

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 May 2025

PRE-TRIAL DIVISION

**Before: Judge Haykel Ben Mahfoudh
Judge of the Pre-Trial Division**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

**with one annex confidential EX PARTE, only available to the Registry and one
annex confidential EX PARTE, only available to Trial Chamber VI**

**Decision on a Preliminary Issue Arising before Trial Chamber VI 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
Trial Chamber VI

Judge Haykel Ben Mahfoudh, acting as Single Judge of the Pre-Trial Division of the International Criminal Court pursuant to the Presidency decision of 24 April 2025 (ICC-01/14-01/21-969) and in accordance with article 64(4) of the Statute, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 64(4), 67, and 70 of the Rome Statute (the ‘Statute’), issues this ‘Decision on a Preliminary Issue Arising before Trial Chamber VI’ (the ‘Chamber’).

I. PROCEDURAL HISTORY AND SUBMISSIONS

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 In this decision, the Chamber prohibited Mr Said from discussing the substance of his case during non-privileged communications.
2. On 11 December 2024, the Chamber issued the Second Decision on Contact Restrictions, in which it, *inter alia*, allowed Mr Said to discuss the substance of his case during non-privileged communications, subject to not divulging the identities of protected persons or other confidential information.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 The Registry requested guidance from the Chamber ‘as to whether it wishes to receive the transcript of the 2 February 2025

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.

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

4. 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.

5. On 23 April 2025, after considering the submissions received from the Office of the Prosecutor (the ‘Prosecution’)⁷ and the Defence,⁸ the Chamber issued a decision referring the matter to the Presidency for its assignment to an available judge of the Pre-Trial Division, pursuant to article 64(4) of the Statute (the ‘Decision of 23 April 2025’).⁹ Therein, the Chamber found it ‘necessary for its effective and fair functioning that an available judge of the Pre-Trial Division should 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 the Chamber.¹⁰ It also found that passages containing potentially prejudicial information that are also relevant to determining whether Mr Said has violated the contact restrictions should be redacted but identified in order to allow the Chamber to decide how to proceed.¹¹

6. On 24 April 2025, the Presidency assigned Judge Haykel Ben Mahfoudh, to consider the issue raised by Trial Chamber VI in the Decision of 23 April 2025, pursuant to article 64(4) of the Statute (the ‘Presidency Decision’).¹²

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

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

⁷ 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

⁸ 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.

⁹ Decision referring a matter pursuant to article 64(4) of the Statute (ICC-01/14-01/21-968-Conf), [ICC-01/14-01/21-968-Red](#), 23 April 2025.

¹⁰ Decision of 23 April 2025, [ICC-01/14-01/21-968-Red](#), para. 26.

¹¹ Decision of 23 April 2025, [ICC-01/14-01/21-968-Red](#), para. 26.

¹² Decision assigning an issue to a judge of the Pre-Trial Division pursuant to article 64(4) of the Rome Statute, 24 April 2025, [ICC-01/14-01/21-969](#).

II. ANALYSIS

7. The Single Judge, noting the Presidency Decision as well as the abovementioned decisions of Trial Chamber VI, has considered the transcript of the 2 February 2025 Call in order to determine which passages, if any, may contain self-incriminating information. In doing so, the Single Judge took into account the redaction proposals submitted by the Defence¹³ as well as a number of documents from the trial record, including the trial briefs of the Prosecution¹⁴ and the Defence.¹⁵

8. Based on this analysis, the Single Judge identified a number of passages in the transcript that may contain self-incriminating or otherwise prejudicial information to the Mr Said. The passages are identified in confidential *ex parte*, Registry only, Annex A to this decision.

9. The Single Judge has further considered whether any of the abovementioned passages also contain information indicating potential violations of the contact restrictions or article 70 of the Statute. The Single Judge has identified at least one passage which may indicate that Mr Said has violated the contact restrictions, but it does not overlap with any of the passages revealing potentially self-incriminating or otherwise prejudicial information for the Defence. The passage containing the potential violation is listed in confidential *ex parte*, Trial Chamber VI only, Annex B to this decision for the consideration of the competent Trial Chamber.

10. The Single Judge further notes that in other parts of the transcript, Mr Said may have revealed information that was discussed in private session. However, none of these passages overlap with passages containing self-incriminatory or prejudicial information.

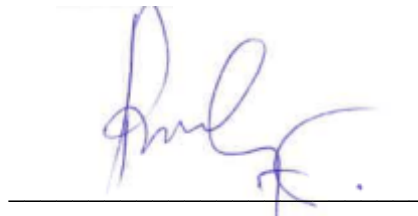
¹³ Soumissions de la Défense portant sur la discussion entre Monsieur Said et son épouse du 2 février 2025 conformément à l'ordonnance de la Chambre du 5 mars 2025 (ICC-01/14-01/21-933-Conf), 28 March 2025, ICC-01/14-01/21-953-Conf, with two confidential *ex parte* annexes.

¹⁴ Prosecution's Trial Brief, 13 June 2022, ICC-01/14-01/21-359-Conf. A public redacted version was filed on 28 July 2022 ([ICC-01/14-01/21-359-Red](#)).

¹⁵ Mémoire de première instance de la Défense, 12 August 2022, ICC-01/14-01/21-229-Conf. A public redacted version was filed on 29 August 2022 ([ICC-01/14-01/21-449-Red](#)).

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

INSTRUCTS the Registry to redact the passages from the transcript of the 2 February 2025 Call identified in the Annex A to this decision and to transmit the redacted transcript to Trial Chamber VI.



Judge Haykel Ben Mahfoudh
Judge of the Pre-Trial Division

Done in English. A French translation may follow. The English version remains authoritative.

Dated 8 May 2025

At The Hague, The Netherlands