

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 April 2025

TRIAL CHAMBER VI

Before:

**Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez
Judge Keebong Paek, Alternate Judge**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public Redacted version of

Decision on a Request for Cooperation by the Defence (ICC-01/14-01/21-949)

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ 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 Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations
Section

☒ Other
Judicial Cooperation Support Section

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 57(3)(b), 64, 67, 86, 87, 93 and 96 of the Rome Statute (the ‘Statute’), rules 116 and 176 of the Rules of Procedure and Evidence (the ‘Rules’) issues this ‘Decision on a Request for Cooperation by the Defence (ICC-01/14-01/21-949)’.

I. PROCEDURAL HISTORY

1. On 8 October 2024, the Chamber issued the Third Directions on the Conduct of Proceedings (the ‘Third Directions’)¹ in which it, *inter alia*, instructed the Defence to: (i) provide a preliminary list of witnesses no later than 17 January 2025; (ii) submit the final list of witnesses and evidence no later than 21 February 2025; and (iii) set 3 March 2025 as the deadline for any applications pursuant to rule 68(2) and 68(3) of the Rules.²

2. On 17 February 2025, the Defence filed a request pursuant to regulation 35 of the Regulations for an extension of time to conclude its ongoing investigations.³ In this request, the Defence informed the Chamber that it had already received certain documents from the [REDACTED] authorities, but that it was still waiting to receive additional documents it had requested on the basis of the ones already received.

3. On 5 March 2025, the Chamber filed the Fourth Directions on the Conduct of Proceedings, instructing the Defence to file any application for the submission of evidence other than through a witness one week after the first block of witness(es) and to make further requests to file additional evidence as soon as feasible.⁴

4. On 7 March 2025, the Defence informed the Chamber of the progress in its efforts to obtain the cooperation from the [REDACTED] authorities and stated that it was still waiting for a response from the latter in relation to additional documents the Defence had requested.⁵

¹ Third Directions on the Conduct of Proceedings, 8 October 2024, [ICC-01/14-01/21-873](#).

² Third Directions, [ICC-01/14-01/21-873](#), paras 13-16.

³ Demande d’extension de délais ciblée pour terminer des actes d’enquêtes en cours conformément à la Norme 35 du Règlement de la Cour, 17 February 2025 (ICC-01/14-01/21-917-Conf-Exp), 24 February 2025, [ICC-01/14-01/21-917-Red](#).

⁴ Fourth Directions on the Conduct of Proceedings, 5 March 2025, [ICC-01/14-01/21-932](#), para. 17.

⁵ Email from the Defence to the Chamber, dated 7 March 2025 at 14:46.

5. On 20 March 2025, the Chamber issued its Decision on the Defence's Request for an Extension of Time to File Requests to Submit Evidence other than through a Witness, in which it authorised the Defence to file any bar table motions by 17 April 2025.⁶

6. On 21 March 2025, the Defence filed a request for the Chamber to issue a request for cooperation from the relevant authorities of the [REDACTED] regarding a limited number of documents in the latter's possession, as further specified in Annex A (the 'Request').⁷

7. On 25 March 2025, the Prosecution informed the Chamber that it does not intend to make submissions on the Request.

8. On 27 March 2025, the Defence informed the Chamber that on 26 March 2025, it received certain items from the [REDACTED] authorities in connection with its additional request.⁸ The Defence submits that the information received does not relate to the items it wishes to obtain on the basis of the Request.

II. SUBMISSIONS

9. According to the Request, the Defence has been in contact with the [REDACTED] authorities since 22 July 2022 and already received a number of items on the basis of informal requests for cooperation.⁹ The Defence submits that some of those items are already included on its List of Evidence.¹⁰

10. Upon receiving those documents, the Defence submits that it identified a number of additional items it wishes to obtain for the purposes of preparing Mr Said's defence. In this regard, the Defence notes that it has already submitted, through the good offices

⁶ Decision on the Defence's Request for an Extension of Time to File Requests to Submit Evidence other than through a Witness, 20 March 2025, [ICC-01/14-01/21-942](#).

⁷ Version confidentielle expurgée de la « Demande visant à obtenir la coopération [REDACTED] sur une demande pendante concernant l'obtention de télégrammes diplomatiques additionnels et d'éléments précis sur la base de télégrammes diplomatiques déjà communiqués » (ICC-01/14-01/21-949-Conf-Red). An *ex parte* version was filed simultaneously (ICC-01/14-01/21-949-Conf-Exp). A public redacted version was filed on 28 March 2025 (ICC-01/14-01/21-949-Red).

⁸ Email from the Defence to the Chamber, dated 27 March 2025 at 14:58.

⁹ Request, ICC-01/14-01/21-949-Red, para. 2.

¹⁰ Request, ICC-01/14-01/21-949-Red, para. 2. *See also* Annex A to the Request, ICC-01/14-01/21-949-Conf-Exp-AnxA.

of the Registry, a number of requests to the relevant authorities of the [REDACTED] on 4 September 2024, 30 January 2025, and 5 and 13 March 2025, respectively.¹¹

11. The Defence indicates that it still awaits the response of the relevant authorities of the [REDACTED] on the aforementioned requests, and accordingly seeks the Chamber's assistance in order to expedite the cooperation process.¹²

III. ANALYSIS

12. At the outset, the Chamber notes that the Defence has, once again, failed to frame the Request on a clear legal basis. As explained previously, only a formal ruling pursuant to article 57(3)(b) of the Statute to issue a cooperation request under Part 9 of the Statute can create an obligation on the part of the [REDACTED].¹³ The Chamber will therefore consider the Request on this basis.

13. Pursuant to article 57(3)(b) of the Statute and rule 116(1) of the Rules, the Chamber may seek such cooperation pursuant to Part 9 of the Statute as may be necessary to assist the accused in the preparation of his or her defence. In particular, the Chamber may issue a formal request for cooperation at the behest of the Defence where it is satisfied that this would facilitate the collection of evidence that may be material to the proper determination of the issue being adjudicated or to the proper preparation of the person's defence. The Chamber recalls the applicable law concerning cooperation requests, notably that they must meet three cumulative requirements of relevance, specificity and necessity.¹⁴

¹¹ Request, ICC-01/14-01/21-949-Red, para. 4.

¹² Request, ICC-01/14-01/21-949-Red, para. 5.

¹³ Public Redacted Version of Decision on a Request for Cooperation by the Defence, 13 March 2025, [ICC-01/14-01/21-937-Red](#), para. 8.

¹⁴ See Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Ngaïssona Defence Motion to Obtain a Lesser Redacted Version of CAR-OTP-2110-0915, 22 June 2022, [ICC-01/14-01/18-1470](#), para. 8; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Ngaïssona Defence Request pursuant to Article 57(3)(b) of the Statute, [ICC-01/14-01/18-1159-Red](#), para. 6; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Prosecution Request to Summon a Witness, 8 January 2021, ICC-01/14-01/18-804-Conf, para. 15. See also Trial Chamber VII, *The Prosecutor v. Jean Pierre Bemba Gombo et al.*, Decision on Second Mangenda Request for Cooperation, 5 April 2016, [ICC-01/05-01/13-1768](#), para. 8; Trial Chamber IV, *The Prosecutor v. Abdalah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Decision on "Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union", 1 July 2011, [ICC-02/05-03/09-170](#), paras 12-14.

A. Specificity

14. The Chamber notes that the Request is twofold in that it seeks the transmission of: (i) materials related to topics mentioned in [REDACTED] received by the Defence from [REDACTED] in the Central African Republic on 2 August 2023¹⁵ and; (ii) [REDACTED] exchanged during the period between June and December 2013.¹⁶

1. *Requests for information on certain topics*

15. As regards the first category, the Defence wishes to receive additional information in relation to particular subjects that are mentioned in the following [REDACTED] already at its disposal:

- a. Regarding [REDACTED] and [REDACTED], the Defence requests additional information about the context in which the [REDACTED] had contacts with ministries under Djotodia's presidency.¹⁷
- b. Regarding [REDACTED], the Defence requests additional information linked to the functioning of the National Transitional Council during that period of time.¹⁸
- c. Regarding [REDACTED], the Defence requests additional information about "other actions of the population" against the Seleka throughout the period from March 2013 to December 2013, as mentioned in that communication.¹⁹

16. As a preliminary remark, the Chamber notes that of the four communications relied upon by the Defence to articulate its request for information in relation to particular topics, the Defence has disclosed only one to the Chamber. The Chamber is therefore not in a position to fully understand the basis of the requests. In particular, it is unclear to the Chamber whether the documents in question make reference to specific sources of information. The Chamber recalls, in this regard, that a category of

¹⁵ Annex A to the Request, ICC-01/14-01/21-949-Conf-Exp-AnxA, pp. 3-4.

¹⁶ Annex A to the Request, ICC-01/14-01/21-949-Conf-Exp-AnxA, pp. 4-5.

¹⁷ Annex A to the Request, ICC-01/14-01/21-949-Conf-Exp-AnxA, p. 3.

¹⁸ Annex A to the Request, ICC-01/14-01/21-949-Conf-Exp-AnxA, p. 3.

¹⁹ Annex A to the Request, ICC-01/14-01/21-949-Conf-Exp-AnxA, p. 4.

documents may be requested as long as it is ‘defined with sufficient clarity to enable ready identification’. However, ‘broad categories of documents without any type of limitation’ do not meet the condition of specificity.²⁰

17. Turning to the information sought in relation to the first two topics the Chamber considers that those requests are framed too broadly.

18. In relation to contact between the [REDACTED] and ministries of the Djotodia presidency, the Chamber notes that the Embassy may well have had extensive contact about a wide-range of topics, many of which may have little or no bearing upon this case. Moreover, the Chamber considers that the request to be given information about the context in which such contact took place is extremely vague.

19. In relation to information about the functioning of the *Conseil national de transition*, it is not clear to the Chamber whether the [REDACTED] authorities should be presumed to have information about the functioning of a Central African political body. Without any indication that the [REDACTED] do indeed have specific documents or other items relating to the *Conseil national de transition*, the Chamber finds that the request is too open-ended to meet the specificity requirement.

20. Turning to the Defence’s request for additional information in relation to “other actions” by the population against the Seleka mentioned in [REDACTED],²¹ the Chamber understands that, although the communication only mentions such actions taking place on 14 April 2013, the Defence seeks to obtain information about similar actions taking place from March until December 2013.

21. As far as the Chamber understands, without having access to [REDACTED], the [REDACTED] authorities were in possession of information about actions against the Seleka by the population taking place on 14 April 2013. There is no indication that they also had information about other such actions – if indeed they occurred – taking place

²⁰ See Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Yekatom Defence Request for Cooperation from [REDACTED] in the Central African Republic, 7 November 2023, ICC-01/14-01/18-2192, para. 3; Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Decision on “Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union”, 1 July 2011, [ICC-02/05-03/09-170](#), paras 16, 19-20.

²¹ Annex A to the Request, ICC-01/14-01/21-949-Conf-Exp-AnxA, p. 4.

on different dates. The Chamber will therefore limit the request for cooperation to the abovementioned information about actions taking place on or about 14 April 2013, since the pertinent materials should be easily identifiable by the [REDACTED].

22. To the extent that the [REDACTED] authorities are in possession of information about actions by the population against the Seleka before or after 14 April 2013, they are invited to also provide it to the Defence, if this can be achieved on short notice. However, such items are not covered by the present decision.

2. *Requests for specific items*

23. The Defence identifies four items it wishes to obtain from the relevant authorities of the [REDACTED]:

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED]; and
- d. [REDACTED].²²

24. The Chamber considers that those items meet the criterion of specificity and should be easily identifiable by the relevant authorities.

B. Relevance

25. The Chamber notes that the Defence avers that these items may be relevant to the alleged existence of an armed conflict between the Seleka and the Anti-Balaka throughout 2013 and the alleged existence of a State or organisational policy within the meaning of article 7(2)(a) of the Statute.²³

²² Annex A to the Request, ICC-01/14-01/21-949-Conf-Exp-Anx, pp. 4-5.

²³ Request, ICC-01/14-01/21-949-Red, para. 8.

26. The Chamber accepts that the requested items which have been identified with sufficient specificity may be material to the proper determination of issues that have to be adjudicated or to the proper preparation of Mr Said's defence.

C. Necessity

27. The Chamber notes that the Defence has characterised its interactions with the [REDACTED] thus far as constructive, but that it nevertheless considers it necessary to seek the Chamber's intervention to accelerate the process. The Chamber finds that the proceedings have now reached a phase where it is necessary to conclude the Defence investigations as soon as possible. It would therefore be extremely helpful if the [REDACTED] could decide at their earliest convenience whether or not they are in a position to hand over the requested items and, if so, to do so at the earliest opportunity.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request in part;

REQUESTS the cooperation of the [REDACTED] pursuant to article 93(1)(i) of the Statute and to provide the Defence with the following items:

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED];
- d. [REDACTED]; and
- e. The information about other actions of the civilian population against the Seleka on 14 April 2013 referenced in [REDACTED].

INSTRUCTS the Registry to prepare and transmit forthwith, in consultation with the Defence, the necessary request for assistance to the relevant authorities of the [REDACTED]; and

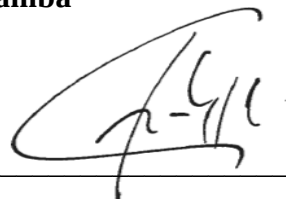
REJECTS the remainder of the Request.



Judge Miatta Maria Samba
Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 1 April 2025

At The Hague, The Netherlands