

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 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

Decision referring a matter pursuant to article 64(4) of the Statute

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
Presidency

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 38(3)(a), 64(2), 64(4), 67(1)(g), 68 of the Rome Statute (the ‘Statute’), issues this ‘Decision referring a matter pursuant to article 64(4) of the Statute’.

I. PROCEDURAL HISTORY

1. On 3 March 2022, the Chamber issued the Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions (the ‘First Decision on Contact Restrictions’).¹
2. On 11 December 2024, the Chamber issued the ‘Second Decision on Contact Restrictions’.²
3. On 25 February 2025, the Registry filed the ‘Registry Request for Guidance on the Implementation of the Restrictions on Contact Ordered by Trial Chamber VI’ (the ‘Registry Submission’).³ In the Registry Submission, the Registry noted that during a call on 2 February 2025 (the ‘2 February 2025 Call’) it appears that Mr Said ‘might have (1) talked about confidential case-related matters, (2) used threatening or intimidating language, (3) disclosed the name of a witness, and (4) made references that could be considered prejudicial to the accused.’⁴
4. The Registry accordingly requested guidance from the Chamber ‘as to whether it wishes to receive the transcript of the 2 February 2025 Call in its entirety or whether it would prefer to receive a redacted version of it and, if so, who should decide which information to redact.’⁵

¹ Public Redacted Version of Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions, 3 March 2022, [ICC-01/14-01/21-247-Red](#). A confidential version was filed simultaneously (ICC-01/14-01/21-247-Conf).

² Second Decision on Contact Restrictions, 11 December 2024, [ICC-01/14-01/21-903-Red](#). An *ex parte* Defence and Registry only version was filed simultaneously (ICC-01/14-01/21-903-Conf-Exp).

³ Registry Request for Guidance on the Implementation of the Restrictions on Contact Ordered by Trial Chamber VI, 25 February 2025, ICC-01/14-01/21-923-Conf.

⁴ Registry Submission, ICC-01/14-01/21-923-Conf, para. 6.

⁵ Registry Submission, ICC-01/14-01/21-923-Conf, para. 7.

5. On 5 March 2025, the Chamber issued the ‘Order in Respect of the Registry’s Request for Guidance’ (the ‘Order’).⁶ Therein, the Chamber ordered, *inter alia*, the parties and participants to make submissions on matters raised in the Registry Submission. Specifically, the Chamber invited the parties and participants to address, *inter alia*: ‘(i) to what extent the Chamber and/or the Office of the Prosecutor should receive an unredacted version of the transcript of the 2 February 2025 Call which may contain prejudicial information to the accused and his case; and (ii) if the transcript of the 2 February 2025 Call should be redacted, who should redact such information.’⁷

6. On 26 March 2025, the Office of the Prosecutor (the ‘Prosecution’) filed a request for the appointment of an independent counsel and the taking of additional measures to protect the accused’s rights and the integrity of the proceedings (the ‘Request’).⁸

7. On 28 March 2025, the Defence filed its submissions in respect of the Order and its response to the Request (the ‘Response’).⁹

8. The Common Legal Representative of Victims (the ‘CLRv’) did not file submissions in respect of any of the aforementioned filings.

II. SUBMISSIONS

A. Request

9. In the Request, the Prosecution submits that ‘in order to protect the integrity of the proceedings and the rights of the accused in this case, the Chamber and the Prosecution Team in the SAID case should not be granted access to all those references in the 2 February 2025 call that could be considered prejudicial to the accused or his case.’¹⁰ Instead, the Prosecution proposes that ‘such information should be forwarded

⁶ Order in Respect of the Registry’s Request for Guidance, 5 March 2025, ICC-01/14-01/21-933-Conf.

⁷ Order, ICC-01/14-01/21-933-Conf, para. 8.

⁸ Prosecution request for the appointment of an Independent Counsel and the taking of additional measures to protect the Accused’s rights and integrity of proceedings, 26 March 2025, ICC-01/14-01/21-951-Conf.

⁹ Soumissions de la Défense portant sur la discussion entre Monsieur Said et son épouse du 2 février 2025 conformément à l’ordonnance de la Chambre du 5 mars 2025 (ICC-01/14-01/21-933-Conf), 28 March 2025, ICC-01/14-01/21-953-Conf, with two confidential *ex parte* annexes.

¹⁰ Request, ICC-01/14-01/21-951-Conf, para. 7.

to the Prosecutor in a separate communication which excludes the Chamber and the Prosecution Team in this case.’¹¹

10. This notwithstanding, the Prosecution avers that both the Said Prosecution team and the Chamber should have access to the redacted version of the transcript of the 2 February 2025 Call since it relates to unauthorised disclosure by the accused of confidential case related matters to a non-privileged contact, and the safety and security of witnesses.¹² In respect of how such redactions should be applied, the Prosecution requests that the Chamber appoint an independent counsel to review the transcript of the 2 February 2025 Call and ‘apply appropriate redactions to all those references that could be considered prejudicial to the Accused or his case, before the said transcript is disclosed to the Chamber and the Prosecution in these proceedings.’¹³

11. In support of its submissions as to why the unredacted transcript of the 2 February 2025 Call should be disclosed to the Prosecutor (but not the Said Prosecution team), the Prosecution submits that ‘[u]nder the Rome Statute, the Prosecutor is mandated to investigate incriminating and exonerating circumstances equally and therefore, nothing bars him from receiving information which may be prejudicial to the accused or his case.’¹⁴ The Prosecution avers that the exclusion of the Said Prosecution team at this stage is only to avoid a ‘possible conflict of interest’ and ‘solely intended, out of abundant caution, to safeguard the integrity of these proceedings and the rights of the accused in this case.’¹⁵

B. Response

12. In the Response, the Defence submits that the 2 February 2025 Call relates to a conversation between Mr Said and [REDACTED] in which he discussed how he has experienced the trial, providing [REDACTED] with a summary of the proceedings.¹⁶

¹¹ Request, ICC-01/14-01/21-951-Conf, para. 7.

¹² Request, ICC-01/14-01/21-951-Conf, para. 8.

¹³ Request, ICC-01/14-01/21-951-Conf, para. 9.

¹⁴ Request, ICC-01/14-01/21-951-Conf, para. 11.

¹⁵ Request, ICC-01/14-01/21-951-Conf, paras 12-13.

¹⁶ Response, ICC-01/14-01/21-953-Conf, paras 2-4.

13. In this context, the Defence provides the Chamber with a redacted version of the 2 February 2025 Call,¹⁷ providing various justifications for the redactions applied,¹⁸ and detailing the various topics that were discussed during the 2 February 2025 Call.¹⁹ In particular, the Defence submits that Mr Said discussed topics relating to: (i) [REDACTED];²⁰ (ii) [REDACTED],²¹ noting that Mr Said inadvertently revealed a protected witness's name;²² (iii) [REDACTED];²³ and (iv) [REDACTED].²⁴

14. The Defence submits that its overview of the topics discussed and its provision of a redacted version of the transcript of the 2 February 2025 Call is intended to assist the Chamber in its evaluation of matters at hand and contains all relevant information for the Chamber and the parties and participants.²⁵

15. In respect of the Prosecution's request for the appointment of independent counsel, the Defence submits this is unnecessary as it has disclosed all necessary information.²⁶ Furthermore, the Defence avers that the Prosecution's proposal is impracticable as independent counsel will not be in a position to familiarise themselves within a reasonable time of all relevant information in the case.²⁷ Similarly, independent counsel will not be able to identify potentially prejudicial information because only Mr Said's counsel can judge what would be detrimental to his case or not.²⁸

16. Last, in respect of the Prosecution's request to transmit the unredacted transcript of the 2 February 2025 Call to the Prosecutor, the Defence submits that an unredacted version of the transcript should not be disclosed to the Prosecutor. In this regard, the Defence submits that distinguishing the Prosecutor from the Said Prosecution team is artificial and from the moment the Prosecutor becomes aware of any information which

¹⁷ See Annex 1 to the Response, ICC-01/14-01/21-953-Conf-Exp-Anx1.

¹⁸ See Annex 2 to the Response, ICC-01/14-01/21-953-Conf-Exp-Anx2.

¹⁹ See Response, ICC-01/14-01/21-953-Conf, paras 7-33.

²⁰ Response, ICC-01/14-01/21-953-Conf, para. 9.

²¹ See Response, ICC-01/14-01/21-953-Conf, paras 10-29.

²² See Response, ICC-01/14-01/21-953-Conf, para. 22.

²³ See Response, ICC-01/14-01/21-953-Conf, para. 30.

²⁴ See Response, ICC-01/14-01/21-953-Conf, paras 31-33.

²⁵ Response, ICC-01/14-01/21-953-Conf, para. 34.

²⁶ Response, ICC-01/14-01/21-953-Conf, para. 40.

²⁷ Response, ICC-01/14-01/21-953-Conf, para. 41.

²⁸ Response, ICC-01/14-01/21-953-Conf, para. 42.

he may consider prejudicial, he will be able to use it.²⁹ The Defence avers that only information concerning issues of article 70 allegations should be disclosed to the Prosecutor, and anything else should be withheld, noting that it has prepared a redacted version of the transcript with this in mind and the redacted elements relate to the opinions and feelings of Mr Said which do not directly or indirectly relate to article 70 allegations.³⁰ The Defence submits that the Prosecution confuses incriminatory and exculpatory information collected during investigations and information that emanates directly from the accused which could be prejudicial to him.³¹ The Defence avers that the Prosecution's request to have all the statements made by Mr Said to [REDACTED], which could be prejudicial to him, is inadmissible and incomprehensible, amounting to a circumvention of all the guarantees against the risk of self-incrimination.³² Accordingly, the Defence submits that the redacted version of the transcript is sufficient for the Prosecutor to determine whether it is appropriate to proceed in respect of article 70 allegations.³³

III.ANALYSIS

17. At the outset, the Chamber recalls that it posed two questions to the parties in the Order: (i) to what extent the Chamber and/or the Office of the Prosecutor should receive an unredacted version of the transcript of the 2 February 2025 Call which may contain prejudicial information to the accused and his case; and (ii) if the transcript of the 2 February 2025 Call should be redacted, who should redact such information.³⁴ In respect of the first question, the Chamber observes from the parties' submissions that both the Prosecution and the Defence are of the view that the Chamber should not receive an unredacted version of the transcript of the 2 February 2025 Call.³⁵

18. The Chamber recalls the Registry Submission which notes that the accused has made, *inter alia*, references that could be considered prejudicial to him.³⁶ Furthermore,

²⁹ Response, ICC-01/14-01/21-953-Conf, paras 48-49.

³⁰ Response, ICC-01/14-01/21-953-Conf, para. 50.

³¹ Response, ICC-01/14-01/21-953-Conf, para. 51.

³² Response, ICC-01/14-01/21-953-Conf, paras 52-53.

³³ Response, ICC-01/14-01/21-953-Conf, para. 54.

³⁴ Order, ICC-01/14-01/21-933-Conf, para. 8.

³⁵ See Request, ICC-01/14-01/21-951-Conf, para. 7; Response, ICC-01/14-01/21-953-Conf, para. 42.

³⁶ Registry Submission, ICC-01/14-01/21-923-Conf, para. 6.

the Chamber notes that in the Response the Defence has made references to issues of self-incrimination in the present case³⁷ and that the Prosecution submitted that the Prosecution Team in this case should not be granted access to passages that could be considered prejudicial to the accused or his case.³⁸ Accordingly, the Chamber finds that it should not, at present, receive an unredacted version of the transcript of the 2 February 2025 Call.

19. The above notwithstanding, the Chamber notes that it has an obligation pursuant to article 68 of the Statute to ensure the protection of witnesses and victims in this case, and has imposed contact restrictions on Mr Said in this regard. The Chamber notes that, in the Registry Submission, the Registry avers that Mr Said may have used threatening or intimidating language and possibly disclosed the name of a witness,³⁹ potentially in violation of the contact restrictions.

20. At present, the Chamber is not in a position to make a proper assessment as to whether Mr Said has violated the contact restrictions, and must therefore identify the appropriate procedure for redacting the 2 February 2025 Call to enable it to make that very determination. This leads to the second question posed by the Chamber in the Order, namely who should redact the transcript of the 2 February 2025 Call.⁴⁰ At the outset, the Chamber notes that the Defence has taken the liberty to propose its own redacted version of the transcript with corresponding justifications. The Chamber finds that redactions should only be applied to information which relates to issues of self-incrimination in the present case. At present, the Chamber is unable to evaluate the redactions applied by the Defence because the Chamber does not have access to the unredacted transcript.

21. In the Request, the Prosecution submits that an independent counsel should be appointed to apply redactions.⁴¹ In the Response, the Defence submits that this proposal is impracticable as independent counsel will not be in a position to familiarise

³⁷ See Response, ICC-01/14-01/21-953-Conf, paras 42, 49-53.

³⁸ Request, ICC-01/14-01/21-951-Conf, para. 7.

³⁹ Registry Submission, ICC-01/14-01/21-923-Conf, para. 6.

⁴⁰ Order, ICC-01/14-01/21-933-Conf, para. 8.

⁴¹ Request, ICC-01/14-01/21-951-Conf, paras 9-10.

themselves within a reasonable time of all relevant information in the case.⁴² Whilst the Chamber agrees with the Prosecution that redactions should be applied in an objective and independent manner, the Chamber also accepts the Defence's submission that appointing an independent counsel is, at present, not the most practical solution. Accordingly, at this stage, the Chamber rejects the Prosecution's request to appoint an independent counsel to apply redactions to the transcript of the 2 February 2025 Call.

22. For the reasons that follow, the Chamber finds that the best course of action at this stage is to refer the matter to an available judge of the Pre-Trial Division pursuant to article 64(4) of the Statute.

23. The Chamber notes that article 64(4) of the Statute provides that a Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division. In this regard, the Chamber observes that article 64(4) of the Statute contains two requirements: (i) referral must be necessary for the Trial Chamber's effective and fair functioning; and (ii) referrals are limited to 'preliminary issues'.

24. The Chamber notes that one of its members is the President of the Pre-Trial Division and also a Judge in Pre-Trial Chamber II, which is currently seised of the situation in the Central African Republic.⁴³ As a result, the Chamber cannot refer the matter directly to Pre-Trial Chamber II. Furthermore, the Chamber is not in a position to determine who is an available judge of the Pre-Trial Division and considers that, under the circumstances, and in accordance with article 38(3)(a) of the Statute, the Presidency is in a better position to make such an assessment. Accordingly, the Chamber decides to refer the matter to the Presidency for it to assign it to an available judge of the Pre-Trial Division.

25. In respect of the first requirement, the Chamber finds that referral to an available judge of the Pre-Trial Division is necessary for the Chamber's continued effective and fair functioning. As stated above, the Chamber notes the submissions to the effect that

⁴² Response, ICC-01/14-01/21-953-Conf, paras 40-42.

⁴³ See Presidency, Decision assigning judges to divisions and recomposing Chambers, 13 March 2024, [ICC-01/14-01/21-720](#), p. 9.

the transcript of the 2 February 2025 Call may contain information which is prejudicial to Mr Said and that there are potential issues of self-incrimination in the present case. As noted above, the Chamber should not, at present, receive any such information. Accordingly, in order to ensure the Chamber's continued effective and fair functioning, this matter should be referred to an available judge of the Pre-Trial Division.

26. In respect of the second requirement, namely whether this issue constitutes a 'preliminary issue', the Chamber finds that the issue of applying redactions to the transcript of the 2 February 2025 Call constitutes a 'preliminary issue' within the meaning of article 64(4) of the Statute. The Chamber interprets 'preliminary issues' as not being limited to issues which are preliminary to trial, but rather as encapsulating discrete and provisional issues which must be resolved by a Pre-Trial Chamber or another available judge of the Pre-Trial Division in order to ensure the Trial Chamber's effective and fair functioning. The Chamber finds that it is necessary for its effective and fair functioning that an available judge of the Pre-Trial Division review the transcript of the 2 February 2025 Call and instruct the Registry to redact information which relates to issues of self-incrimination in the present case, before transmitting it to this Chamber. To the extent that any passages contain such prejudicial information *and* are relevant to determining whether Mr Said has violated his contact restrictions, the Chamber respectfully requests that such passages still be redacted but identified to the Chamber, which will then determine how to proceed.

27. Therefore, pursuant to article 64(4) of the Statute, the Chamber respectfully requests the Presidency to refer the matter to an available judge of the Pre-Trial Division.

28. In respect of the Prosecution's request regarding the disclosure of the unredacted transcript to the Prosecutor,⁴⁴ the Chamber defers ruling on this request pending the available judge of the Pre-Trial Division's determination on redactions.

⁴⁴ Request, ICC-01/14-01/21-951-Conf, paras 11-13.

29. Last, the Chamber is conscious that in the Response, the Defence, by its own admission, confirms that Mr Said revealed the name of a protected witness.⁴⁵ As a result, the Chamber orders the Victims and Witnesses Unit (the ‘VWU’), in conjunction with the Prosecution, to take all necessary steps to ensure the safety and security of the protected witness who was mentioned during the 2 February 2025 Call. The Chamber finds that having access to the Defence’s redacted version of the transcript of the 2 February 2025 Call is necessary for the VWU and the Prosecution to take any relevant steps in this regard.⁴⁶ Accordingly, the Chamber orders the Registry to reclassify ICC-01/14-01/21-953-Conf-Exp-Anx1 and ICC-01/14-01/21-953-Conf-Exp-Anx2 as ‘confidential’.

⁴⁵ Response, ICC-01/14-01/21-953-Conf, para. 22. *See also* ICC-01/14-01/21-953-Conf-Exp-Anx1, para. 41.

⁴⁶ The Chamber notes that the Defence does not object to reclassification of these annexes as ‘confidential’- Response, ICC-01/14-01/21-953-Conf, para. 39.

FOR THESE REASONS, THE CHAMBER HEREBY

REFERS the matter as set out in the present decision to the Presidency for its assignment to an available judge of the Pre-Trial Division, pursuant to article 64(4) of the Statute;

ORDERS the Registry to reclassify ICC-01/14-01/21-953-Conf-Exp-Anx1 and ICC-01/14-01/21-953-Conf-Exp-Anx2 as ‘confidential’; and

ORDERS the VWU and the Prosecution to take all necessary steps to ensure the safety and security of the protected witness as set out in paragraph 29 above.

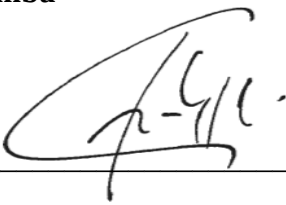


Judge Miatta Maria Samba

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 23 April 2025

At The Hague, The Netherlands