

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 October 2022

TRIAL CHAMBER VI

**Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez**

**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 lift Redactions in the Statements of P-3053,
P-3056 and P-3064**

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim A. A. Khan

Mr Mame Mandiaye Niang

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

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 rule 81 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Defence’s Request to lift Redactions in the Statements of P-3053, P-3056 and P-3064’.

I. PROCEDURAL HISTORY

1. On 15 September 2022, the Defence wrote an email to the Office of the Prosecutor (the ‘Prosecution’) requesting the disclosure of audio recordings or *verbatim* transcripts of the interviews with witnesses P-3053, P-3056 and P-3064, as well as the lifting of redactions regarding the persons present during the interviews with the three witnesses.¹

2. On 20 September 2022, the Prosecution responded by email stating that no audio recordings or *verbatim* transcripts existed for the three witnesses and that certain redactions regarding the persons present during the interviews had been lifted. However, where investigators remained active in the Central African Republic (the ‘CAR’), redactions remained necessary for security reasons.²

3. On 23 September 2022, the Defence filed a request that the Prosecution lift redactions to the names of the investigators who were present during the interview with witnesses P-3053, P-3056 and P-3064 (the ‘Request’).³

4. On 30 September 2022, the Prosecution responded to the Request, submitting that it should be rejected (the ‘Response’).⁴

¹ Email from the Defence to the Prosecution, “Demande de divulgations/témoins relatifs à l’incident (m)/Règle 77”, 15 September 2022, 17:55.

² Email from the Prosecution to the Defence, “RE: Demande de divulgations”, 20 September 2022, 12:46.

³ Requête visant à obtenir la levée d’expurgations apposées par l’Accusation dans des déclarations antérieures des témoins, 23 September 2022, ICC-01/14-01/21-483-Conf ; a public redacted version was filed on 3 October 2022 (ICC-01/14-01/21-483-Red).

⁴ Prosecution’s Response to the Defence’s Request to lift Redactions in the Statement of P-3053, P-3056 and P-3064, 30 September 2022, ICC-01/14-01/21-492-Conf.

II. SUBMISSIONS

5. The Defence notes that P-3053, P-3056 and P-3064 all provide witness statements regarding the same incident (m).⁵ This makes it essential for the Defence to obtain the lifting of redactions in order to assess whether the investigators respected the multiple procedures regarding independence and confidentiality between the witnesses.⁶

6. The Defence also submits that being able to identify the investigator who has prepared the prior recorded testimony would allow them to verify how the statements were written⁷, as they claim that investigators have frequently influenced the content of witness statements.⁸ In this regard, the Defence notes that it is crucial to obtain all relevant information, including the names of the people present during the interview, in order to understand the context in which the prior recorded testimony was taken.⁹

7. The Defence rejects the Prosecution's argument to maintain the redactions due to a security risk for the investigators who remain active in the CAR¹⁰, as the Prosecution has already disclosed the names of numerous investigators, some of whom are still active, without referring to a potential risk for ongoing Prosecution investigations.¹¹

8. In the Response, the Prosecution submits that the Request should be rejected as the standard redactions are justified, necessary and proportionate in the circumstances.¹² The Prosecution argues that there exists an "objectively justifiable risk" to the safety of the investigators concerned, as they are all still active in the field and disclosure of their names could jeopardise the integrity of the Prosecution's ongoing investigative activities.¹³ The Prosecution makes reference to a second arrest warrant that has been issued against the former high ranking member of the Seleka,

⁵ Request, para. 14.

⁶ Request, para. 14.

⁷ Request, para. 16.

⁸ Request, para. 17.

⁹ Request, para. 17.

¹⁰ Request, para. 20.

¹¹ Request, para. 21.

¹² Response, para. 3.

¹³ Response, para. 4.

Nouradine ADAM ('Mr ADAM'), who still has continued influence in the CAR and could therefore increase the risk to the Prosecution staff in the field.¹⁴

9. The Prosecution specifies that even though the investigation against Mr SAID is closed, his network is still active in the CAR and closely linked to the network and associates supporting Mr ADAM, who they believe have every incentive to publicise information about the Prosecution's investigations.¹⁵ Furthermore, the Prosecution notes that the risk arises from the disclosure of the investigator's names to the Defence, rather than the public at large, as they claim that there remains a risk that the information may inadvertently be leaked.¹⁶

10. Lastly, the Prosecution argues that the redactions are proportionate as there are no less intrusive alternative measures to achieve protection and safeguard the investigators.¹⁷ In addition, the Prosecution submits that the redactions do not prejudice Mr SAID's rights as he has access to all substantial information about the witnesses in their statements and the Defence will have ample opportunity to cross-examine the witnesses.¹⁸

III. APPLICABLE LAW

11. It has been settled law that for redactions sought pursuant to rule 81(2) of the Rules, 'it will be for the Prosecutor seeking redactions to establish that such redactions are warranted and, in particular, that disclosure of the information for which redactions are sought "may prejudice further or ongoing investigations".'¹⁹

12. In relation to the authorisation of the non-disclosure of information, the Appeals Chamber has held that

¹⁴ Response, para. 5.

¹⁵ Response, para. 6.

¹⁶ Response, para. 8.

¹⁷ Response, para. 9.

¹⁸ Response, para. 10.

¹⁹ Appeals Chamber, *The Prosecutor v. Germain Katanga*, Judgement on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", 13 May 2008, ICC-01/04-01/07-475, para. 97.

The requirements to authorise the non-disclosure of information are the following: (i) the existence of an “objectively justifiable risk” to the safety of the person concerned or which may prejudice further or ongoing investigations; (ii) the risk must arise from disclosing the particular information to the accused; (iii) the infeasibility or insufficiency of less restrictive protective measures; (iv) an assessment as to whether the redactions sought are “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial; and (v) the obligation to periodically review the decision authorising the redactions should circumstances change.²⁰

IV. ANALYSIS

13. The Chamber takes note of the Prosecution’s arguments regarding the “objectively justifiable risk” to the safety of the investigators concerned that could arise when redactions would be lifted. However, this risk must arise from disclosing the particular information to the accused. The Chamber notes, in this regard, that, although there always remains a certain level of risk when confidential information is disclosed, it is fairly low in this instance. Indeed, the Defence is bound by article 8 of the Code of Professional Conduct for Counsel and Mr SAID’s communications remain subject to contact restrictions.²¹ Moreover, the Prosecution’s suggestion that the information may be revealed ‘inadvertently’ is entirely speculative and cannot form the basis for redacting otherwise disclosable information. Finally, the Chamber cannot fail to note that the Prosecution has already disclosed the identities of certain other Prosecution staff members who remain active in the field.²² The Chamber has not been made aware of any factors that would distinguish these individuals from the ones subject of the Request.

14. The Chamber also rejects the Prosecution’s argument that the Defence would have to substantiate specific allegations about the lack of integrity or misconduct on the part of the investigators in order to be entitled to have their identities disclosed.

²⁰ Trial Chamber V, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the protocol establishing a redaction regime, 27 September 2012, ICC-01/09-01/11-458, para. 11.

²¹ Trial Chamber VI, *The Prosecutor v. Mahamat Said Abdel kani*, Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions, 3 March 2021, ICC-01/14-01/21-247-Red, para. 45; First review of the detention of Mr Mahamat Said Abdel Kani, 26 June 2022, ICC-01/14-01/21-382.

²² See Prosecution’s Request for In-court Protective Measures, ICC-01/14-01/21-356-Conf-An x.A.

15. Under these circumstances, the Chamber can only conclude that the Prosecution has not demonstrated that the redactions are objectively warranted. Therefore, the Chamber orders the Prosecution to lift redactions of the names of all staff members of the Office of the Prosecution who were present during the interviews with P-3053, P-3056 and P-3064.

FOR THESE REASONS, THE CHAMBER HEREBY

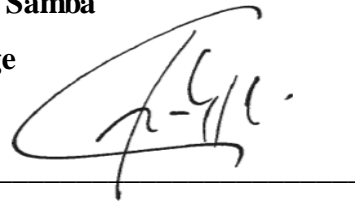
ORDERS the Prosecution to lift redactions of the names of all staff members of the Office of the Prosecution who were present during the interviews with P-3053, P-3056 and P-3064 in their respective statements.



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 10 October 2022

At The Hague, The Netherlands