

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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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
THE PROSECUTOR *v.* MAHAMAT SAID ABDEL KANI**

Confidential

Victims' response to the "*Requête de prorogation du délai de réponse à la 'Prosecution's third request to introduce prior recorded testimony pursuant to rule 68(3)' (ICC-01/14-01/21-348-Conf), à la 'Prosecution's Request for In-Court Protective Measures' (ICC-01/14-01/21-356-Conf) et à la 'Prosecution's fourth request to introduce prior recorded testimony pursuant to rule 68(3)' (ICC-01/14-01/21-357-Conf) en vertu de la Norme 35 du Règlement de la Cour*" (ICC-01/14-01/21-363-Conf)

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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

Mr Mame Mandiaye Niang

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of the Victims

Ms Sarah Pellet

Mr Tars Van Litsenborgh

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 Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Counsel representing the collective interests of future applicants as well as of applicants in the proceedings and participating victims (the “Legal Representative”),¹ hereby submits her response to the “*Requête de prorogation du délai de réponse à la ‘Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(3)’ (ICC-01/14-01/21-348-Conf), à la ‘Prosecution’s Request for In-Court Protective Measures’ (ICC-01/14-01/21-356-Conf) et à la ‘Prosecution’s fourth request to introduce prior recorded testimony pursuant to rule 68(3)’ (ICC-01/14-01/21-357-Conf) en vertu de la Norme 35 du Règlement de la Cour*” (the “Defence Request”).²

II. PROCEDURAL BACKGROUND

2. On 23 May 2022, the Prosecution filed the “Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3)” (the “First Rule 68(3) Application”),³ the “Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(2)(b)” (the “Fifth Rule 68(2)(b) Application”),⁴ the “Prosecution’s Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)” (the “Sixth Article 64(9) Application”),⁵ the “Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(3)” (the “Second Rule 68(3)

¹ See the transcript of the hearing held on 28 January 2022, [No. ICC-01/14-01/21-T-007-CONF-ENG CT](#) and [No. ICC-01/14-01/21-T-007-Red-ENT CT WT](#), p. 47, lines 12-24; the “Decision on matters relating to the participation of victims during the trial”, [No. ICC-01/14-01/21-278](#), 13 April 2022, para. 29; and the “Decision authorising 20 victims to participate in the proceedings”, [No. ICC-01/14-01/21-311](#), 27 May 2022.

² See the “*Requête de prorogation du délai de réponse à la ‘Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(3)’ (ICC-01/14-01/21-348-Conf), à la ‘Prosecution’s Request for In-Court Protective Measures’ (ICC-01/14-01/21-356-Conf) et à la ‘Prosecution’s fourth request to introduce prior recorded testimony pursuant to rule 68(3)’ (ICC-01/14-01/21-357-Conf) en vertu de la Norme 35 du Règlement de la Cour*”, [No. ICC-01/14-01/21-363-Conf](#), 16 June 2022 (the “Defence Request”).

³ See the “Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(3)”, with [Confidential Annex A](#), [No. ICC-01/14-01/21-322-Conf](#) and [No. ICC-01/14-01/21-322-Red](#), 23 May 2022.

⁴ See the “Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, with [Confidential Annex A](#), [No. ICC-01/14-01/21-323-Conf](#) and [No. ICC-01/14-01/21-323-Red](#), 23 May 2022.

⁵ See the “Prosecution’s Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)”, with [Confidential Annexes A](#) and [B](#), [No. ICC-01/14-01/21-325-Conf](#) and [No. ICC-01/14-01/21-325-Red](#), 23 May 2022.

Application”),⁶ and the “Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b)” (the “Sixth Rule 68(2)(b) Application) (jointly, the “Applications”).⁷

3. On 30 May 2022, the Defence requested an extension of time to respond to the Sixth Article 64(9) Application by 13 June 2022, the First Rule 68(3) Application and the Fifth Rule 68(2)(b) Application by 8 July 2022, and the Second Rule 68(3) Application and the Sixth Rule 68(2)(b) Application by 20 July 2022.⁸

4. On the same day, Trial Chamber VI (the “Chamber”) instructed the Prosecution and the Legal Representative to file any responses to said request by no later than 1 June 2022, given the proximity of the deadline for which extension was sought.⁹

5. On 1 June 2022, the Legal Representative filed a response, not opposing said request and requesting the Chamber, in case it would grant the Defence an extension of time, to grant an equivalent extension to her.¹⁰

6. On the same day, the Chamber extended the time limits for the Defence’s response to the Sixth Article 64(9) Application to 13 June 2022, for the Defence’s responses to the Fifth Rule 68(2)(b) Application and the Sixth Rule 68(2)(b) Application

⁶ See the “Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(3)”, with [Confidential Annex A, No. ICC-01/14-01/21-326-Conf](#) and [No. ICC-01/14-01/21-326-Red](#), 23 May 2022.

⁷ See the “Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(2)(b)”, with [Confidential Annex A, No. ICC-01/14-01/21-328-Conf](#) and [No. ICC-01/14-01/21-328-Red](#), 23 May 2022.

⁸ See the “*Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022*”, [No. ICC-01/14-01/21-334](#), 30 May 2022.

⁹ See the email from Trial Chamber VI to the parties and participants entitled “Decision reducing time limit for response to Defence filing ICC-01/14-01/21-344-Conf”, 30 May 2022 at 15:02.

¹⁰ See the “Victims’ response to the ‘*Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022*’ (ICC-01/14-01/21-334-Conf)”, [No. ICC-01/14-01/21-339](#), 1 June 2022.

to 8 July 2022, and for the Defence's responses to the First Rule 68(3) Application and the Second Rule 68(3) Application to 20 July 2022, while rejecting the Legal Representative's request for equivalent extensions of time for her responses.¹¹

7. On 8 June 2022, the Prosecution filed the "Prosecution's third request to introduce prior recorded testimony pursuant to rule 68(3)" (the "Third Rule 68(3) Application").¹²

8. On 13 June 2022, the "Prosecution's Request for In-Court Protective Measures",¹³ and the "Prosecution's fourth request to introduce prior recorded testimony pursuant to rule 68(3)" (the "Fourth Rule 68(3) Application")¹⁴ were notified.

9. On 16 June 2022, the Defence requested an extension of time to respond, for each witness called by the Prosecution to testify in Court, to any application for admission of his or her previous statement under rule 68 and to any application for protective measures, no later than one month before the anticipated date of their testimony.¹⁵

10. On the same day, the Chamber suspended the time limits for the Defence's responses to the Third Rule 68(3) Application, the "Prosecution's Request for In-Court Protective Measures", and the Fourth Rule 68(3) Application, and instructed the Prosecution and the Legal Representative to file any responses to the Defence Request

¹¹ See the "Decision on Defence Request for Extension of Time for Responses to Rule 68 Applications and Bar Table Motion (ICC-01/14-01/21-333-Conf)" (Trial Chamber VI), [No. ICC-01/14-01/21-341](#), 1 June 2022.

¹² See the "Prosecution's third request to introduce prior recorded testimony pursuant to rule 68(3)", with [Confidential Annex A](#), [No. ICC-01/14-01/21-348-Conf](#) and [No. ICC-01/14-01/21-348-Red](#), 8 June 2022.

¹³ See the "Prosecution's Request for In-Court Protective Measures", with Confidential, *EX PARTE*, only available to the Prosecution and the VWU Annex A, [No. ICC-01/14-01/21-356-Conf](#) and [No. ICC-01/14-01/21-356-Red](#), 13 June 2022 (dated 10 June 2022).

¹⁴ See the "Prosecution's fourth request to introduce prior recorded testimony pursuant to rule 68(3)", with [Confidential Annex A](#), [No. ICC-01/14-01/21-357-Conf](#) and [No. ICC-01/14-01/21-357-Red](#), 13 June 2022 (dated 12 June 2022).

¹⁵ See the Defence Request, *supra* note 2.

by no later than 21 June 2022; while not suspending the time limits for the Legal Representative.¹⁶

III. CLASSIFICATION

11. Pursuant to regulation 23bis(2) of the Regulations of the Court, the present filing is classified as “confidential”, since it refers to a document which was filed with the same classification. A public redacted version will be filed in due course.

IV. SUBMISSIONS

12. First, the Legal Representative regrets the tardiness of the Defence Request, only two working days before the deadline for the responses to the Third Rule 68(3) Application. Said course of action has an immediate negative impact on her workload, which is just as much as the Defence’s workload focused on the preparation of the approaching trial. Moreover, due to the non-suspension of her response deadline, she finds herself, as usual, not only having to respond to the main Prosecution request but also to an umpteenth Defence request for extension of time¹⁷ within a very tight

¹⁶ See the email from Trial Chamber VI to the parties and participants entitled “Order concerning ICC-01/14-01/21-363-Conf”, 16 June 2022 at 19:01. The Legal Representative maintains her observations as to the existence of a general and consistent practice of the Court to extend deadlines equally for all parties and participants, “in the interests of fairness” or “to remain on the same filing schedule”. See, in this regard, *inter alia*, the “Victims’ response to the ‘Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022’ (ICC-01/14-01/21-334-Conf)”, *supra* note 10, para. 7 and accompanying footnotes.

¹⁷ See the “Requête en suspension du délai de réponse au mémoire de première instance jusqu’à transmission de la traduction française du mémoire de première instance déposé par l’Accusation le 13 juin 2022 (ICC-01/14-01/21-359-Conf) et demande de report de la date de début du procès qui devra être fixée au moins 3 mois et 13 jours (73 jours ouvrés) après la transmission de la traduction française de ce mémoire de première instance”, [No. ICC-01/14-01/21-367-Conf](#), 20 June 2022 (dated 17 June 2022); the “Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022”, *supra* note 8; the “Version confidentielle expurgée de la ‘Requête de prorogation du délai de réponse à la ‘Prosecution’s second request to introduce prior recorded testimony pursuant to rule 68(2)(b)’ (ICC-01/14-01/21-307-Conf) et à la ‘Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(2)(b)’ (ICC-

deadline. As indicated by the Chamber, such a course of action “lends very little time for the Prosecution and participating victims to respond, and for the Chamber to ultimately rule on the Defence Request”.¹⁸ Moreover, it is not the first time that such a request is submitted at the eleventh hour.¹⁹

13. Second, the Legal Representative notes that the Defence now seeks another extension of time for its responses to the First Rule 68(3) Application and the Second Rule 68(3) Application, after already having been granted an extension to 20 July 2022.²⁰ In this regard, she recalls that she previously put forward that “consistently seeking extensions for all responses might defeat the purpose of sufficiently spreading [the] workload, since all responses would be due in June and July, with the commencement of the trial gradually approaching”.²¹ Indeed, while the Defence reminds the Chamber of a

01/14-01/21- 308-Conf) en vertu de la Norme 35 du Règlement de la Cour”, [No. ICC-01/14-01/21-313-Conf-Red](#) and [No. ICC-01/14-01/21-313-Red2](#), 17 May 2022; the “Version confidentielle expurgée de la ‘Requête de prorogation du délai de réponse à la ‘Prosecution’s first request to introduce prior recorded testimony pursuant to rule 68(2)(b)’ (ICC-01/14-01/21-289-Conf), à la ‘Prosecution Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses’ (ICC-01/14-01/21-290-Conf) et à la ‘Prosecution’s Request to vary the time limit for applications to introduce the prior recorded testimony of 20 witnesses pursuant to Rule 68’ (ICC-01/14-01/21-291-Conf) en vertu de la Norme 35 du Règlement de la Cour”, [No. ICC-01/14-01/21-300-Conf-Red](#) and [No. ICC-01/14-01/21-300-Red2](#), 6 May 2022; the email from the Defence to Pre-Trial Chamber II entitled “Demande de clarification procédure/ICC-01/14-01/21-294-Conf”, 12 May 2022 at 16:18.

¹⁸ See the email from Trial Chamber VI to the parties and participants entitled “Order concerning ICC-01/14-01/21-363-Conf”, 16 June 2022 at 19:01.

¹⁹ See, *inter alia*, the “Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022”, *supra* note 8. See also the “Victims’ response to the ‘Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022’ (ICC-01/14-01/21-334-Conf)”, *supra* note 10, para. 6.

²⁰ See the “Decision on Defence Request for Extension of Time for Responses to Rule 68 Applications and Bar Table Motion (ICC-01/14-01/21-333-Conf)”, *supra* note 11.

²¹ See the “Victims’ response to the ‘Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l’Accusation déposées en vertu de la Règle 68 ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la ‘Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)’ (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022’ (ICC-01/14-01/21-334-Conf)”, *supra* note 10, para. 6.

number of upcoming deadlines in June and July,²² it fails to clarify that said deadlines are a result of its earlier requests for extension of time,²³ and the Chamber's subsequent decisions.²⁴

14. Finally, with regard to the specific extension sought, the Legal Representative submits that the Chamber should be able to take decisions on applications for admission of previous witness statements under rule 68 and on applications for protective measures well in advance, rather than just a few weeks before the witnesses' appearance in Court, as requested by the Defence.²⁵ Indeed, she posits that it is in the interest of the fairness of the proceedings to have clarity and certainty on the procedure as early as possible. Delaying such decisions to a moment close before the witnesses' appearance in Court could place said witnesses before accomplished facts and unduly jeopardise not only their procedural safeguards, but also their well-being. In this respect, the Legal Representative recalls that, pursuant to rule 86 of the Rules of Procedure and Evidence, "[a] Chamber in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses in accordance with article 68 [of the Rome Statute]". The Chamber's obligation under article 68(1) of the Statute to ensure the protection of victims and witnesses is all the more important considering the remaining volatile

²² See the Defence Request, *supra* note 2, para. 27.

²³ See the "*Requête de prorogation en vertu de la Norme 35 du Règlement de la Cour portant sur le délai de réponse aux requêtes de l'Accusation déposées en vertu de la Règle 68* ICC-01/14-01/21-322-Conf, ICC-01/14-01/21-323-Conf, ICC-01/14-01/21-326-Conf et ICC-01/14-01/21-328-Conf, et à la 'Sixth Application for Submission of Documents from the Bar Table Pursuant to Article 64(9)' (ICC-01/14-01/21-325-Conf) notifiées à la Défense le 23 mai 2022", *supra* note 8; and the "*Version confidentielle expurgée de la 'Requête de prorogation du délai de réponse à la 'Prosecution's second request to introduce prior recorded testimony pursuant to rule 68(2)(b)' (ICC-01/14-01/21-307-Conf) et à la 'Prosecution's third request to introduce prior recorded testimony pursuant to rule 68(2)(b)' (ICC-01/14-01/21-308-Conf) en vertu de la Norme 35 du Règlement de la Cour*", *supra* note 17.

²⁴ See the "Decision on Defence Request for Extension of Time for Responses to Rule 68 Applications and Bar Table Motion (ICC-01/14-01/21-333-Conf)", *supra* note 11; and the "Decision on Defence Request for Extension of Time for Responses to Rule 68(2)(b) Applications (ICC-01/14-01/21-313-Conf-Exp)" (Trial Chamber VI), [No. ICC-01/14-01/21-314](#), 19 May 2022.

²⁵ See the Defence Request, *supra* note 2.

situation on the ground, and the correlated vulnerable position of victims, leading to the permanent fear they are living in, as expressed repeatedly.²⁶

FOR THESE REASONS, the Legal Representative opposes the Defence Request in its entirety.



Sarah Pellet

Dated this 21st day of June 2022

At The Hague, The Netherlands

²⁶ See, *inter alia*, the “Victims’ response to the ‘Demande de la Défense se fondant sur les informations actualisées portant sur le nombre de demandes de participation de victimes déposées et anticipées dans la présente affaire visant à ce que ces demandes soient communiquées aux Parties en application du Jugement d’appel du 14 septembre 2021 (ICC-01/14-01/21-171)’”, [No. ICC-01/14-01/21-263](#), 18 March 2022, para. 19; the “Victims’ observations on the ‘Registry Submission on the parameters for the organisation of a judicial site visit’ (ICC-01/14-01/21-241-Conf)”, [No. ICC-01/14-01/21-245-Conf](#), 28 February 2022, para. 14; and the transcript of the hearing held on 12 October 2021, [No. ICC-01/14-01/21-T-004-Red2-ENG](#), p. 23, lines 20-23: “[victims] are terrorised. They live in constant fear of being arrested in the streets in Bangui or to be recognised by their torturers [...], some of whom, continue to serve within the internal security forces or within the Central African Armed Forces, while others hold high offices within the Central African administration”. See also the “Brief Report on the Security Situation in the Central African Republic” with [Confidential Annex, No. ICC-01/14-01/21-365-Conf](#), 17 June 2022.