



Original: **English**

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

Date: **22 April 2022**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Prosecution Response to Defence Request for Leave to Appeal the Order on Page
Limits Pursuant to Regulation 37(1) of the Regulation of the Court**

Source: Office of the Prosecutor

Document 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 QC
Mr Mame Mandiaye Niang
Mr Eric MacDonald

Counsel for Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet
Tars Van Litsenborgh

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. The Defence's request for leave to appeal ("Request")¹ the Trial Chamber's order on page limits ("Order")² should be dismissed because the proposed issues do not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. Further, immediate resolution by the Appeals Chamber will not materially advance the proceedings.

II. SUBMISSIONS

2. The Defence seeks leave to appeal the Order in relation to two issues:
- a. Whether Regulation 37(1) of the Regulation of the Court ("Regulations") allows a Chamber to order that documents filed shall not exceed 12 pages instead of 20 ("First Issue");³
 - b. Whether Regulation 37(1) of the Regulations allows a Chamber to *generally* order that *all* documents filed shall not exceed 12 pages, instead of issuing *specific* orders based on the circumstances of each filing ("Second Issue").⁴
3. Both proposed issues arise from the Order. However, the Request fails to meet the other requirements under article 82(1)(d) in that neither of the issues 1) would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial nor 2) would their immediate resolution by the Appeals Chamber materially advance the proceedings.

¹ ICC-01/14-01/21-280 ("Request").

² ICC-01/14-01/21-277 ("Order").

³ Request, paras. 12-19.

⁴ Request, paras. 20-27.

The proposed issues would not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

4. The proposed issues do not meet article 82(1)(d) threshold since they do not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. The Order is consistent with regulation 37(1) allowing a Chamber to vary the page limit for documents filed with the Registry in the exercise of the Chamber's managerial functions and to ensure the expeditious conduct of the proceedings. Further, the Chamber expressly recalled that—if needed—page extensions will be granted.⁵ For this reason, the issues do not affect the fairness of the proceedings or the outcome of the trial, and indeed the Order rather advances the expeditious conduct of the proceedings.

5. The Defence nevertheless submits that the Order will negatively affect the fair and expeditious conduct of the proceedings because the Parties may not be allowed to properly, exhaustively and completely put forward their legal and factual arguments (*“pourra avoir été conduite sans que les Parties n’aient pu disposer des moyens nécessaires pour faire entendre leurs arguments de manière complète, exhaustive, juridiquement et actuellement exacte et argumentée devant les Juges”*).⁶ The Defence's submissions misrepresent the effects of the Order and in any event they are wholly speculative.

6. First, contrary to the Defence's submission, the Order does not *de facto* deprive the Parties of their *“bénéfice de 20 pages”*.⁷ The Defence assumes that, under regulation 37(1), the Parties have a non-derogable right to file documents up to 20 pages long. However, regulation 37(1) clearly states that the Parties can file 20 pages documents *unless* the Chamber orders otherwise. The caveat *“unless otherwise [...] ordered by the Chamber”* is an integral part of regulation 37(1) and defines the scope of the Parties'

⁵ [Order](#), para. 2.

⁶ [Request](#), para. 28.

⁷ [Request](#), para. 29.

entitlement when it comes to the length of the documents to be filed with the Registry. For this reason, although there is no certainty that the Chamber will grant any page extension for a total of 20 pages (*“rien ne garantit que les Parties et participants pourront disposer de pages additionnelles”*),⁸ the Order does not curtail the Defence’s rights as recognised by the Regulations. Rather, the Chamber properly exercised its power under regulation 37(1)⁹ and recalled that when appropriate the Chamber will grant the necessary page extensions.¹⁰

7. Second, while it is indeed not possible to predict with certainty when the Chamber will grant such extensions (*“il n’est pas possible de savoir si des circonstances exceptionnelles seront considérées”*),¹¹ it remains impermissibly speculative to suggest at this stage that the Chamber will *not* grant well-grounded requests.¹² To the contrary, the Chamber, composed of professional judges, is entitled to the presumption that it will act to ensure the fair and conduct of the proceedings, as guaranteed by the Statute.

8. Third, the Defence submits that it will be more difficult to seek a page extension because the starting point is 12 and not 20 pages.¹³ For example, to file a 30-page document it will be necessary to seek an extension of 18 rather than 10 pages, which they submit will be more difficult to argue (*“sera aussi plus difficile à argumenter”*).¹⁴ This reasoning is premised on the understanding that a Chamber would be unduly influenced by the maximum number of pages allowed. However, a Chamber will decide any page extension on the basis of the *total* number of pages that the circumstances of the case mandate.¹⁵ To use the example of the Defence, a party will have to demonstrate that in order to make adequate submissions the circumstances

⁸ [Request](#), para. 29.

⁹ [Order](#), para. 1.

¹⁰ [Order](#), para. 2.

¹¹ [Request](#), para. 29.

¹² [Request](#), para. 30.

¹³ [Request](#), para. 31.

¹⁴ [Request](#), para. 31.

¹⁵ See [ICC-01/05-01/13-256](#), referred to in the [Request](#), para. 13. The same authority also shows that, under regulation 37(1), a Chamber has the power to lower the page limit (“the page limits set forth in the Regulations *should be adapted* on a case-by-case basis in light of both the features and objectives of a specific submission and the overall circumstances of the proceedings at stake”, emphasis added).

require a 30-page document. Whether the starting point is 12 or 20 is immaterial to the Defence's submission and the Chamber's determination.

9. Fourth, the Defence's submission that the Order negatively affects any Party that, like the Defence, chooses French as working language¹⁶ is also unconvincing. By the same logic, all page limits envisaged by the Regulations should vary depending on the chosen working language.

10. Fifth, the Defence argues that the Order will force the Defence to devote their resources ("*consacrer ses moyens limités*")¹⁷ to assess the number of pages required for each filing, prepare requests under regulation 37(2), and adapt their filing to the page limit imposed.¹⁸ However, the Defence's submission overlooks that even assuming that there is such an "additional burden", this applies to all Parties, including the Prosecution. As such the Order does not affect the fairness of the proceedings.

11. Finally, contrary to the Defence's submission,¹⁹ the Order does not create any material "*inégalité*" between the Parties in this case and the Parties in other cases. Rather, the Chamber's order falls within the discretionary trial management functions that each Chamber exercises independently of any other Chamber. The fact that different Chambers may take different approaches to the conduct of proceedings does not as such affect "*l'égalité devant la loi*",²⁰ but rather is inherent even in the ordinary exercise of discretionary powers and the different circumstances of each case.

12. In any event, the Defence's submissions that the issues impact the fair and expeditious conduct of the proceedings and the outcome of the trial are wholly speculative and based on the unfounded assumption that the Defence will not be able to fully exercise its rights. To the contrary, the framework provided in the Order does not in itself affect, let alone curtail, the Defence's rights.

¹⁶ [Request](#), para. 34.

¹⁷ [Request](#), para. 32.

¹⁸ [Request](#), para. 33.

¹⁹ [Request](#), para. 34.

²⁰ *Contra* [Request](#), para. 34.

Immediate resolution of the proposed issues by the Appeals Chamber would not materially advance the proceedings

13. Immediate resolution of the proposed issues by the Appeals Chamber would not materially advance, but rather delay, the proceedings. The speculative nature of the Defence's submissions—which merely assume that the Chamber will not allow clear and exhaustive submissions from the Parties, and thus ultimately affect the Defence's rights²¹—fails to show concretely how the resolution of the proposed issues would actually advance the proceedings.

III. CONCLUSION

14. For the foregoing reasons, the Chamber should reject the Request.



Karim A. A. Khan QC, Prosecutor

Dated this 22nd day of April 2022

At The Hague, The Netherlands

²¹ [Request](#), para. 37.