

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 30 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
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public Document

**Victims' observations the Defence's requests to vary the time limit and to postpone
the commencement date of the trial
(No. ICC-01/14-01/21-367-Red)**

Source: Office of Public Counsel for Victims

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

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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 Defence’s Request for translation of the Trial Brief, for suspension of the deadline to respond thereto and for postponement of the start date of the trial (the “Defence Request” or the “Request”).²

2. The Legal Representative opposes the Request as it is premised on the Defence’s misunderstanding of both the nature and purpose of the Prosecution’s Trial Brief and of the scope of the Defence’s rights under articles 67(1)(a) and (f) of the Rome Statute (the “Statute”).

3. At the outset, the Legal Representative submits that the Defence’s Request for extension of time to respond to the Trial Brief must be dismissed *in limine*. Contrary to the Defence’s assumptions, a written response to such document was neither envisaged by the Chamber nor is warranted. In fact, the Defence will have the opportunity to raise any issues concerning the Prosecution’s case during the conduct of the proceedings and by presenting evidence at trial.

4. Furthermore, Counsel opposes the Defence’s Request to have the Trial starting date subject to the notification of the Trial Brief officially translated into the language fully understood by the Accused. In fact, the translation sought by the Defence does not relate to a document which would serve to inform the Accused of the nature, cause and content of the charges within the meaning of article 67(1)(a) of the Statute.

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-01/14-01/21-331](#), 27 May 2022.

² 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 ouverts) après la transmission de la traduction française de ce mémoire de première instance*”, [No. ICC-01/14-01/21-367-Conf](#) and [No. ICC-01/14-01/21-367-Red](#), 20 June 2022 (the “Defence’s Request”).

II. PROCEDURAL BACKGROUND

5. On 21 February 2022, the Chamber issued the “Decision Setting the Commencement Date of the Trial and Related Deadlines”, *inter alia*, instructing the Prosecution to file a detailed Trial Brief by 13 June 2022.³

6. On 13 June 2022, the Prosecution filed its Trial Brief.⁴

7. On 17 June 2022, the Defence filed 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*”.⁵

8. On 22 June 2022, the Chamber suspended the deadline for responding to the Trial Brief pending its decision on the Request.⁶

9. On 28 June 2022, the Prosecution responded to the Defence’s Request.⁷

III. SUBMISSIONS

A. The Defence’s Request for extension of time to respond to the Trial Brief must be dismissed *in limine*

10. The Legal Representative submits that the Defence’s Request for extension of time to respond to the Trial Brief must be dismissed *in limine*. The Trial Brief provides notice of the Prosecution’s case theory in the form of an analysis of the evidence to be presented at trial. As such, it is a document made on the basis of the material already

³ See the “Decision Setting the Commencement Date of the Trial and Related Deadlines” (Trial Chamber VI), [No. ICC-01/14-01/21-243](#), 21 February 2022, para. 23.

⁴ See the Prosecution’s Trial Brief, [No. ICC-01/14-01/21-359-Conf](#), 13 June 2022.

⁵ See the Defence’s Request, *supra* note 2.

⁶ See the email from Trial Chamber VI to the parties and participants entitled “Time limit for responding to Prosecution’s Trial Brief”, 22 June 2022 at 16:06.

⁷ See the “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)”, [No. ICC-01/14-01/21-381](#), 28 June 2022.

disclosed to the Defence throughout the trial proceedings.⁸ Accordingly, the Trial Brief is merely “*designed to provide additional assistance and notice to the Defence of the nature of the Prosecution’s case and how the intended evidence relates to the charges*”.⁹ It is thus precisely to that evidence that the Defence will be called to respond during the course of the trial.

11. Moreover, a trial brief – albeit of potentially significant assistance to the Defence – is not a statutory document, nor does it constitute material that needs to be timely disclosed under the Statute.¹⁰ Accordingly – and contrary to Defence’s assumptions in this regard¹¹ – a written response to such document is neither warranted¹² nor was envisaged by the Chamber.¹³ In fact, the Defence will have the opportunity to raise of any issues concerning the Prosecution’s case during the conduct of the proceedings and by presenting evidence at trial.¹⁴

B. The Defence’s request for translation of the Trial Brief and postponement of the start of the trial must be dismissed

12. The Legal Representative opposes the Defence’s Request to have the Trial starting date subject to the notification of the Trial Brief officially translated into the language fully understood by the Accused. The translation sought by the Defence does not relate to a document which would serve to inform the Accused of the nature, cause and content of the charges within the meaning of article 67(1)(a) of the Statute.¹⁵ In fact, “[t]he translation of a given document is a right for the accused only insofar as it can be held

⁸ See ICTY, *Prosecutor v. Limaj et al.*, “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”, [IT-03-66-PT](#), 7 May 2004, para.6.

⁹ See, *mutatis mutandis*, the “Decision on ‘Prosecution’s request pursuant to regulation 35 to vary the time limit for disclosure of the Pre-Trial Brief’” (Trial Chamber VI), [No. ICC-01/04-02/06-467](#), 19 February 2015, para. 11 (emphasis added).

¹⁰ *Idem*.

¹¹ See the Defence’s Request, *supra* note 2, para. 36.

¹² See *inter alia*, the “Decision on Defence requests relating to the Prosecution’s Pre-Trial Brief (Trial Chamber I), [No. ICC-02/11-01/15-224](#), 16 September 2015, para. 22.

¹³ See the “Decision Setting the Commencement Date of the Trial and Related Deadlines”, *supra* note 3, para. 23.

¹⁴ *Idem*. See also the “Directions on the Conduct of Proceedings”, (Trial Chamber VI), [No. ICC-01/14-01/21-251](#), 9 March 2022, para. 10.

¹⁵ See the “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), [No. ICC-01/04-01/06-3121-Red A5](#), 1 December 2014, para. 128.

that, without the translation of that particular document in a language that he or she fully understands and speaks, the accused (who is, as clarified by the Appeals Chamber, the exclusive 'subject of understanding') would not be able to understand the nature, cause and content of the charge and thus to adequately defend himself or herself, thereby prejudicing the fairness of the proceedings".¹⁶

13. Thus, according to the jurisprudence of the Court, the right to translation only refers to "such documents that inform [the Accused] in detail of the nature, cause and content of the charges brought against him".¹⁷ A trial brief is not a document envisaged in the ICC statutory framework for the accused person to be informed in sufficient detail of the charges.¹⁸ Rather, it is one of several supplementary documents designed to provide additional assistance to Defence in preparing its case in response to Prosecution's theory. In fact, "*the factual parameters of the case at trial are determined by the charges as presented by the Prosecutor, to the extent confirmed by the Pre-Trial Chamber*".¹⁹ As clarified by the Appeals Chamber, it is thus for the decision on the confirmation of charges to "*define the parameters of the charges at trial*".²⁰

14. In turn, the Chamber's decision under article 74 of the Statute shall not exceed the facts and circumstances as described in the charges and any amendments to the charges. As such, the Trial Brief is neither compulsory nor necessary, but merely convenient. Accordingly, the Defence reference to the translation into French of the decision confirming the charges against Mr Saïd and related extension of deadlines²¹ is

¹⁶ See the "Decision on the 'Defence request for an order requiring the translation of evidence'" (Pre-Trial Chamber II, Single Judge), [No. ICC-01/05-01/13-177](#), 11 February 2014, para. 6 (emphasis added).

¹⁷ See, *inter alia*, the "Decision on the Defence's Request Related to Language Issues in the Proceedings" (Pre-Trial Chamber III), [No. ICC-01/05-01/08-307](#), 4 December 2008, para. 16 (emphasis added).

¹⁸ See, *mutatis mutandis*, the "Decision on 'Prosecution's request pursuant to regulation 35 to vary the time limit for disclosure of the Pre-Trial Brief'", *supra* note 9, para. 11.

¹⁹ See the "Decision on the date of the confirmation of charges hearing and proceedings leading thereto" (Pre-Trial Chamber I), [No. ICC-02/11-01/11-325](#), 17 December 2012, para. 27.

²⁰ See the "Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters" (Trial Chamber I), [No. ICC-02/11-01/15-1](#), 11 March 2015, para. 52. See also the "Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction", *supra* note 15, para. 124.

²¹ See the Defence's Request, *supra* note 2, para. 21.

inapposite and does not support its position that it is entitled to an official translation of any relevant material providing information concerning the charges.

15. Similarly, the Legal Representative observes that the jurisprudence from the ECHR cited by the Defence does not reflect the Defence's understanding of the purpose of the Trial Brief and of the scope of the Defence's rights under articles 67(1)(a) and (f) of the Statute.²² In fact, article (6)(3)(e) of the European Convention on Human Rights "*does not go so far as to require a written translation of all items of written evidence or official documents in the procedure*", but rather that the "*the accused is entitled to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events*".²³

16. Accordingly, there is no need for the Accused to received a French translation of the Trial Brief;²⁴ nor in turn is it justified to postpone the commencement of the trial. The Accused has a full knowledge of the scope of the case against him since he was served with a French translation of the Document containing the charges²⁵ and of the Decision of the confirmation of the charges.²⁶

17. Last but not least, the Legal Representative posits that postponing the starting date of the trial would further delay the realisation of the Victims' right to truth, to have those responsible for those crimes held accountable and to receive just reparations for the harm suffered.²⁷ Victims have already endured extremely long

²² *Idem*, para. 18.

²³ ECHR, *Kamasinski v. Austria*, [Case no. 9783/82](#), 19 December 1989, para. 74.

²⁴ Incidentally, the Legal Representative notes that the Accused will in fact receive the complete unedited version of said document on 1 July 2022. See the Defence's Request, *supra* note 2, para. 6.

²⁵ See the "Corrigendum du Document de notification des charges", [No. ICC-01/14-01/21-144-Conf-AnxA-Corr](#), 27 October 2021.

²⁶ See the "Décision relative à la confirmation des charges portées contre Mahamat Saïd Abdel Kani" (Pre-Trial Chamber II), [No. ICC-01/14-01/21-218-Conf-tFRA](#), 9 December 2021.

²⁷ See, *inter alia*, the "Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 7 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 24 December 2007" (Appeals Chamber), [No. ICC-01/04-503 OA4 OA5 OA6](#), 30 June 2008, para. 97; the "Decision on the Set of Procedural Rights Attached to the Status of Victim at the Pre-Trial Stage of the Case" (Pre-Trial Chamber I), [No. ICC-01/04-01/07-474](#), 13 May 2008, para. 32; and the "Decision on victims' participation" (Trial Chamber I), [No. ICC-01/04-01/06-1119](#), 18 January 2008, para. 98.

periods of judicial inactivity, waiting to this date for more than 8 years in the hope that justice would one day be done.

18. The Legal Representative underlines that the ‘fair trial’ guarantees shall not be considered from the Defence standpoint only. Indeed, these rights also encompass the victims’ right to expeditious proceedings, their right to truth and to adequate reparations for the harms suffered. In the same vein, the requirements of fair proceedings shall apply to all the parties and participants before the Court, and not only to the Accused.²⁸ The Court is a unique international jurisdiction which has been established not only to investigate the most serious crimes of concern to the international community but also, and particularly, to render justice to victims.²⁹ As far as victims’ participation constitutes an integral part of the fairness and impartiality of the proceedings before the Court, Chambers have a duty to take into consideration the interests of the victims throughout the proceedings, and in particular when deciding on any requests for postponement thereof.

²⁸ See the “Decision on the admission of material from the ‘bar table’” (Trial Chamber I), [No. ICC-01/04-01/06-1981](#), 24 June 2009, para. 42. See also in the same sense TRAPP (K.), *Excluding Evidence: The Timing of a Remedy*, non-published manuscript (1998), Faculty of Law, McGill University, Canada, p. 21; quoted in TRIFFTERER (O.), *Commentary on the Rome Statute of the International Criminal Court – Observer’s Notes, Article by Article*, Verlag C.H Beck, Munich, 2008, p. 1335, footnote 139. See also the “DECISION ON THE PROSECUTION’S APPLICATION FOR LEAVE TO APPEAL THE CHAMBER’S DECISION OF 17 JANUARY 2006 ON THE APPLICATIONS FOR PARTICIPATION IN THE PROCEEDINGS OF VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 AND VPRS 6” (Pre-Trial Chamber I), [No. ICC-01/04-135-tEN](#), 31 March 2006, para. 38.

²⁹ It was determined that the need to “ensure the effective implementation of victims’ rights [...] constitute a cornerstone of the Rome Statute system”. See ASSEMBLY OF STATES PARTIES, “Victims and affected communities, reparations and Trust Fund for Victims”, Resolution [ICC-ASP/12/Res.5](#), 27 November 2013, Preamble, para. 2. It was also emphasised that “[a] key feature of the system established in the Rome Statute is the recognition that the ICC has not only a punitive but also a restorative function. It reflects growing international consensus that participation and reparations play an important role in achieving justice for victims”. See ASSEMBLY OF STATES PARTIES, the “Report of the Court on the strategy in relation to victims”, [ICC-ASP/8/45](#), 10 November 2009, para. 3.

FOR THESE REASONS, the Legal Representative respectfully requests the Chamber to dismiss the Defence's request for extension of time to respond to the Trial Brief *in limine* and to dismiss the remainder of the Request.



Sarah Pellet

Dated this 30th day of June 2022

At The Hague, The Netherlands