

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **28 June 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's response to the Defence requests to vary the time limit and for
postponement of the trial (ICC-01/14-01/21-367-Conf)**

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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I. INTRODUCTION

1. The Prosecution requests Trial Chamber VI (“Chamber”) to reject the Defence’s requests for the suspension of the response deadline to the Trial Brief pending the receipt of an official French translation and to postpone the start of the trial (“Defence Requests”).¹ Notwithstanding that a translation is not required under the legal framework of the Court, a French translation will be available to the Accused Mahamat Said Abdel Kani (“Mr SAID”) well in advance of the start of the trial, by 5 August 2022, and a draft even earlier. Mr SAID is already in possession of the charging document, which is the Confirmation of Charges Decision (“Confirmation Decision”),² and all witness statements and the main documentary evidence in French. Further, Mr SAID is assisted by a Defence team capable of working in both working languages of the Court.

II. SUBMISSIONS

A. The Defence does not show good cause to vary the time limit

2. The Defence does not show good cause pursuant to regulation 35 of the Regulations of the Court (“Regulations”). The notion that the Trial Brief is an updated version of the charges brought against Mr SAID is misconstrued.³ There is a difference between charges based on the legal requirements and material facts *and* the underlying evidence. The charging document for the case is now the Confirmation Decision. Following on the Prosecution’s Document containing the Charges (“DCC”)⁴, the Confirmation Decision sets out the material facts underlying the legal elements of

¹ “*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, ICC-01/14-01/21-367-Conf.*”

² ICC-01/14-01/21-218-Red-tFRA.

³ *Ibid.*, para. 14-16.

⁴ ICC-01/14-01/21-144-Conf-AnxA.

the alleged crimes (including contextual) and modes of liability, and the legal characterisations of those facts.⁵ This document was made available in French allowing Mr SAID to fully comprehend the scope of the charges.⁶

3. It is important to distinguish material facts from subsidiary facts and evidence which are not part of a charging document.⁷ While material facts cannot just be amended by the Prosecution after the charges have been confirmed unless permitted to do so under article 61(9), evidence presented during the pre-trial phase may be supplemented so long as the accused receives sufficient notice.⁸ In contrast, the Prosecution's Trial Brief merely summarises the main evidence in support of the charges to assist the Chamber, Parties and Participants and cannot be considered a statutory document serving to inform the accused of the "*nature, cause and content of the charge.*"⁹ It is "*an auxiliary tool to the benefit of both the Chamber and the parties and participants,*"¹⁰ and not an essential document, as claimed by the Defence.

4. For these reasons, Chambers have regularly not required to have Trial Briefs translated. This was especially the case where the Defence was able to assist the accused and the main documents and evidence were made available in a language the accused fully understands in a timely manner.¹¹ Where translations have been deemed *useful*, drafts have been held sufficient, especially where an accused is aided by counsel who are able to function effectively in both working languages of the Court should any questions arise.¹²

⁵ The Chambers Practice Manual characterises the charges as "fully self-contained" and exhaustively set[ting out all, and no more than, the material facts and their legal characterisation", see Chamber Practice Manual, para. 42.

⁶ ICC-01/14-01/21-218-Red-tFRA.

⁷ Chambers Practice Manual, para. 36 (subsidiary facts). See also ICC-01/04-01/07-1547-tENG, para. 25.

⁸ ICC-01/04-01/07-1547-tENG, para. 25.

⁹ ICC-02/11-01/15-1141, paras. 7-9.

¹⁰ *Idem*. See also *Prosecutor v. Limaj et al*, IT-03-66-PT, Decision on Defence's application for extension of time to file pre-trial briefs and order for filing of expert reports and notice under rule 94bis, 7 May 2004, para.6.

¹⁰ ICTY, *Prosecutor v. Naletilic and Martinovic*, Decision on Defence's Motion Concerning Translation of All Documents, 18 October 2001.

¹¹ ICC-02/11-01/15-224, para. 20.

¹² *Ibid.*, paras. 20-21.

5. Against this background, it is not necessary or justified to vary the time limit to respond to the Trial Brief until a full translation is received. In the case at hand, the Prosecution completed its disclosure of the evidence it seeks to rely on and filed the main Bar Table Motions pursuant to article 64(9) of the Rome Statute (“Statute”) well in advance of the commencement of trial. These motions set out the relevance of the submitted evidence in relation to the charges. Further, the evidence the Prosecution seeks to rely on at trial was also added to its List of Evidence (“LoE”) submitted on 13 June 2022. The Trial Brief will have to be read jointly with the Prosecution’s LoE, the Bar Table Motions and applications pursuant to rule 68 of the Rules of Procedure and Evidence (“Rules”). Considering the volume of materials, not all items of evidence relevant for trial can or should have to be set out or cited in the Trial Brief.

B. A postponement of the trial is not justified

6. It follows that the requested postponement of the trial date is equally unnecessary and unjustified. As set out above, there is no obligation under the Statute to translate an auxiliary document such as the Trial Brief. Notwithstanding this principle, the Defence and Mr SAID will receive a partial draft translation of the Trial Brief on 24 June 2022 and then a complete draft on 1 July 2022 before the official translation is submitted on 5 August 2022. If the Defence would only commence review of the Trial Brief once it has received a complete draft translation on 1 July 2022, this would still leave 61 working days until the start of the trial (14 working days more than in the *Gbagbo* case).

7. Further, issues the Defence team may seek to raise concerning the Prosecution’s case may be introduced at any time during the proceedings, but most notably by 12

August 2022 with a Defence Trial Brief¹³ or in the opening and closing statements of the trial.

C. There is no undue prejudice to the Accused

8. There is no prejudice caused to Mr SAID in the circumstances. The lack of a full translation before 5 August of the Trial Brief does not affect the ability of Mr SAID's Defence to properly represent his interests and to make submissions on his behalf with regard to the charges, issues of evidence or the case of the Prosecution overall. The Prosecution's case hypothesis has not changed since the Confirmation Decision. Mr SAID has received a French translation of the DCC, the Confirmation Decision, and all witness materials the Prosecution relies on. He will further have a draft translation of the Trial Brief on 1 July 2022.

9. The vast majority of the non-witness related items of evidence, which are submitted as part of the Bar Table Motions, are also available to him in French and his counsel able to explain and discuss with him the relevance of these items. The Prosecution filed its Trial Brief on 13 June 2022 providing the Defence with sufficient time for assessment before the start of the trial. Further, the evidence to be relied upon has been disclosed on a rolling basis, included in submissions pursuant to rule 68 of the Rules and article 64(9) of the Statute, and was set out in the LoE also on 13 June 2022.

¹³ ICC-01/14-01/21-243, para. 27.

IV. RELIEF SOUGHT

10. For the above reasons, the Prosecution requests that the Chamber reject the Defence Requests.

A handwritten signature in blue ink, appearing to read 'K.A.K.', followed by a horizontal line and a period.

Karim A. A. Khan QC, Prosecutor

Dated this 28th day of June 2022
At The Hague, The Netherland