



Original: English

**No.: ICC-01/14-01/21
Date: 31 January 2024**

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 with Confidential Annex

**Decision on Disagreements Regarding Lesser Redacted Versions of Public
Transcripts**

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
Ms Holo Makwaia

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 Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

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), 67(1) and 68(1) of the Rome Statute (the ‘Statute’), issues this ‘Decision on Disagreements Regarding Lesser Redacted Versions of Public Transcripts’.

I. PROCEDURAL HISTORY

1. On 9 March 2022, the Chamber issued the Directions on the Conduct of Proceedings (the ‘Directions on the Conduct of Proceedings’),¹ in which it set out a procedure for producing public redacted versions of transcripts (the ‘PRV’). According to this procedure, it is incumbent upon the Registry to publish a redacted version of each transcript within two working days following the notification of the edited confidential version of the transcript. The Registry was instructed to redact all passages that took place in private or closed session as well as passages that were redacted during the hearing pursuant to an agreement between the parties or an order of the Chamber. Following the publication of the public redacted version of the transcript, the parties have the responsibility of trying to agree among themselves on a lesser redacted public version (the ‘LRPV’).

2. Pursuant to this procedure, the parties and participants informed the Chamber that they had reached complete agreement on a LRPV in relation to the following transcripts:

- a. T-013 email from Prosecution to Trial Chamber VI dated 16/11/2023 at 10:40
- b. T-016 email from Prosecution to Trial Chamber VI dated 30/10/2023 at 16:21. The Prosecution sent a correction on 10/11/2023 at 10:59
- c. T-017 email from Prosecution to Trial Chamber VI dated 03/11/2023 at 09:57
- d. T-018 email from Prosecution to Trial Chamber VI dated 12/09/2023 at 15:05
- e. T-019 email from Prosecution to Trial Chamber VI dated 12/10/2023 at 11:25
- f. T-020 email from Prosecution to Trial Chamber VI dated 20/10/2023 at 10:41
- g. T-021 email from Prosecution to Trial Chamber VI dated 10/11/2023 at 11:31

¹ Directions on the Conduct of Proceedings, 9 March 2022, ICC-01/14-01/21-251.

- h. T-022 email from Prosecution to Trial Chamber VI dated 20/10/2023 at 09:02
- i. T-025 email from Prosecution to Trial Chamber VI dated 16/11/2023 at 12:54
- j. T-029 email from Prosecution to Trial Chamber VI dated 27/10/2023 at 15:07
- k. T-030 email from Prosecution to Trial Chamber VI dated 03/11/2023 at 15:36
- l. T-031 email from Prosecution to Trial Chamber VI dated 24/10/2023 at 10:48
- m. T-032 email from Prosecution to Trial Chamber VI dated 15/11/2023 at 10:12
- n. T-034 email from Prosecution to Trial Chamber VI dated 11/10/2023 at 15:53
- o. T-035 email from Prosecution to Trial Chamber VI dated 25/10/2023 at 16:05
- p. T-037 email from Prosecution to Trial Chamber VI dated 12/09/2023 at 15:03
- q. T-038 email from Prosecution to Trial Chamber VI dated 19/10/2023 at 14:58
- r. T-042 email from Prosecution to Trial Chamber VI dated 31/10/2023 at 14:34
- s. T-043 email from Prosecution to Trial Chamber VI dated 11/10/2023 at 10:31
- t. T-044 email from Prosecution to Trial Chamber VI dated 26/10/2023 at 10:44
- u. T-046 email from Prosecution to Trial Chamber VI dated 07/11/2023 at 10:10

3. In relation to some of these transcripts, the parties agreed to apply additional redactions. These are new redactions in relation to information that was previously public. In relation to some – but not all – of these transcripts, the Prosecution asked the Chamber to instruct the Registry to remove the PRV from the Court’s website. In particular, the Prosecution asked the Chamber to authorise the withdrawal of:

- a. T-013-Red-ENG CT WT // T-013-Red-FRA CT WT
- b. T-032-Red-ENG CT WT // T-032-Red-FRA-CT WT
- c. T-042-Red2-ENG CT2 RCL WT // T-042-Red-FRA CT RCL WT

4. The Chamber notes that the parties also agreed to additional redactions in relation to T-020 ; T-021 ; T-029 ; T-030 ; T-038 ; and T-046 but did not ask the Chamber to withdraw the PRV from the Court’s website. The Chamber notes, in this regard, that the Registry confirmed that, with the exception of transcripts T-30 and

T-31,² none of these transcripts were ever published on the Court's website. This aspect of the Prosecution's requests is thus moot.

5. The parties further informed the Chamber that they agreed on some but not all redactions in relation to the following transcripts:

- a. T-012 email from Prosecution to Trial Chamber VI dated 14/11/2023 at 12:01; the Defence responded via email on 27/11/2023 at 13:50
- b. T-014 email from Prosecution to Trial Chamber VI dated 16/11/2023 at 10:44, the Defence responded via email on 27/11/2023 at 13:53
- c. T-015 email from Prosecution to Trial Chamber VI dated 16/11/2023 at 15:55; the Defence responded via email on 23/11/2023 at 11:28; the Common Legal Representative made separate submissions via email on 23/11/2023 at 12:01
- d. T-023 email from Prosecution to Trial Chamber VI dated 20/11/2023 at 15:18; the Defence responded via email on the Defence responded via email on 01/12/2023 at 15:25
- e. T-024 email from Prosecution to Trial Chamber VI dated 28/11/2023 at 12:18; the Defence responded via email on 08/12/2023 at 11:36
- f. T-026 email from Prosecution to Trial Chamber VI dated 10/11/2023 at 18:00; the Defence responded via email on 23/11/2023 at 11:37
- g. T-027 email from Prosecution to Trial Chamber VI dated 17/11/2023 at 15:16; the Defence responded via email on 30/11/2023 at 10:42
- h. T-028 email from Prosecution to Trial Chamber VI dated 24/11/2023 at 09:23; the Defence responded via email on 07/12/2024 at 09:58
- i. T-033 email from Prosecution to Trial Chamber VI dated 28/08/2023 at 17:33; the Prosecution provided additional justification for the requested

² Both transcripts were available on the Court's website from 2 June 2023 until 9 November 2023.

redactions via email on 30/08/2023 at 13:14; the Defence responded via email on 01/09/2023 at 13:00

- j. T-036 email from Prosecution to Trial Chamber VI dated 10/11/2023 at 09:21; the Defence responded via email on 23/11/2023 at 11:21
- k. T-040 email from Prosecution to Trial Chamber VI dated 31/08/2023 at 14:22; the Defence responded via email on 01/09/2023 at 13:04
- l. T-041 email from Prosecution to Trial Chamber VI dated 17/11/2023 at 16:21; the Defence responded via email on 30/11/2023 at 10:30
- m. T-045 email from Prosecution to Trial Chamber VI dated 14/11/2023 at 10:31; the Defence responded via email on 27/11/2023 at 13:54

II. ANALYSIS

A. Additional Redactions

6. At the outset, the Chamber recalls that the goal of the exercise that the parties are engaged in is to produce lesser redacted versions of the transcripts, as envisaged in paragraphs 55 to 57 of the Directions on the Conduct of Proceedings. While paragraph 56 of the Directions on the Conduct of Proceedings provides that the parties may make ‘discrete requests for additional redactions’, the Chamber stresses that this is an exceptional remedy. It is not intended to operate as a general opportunity for parties to add further redactions after the conclusion of the hearing. As a rule, all necessary redactions should be requested during the hearing to prevent the information from ever reaching the public.

7. The Chamber is concerned about the frequency with which the parties have resorted to this exceptional remedy. Indeed, out of 34 transcripts of trial hearings so far, the Prosecution has proposed additional redactions to 19 of them.

8. The Chamber expects the parties - especially the calling party - to be more vigilant, especially during open sessions. As the frequency of requests for agreed or additional redactions indicates, there have been too many instances where the calling party failed to ask for in-court redactions only to subsequently ask for additional redactions. By that time, the possible risk has already been created. This manner of

proceeding is unsatisfactory, because applying additional redactions to transcripts that have already been made public may have the undesired effect of drawing attention to the information that is being redacted, thereby inadvertently increasing the risk.

9. To be clear, the Chamber is not inviting the parties to request in-court redactions more frequently. However, it does expect them to demonstrate greater vigilance so that, so far as is practicable, information that is truly identifying is brought to the attention of Chambers promptly and redactions are dealt with immediately.

B. Contested Redactions

10. The Chamber is also dissatisfied with the frequency of disagreements between the parties. Out of 34 transcripts of trial hearings there are disputes in relation to redactions for 13 of them. Having analysed these disputes, the Chamber is persuaded that, with a bit more good faith effort from both sides, most of this litigation could have been avoided.

11. The Chamber is particularly concerned about the Prosecution's minimal efforts to justify the maintenance of a number of contested redactions. The Chamber reminds the Prosecution that it is its primary responsibility, as the calling party, to explain why a particular redaction needs to be maintained or added. It is entirely inadequate to simply assert that the information proposed to be redacted is identifying without making the least attempt at explaining why this is indeed so. The Prosecution should not assume that, because the responsibility to protect witnesses and victims is a shared one, it can leave it to the Chamber to make a proper assessment of the need for redactions.

12. Be that as it may, the Chamber has assessed all the contested redactions and ruled upon them in Confidential Annex A. It is incumbent upon the Prosecution to produce the final version of the LRPV's in line with the agreements reached and the Chamber's instructions.

C. Amended Procedure for Producing (Lesser) Public Redacted Versions of Transcripts

13. Considering the aforementioned problems in relation to the production and publication of public redacted versions of the transcripts, the Chamber has decided to modify the procedure going forward. In particular, the Chamber abolishes the two-step process of publishing a PRV, followed by a LRPV, as set out in paragraphs 55 to 57 of the Directions on the Conduct of Proceedings. Instead, there shall be only one PRV for each transcript, containing only the necessary redactions.

14. Henceforth, when producing the confidential edited version of a transcript, the Registry must ensure that all passages that are subject to agreed or ordered in-court redactions are clearly marked as such. There is no longer a requirement to produce a provisional PRV for publication on the Court's website. In other words, apart from the two-day deadline for producing the edited version of transcripts, paragraph 55 of the Directions on the Conduct of Proceedings is hereby rescinded.

15. Five working days after all the edited and highlighted transcripts relating to a witness have been transferred by the Registry to the parties and participants, the calling party may propose redactions to parts of hearings that took place in private/closed session. Exceptionally, it may also propose additional redactions to information that was revealed during open session and for which no redaction orders were sought at the time. If two witnesses overlap on one transcript, the proposed redactions for both testimonies may be submitted five working days after the Registry has provided the edited and highlighted transcripts for the second witness.

16. The calling party shall provide a detailed justification for each proposed redaction. This justification should explain the nature of the risk to which the person(s) is/are said to be exposed and from whom or where this risk is thought to emanate. The justification should further explain how and why the information that is proposed for redaction could lead to the identification of the person(s) at risk. If the risk of identification is claimed to arise from reading the redacted information together with other publicly available information, this information should be properly identified.

17. Within 5 working days after the other parties and participants have received the redaction proposals and the corresponding justifications from the calling party, they

shall either indicate their full agreement with the proposed redactions or engage in a constructive dialogue with the calling party to find a solution which respects the appropriate balance between the publicity of the proceedings and the need to protect persons at risk on account of the Court's activities. The non-calling party and other participants may also propose redactions, in which case they must equally provide a detailed justification.

18. If there is full agreement, the calling party shall prepare an agreed PRV within two working days for publication on the Court's website and transmit it to the Registry.

19. If no mutually acceptable solution can be agreed upon within ten working days, the party proposing the contested redaction(s) may seize the Chamber for authorisation. It shall (i) set out its justification for the proposed redaction(s); (ii) the arguments of the opposing parties and/or participants; and (iii) explain why the difference could not be resolved. The opposing parties or participants may inform the Chamber within two working days if they believe that the calling party has not reflected their position accurately or if the calling party raised new arguments that were not mentioned during the *inter partes* discussions.

20. After the Chamber has ruled on the contested redactions, the calling party shall prepare a final PRV and transmit this to the Registry for publication on the Court's website.

FOR THESE REASONS, THE CHAMBER HEREBY

AUTHORISES the redactions specified in Annex A; and

AMENDS the procedure for producing the public redacted version of transcripts as described in paragraphs 13 to 20.

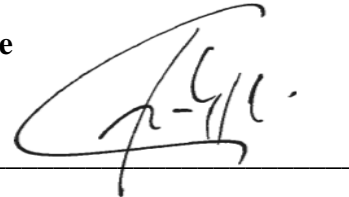


Judge Miatta Maria Samba

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 31 January 2024

At The Hague, The Netherlands