

**Cour  
Pénale  
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**International  
Criminal  
Court**

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

Date: **22 July 2022**

## **TRIAL CHAMBER VI**

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

### **SITUATION IN THE CENTRAL AFRICAN REPUBLIC**

#### **IN THE CASE OF *THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

#### **Public**

**Prosecution response to the Defence's "Demande d'autorisation d'interjeter appel de la "Decision on Defence Request for Suspension of Deadline for Response to the Trial Brief and Postponement of Commencement of Trial pending Translation of Trial Brief" (ICC-01/14-01/21-408)."**

**Source:** Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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**Victims Participation and Reparations  
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## Introduction

1. Trial Chamber VI (“Chamber”) should dismiss the Defence request for leave to appeal<sup>1</sup> the “Decision on Defence Request for Suspension of Deadline for Response to the Trial Brief and Postponement of Commencement of Trial pending Translation of Trial Brief”<sup>2</sup> (“Decision”).
2. None of the Defence’s proposed questions identifies an appealable issues within the meaning of article 82(1)(d) of the Statute. The Defence’s arguments either misread the Decision, relate to matters that have already been decided by the Appeals Chamber, or consist of mere disagreements with the Chamber’s reasonable findings and conclusions on its trial management discretion. The Defence Request should be dismissed on these bases alone.
3. In any event, should the Chamber decide not to dismiss the Defence Request on these bases, it should dismiss them because the proposed questions also fail to meet the remaining cumulative criteria under article 82(1)(d) of the Statute. The Defence Request does not elucidate how any of the four proposed issues affects the fair and expeditious conduct of the proceedings, or that they merit an immediate resolution by the Appeals Chamber.

## Submissions

### A. None of the four proposed questions raises an appealable issue arising from the Decision

4. The Court has consistently required that an appealable issue must be “an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion.”<sup>3</sup> No appealable

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<sup>1</sup> “Demande d’autorisation d’interjeter appel de la “Decision on Defence Request for Suspension of Deadline for Response to the Trial Brief and Postponement of Commencement of Trial pending Translation of Trial Brief” (ICC-01/14-01/21- 408),” [ICC-01/14-01/21-415](#), 18 July 2022 (“Defence Request”).

<sup>2</sup> [ICC-01/14-01/21-408](#), 14 July 2022 (“Decision”).

<sup>3</sup> [ICC-01/04-168 OA3](#), para. 9. See also [ICC-01/05-01/08-532](#), para. 17; [ICC-01/04-01/06-1557](#), para. 30.

issue arises if a party misreads or misrepresents the decision or record.<sup>4</sup> Nor is appellate intervention warranted where a matter has already been decided by the Appeals Chamber.<sup>5</sup>

5. None of the Defence's four proposed four issues satisfies these requirements.

(i) *First Proposed Issue identifies no appealable issue*

6. Under its first proposed issue, the Defence alleges that the Chamber did not determine whether the Prosecution's Trial Brief should be notified to the Accused in a language he understands, or that the Chamber otherwise erred in failing to consider that the Accused had a right to receive the Prosecution's Trial Brief in that language (more than three months before the commencement of trial).<sup>6</sup> In advancing these arguments, the Defence misreads the Decision. In any event, the question underlying this first proposed issue relates to a matter already decided by the Appeals Chamber. Therefore, the first proposed issue does not identify an appealable issue and should not be certified for appeal under article 82(1)(d) of the Statute.

7. *First*, contrary to the Defence Request, the Chamber determined that the official translation into French of the Trial Brief was not a precondition for Mr Said to set out the elements and strategy of his defence.<sup>7</sup> In particular, it stressed that he had already been notified in the language he fully understands in detail of the nature, cause and content of the charges — not only by the Confirmation Decision, but also other additional documents, including the Document Containing the Charges, and the Prosecutor's Pre-Confirmation Brief.<sup>8</sup>

8. Thus, the Chamber did not simply, as the Defence Request claims, limit itself "exclusively [to] the question of the effective involvement of the Accused in his

<sup>4</sup> See e.g., [ICC-01/04-01/10-487](#), paras. 32-33; [ICC-01/05-01/13-1489](#), paras. 9, 10; [ICC-01/05-01/08-75](#), para. 32.

<sup>5</sup> [ICC-01/05-01/08-2487-Red](#), para. 28.

<sup>6</sup> Defence Request, paras. 19-30.

<sup>7</sup> Decision, para. 17.

<sup>8</sup> Decision, para. 14.

Defence”<sup>9</sup> (which, in any event, would still necessarily mean that the Chamber was satisfied that Mr Said had all the relevant information in a language he fully understands, in order to enable him to effectively participate in his defence). Rather, the Chamber also specifically addressed whether it was required for the Accused to receive a French translation of the Prosecution Trial Brief (more than three months before the commencement of trial) in circumstances where he had already been fully notified “of detailed information regarding the Prosecution’s case against him for some time”<sup>10</sup> in a language he fully understands including by the Confirmation Decision.<sup>11</sup> The Defence’s misreading of the Decision thus means that it fails to identify an appealable issue under article 82(1)(d).<sup>12</sup>

9. *Second*, and in any event, to the extent that the Defence claims that the Prosecution’s -Trial Brief is the “only document presenting the charges”<sup>13</sup> — and thus, in its view, must be conveyed to the Accused in a language he fully understands in order to give effect to the right under article 67(1)(a)) — this matter has already been settled by the Appeals Chamber. As such, the Defence cannot identify any error of law in the Decision — or indeed any appealable issue meriting appellate intervention.<sup>14</sup>

10. As underlined by the Appeals Chamber, it is the Confirmation Decision — a document that Mr Said has for several months already been notified of in a language that he fully understands — which is the primary instrument which not only “defines the parameters of the charges,”<sup>15</sup> but also sets out “where and how the detailed information about the charges is to be provided to the accused.”<sup>16</sup> Consequently, since it has already been determined that it is the Confirmation Decision that primarily

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<sup>9</sup> Defence Request, para. 20.

<sup>10</sup> Decision, para.14.

<sup>11</sup> Decision, para. 14.

<sup>12</sup> [ICC-01/04-01/10-487](#), paras. 32-33; [ICC-01/05-01/13-1489](#), paras. 9, 10; [ICC-01/05-01/08-75](#), para. 32.

<sup>13</sup> Defence Request, paras. 22-30.

<sup>14</sup> [ICC-01/05-01/08-2487-Red](#), para. 28.

<sup>15</sup> [ICC-01/04-01/06-3121-Red](#), para. 124.

<sup>16</sup> [ICC-01/04-01/06-3121-Red](#), para. 124.

notifies the charges, appellate intervention to the same Appeals Chamber on essentially the same question is uncalled for.

11. *Third* — again in any event — the Defence merely disagrees with the Chamber’s reasonable assessment that the absence of an official translation into French of the Trial Brief did not undermine the Accused’s ability to set out the elements and strategy of his defence, given all the documents that Mr Said has already received providing detailed information regarding the Prosecution’s case against him (including the Confirmation Decision).<sup>17</sup> Such mere disagreement with the Decision, moreover regarding a matter that concerns the Chamber’s trial management discretion, is not sufficient to identify an appealable issue under article 82(1)(d).<sup>18</sup> The first proposed issue should therefore be rejected.

(ii) *Second Proposed Issue constitutes no appealable issue*

12. The Defence’s second proposed issue concerns the Chamber’s consideration of the language skills of the Defence Team.<sup>19</sup> This issue too either misrepresents the Decision, or constitutes a mere disagreement with the Chamber’s reasonable assessment of all relevant factors in reaching the Decision.

13. Contrary to the Defence’s suggestions, the Chamber did not simply consider in isolation that the assistance the Defence Team could provide to Mr Said (by reading and analysing documents in English and explaining all relevant information to him) “compensated” for the non-disclosure of the Prosecution’s Trial Brief in French.<sup>20</sup> Rather, the Defence Team’s language skills, were a “further” factor<sup>21</sup> that the Chamber considered together with other factors, notably that Mr Said had already been notified

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<sup>17</sup> Decision, paras. 14, 16.

<sup>18</sup> [ICC-01/04-168 OA3](#), para. 9. See also [ICC-01/05-01/08-532](#), para. 17; [ICC-01/04-01/06-1557](#), para. 30.

<sup>19</sup> Defence Request, paras. 31-32.

<sup>20</sup> *Contra* Defence Request, paras. 31-32.

<sup>21</sup> Decision, para. 15.

in a language he fully understands, of all the detailed information concerning the Prosecution's case, including through the Confirmation Decision.<sup>22</sup>

14. In any event, the Defence merely disagrees with the Chamber's reasonable assessment of all these relevant factors which informed its conclusion that providing Mr Said with a French translation of the Prosecution's Trial Brief more than three months before the commencement of trial was unwarranted. Consequently, the Defence fails to identify an appealable issue under article 82(1)(d).<sup>23</sup> The second proposed question should therefore not be certified for appeal.

*(iii) Third Proposed Issue identifies no appealable issue*

15. The Defence's third proposed question — whether the Chamber erred in concluding that Mr Said could use draft translations of the Trial Brief pending the provision of a final translation<sup>24</sup> — merely expresses disagreement with the Chamber's reasonable assessment of all relevant factors in reaching the Decision.

16. Like the Defence's second proposed issue above, the availability of draft French translations of the Trial Brief was an additional factor that the Chamber considered together with other factors, notably that Mr Said had already been notified in French of all the detailed information concerning the Prosecution's case, including through the Confirmation Decision.<sup>25</sup> The Defence's mere expression of disagreement with the Chamber's reasonable assessment and conclusions is insufficient to justify the certification for appeal of the third proposed question under article 82(1)(d).<sup>26</sup>

17. In addition, reliance on draft translations has also been accepted by the Appeals Chamber itself in appeal proceedings,<sup>27</sup> and as such cannot be the subject of appellate

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<sup>22</sup> Decision, paras. 14, 16.

<sup>23</sup> [ICC-01/04-168 OA3](#), para. 9. See also [ICC-01/05-01/08-532](#), para. 17; [ICC-01/04-01/06-1557](#), para. 30.

<sup>24</sup> Defence Request, paras. 33-35.

<sup>25</sup> Decision, paras. 14-16.

<sup>26</sup> [ICC-01/04-168 OA3](#), para. 9. See also [ICC-01/05-01/08-532](#), para. 17; [ICC-01/04-01/06-1557](#), para. 30.

<sup>27</sup> See e.g., [ICC-02/11-01/15-1289](#), paras. 23-25.

litigation.<sup>28</sup> Consequently, the Chamber should not certify the third proposed question for appeal under article 82(1)(d).

*(iv) Fourth Proposed Issue identifies no appealable issue*

18. The Defence's fourth proposed issue concerns an alleged error in not postponing the commencement of the trial and thus in not giving the Defence and Mr Said more time to prepare.<sup>29</sup> This issue too misreads the Decision, besides merely expressing disagreement with it.

19. Since the Chamber had considered 3 months and 13 days to be necessary for the Defence's preparation before the commencement of trial when it ordered the Prosecution to file its Trial Brief by 13 June 2022, the Defence claims that the provision to the Defence of a final French translation of the Trial Brief only 35 days before the commencement of trial defeats the Chamber's own original logic.<sup>30</sup> But this assertion misunderstands the Decision. The Chamber's instructions to the Prosecution did not prescribe filing the Brief in French — such as to premise the calculation of the sufficiency of the time-lines afforded to Defence's preparation on the availability of the French translation as the Defence suggests. To the contrary, as is clear from the Decision, filing in English (rather than in French) was considered sufficient by the Chamber at the time it issued its order, since Mr Said already had detailed information in French (including in the Confirmation Decision) concerning the Prosecution's case to enable him to prepare. Consequently, contrary to the Defence's reading of the Decision, the original time-lines envisaged by the Chamber, as well as its logic, have not been eroded by the Decision.

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<sup>28</sup> [ICC-01/05-01/08-2487-Red](#), para. 28.

<sup>29</sup> Defence Request, paras. 36-38.

<sup>30</sup> Defence Request, paras. 36-37.

20. In any event, like the Defence's second and third proposed issues above, the Defence merely expresses disagreement with the Chamber's reasonable assessment that it was unwarranted to postpone the trial commencement pending the translation of the Prosecutor's Trial Brief in French, given that Mr Said was already in possession several months before of detailed information in French (including the Confirmation Decision) concerning the Prosecutor's case.<sup>31</sup> The Defence thus fails to identify an appealable issue. Its fourth proposed question should therefore not be certified for appeal under article 82(1)(d).<sup>32</sup>

**B. The Defence Request does not meet the remaining criteria for leave to appeal under article 82(1)(d) of the Statute**

21. Should the Chamber find that any of the four issues proposed by the Defence constitutes an appealable issue arising from the Decision, the Defence Request should, in any event, be denied. These issues fail to meet the remaining cumulative criteria under article 82(1)(d) of the Statute. The proposed issues do not significantly affect both the fair and expeditious conduct of proceedings, nor do they require an immediate resolution by the Appeals Chamber to materially advance the proceedings.<sup>33</sup>

22. Here, the Defence Request simply makes an omnibus, cursory, conclusory and unsubstantiated claim that the cumulative criteria are met. It refers to the mere fact that any decision directly concerning a fundamental right necessarily impacts the fairness of the proceedings in the broad sense, and this is regardless (as in this case) of whether or not it is Mr Said's right to be notified of the French translation of the Prosecutor's Trial Brief.<sup>34</sup> The Defence's approach is thus insufficient to establish that

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<sup>31</sup> Decision, paras. 14-19.

<sup>32</sup> [ICC-01/04-168 OA3](#), para. 9. See also [ICC-01/05-01/08-532](#), para. 17; [ICC-01/04-01/06-1557](#), para. 30.

<sup>33</sup> See e.g. [ICC-01/09-01/11-912](#), para. 16 (underscoring that for leave to appeal to be granted, "(a) the decision must involve an 'issue' that would significantly affect (i) *both* the 'fair' and 'expeditious' conduct of the proceedings; or (ii) the outcome of the trial; and b) in the view of the [Pre-Trial] Chamber, an immediate resolution by the Appeals Chamber is warranted as it may materially advance the proceedings" (emphases in the original)).

<sup>34</sup> Defence Request, paras. 39-43.

each of the four proposed issues *individually* meets all the cumulative requirements under article 82(1)(d) of the Statute.<sup>35</sup>

23. In any event, none of the four proposed issues whether individually or cumulatively, affects the fair and expeditious conduct of the proceedings, nor requires immediate appellate intervention.

24. At the heart of the Decision was the Chamber's evaluation "whether fair trial considerations and respect for the rights of the accused justif(ied) a postponement of the trial until more than three months after the official translation of the Trial Brief becomes available to Mr Said and whether good cause has been shown for an extension of the deadline for filing a response to the Trial Brief until such translation has been provided."<sup>36</sup>

25. As is clear from the Decision, the Chamber carefully considered all relevant factors before concluding that the fair trial rights of Mr Said, notably, to effectively set out the elements and strategy of his defence, were not prejudiced even if trial were to commence about two months (rather than more than three months) after the official translation of the Prosecution's Trial Brief was availed to him. As noted above, the Chamber considered that by the time his trial commences, Mr Said would not only have received draft translations of the Trial Brief over two months earlier, but he would have already been in possession for several months of all detailed information in French regarding the Prosecution's case against him. In particular, this would be achieved in the form of the Confirmation Decision — a decision that the Appeals Chamber has confirmed as the primary instrument regarding "where and how the detailed information about the charges is to be provided to the accused."<sup>37</sup> The Decision also considered that by the time his trial commences, Mr Said would already have had in his possession for many months of additional relevant documents in

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<sup>35</sup> See e.g. [ICC-01/05-01/08-3382](#), para. 12.

<sup>36</sup> Decision, para. 13.

<sup>37</sup> [ICC-01/04-01/06-3121-Red](#), para. 124.

French, including the Document Containing the Charges and the Prosecution's Pre-Confirmation Brief and witness statements.<sup>38</sup>

26. Given the totality of these factors, coupled with the language assistance the Defence would additionally afford Mr Said, the Defence does not show how Mr Said would be prejudiced in his preparations and thereby that the fair conduct of the proceedings or the outcome of the trial would be at all affected within the meaning of article 82(1)(d).

27. Furthermore, at the heart of the Decision are matters that fall within the Chamber's mandate to manage proceedings as to ensure a fair and expeditious trial. As such, given the totality of the circumstances described above, appellate intervention would delay, rather than expedite the present proceedings.

28. In conclusion, the Defence Request cannot show that any of the four proposed issues significantly affects both the fair and expeditious conduct of proceedings or the outcome of the trial, nor that any of them requires an immediate resolution by the Appeals Chamber to materially advance the proceedings.

### Conclusion

29. For the foregoing reasons, the Prosecution respectfully requests the Chamber to reject the Defence Request.




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Karim A. A. Khan QC., Prosecutor

Dated this 22<sup>nd</sup> day of July 2022

At The Hague, The Netherlands.

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<sup>38</sup> Decision, para. 14.