

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 July 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 the Defence's Request to Reclassify Witness Statements

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 articles 64(2), 64(4), 64(7), 67(1), 68 of the Rome Statute (the ‘Statute’), and rules 87, 88 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Defence’s Request to Reclassify Witness Statements’.

I. PROCEDURAL HISTORY

1. On 20 June 2025, the Defence filed a request to reclassify a number of statements of witnesses for the Office of the Prosecutor (the ‘Prosecution’) (the ‘Request’).¹
2. On 3 July 2025 the Prosecution filed a response to the Request (the ‘Response’).²
3. On the same day, the Common Legal Representative of Victims (the ‘CLRv’) also responded to the Request (the ‘Victims’ Response’).³
4. On 7 July 2025, the Defence sought leave to reply to the Response.⁴
5. On 10 July 2025, the Chamber granted the Defence leave to reply to the Response.⁵
6. On 14 July 2025, the Defence filed its reply to the Response (the ‘Reply’).⁶

¹ Requête de la Défense visant à reclassifier « public » des déclarations antérieures de témoins de l’Accusation afin d’assurer la publicité des débats composante essentielle du procès équitable., 20 June 2025, [ICC-01/14-01/21-985](#).

² Réponse de l’Accusation à la « Requête de la Défense visant à reclassifier « public » des déclarations antérieures de témoins de l’Accusation afin d’assurer la publicité des débats composante essentielle du procès équitable », 3 July 2025, ICC-01/14-01/21-991.

³ Public redacted version of “Victims’ Response to “Requête de la Défense visant à reclassifier ‘public’ des déclarations antérieures de témoins de l’Accusation afin d’assurer la publicité des débats composante essentielle du procès équitable” (No. ICC-01/14-01/21-985)”, 3 July 2025, [ICC-01/14-01/21-990-Red](#). A confidential version was filed simultaneously (ICC-01/14-01/21-990-Conf).

⁴ Demande d’autorisation de répliquer à la « Réponse de l’Accusation à la « Requête de la Défense visant à reclassifier « public » des déclarations antérieures de témoins de l’Accusation afin d’assurer la publicité des débats composante essentielle du procès équitable » » (ICC-01/14-01/21-991-Conf)., 7 July 2025, ICC-01/14-01/21-993.

⁵ Email from the Chamber to the Parties, dated 10 July 2025, at 17:48.

⁶ Réplique de la Défense à la « Réponse de l’Accusation à la « Requête de la Défense visant à reclassifier « public » des déclarations antérieures de témoins de l’Accusation afin d’assurer la publicité des débats composante essentielle du procès équitable » » (ICC-01/14-01/21-991-Conf)., 14 July 2025, ICC-01/14-01/21-995, with one public redacted annex.

II. SUBMISSIONS

A. Request

7. In the Request, the Defence states that the publicity of the proceedings is a fundamental principle of the trial which fulfils several crucial functions, such as ensuring the rights of the Defence by guaranteeing that the accused's case is discussed publicly and that the public can learn about the discussions that relate to what they experienced.⁷

8. The Defence submits that a key part of the procedure is the Closing Briefs and Closing Submissions of the Parties, in which the evidence submitted during the trial will be discussed.⁸ In this regard, the Defence avers that it is all the more important that the content of testimony is public, and there is a need to ensure that there are no impediments to what can be discussed publicly in the Briefs and pleadings beyond what is objectively justifiable.⁹

9. The Defence submits that it is therefore for the Prosecution to justify the need for protective measures for its witnesses, and in the absence of such measures, in principle the testimony of those witnesses should be public.¹⁰

10. The Defence accordingly requests that: (i) the prior recorded statements of rule 68 witnesses who do not have protective measures be reclassified as public;¹¹ and (ii) a review of the protective measures granted to witnesses be undertaken.¹²

11. In respect of the rule 68 witnesses who do not have protective measures, the Defence submits that there is a presumption that witnesses must testify publicly and there is no reason to treat rule 68(2) witnesses differently from other Prosecution witnesses who come to court.¹³ Accordingly, the Defence avers that unless the Prosecution justifies the need for protective measures to each of the Prosecution

⁷ Request, [ICC-01/14-01/21-985](#), para. 24.

⁸ Request, [ICC-01/14-01/21-985](#), para. 25.

⁹ Request, [ICC-01/14-01/21-985](#), para. 26.

¹⁰ Request, [ICC-01/14-01/21-985](#), para. 27.

¹¹ Request, [ICC-01/14-01/21-985](#), paras 29-37.

¹² Request, [ICC-01/14-01/21-985](#), paras 38-40.

¹³ Request, [ICC-01/14-01/21-985](#), paras 29-30.

witnesses introduced under rule 68(2)(b) and (c) of the Rule, then there is nothing to warrant their classification as ‘confidential’.¹⁴

12. The Defence further submits that the Prosecution’s position is not consistent with that in other cases, making reference to the *Gbagbo and Blé Goudé* case in which the Prosecution allegedly agreed that statements submitted under rule 68(2)(b) and (c) of the Rules for witnesses who did not have protective measures be reclassified as ‘public’.¹⁵

13. In addition, the Defence submits that, by the same logic, with respect to rule 68(3) witnesses who testified publicly, their prior statements should also be reclassified as ‘public’.¹⁶

14. In respect of witnesses who have been granted protective measures in the present case, the Defence notes that these protective measures were granted almost three years ago and it is important to ensure that these measures are still justified today.¹⁷

15. Accordingly, the Defence avers that the Victim and Witnesses Unit (the ‘VWU’) should be ordered to take necessary steps to verify whether there has been a change in circumstances that would remove the need for the protection for all or some of the Prosecution’s witnesses, and transmit that to the Parties for consideration.¹⁸

16. Last, the Defence submits that for rule 68(3) witnesses who testified with protective measures, even if such protective measures are still justified, the Prosecution should prepare public redacted versions of their testimony, as is the case with transcripts of in-court testimony.¹⁹

B. Response

17. In the Response, the Prosecution submits that the Request must be placed in its context, namely the drafting of the Closing Briefs, noting that there have been *inter*

¹⁴ Request, [ICC-01/14-01/21-985](#), paras 31-32.

¹⁵ Request, [ICC-01/14-01/21-985](#), paras 34-35.

¹⁶ Request, [ICC-01/14-01/21-985](#), para. 37.

¹⁷ Request, [ICC-01/14-01/21-985](#), para. 38.

¹⁸ Request, [ICC-01/14-01/21-985](#), para. 39.

¹⁹ Request, [ICC-01/14-01/21-985](#), para. 40.

partes discussions in which the Prosecution took the position that it is appropriate to maintain the confidential nature of statements of rule 68(2)(b) and (c) witnesses.²⁰

18. The Prosecution makes a number of overarching submissions in response to the Request. First, the Prosecution submits that the prior recorded testimony of a number of witnesses who have also given evidence in the *Yekatom and Ngaïssona* case is already public and available on the Court's website (or will be in due course), making reference to six witnesses in this regard.²¹

19. In respect of the prior recorded testimony of other witnesses, the Prosecution submits that an appropriate balance between the publicity of the proceedings and the protection of confidential information and judicial economy must be struck.²² The Prosecution avers that this can be achieved by allowing the Parties to refer, under certain conditions, to the confidential content of the prior recorded testimony of witnesses in their Closing Briefs.²³ The Prosecution makes reference to the practice in the *Abd Al Rahman* case, where the Trial Chamber granted a request by the parties and participants in that case to be allowed to refer to confidential passages of witness testimony in the public versions of their Closing Briefs as long as they did not compromise the reason for which confidential status had been given.²⁴

20. The Prosecution proposes that a similar approach be taken in the present proceedings, noting that the public redacted versions should be disclosed *inter partes* before they are filed to enable the Parties and Participants to review them to ensure that identifying information is not disclosed or revealed.²⁵

21. In respect of the Defence's request for a revision of protective measures already granted, the Prosecution submits that this request should be rejected.²⁶ The Prosecution avers that the protective measures granted are necessary, justified and proportionate and

²⁰ Response, ICC-01/14-01/21-991, para. 3.

²¹ Response, ICC-01/14-01/21-991, paras 5-6.

²² Response, ICC-01/14-01/21-991, para. 7.

²³ Response, ICC-01/14-01/21-991, paras 7-8.

²⁴ Response, ICC-01/14-01/21-991, para. 8.

²⁵ Response, ICC-01/14-01/21-991, paras 9-10.

²⁶ Response, ICC-01/14-01/21-991, para. 11.

the Defence has not substantiated a change in circumstances which would warrant the Chamber reviewing them.²⁷

C. Victims' Response

22. In the Victims' Response, the CLRV makes a number of submissions in respect of 'the prior recorded testimony of the dual status witnesses she represents, or of any other witness whose testimony overlaps with that of dual status witnesses, and which, if disclosed, could undermine the protective measures granted to her clients.'²⁸

23. The CLRV submits that whilst it is of fundamental importance that the proceedings be public, this principle is not absolute, noting that article 68 of the Statute and rules 87 and 88 of the Rules are 'essential legal means by which the Court can enable [witnesses' and victims'] participation in the proceedings, as such measures are critical to safeguarding their safety, physical and psychological well-being, dignity, and private life.'²⁹

24. In respect of Prosecution witnesses whose prior recorded testimony was introduced under rule 68(2)(b) and (c) of the Rules, the CLRV refers to the Chamber's previous finding that 'a large number of witnesses in this case are potentially affected by the volatile security situation in the CAR and the continued operation of armed groups on its territory'.³⁰ The CLRV further refers to the Registry's findings in its recent report on the security situation in the Central African Republic, highlighting that victims have 'repeatedly stressed their vulnerable position and the permanent fear they are living in'.³¹

25. The CLRV makes detailed submissions regarding specific witnesses whose prior recorded testimony overlaps with testimony given by protected dual status witnesses. She cautions that the public disclosure of the statements of these witnesses would

²⁷ Response, ICC-01/14-01/21-991, paras 12-13.

²⁸ Victims' Response, [ICC-01/14-01/21-990-Red](#), para. 9.

²⁹ Victims' Response, [ICC-01/14-01/21-990-Red](#), paras 11-12.

³⁰ Victims' Response, [ICC-01/14-01/21-990-Red](#), para. 14.

³¹ Victims' Response, [ICC-01/14-01/21-990-Red](#), para. 15.

directly compromise the protective measures already granted to the dual status witnesses concerned.³²

26. The CLRV further avers that nearly all statements introduced pursuant to rules 68(2)(b) and (c) of the Rules contain identifying information and it would be ‘unwise to simply reclassify these statements as public without first conducting a thorough, line-by-line analysis of each one’, noting that ‘[s]uch an exercise would be resource-intensive and time-consuming, and may not even be possible to complete before the deadline for submission of the closing briefs.’³³ The CLRV further notes that a similar situation appears for witnesses who testified pursuant to rule 68(3) of the Rules.³⁴

27. In respect of witnesses whose prior recorded testimony was introduced pursuant to rule 68(3) of the Rules, the CLRV submits that there is no need for the VWU to conduct a verification exercise of protective measures granted ‘given the absence of any significant changes concerning the security situation over the years.’³⁵ In addition, the CLRV posits that it would require the VWU ‘to contact all affected individuals to assess their current circumstances, which could cause unnecessary distress and/or re-traumatisation.’³⁶ In any event, the CLRV submits that she has contacted all the dual status witnesses concerned and they all indicate that their personal circumstances have not changed, and thus all granted protective measure remain necessary.³⁷

D. Reply

28. In the Reply, the Defence addresses the jurisprudence from the *Abd Al Rahman* case, cited by the Prosecution in the Response, submitting that the jurisprudence is not relevant to the matter under consideration.³⁸ Specifically, the Defence submits that the parties in the *Abd Al Rahman* case agreed with the classification of the evidence and the protective measures granted and were simply drawing the logical consequences for knowing how to cite this evidence in their Closing Briefs.³⁹

³² Victims’ Response, [ICC-01/14-01/21-990-Red](#), para. 16. *See also* para. 24.

³³ Victims’ Response, [ICC-01/14-01/21-990-Red](#), para. 17.

³⁴ Victims’ Response, [ICC-01/14-01/21-990-Red](#), para. 25.

³⁵ Victims’ Response, [ICC-01/14-01/21-990-Red](#), para. 20.

³⁶ Victims’ Response, [ICC-01/14-01/21-990-Red](#), para. 20.

³⁷ Victims’ Response, [ICC-01/14-01/21-990-Red](#), paras 21-22.

³⁸ Reply, ICC-01/14-01/21-995-Conf, para. 28.

³⁹ Reply, ICC-01/14-01/21-995, para. 29.

29. The Defence submits that the jurisprudence from the *Abd Al Rahman* case can be distinguished from the present proceedings because the Defence request an adversarial debate on the possible need for protective measures for witnesses falling within the scope of rule 68(2) of the Rules.⁴⁰ The Defence submits that the Request is based on the Court's established practice according to which protective measures are exceptions to the principle of publicity of the proceedings, and argues that nothing in the Court's legal frameworks supports the Prosecution's position.⁴¹ In this regard, the Defence submits that the current approach allows the Prosecution to give anonymity to any rule 68(2) witness.⁴²

30. Furthermore, the Defence notes that the *Abd Al Rahman* jurisprudence mentions the anonymity of protected witnesses vis-à-vis the public, however, the Defence submits that as long as the Prosecution has not requested protective measures then these rule 68(2) witnesses cannot be considered protected witnesses in the present case.⁴³

31. Accordingly, the Defence requests the Chamber to disregard the *Abd Al Rahman* jurisprudence and grant the Request.

III. ANALYSIS

32. At the outset, the Chamber recalls, as it has held on a number of occasions, that articles 64(7) and 67(1) of the Statute establish the principle of the publicity of the proceedings as a fundamental right of the accused and a necessary component of a fair and transparent trial. However, the Chamber further recalls that this principle is not absolute and subject to exceptions, including for the purposes of protecting victims and witnesses.⁴⁴ The Chamber finds, in assessing the Request, that consideration must be had to the balancing of these considerations.

⁴⁰ Reply, ICC-01/14-01/21-995, para. 30.

⁴¹ Reply, ICC-01/14-01/21-995, para. 32.

⁴² Reply, ICC-01/14-01/21-995, para. 32.

⁴³ Reply, ICC-01/14-01/21-995, paras 33-34.

⁴⁴ See Decision on the Prosecution's Request for In-Court Protective Measures dated 21 September 2022 (ICC-01/14-01/21-481-Conf), 26 September 2022, [ICC-01/14-01/21-481-Red](#) (the 'First Decision on Protective Measures'), para. 12. A confidential version was filed on 21 September 2022 (ICC-01/14-01/21-481-Conf); Decision on the Prosecution Second Request for In-Court Protective Measure, 4 May 2023, [ICC-01/14-01/21-605-Red](#) (the 'Second Decision on Protective Measures'), para. 31. A

33. The Chamber observes that the Defence makes a number of discrete requests in the Request, which the Chamber will address in turn.

34. First, the Defence requests that the Chamber embark on a review of the protective measures already granted to Prosecution rule 68(3) witnesses in the present case, and order the VWU to take steps to verify whether there has been a change in circumstances for these Prosecution witnesses.⁴⁵

35. The Chamber finds that the Defence essentially requests reconsideration of the Chamber's decisions to grant protective measures in this case. The Chamber recalls that reconsideration of a decision is an exceptional remedy and should only take place if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice, noting that new facts arising since the decision was rendered may be relevant to this assessment.⁴⁶

36. The Chamber notes that the Defence has not presented any new facts or arguments, other than reference to the passage of time,⁴⁷ which would warrant the Chamber engaging in a review of all protective measures granted to rule 68(3) witnesses in the present case. Indeed the Chamber notes, as highlighted by the CLRV,⁴⁸ that the security situation in the Central African Republic, which was a relevant factor taken into consideration for the purposes of granting protective measures to a majority of the

confidential version was filed on 20 April 2023 (ICC-01/14-01/21-605-Conf); Decision on the Prosecution's Request for In-Court Protective Measures for P-0529, P-2239 and P-0342, 4 October 2024, [ICC-01/14-01/21-870-Red](#) (the 'Fourth Protective Measures Decision'), para. 32. A confidential version was filed simultaneously (ICC-01/14-01/21-870-Conf).

⁴⁵ Request, [ICC-01/14-01/21-985](#), paras 38-40.

⁴⁶ Decision on the Defence's Request for Reconsideration of the 'Second Order Pursuant to Rule 135 of the Rules of Procedure and Evidence' and Order Appointing a Medical Expert, 4 June 2024, [ICC-01/14-01/21-780-Red](#), paras 26-27 referring to Decision on the Defence Request for Reconsideration of 'Order pursuant to rule 135 of the Rules of Procedure and Evidence', 15 December 2023, [ICC-01/14-01/21-618-Red](#). A SECRET *ex parte* and SECRET Redacted version were filed on 16 June 2023 respectively (ICC-01/14-01/21-618-SECRET-Exp; ICC-01/14-01/21-618-SECRET-Red); 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 2022, [ICC-01/14-01/21-275](#) and references therein.

⁴⁷ Request, [ICC-01/14-01/21-985](#), para. 38.

⁴⁸ Victims' Response, [ICC-01/14-01/21-990-Red](#), para. 15.

protected witnesses in the present proceedings,⁴⁹ remains largely unchanged.⁵⁰ Accordingly, this aspect of the Request is rejected.

37. Turning to the Defence's request in respect of the Prosecution's rule 68(2)(b) and (c) witnesses, the Chamber rejects the Defence's submission that simply because the Prosecution has not requested protective measures for its rule 68(2) witnesses that their statements should automatically be reclassified as 'public'. The Chamber finds that to take this approach would result in a violation of article 68 of the Statute as confidential information would automatically be released into the public domain without any prior review. The Chamber finds that the Court, as a whole, has an obligation to ensure that victims and witnesses who cooperate with it are not put at risk. Indeed, the Chamber notes that article 68(1) of the Statute allows the Prosecution 'to take measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses' during its investigation and prosecution of alleged crimes under the Statute.⁵¹

38. Nevertheless, the Chamber finds, as acknowledged by both the Prosecution⁵² and the Defence,⁵³ that there is a need to ensure that the Parties and Participants can make their final submissions in the most public way possible. Whilst the Chamber notes that the prior recorded testimony of a number of witnesses are already public,⁵⁴ the majority are not. In respect of a way forward, the Chamber finds that, at this stage of the proceedings, to order a review of the prior recorded testimony of all Prosecution rule 68(2) witnesses which are currently classified as 'confidential' would be unduly burdensome, lead to delays in the filing of the Closing Briefs, and not facilitate the expeditiousness of the proceedings. The Chamber finds that such an exercise would,

⁴⁹ See, for example, First Decision on Protective Measures, [ICC-01/14-01/21-481-Red](#), para. 18; Second Decision on Protective Measures, [ICC-01/14-01/21-605-Red](#), paras 19-21; Fourth Protective Measures Decision, [ICC-01/14-01/21-870-Red](#), para. 33.

⁵⁰ See Annex to the Twelfth Periodic Report of the Registry on the Political and Security situation in the Central African Republic 11 February – 15 May 2025, 26 May 2025, ICC-01/14-01/21-983-Conf-Anx, para. 52.

⁵¹ See article 68(1) of the Statute which provides, in relevant part: 'The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. [...] *The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes [...].*' (Emphasis added).

⁵² Response, ICC-01/14-01/21-991, paras 7-9

⁵³ Request, [ICC-01/14-01/21-985](#), paras 24-26.

⁵⁴ See P-0966, P-2251, P-2269, P-0291.

inter alia, require the Parties and Participants to contact all the witnesses concerned, leading to an intensive, rigorous review of the prior recorded testimony, and likely result in extensive litigation on redactions.⁵⁵ To engage in this exercise at this stage of the proceedings would impact Mr Said's right to be tried without undue delay.

39. Accordingly, the Chamber finds that an alternative solution must be found. The Chamber takes note of the approach adopted by the Trial Chamber in the *Abd Al Rahman* case.⁵⁶ Although the Defence submits that the jurisprudence from the *Abd Al Rahman* case should be distinguished from the present proceedings,⁵⁷ the Chamber finds that the approach taken by the parties, participants and Trial Chamber in that case is pragmatic and facilitates the publicity of the final submissions to the greatest extent possible.

40. The Chamber will therefore allow the Parties and Participants to refer to confidential information in the public versions of their Closing Briefs (and Closing Submissions) as long as doing so will not lead to the identification of witnesses whose identity is not already public, or otherwise compromise the security of such witnesses. The Parties and Participants are ordered to liaise *inter partes* in this respect prior to the filing of the public redacted versions of their Closing Briefs.

⁵⁵ The Chamber notes that there has been extensive litigation between the Parties on redactions relating to witness testimony requiring intervention by the Chamber – *see*, for example, Second Decision Regarding Public Redacted Versions of Transcripts, 16 December 2024, [ICC-014-01/21-907](#); Decision on Disagreements Regarding Lesser Redacted Versions of Public Transcripts, 31 January 2025, [ICC-01/14-01/21-683](#), with one confidential annex. Furthermore, the Chamber also notes that the pace on which parties have produced the public redacted versions of transcripts has been slow – *see* Second Decision Regarding Public Redacted Versions of Transcripts, 16 December 2024, [ICC-014-01/21-907](#), para. 10.

⁵⁶ *See* Response, ICC-01/14-01/21-991, fn 6; Annex to Reply, ICC-01/14-01/21-995-Anx-Red.

⁵⁷ *See* Reply, ICC-01/14-01/21-995, paras 28 *et seq.*

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

ORDERS the Parties and Participants to proceed in line with paragraph 40 above.

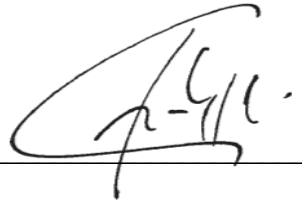


Judge Miatta Maria Samba

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 21 July 2025

At The Hague, The Netherlands