

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 March 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 Redacted Version

Decision on a Request for Cooperation by the Defence

Order 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
Central African Republic

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 57(3)(b), 64, 67, 86, 87, 93 and 96 of the Rome Statute (the ‘Statute’), rules 116 and 176 of the Rules of Procedure and Evidence (the ‘Rules’) issues this ‘Decision on a Request for Cooperation by the Defence’.

I. PROCEDURAL HISTORY

1. On 8 October 2024, the Chamber issued the Third Directions on the Conduct of Proceedings (the ‘Third Directions’)¹ in which it, *inter alia*, instructed the Defence to provide a preliminary list of witnesses no later than 17 January 2025; to submit the final list of witnesses and evidence no later than 21 February 2025; and set 3 March 2025 as the deadline for any applications pursuant to rule 68(2) and 68(3) of the Rules.²

2. On 15 November 2024, the Prosecution formally closed the presentation of its evidence.³

3. On 17 January 2025, the Defence provided a preliminary list of seven witnesses, one of whom the Defence would call to testify *viva voce* and the remainder it would seek the introduction of the prior recorded testimony pursuant to rule 68(2)(b) of the Rules (the ‘Notification’).⁴ The Defence also explained that it was facing difficulties in finding witnesses who were prepared to testify and that it was still in consultation with the Prosecution about additional disclosure and the lifting of redactions.

4. On 17 February 2025, the Defence filed a request pursuant to regulation 35 of the Regulations for an extension of time to conclude its ongoing investigations.⁵ In this request, the Defence informed the Chamber that it had made a request for assistance (the ‘RFA’) through the good offices of the Registry to [REDACTED]. According to the Defence, [REDACTED] informed the Defence on 14 February 2025 that he had identified a number of relevant items but that, under Central African law, there is a need

¹ Third Directions on the Conduct of Proceedings, 8 October 2024, [ICC-01/14-01/21-873](#).

² Third Directions, [ICC-01/14-01/21-873](#), paras 13-16.

³ Notification of the Conclusion of the Prosecution’s Presentation of Evidence, 15 November 2024, [ICC-01/14-01/21-895](#).

⁴ Liste provisoire des témoins de la Défense, ICC-01/14-01/21-908-Conf-AnxA.

⁵ Demande d’extension de délais ciblée pour terminer des actes d’enquêtes en cours conformément à la Norme 35 du Règlement de la Cour, 17 February 2025, ICC-01/14-01/21-917-Conf-Exp.

for a Chamber of the Court to confirm, in an official decision, that the Defence's RFA can be executed. The Defence therefore requested the Chamber to confirm to [REDACTED] that the Defence's RFA can be given a favourable outcome.⁶

5. On 21 February 2025, the Chamber denied the Defence's request and ordered it to file a renewed request for cooperation in accordance with the requirements of relevance, specificity and necessity.⁷

6. On 25 February 2025, the Defence filed a request for the Chamber to [REDACTED] that it can respond favourably to the Defence's request for cooperation, specifying that all documents identified [REDACTED] can be transmitted, [REDACTED] (the 'Request').⁸

7. On 3 March 2025, the Prosecution informed the Chamber that it had no observations to furnish on the Request.⁹

II. ANALYSIS

8. The Chamber understands from the Request that the Defence is not asking for a formal ruling pursuant to article 57(3)(b) of the Statute to issue a cooperation request under Part 9 of the Statute for the benefit of Mr Said. However, the Chamber believes that only such a formal request will suffice in the eyes of the Central African Republic ('CAR') authorities. Indeed, in his letter of 23 January 2025, [REDACTED] explicitly refers to articles 86 and 87 of the Statute and points to rule 176 of the Rules.¹⁰ Rule 176 of the Rules identifies Chambers and the Office of the Prosecutor as the two entities capable of making cooperation requests under article 87 of the Statute. The Chamber notes that the Defence's own request was not made under Part 9 and therefore does not impose any obligation on the CAR authorities to transfer the requested materials. For

⁶ Demande d'extension de délais ciblée pour terminer des actes d'enquêtes en cours conformément à la Norme 35 du Règlement de la Cour, 17 February 2025, ICC-01/14-01/21-917-Conf-Exp (a public redacted version was filed on 24 February 2025, [ICC-01/14-01/21-917-Red](#)), paras 28-33.

⁷ Decision on the Defence's Request for an Extension of Time to File its Final List of Witnesses, List of Evidence and Complete Disclosure, 21 February 2025, [ICC-01/14-01/21-920-Red](#), paras 28-30.

⁸ Demande visant à obtenir la coopération de [REDACTED] avec l'équipe de Défense de Monsieur Said, 25 February 2025, ICC-01/14-01/21-926-Conf-Exp (a public redacted version was filed on 26 February 2025, [ICC-01/14-01/21-926-Red](#)).

⁹ Email from the Prosecution to Trial Chamber VI, dated 3 March 2025, at 14:02.

¹⁰ Request, Annex 2, ICC-01/14-01/21-926-Conf-Exp-Anx2.

these reasons, and in the interest of saving time, the Chamber will treat the Request as an application for a cooperation request under article 57(3)(b) and Part 9 of the Statute.

9. Pursuant to article 57(3)(b) of the Statute and rule 116(1) of the Rules, the Chamber may seek such cooperation pursuant to Part 9 as may be necessary to assist the accused in the preparation of his or her defence where it is satisfied that such an order would facilitate the collection of evidence that may be material to the proper determination of the issue being adjudicated or to the proper preparation of the person's defence. The Chamber recalls the applicable law concerning cooperation requests, notably that they must meet three cumulative requirements of relevance, specificity and necessity.¹¹

A. Specificity

10. The Chamber notes that the Request is rather ambiguous in terms of the scope of materials that are requested from the CAR authorities. On the one hand, the Defence has annexed its original request of 1 October 2024 (the 'Original Request'), which contains a wide range of topics on which it seeks further information from [REDACTED],¹² many of which do not meet the specificity requirement.¹³ Nevertheless, the CAR authorities appear to have already identified a number items as potentially responsive to some of the Defence's topics.¹⁴

¹¹ See Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Ngaïssona Defence Motion to Obtain a Lesser Redacted Version of CAR-OTP-2110-0915, 22 June 2022, [ICC-01/14-01/18-1470](#), para. 8; Decision on the Ngaïssona Defence Request pursuant to Article 57(3)(b) of the Statute, [ICC-01/14-01/18-1159-Red](#), para. 6; Decision on the Prosecution Request to Summon a Witness, 8 January 2021, ICC-01/14-01/18-804-Conf, para. 15. See also Trial Chamber VII, *The Prosecutor v. Jean Pierre Bemba Gombo et al.*, Decision on Second Mangenda Request for Cooperation, 5 April 2016, [ICC-01/05-01/13-1768](#), para. 8; *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Decision on "Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union", 1 July 2011, [ICC-02/05-03/09-170](#), paras 12-14.

¹² Request, ICC-01/14-01/21-926-Conf-Exp-Anx1.

¹³ The Chamber agrees that a category of documents may be requested as long as it is 'defined with sufficient clarity to enable ready identification'. However, 'broad categories of documents without any type of limitation' do not meet the condition of specificity. See Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Yekatom Defence Request for Cooperation from [REDACTED] in the Central African Republic, 7 November 2023, ICC-01/14-01/18-2192, para. 3; Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Decision on "Defence Application pursuant to Articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the African Union", 1 July 2011, [ICC-02/05-03/09-170](#), paras 16, 19-20.

¹⁴ Request, ICC-01/14-01/21-926-Conf-Exp, paras 6-8.

11. In particular, [REDACTED] mentioned the following files as containing potentially responsive items:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]¹⁵

12. The Chamber further notes that [REDACTED] also indicated that a very residual part of the Defence's Original Request could correspond to certain files [REDACTED].¹⁶ It is not clear to the Chamber to which of the Defence's topics listed in the Original Request [REDACTED] refers or which [REDACTED] files contain the information.

13. Considering the advanced stage of the proceedings, there is no time to clarify these matters or to refine the Original Request. The Chamber notes, in this regard, that the Defence only made the Original Request in October 2024.¹⁷ Given the broad and wide-ranging nature of the Original Request, the Chamber does not understand why it waited so long to undertake this step. Indeed, the Defence clearly appreciated the pertinence of the vast majority of the topics mentioned in the Original Request well before October 2024.¹⁸ The Chamber recalls that it has repeatedly urged the Defence to take the necessary steps to prepare its case.¹⁹ Accordingly, the Chamber would have expected a request of this nature to have been made at a much earlier stage of the proceedings, so as to allow adequate time for the cooperation process to take place.

¹⁵ Request, ICC-01/14-01/21-926-Conf-Exp-Anx2, note 1.

¹⁶ Request, ICC-01/14-01/21-926-Conf-Exp-Anx2, para. 3.

¹⁷ Request, ICC-01/14-01/21-926-Conf-Exp, para. 2.

¹⁸ *Version Publique Expurgée du « Mémoire de première instance de la Défense »* (ICC-01/14-01/21-449-Conf), 29 August 2022, [ICC-01/14-01/21-449-Red](#), inter alia, paras 248, 252, 271, 273, 283, 286, 287, 298.

¹⁹ See Order in relation to the Defence Notification of its Preliminary List of Witnesses, [ICC-01/14-01/21-909](#), para. 5 and references therein.

14. Nevertheless, the Chamber notes that [REDACTED] and made public that it intended to [REDACTED] in April 2024.²⁰ To the extent that the Defence is now requesting information that is specifically related to these two relatively recent developments, the Chamber is prepared to also consider them.

15. In this regard, the Chamber notes that, in the Original Request, the Defence identified the following topics as being of particular interest in relation to [REDACTED]:

- a. Items relating to detention centres for political opponents.
- b. Items relating to the oppression by the BOZIZE regime of political opponents and the population of the north of the CAR.
- c. Items relating to the organisation and operation of the Presidential Guard under Presidents BOZIZE and DJOTODIA (i.e. lists of personnel, recruitment, operations conducted by the Presidential Guard).²¹

16. The Defence furthermore requested items in relation to [REDACTED].²²

17. Given the lack of specificity and belated nature of the Original Request, the Chamber will restrict its request for cooperation to the items mentioned in paragraphs 10, 15 and 16.

18. With these restrictions, the Chamber finds that the Request is sufficiently specific.

B. Relevance

19. The Chamber notes that the Defence argues that the requested items are potentially relevant to the alleged existence of an armed conflict between the Seleka and the Anti-Balaka.²³ As the Chamber does not know what information the abovementioned files contain, it is not in a position to assess their relevance. However, the Chamber understands that [REDACTED] has made a preliminary evaluation of

²⁰ Request, ICC-01/14-01/21-926-Conf-Exp-Anx1, pp. 2-3.

²¹ Request, ICC-01/14-01/21-926-Conf-Exp-Anx1, pp. 2-3.

²² Request, ICC-01/14-01/21-926-Conf-Exp-Anx1, p. 3.

²³ Request, ICC-01/14-01/21-926-Conf-Exp, para. 5.

their relevance in light of the Original Request.²⁴ The Chamber has no reason to question this assessment and therefore considers that this requirement is satisfied.

20. The Chamber also finds that the requests in relation to [REDACTED] and the testimony of [REDACTED] are potentially relevant to the contextual elements in this case.

C. Necessity

21. Considering the willingness of the CAR authorities to supply the requested items, subject to a judicial order from the Court, the Chamber considers that there is a need for it to assist the Defence by formally seeking the cooperation of the CAR authorities pursuant to Part 9 of the Statute.

²⁴ [REDACTED] also determined that [REDACTED] does not possess information in relation to four categories of information contained in the Defence's request of 1 October 2024; *see* Request, Annex 2, ICC-01/14-01/21-926-Conf-Exp-Anx2, note 2.

FOR THESE REASONS, THE CHAMBER HEREBY

PARTIALLY GRANTS the Request;

REQUESTS the cooperation of the Central African Republic in obtaining the items mentioned in paragraphs 11, 15 and 16 of this decision;

INSTRUCTS the Registry to prepare and transmit forthwith, in consultation with the Defence, the necessary request for assistance to the relevant authorities of the Central African Republic; and

REJECTS the remainder of the Request.

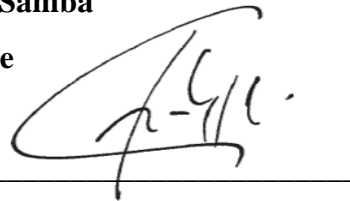


Judge Miatta Maria Samba

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 13 March 2025

At The Hague, The Netherlands