

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/14-01/21
Date: 2 September 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's Request for Leave to Appeal the '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 article 82(1)(d) of the Rome Statute (the ‘Statute’) issues this ‘Decision on Defence’s Request for Leave to Appeal the ‘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, with one public redacted annex.

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.

7. On 21 July 2025, the Chamber issued the ‘Decision on the Defence’s Request to Reclassify Witness Statements’ (the ‘Impugned Decision’),⁷ in which it rejected the Request.

8. On 28 July 2025, the Defence filed a request for leave to appeal the Impugned Decision, identifying four issues for leave to appeal (the ‘Request for Leave to Appeal’).⁸

9. On 1 August 2025, the Prosecution filed a response to the Request for Leave to Appeal (the ‘Response to the Request for Leave to Appeal’).⁹

10. The CLRV did not respond to the Request for Leave to Appeal.

II. SUBMISSIONS

11. In the Request for Leave to Appeal, the Defence identifies four issues for appeal: (i) whether the Chamber erred in law by refusing to apply the applicable law regarding protective measures; (ii) whether the Chamber erred in law by refusing to implement the applicable law regarding protective measures because of the time it would take; (iii) whether the Chamber erred in fact by considering that the implementation of the applicable law on protective measures would take a considerable time; and (iv) whether the Chamber erred in law by relying on the *Abd-Al-Rahman* jurisprudence without explaining how it applies to the present case.

1. First Issue

12. The Defence submits that the Chamber erred in law by refusing to apply the applicable law regarding protective measures.¹⁰ The Defence avers that the Chamber did not explain the legal basis which would allow the Prosecution to automatically obtain the anonymity of its witnesses without making a request for protective measures.¹¹ In this regard, the Defence submits that the invocation of article 68(1) of

⁷ Decision on the Defence’s Request to Reclassify Witness Statements, 21 July 2025, ICC-01/14-01/21-1000, para. 40.

⁸ Demande d’autorisation d’interjeter appel de la “Decision on the Defence’s Request to Reclassify Witness Statements”(ICC-01/14-01/21-1000), 28 July 2025, ICC-01/14-01/21-1003-Conf.

⁹ Prosecution’s response to Defence’s request for leave to appeal the “Decision on the Defence’s Request to Reclassify Witness Statements”(ICC-01/14-01/21-1000), 1 August 2025, ICC-01/14-01/21-1006-Conf.

¹⁰ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 41.

¹¹ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 42.

the Statute cannot circumvent the application of the applicable law regarding protective measures, noting that it made reference to jurisprudence in the *Gbagbo* case which would have allowed the Chamber to rule in the Defence's favour.¹² Last, the Defence submits that there is no reason to treat rule 68(2) witnesses different from other oral Prosecution witnesses and, in the absence of protective measures, the prior recorded testimony must be public.¹³

13. In the Response to the Request for Leave to Appeal, the Prosecution submits that, contrary to the Defence submissions, the Chamber complied with the Court's legal framework on granting protective measures and identified the factors taken into consideration. For example, the fact that there has been extensive litigation between the Parties on redactions of witness testimony requiring intervention by the Chamber.¹⁴ In this regard, the Prosecution submits that the Defence merely disagrees with the Impugned Decision. The Prosecution further avers that the Defence fails to appreciate that the principle of publicity of proceedings is not absolute and 'does not translate into a blanket disclosure to the public of every element of the case file, regardless of the need for non-disclosure necessary to protect the administration of justice.'¹⁵ In any event, the Prosecution submits that 'the requirements of publicity and transparency of proceedings have been fully met in this case since there is an extensive record which is already available on the Court's website including the filings and decisions of the pre-trial and trial proceedings, as well as thousands of pages of hearing transcripts reflecting the witness testimony.'¹⁶

2. *Second Issue*

14. The Defence submits that the Chamber erred in law by engaging in a discussion of the length of time it would take to implement the legal framework regarding protective measures in order to justify not following it.¹⁷ The Defence makes two discrete claims in this regard.

¹² Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, paras 42-43.

¹³ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 44.

¹⁴ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 17.

¹⁵ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 18.

¹⁶ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 18.

¹⁷ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 46.

15. First, the Defence argues that there is no legal basis for setting aside the applicable law because of time considerations.¹⁸ In this regard, the Defence avers that to do so would allow for arbitrariness and create legal uncertainty.¹⁹

16. Second, the Defence submits that the right to be tried without undue delay is the accused's right and there can be no undue delay when it comes to taking the time to conduct a fair trial.²⁰ In this regard, the Defence submits that the Impugned Decision prohibits Mr Said from benefiting from his right to public proceedings by invoking the protection of other rights.²¹

17. In the Response to the Request for Leave to Appeal, the Prosecution submits that the Defence's arguments are 'unfounded' and 'merely illustrate a disagreement' with the Impugned Decision.²² The Prosecution avers that the Defence's submission that witness statements should be reclassified as public simply because the Prosecution has not requested protective measures is 'misguided and lacks legal basis.'²³ In this regard, the Prosecution states that rule 68(2) witness statements are generally not made publicly available and what the Defence is seeking is 'unprecedented'.²⁴ The Prosecution explains that, in its view, the 'requirements of publicity and transparency of proceedings have been fully met in this case since there is an extensive record which is already available on the Court's website.'²⁵ In this regard, the Prosecution submits that the Chamber carefully analysed 'article 68 of the Statute and the need to ensure that confidential information is not released into the public domain, as well as its legal obligation to ensure protection of victims and witnesses, and in this vein, rightly ruled on the need to uphold Mr Said's right to an expeditious trial.'²⁶

¹⁸ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 47.

¹⁹ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 47.

²⁰ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 48.

²¹ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 48.

²² Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 20.

²³ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 20.

²⁴ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 20.

²⁵ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 20.

²⁶ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 20.

3. *Third Issue*

18. The Defence contends that the Chamber erred in fact by considering that the implementation of the legal framework would take too long.²⁷ In this regard, the Defence submits that there is sufficient time for the Prosecution to contact its witnesses to determine whether or not there is a need for protective measures, to which the Defence could respond quickly and the Chamber could then render a decision within a reasonable time.²⁸ The Defence submits that this procedure could be concluded before the end of the hearings.²⁹ The Defence further avers that once the Chamber has decided on any request for protective measures then it would reduce *inter partes* discussion on redactions.³⁰

19. In the Response to the Request for Leave to Appeal, the Prosecution submits that the Defence merely reiterates its previous submissions made in the Request.³¹ Furthermore, the Prosecution avers that the Chamber analysed all the procedural steps before reaching its conclusion that it would lead to an intensive and rigorous review of the prior recorded testimony, resulting in extensive litigation, and therefore the Third Issue represents a ‘mere disagreement’ with the Impugned Decision.³²

4. *Fourth Issue*

20. The Defence submits that the Chamber erred in law by relying on the jurisprudence from the *Abd-Al-Rahman* case without explaining how it is applicable or relevant to the present case.³³ The Defence submits that there is no basis in the jurisprudence from the *Abd-Al-Rahman* case to challenge the fundamental point raised by the Defence, namely that in the absence of requests for protective measures, there is no legal basis for rule 68(2) witnesses to benefit from protective measures.³⁴

21. The Prosecution submits, in response, that the Defence merely reiterates previous submissions which it raised in its Reply, and were already considered by the Chamber.³⁵

²⁷ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 50.

²⁸ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 50.

²⁹ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 50.

³⁰ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 51.

³¹ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 21.

³² Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 21.

³³ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 53.

³⁴ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 54.

³⁵ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 22.

The Prosecution, therefore, posits that the Fourth Issue represents a disagreement with the Impugned Decision and is not an appealable issue.³⁶

22. In respect of the requirements that the identified issues significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, the Defence submits that the Impugned Decision unduly interferes with the publicity of the proceedings and restricts the exercise of the fundamental rights of the accused.³⁷ Last, the Defence avers that an immediate resolution by the Appeals Chamber of the issues identified for leave to appeal would materially advance proceedings, because if the Appeals Chamber is not seized then there will be no public debate on 91.3% of the Prosecution's witnesses.³⁸

23. The Prosecution submits that the Defence 'fails to substantiate how any of the Issues impacts the fair and expeditious conduct of the proceedings or the outcome of the trial.'³⁹ The Prosecution avers that the Defence's submissions reiterate arguments previously submitted, which represents a 'mere disagreement' with the Impugned Decision. Furthermore, the Prosecution submits that, in any event, the alleged impact on fairness is 'speculative.'⁴⁰ Last, the Prosecution posits that the Defence's submissions mischaracterise the Impugned Decision as 'the requirements of publicity and transparency have been fully met in this case' and 'resolution by the Appeals Chamber will not materially advance the proceedings because the Trial Chamber will soon render its judgment [...] [h]ence litigating the publicity of rule 68 statements [...] will only delay the proceedings.'⁴¹

³⁶ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 22.

³⁷ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 56.

³⁸ Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, paras 57-58.

³⁹ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 23.

⁴⁰ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, para. 25.

⁴¹ Response to the Request for Leave to Appeal, ICC-01/14-01/21-1006-Conf, paras 26-27.

III. APPLICABLE LAW

24. The Chamber recalls its previous decisions,⁴² as well as prior jurisprudence of the Court, regarding the application of article 82(1)(d) of the Statute.⁴³ 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.

IV. ANALYSIS

25. For the reasons articulated below, the Chamber finds that none of the four issues identified for leave to appeal satisfy the cumulative requirements of article 82(1)(d) of the Statute.

26. In respect of the First and Second Issues, the Chamber finds that the Defence misrepresents and merely disagrees with the Impugned Decision. Contrary to the Defence's submission, the Chamber did not fail to or refuse to follow the applicable law regarding protective measures.⁴⁴ Rather, the Chamber reiterated the applicable legal principles at the outset of the Impugned Decision, noting that the principle of

⁴² 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), [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](#); 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, 2 May 2025, [ICC-01/14-01/21-972](#), para. 13.

⁴³ 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.

⁴⁴ See Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, paras 41, 46.

publicity of the proceedings must be balanced with the need to protect victims and witnesses in this case.⁴⁵ The Chamber then applied these principles and found that the Defence's approach taken in the Request 'would result in a violation of article 68 of the Statute as confidential information would automatically be released into the public domain'.⁴⁶ The Chamber further found that to engage in a review of the prior recorded testimony of all Prosecution rule 68(2) witnesses at this stage of the proceedings, as suggested by the Defence,⁴⁷ would be 'unduly burdensome, lead to delays in the filings of the Closing Briefs, and not facilitate the expeditiousness of the proceedings',⁴⁸ a conclusion supported by, *inter alia*, the extensive litigation on redactions to witness testimony between the Parties in this case.⁴⁹ It was on the basis of this assessment and the application of the aforementioned legal principles that the Chamber set out a way forward for the Parties and Participants, ensuring that the aforementioned obligations and rights, including Mr Said's right to be tried without undue delay, are upheld.⁵⁰

27. Based on the foregoing, the Chamber finds that the Defence misrepresents and merely disagrees with the Impugned Decision, and the First and Second Issues do not constitute appealable issues.

28. In respect of the Third Issue, the Chamber finds that the Defence's submissions are entirely speculative and are based on conjecture. In this regard, the Defence does not advance any authority supporting its contention that its proposed procedure could be concluded before the end of the hearings,⁵¹ nor does it engage with, nor demonstrate any error, in the Chamber's assessment to the contrary, which took into consideration the previous practice by the Parties on this matter. Accordingly, the Chamber finds that the Third Issue does not constitute an appealable issue.

29. In respect of the Fourth Issue, the Chamber finds that the Defence merely reiterates previous submissions made in the Reply regarding the applicability of the

⁴⁵ Impugned Decision, ICC-01/14-01/21-1000, para. 32.

⁴⁶ Impugned Decision, ICC-01/14-01/21-1000, para. 37.

⁴⁷ See Request, [ICC-01/14-01/21-985](#), para. 36, prayer.

⁴⁸ Impugned Decision, ICC-01/14-01/21-1000, para. 38.

⁴⁹ Impugned Decision, ICC-01/14-01/21-1000, para. 38, footnote 55.

⁵⁰ Impugned Decision, ICC-01/14-01/21-1000, paras 39-40.

⁵¹ See Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, paras 50-51.

jurisprudence from *Abd-Al-Rahman* case,⁵² which the Chamber already took into consideration in the Impugned Decision.⁵³ In this regard, the Chamber finds that the Defence merely disagrees with the Impugned Decision and the Fourth Issue does not constitute an appealable issue.

30. The above notwithstanding, the Chamber also notes that none of the issues identified for leave to appeal would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. The Defence does not advance any cogent argument as to how any alleged issue with the publicity of the proceedings, common to all four issues identified, would significantly affect the fairness of the proceedings or outcome of the trial. Furthermore, the Chamber notes that the Defence indicates that if the Appeals Chamber is not seized then there will be no public discussion on 91.3% of the Prosecution witnesses.⁵⁴ However, this fails to take into account the fact that the Chamber has allowed the Parties and Participants to refer to confidential information, including information relating to Prosecution witnesses whose identities are not public, as long as doing so will not lead to those witnesses' identification or otherwise undermine their security.⁵⁵ Accordingly, the Chamber finds that the Defence's submissions are misleading and fail to demonstrate how an immediate resolution by the Appeals Chamber will materially advance the proceedings.

31. Based on the foregoing, the Chamber finds that the cumulative requirements of article 82(1)(d) of the Statute have not been satisfied and, accordingly, rejects the Request for Leave to Appeal.

32. Last, the Chamber notes that the Parties have not filed public redacted versions of a number of filings.⁵⁶ The Chamber orders the Parties to file public redacted versions or request reclassification, as appropriate, as soon as possible and no later than two weeks from the notification of the present decision.

⁵² See Reply, ICC-01/14-01/21-995, paras 28 *et seq.*

⁵³ See Impugned Decision, ICC-01/14-01/21-1000, para. 39, footnote 57.

⁵⁴ See Request for Leave to Appeal, ICC-01/14-01/21-1003-Conf, para. 57.

⁵⁵ Impugned Decision, ICC-01/14-01/21-1000, para. 40.

⁵⁶ ICC-01/14-01/21-1003-Conf; ICC-01/14-01/21-1006-Conf.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Appeal; and

ORDERS the Parties to proceed in accordance with paragraph 32 above.

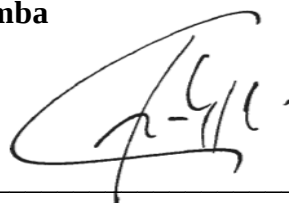


Judge Miatta Maria Samba

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 2 September 2025

At The Hague, The Netherlands