Table by the Prosecution.⁷² In that particular instance, as with the present, the

⁶⁶ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 33.

⁶⁷ See Impugned Decision, ICC-01/14-01/21-1011-Red, paras 65, 67. See also para. 43.

⁶⁸ See Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 33.

⁶⁹ See Impugned Decision, ICC-01/14-01/21-1011-Red, para. 66 referring to the Prosecution Bar Table Decision, [ICC-01/14-01/21-694](#), para. 44.

⁷⁰ See Prosecution's response to "Requête de la Défense afin de soumettre des éléments de preuve par le biais d'une Bar Table" (ICC-01/14-01/21-966), 25 April 2025, [ICC-01/14-01/21-970](#), paras 19-21, 23. See also Impugned Decision, ICC-01/14-01/21-1011-Red, para. 63.

⁷¹ Impugned Decision, ICC-01/14-01/21-1011-Red, paras 65-69.

⁷² See Version publique expurgée de la « Réponse de la Défense à la « Prosecution's Fifth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9) » (ICC-01/14-01/21-321-Conf) déposée le 20 mai 2022 » (ICC-01/14-01/21-342-Conf) déposée le 2 juin 2022., 8 June 2022, [ICC-01/14-01/21-342-Red](#), paras 14, 18. A confidential version was filed on 2 June 2022 (ICC-01/14-01/21-342-Conf); Annex E to Réponse de la Défense à la « Prosecution's Second Application for Submission of Documents from the Bar Table Pursuant to Article 64(9), 6 May 2022, ICC-01/14-01/21-299-Conf-AnxE. See also Version publique expurgée de la « Réponse de la Défense à la « Prosecution's Second Application for Submission of Documents from the Bar Table Pursuant to Article 64(9) » (ICC-

Chamber assessed whether indeed such items were better introduced through those Prosecution witnesses and rejected a number of items that the Prosecution had sought to introduce through the Bar Table.⁷³

42. Based on the foregoing, the Chamber finds that it is misleading of the Defence to imply that there has been a difference of approach between the Parties. For the same reasons, the Chamber also rejects the Defence's submissions that the timing of the Impugned Decision causes irreparable prejudice to the Defence.⁷⁴ As noted above, the Defence was on notice regarding the Chamber's approach to the introduction of evidence through the Bar Table before the relevant Prosecution witnesses testified.⁷⁵ In this regard, the Chamber finds that the Defence knew that it would have to introduce the items, which were in its possession,⁷⁶ through the relevant witnesses rather than through the Bar Table. Accordingly, the Chamber finds that the Defence's submissions misrepresent the Impugned Decision.

43. The Chamber further rejects the Defence's submission that it did not have adequate time for cross-examination and that, by extension, it had to make choices as to what items it showed witnesses.⁷⁷ The Chamber finds this submission misleading and notes that for one of the identified witnesses (P-0481) the Defence did not use all of the time allotted to it for cross-examination⁷⁸ and for a further identified witness (P-0349) the Chamber allowed the Defence more time to conduct its cross-examination.⁷⁹

01/14-01/21-285-Conf) déposée le 25 avril 2022 » (ICC-01/14- 01/21-299-Conf) déposée le 6 mai 2022., 16 May 2022, [ICC-01/14-01/21-299-Red](#), paras 40-42. A confidential version was filed on 6 May 2022 (ICC-01/14-01/21-299-Conf).

⁷³ See Prosecution Bar Table Decision, [ICC-01/14-01/21-694](#), paras 85-91, 96.

⁷⁴ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 34.

⁷⁵ See paragraph 33 above. See also Prosecution Bar Table Decision, [ICC-01/14-01/21-694](#), paras 38-40, 42-44.

⁷⁶ See Impugned Decision, ICC-01/14-01/21-1011-Red, paras 68-69.

⁷⁷ Request for Leave to Appeal, ICC-01/14-01/21-1018-Conf, para. 35.

⁷⁸ The Chamber notes that the Prosecution questioned P-0481 (a fully *viva voce* witness) for approximately 3 hours and 51 minutes and the Defence for 1 hour and 43 minutes (see the metadata for P-0481 in eCourt). See also Transcript of hearing, 22 May 2024, ICC-01/14-01/21-T-072-CONF-ENG; Transcript of hearing, 23 May 2024, ICC-01/14-01/21-T073-CONF-ENG.

⁷⁹ The Chamber notes that the Defence originally estimated 3 hours for its cross-examination of P-0349 (see attachment to email from the Prosecution, dated 18 June 2024, at 16:44) and the Chamber allowed the Defence 4 hours and 34 minutes (see metadata for P-0349 in eCourt). See also Transcript of hearing, 16 July 2024, ICC-01/14-01/21-T-096-CONF-ENG, p. 3, lines 9-12, p. 4, lines 1-14 and, p. 46, lines 14-16.

Accordingly, the Chamber finds that the Defence misrepresents the procedure, which does not arise from the Impugned Decision.

44. Taking the foregoing together, the Chamber finds that the Second Issue does not constitute an appealable issue within the meaning of article 82(1)(d) of the Statute.

45. Notwithstanding the fact that the Chamber has found that none of the identified issues constitute appealable issues within the meaning of article 82(1)(d) of the Statute, the Chamber finds that an immediate resolution by the Appeals Chamber will not materially advance the proceedings. Accordingly, the Chamber rejects the Request for Leave to Appeal.

46. Last, the Chamber notes that the Parties have not filed public redacted versions of a number of filings.⁸⁰ The Chamber orders the Parties to file public redacted versions or request reclassification, as appropriate, as soon as possible and no later than two weeks from the notification of the present decision.

⁸⁰ ICC-01/14-01/21-1018-Conf; ICC-01/14-01/21-1023-Conf.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Appeal; and

ORDERS the Parties to proceed in accordance with paragraph 46 above.

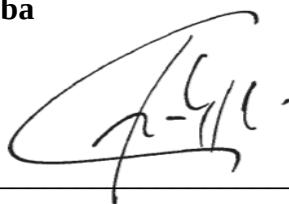


Judge Miatta Maria Samba

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 9 September 2025

At The Hague, The Netherlands