

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 May 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

**Decision on Defence Request for Leave to Appeal the Decision on Request for
Clarification of the Decision on a Request for Cooperation by the Defence**

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

TRIAL CHAMBER VI of the International Criminal Court, in the case of The Prosecutor v. Mahamat Said Abdel Kani, having regard to article 82(1)(d) of the Rome Statute (the ‘Statute’) issues this Decision on Defence Request for Leave to Appeal Decision on Request for Clarification of the Decision on a Request for Cooperation by the Defence.

I. PROCEDURAL HISTORY

1. On 21 March 2025, the Defence filed a request for the Chamber to issue a formal request for cooperation from a State Party (the ‘Requested State’) regarding a number of documents in the latter’s possession (the ‘Request’).¹

2. On 1 April 2025, the Chamber partially granted the Request and issued a request for cooperation to provide a limited number of specified items as well as information in relation to a specific issue.²

3. On 3 April 2025, the Defence filed a request for clarification (the ‘Clarification Request’).³ The Defence claimed that the Chamber had failed to rule on part of its Request. In particular, the Defence averred that it had asked the Chamber to order the Requested State to provide an entire category of ‘missing documents’ for the period of July until December 2013.

4. On 11 April 2025, the Chamber issued its decision on the Request for Clarification (the ‘Impugned Decision’),⁴ in which it rejected the Clarification Request. In the Impugned Decision, the Chamber held that it could not issue a cooperation

¹ Version confidentielle expurgée de la « Demande visant à obtenir la coopération des Autorités [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](#)).

² Decision on a Request for Cooperation by the Defence (ICC-01/14-01/21-949) (ICC-01/14-01/21-954-Conf-Exp), 1 April 2025, [ICC-01/14-01/21-954-Red](#).

³ Demande de clarification de la décision « Decision on a Request for Cooperation by the Defence (ICC-01/14-01/21-949) » (ICC-01/14-01/21-954-Conf-Exp), 3 April 2025, ICC-01/14-01/21-958-Conf.

⁴ Decision on Request for Clarification of the Decision on a Request for Cooperation by the Defence (ICC-01/14-01/21-949), 11 April 2025, ICC-01/14-01/21-961-Conf-Exp. A corrected public redacted version was filed on 22 April 2025 ([ICC-01/14-01/21-961-Red-Corr](#)).

request for the ‘missing documents’ because the Request did not meet the specificity and relevance requirements.

5. On 22 April 2025, the Defence filed a request for leave to appeal the Impugned Decision and identified two appealable issues (the ‘Request for Leave to Appeal’).⁵

6. On 29 April 2025, the Prosecution informed the Chamber that it did not intend to respond to the Request for Leave to Appeal.⁶

II. SUBMISSIONS

7. In the Request for Leave to Appeal, the Defence identifies two grounds for appeal: (i) whether the Chamber erred in fact and in law by considering that the Request did not meet the specificity requirement (the ‘First Issue’); and (ii) whether the Chamber erred in law by considering that the Request did not meet the relevance requirement (the ‘Second Issue’).

i. First Issue

8. Under the First Issue, the Defence challenges the Chamber’s refusal to make a request for cooperation for an entire category of documents spanning several months because the Defence had failed to clearly define the content and/or subject matter of the information sought.

9. According to the Defence, the Chamber erred in fact because the Request sufficiently qualified the scope of the information sought by tying it to several topics of relevance to its case, such as the activities of the OCRB and the security situation in Bangui at the time relevant to the charges.⁷

10. The Defence also argues that the Chamber erred in law because there is no legal basis for the Chamber’s ruling that “the Requested State cannot be asked to surmise which diplomatic communications contain relevant information. Nor can it be asked to

⁵ Demande d'autorisation d'interjeter appel de la “Decision on Request for Clarification of the Decision on a Request for Cooperation by the Defence”, 22 April 2025, ICC-01/14-01/21-967-Conf.

⁶ Email from Prosecution to Trial Chamber VI of 29 April 2025 at 12:23.

⁷ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 17.

hand over all of them, regardless of relevance”.⁸ The Defence submits that, in so holding, the Chamber overstepped its role and prevented the Requested State from making its own assessment of whether or not the Request was sufficiently specific.⁹ The Defence claims, in this regard, that the Requested State had in the past shown itself capable of identifying relevant items of the same category.¹⁰

ii. Second Issue

11. As the second ground of appeal, the Defence avers that the Chamber erred in law by finding that the Request failed to meet the relevance criterion.¹¹ The Defence submits that the Request sufficiently explained the relevance of the materials sought, by linking them to (i) the alleged existence of an armed conflict in 2013 in CAR and (ii) the alleged existence of a State or organisational policy within the meaning of Article 7(2) of the Statute.¹² The Defence argues that it cannot precisely demonstrate the relevance of the information sought without prior knowledge of its contents.¹³ Consequently, the Defence avers that the Chamber subjected it to a standard that is impossible to fulfil in practice because it presupposes that the Defence already knows what is in the requested items, which is logically impossible.¹⁴

12. The Defence argues that both issues require the immediate attention of the Appeals Chamber because the evidence sought by the Request could affect the outcome of the trial.¹⁵ Accordingly, it submits that by partially denying the Request, the Impugned Decision prevents the Defence from conducting investigations in favourable conditions, consequently undermining the fairness of the proceedings.¹⁶

⁸ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 19.

⁹ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 19.

¹⁰ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 20.

¹¹ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 24.

¹² Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 25.

¹³ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 26.

¹⁴ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 24.

¹⁵ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 29.

¹⁶ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, paras 27.

III. ANALYSIS

13. The Chamber recalls its previous decisions¹⁷ and antecedent jurisprudence regarding the application of article 82(1)(d) of the Statute.¹⁸ For the purposes of the present decision, the Chamber adopts its findings as set out in its previous decisions on requests for leave to appeal.

14. For the reasons elaborated on below, the Chamber finds that neither of the two identified grounds for appeal constitutes an appealable issue within the meaning of Article 82(1)(d) of the Statute.

15. Regarding the First Issue, the Chamber considers that the Request for Leave to Appeal primarily expresses a disagreement with the Impugned Decision in that it essentially restates the arguments that were already raised in the Clarification Request and ruled upon by the Chamber in the Impugned Decision.¹⁹ In particular, the Defence argues that the Chamber did not take into consideration the specific indications it provided in the Annex to its Request.²⁰ However, the Chamber did consider the Annex

¹⁷ See, *inter alia*, Decision on the Defence's Request for Leave to Appeal the 'Decision on the Prosecution's Third Request for In-Court Protective Measures', 19 March 2024, [ICC-01/14-01/21-725](#), para. 19; Decision on the Defence's Request for Reconsideration of or Leave to Appeal the Decision on the Prosecution's Fifth Request under Rule 68(2)(b), 16 December 2022, [ICC-01/14-01/21-575](#), paras 20-23; Decision on the Defence's Request for Leave to Appeal the 'Decision on the Prosecution's First, Second and Fourth Requests Pursuant to Rule 68(2)(b) of the Rules' (ICC-01/14-01/21-507-Conf), 28 November 2022, [ICC-01/14-01/21-562](#), paras 16-18; Decision on Defence Request for Leave to Appeal (ICC-01/14-01/21-440) and Reasons for Decision Rejecting Leave to Appeal (ICC-01/14-01/21-425), 6 September 2022, [ICC-01/14-01/21-473](#), paras 11-13; Decision on Defence Request for Reconsideration or Leave to Appeal the 'Directions on the Conduct of Proceedings' (ICC-01/14-01/21-251), 8 April 2025, [ICC-01/14-01/21-275](#), paras 9-11; Decision on Defence Request for Leave to Appeal the 'Decision Setting the Commencement Date of the Trial and Related Deadlines' (ICC-01/14-01/21-243), 15 March 2022, [ICC-01/14-01/21-258](#), paras 11-15; Decision on Defence Request for Leave to Appeal Decision on the Prosecution's Request for an Order to Exclude Defence Counsel from the Defence's List of Witnesses and Evidence, 26 March 2025, [ICC-01/14-01/21-952](#).

¹⁸ See Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the Demande d'autorisation d'interjeter appel de la 'Decision on the request for suspension of the time limit to respond to the Prosecutor's Trial Brief submitted by the Defence for Mr Gbagbo' (ICC-02-11-01/15-1141), 13 April 2018, [ICC-02/11-01/15-1150](#), para. 8; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Defence request for leave to appeal the decision appointing experts on reparations, 29 June 2017, [ICC-01/05-01/08-3536](#), paras 4-7; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 5 September 2018, [ICC-02/04-01/15-1331](#), para. 8.

¹⁹ Demande de clarification de la décision « Decision on a Request for Cooperation by the Defence (ICC-01/14-01/21-949) » (ICC-01/14-01/21-954-Conf-Exp), 14 April 2025, [ICC-01/14-01/21-958-Red](#), para. 6.

²⁰ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 1.

and found it to be unclear and confusing. In fact, as the Chamber clearly stated in the Impugned Decision, it had reviewed the Annex in an effort to discern what the Defence intended, finding that the only limitation provided by the Defence was by way of two broad - and presumably non-exhaustive - examples (i.e. ‘the OCRB and the prevailing security situation in Bangui in 2013’), which the Chamber deemed inadequate.²¹

16. With regard to the Defence’s argument that there is no legal basis for the Chamber’s finding that “the Requested State cannot be asked to surmise which diplomatic communications contain relevant information. Nor can it be asked to hand over all of them, regardless of relevance”, the Chamber considers that the Defence mischaracterises the findings made in the Impugned Decision. Indeed, the Chamber did not limit the Requested State’s discretion to provide the Defence with any information it sees fit in the context of voluntary cooperation. Instead, the Chamber found that it could not formally compel a State Party under article 96(1) of the Statute to either hand over large quantities of documents with no apparent relevance to the case or to select specific items on the basis of ill-defined criteria. The fact that the Defence disagrees with the Chamber’s assessment of the clarity of the criteria does not constitute an appealable issue. The Chamber notes, in this regard, that the Defence claims there is no legal basis for the Chamber’s position. However, apart from referencing articles 93 and 96 of the Statute,²² the Defence itself does not develop a cogent legal argument or demonstrate how the Impugned Decision diverges from the Court’s practice.

17. The Chamber observes, in this regard, that the Defence refers to CAR-OTP-2130-6245,²³ which is an Investigation Report and not a formal request for cooperation pursuant to article 96 of the Statute. Indeed, the report mentions a specific request for assistance (CAR-OTP-2118-7141), but this document does not appear to be available to the Chamber. Moreover, it is worth noting that this request pertained to recordings of public broadcasts as opposed to confidential internal government communications. As regards the Defence’s reference to CAR-OTP-2122-4152,²⁴ the Chamber notes that, contrary to what the Defence maintains, this Investigation Report does not confirm the

²¹ Impugned Decision, [ICC-01/14-01/21-961-Red-Corr](#), para. 7.

²² Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, para. 19.

²³ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, fn. 16.

²⁴ Request for Leave to Appeal, ICC-01/14-01/21-967-Conf, fn. 17.

Defence's allegation that the relevant State authorities indeed handed over all internal correspondence for the period of August 2012 to 10 January 2014. Rather, the report describes steps taken to obtain the registers of correspondence and the physical inspection of materials found in a particular location.

18. Turning to the Second Issue, the Chamber finds that the Defence misrepresents the Impugned Decision. The Defence argues that the Impugned Decision imposed an erroneously high threshold, which can only be met when the Defence is already in possession of the requested material. This argument distorts the Impugned Decision. Far from requiring the Defence to indicate the requested items with great precision, the Chamber found that it should either have articulated clear criteria to circumscribe the requested documents or have demonstrated that there was a reasonable chance that at least a large proportion of the documents falling in the requested category would be relevant. The Chamber found that the Defence had done neither of these things. Accordingly, the Chamber finds that the Second Issue does not arise from the Impugned Decision and therefore does not amount to an appealable issue.

19. Finally, the Chamber is of the view that none of the identified issues would significantly affect the fair and expeditious conduct of the proceedings or outcome of the trial. Even if the Chamber had requested all the 'missing documents' for the period of July to December 2013, there is no indication that any of them would contain new information that is not available in other evidence that is already in the record. Any impact on the outcome of the proceedings is thus entirely speculative. The Defence also fails to explain how its partial rejection of the Request would negatively affect the fair and expeditious conduct of the proceedings. The simple affirmation that the Chamber's refusal to grant the Defence's broad request prevents the Defence from investigating under good conditions and from obtaining all documents that are useful to discovering the truth is itself vague and speculative. Such arguments cannot substantiate the claim that the Impugned Decision violates the accused's right to have the necessary facilities to prepare his defence.

20. Accordingly, the Chamber finds that the Request fails to satisfy the cumulative requirements of article 82(1)(d) of the Statute, and must be rejected.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Appeal.

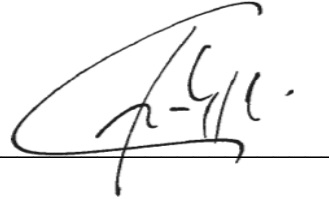


Judge Miatta Maria Samba

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 2 May 2025

At The Hague, The Netherlands