

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 17 June 2025

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godinez
Judge Keebong Paek , Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

Public redacted version of "Prosecution request for the appointment of an Independent Counsel and the taking of additional measures to protect the Accused's rights and integrity of proceedings", ICC-01/14-01/21-951-Conf, dated 26 March 2025

Source: Office of the Prosecutor

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

SAID Defence Team

☒ **Legal Representatives of the Victims**
Legal Representative of Victims - OPCV

☐ **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**

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber VI (“the Chamber”) to appoint an Independent Counsel to review the transcript of the 2 February 2025 call and redact all references that could be considered prejudicial to the Accused and his case,¹ before the said transcript is disclosed to the Chamber and the Prosecution in this case.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this submission is being classified as confidential since it contains confidential information. A public redacted version shall be filed as soon as practicable.

III. THE BACKGROUND

3. On 11 December 2024, the Chamber issued the ‘Second Decision on Contact Restrictions’,² ordering the restrictions on Mahamat Said Abdel Kani’s (“Mr Said”) contacts to be: (1) non-privileged telephone calls and visits limited to authorized individuals who have been verified by the Registry with the support of the Victims and Witnesses Unit in liaison with the Prosecutor; (2) randomly actively monitor at least one non-privileged telephone call every week with authorized individuals; (3) non-privileged telephone calls and visits limited to the French and Sango language; and (4) the prohibition of using obscure or coded language, including the use of nicknames or otherwise unidentified individuals, or discussing any confidential information related to the case or mentioning or discussing anything

¹ ICC-01/14-01/21-933-Conf, Order in Respect of the Registry’s Request for Guidance dated 5 March 2025, at paragraphs 3, 6 and 8.

² Second Decision on Contact Restrictions, 11 December 2024, ICC-01/14-01/21-903-Red. An ex parte Defence and Registry only version was filed simultaneously (ICC-01/14-01/21-903-Conf-Exp).

that could be identifying for protected Prosecution witnesses and/or victims with his non-privileged contacts.³

4. On 25 February 2025, the Registry filed the Registry Request for Guidance on the Implementation of the Restrictions on Contact Ordered by Trial Chamber VI ("Registry Submission").⁴
5. In the Registry Submission, the Registry noted that during a call on 2 February 2025 ("2 February 2025 Call") [REDACTED]⁵. [REDACTED]⁶.
6. On 5 March 2025, the Chamber ordered the Parties and Participants to address, *inter alia*: (i) to what extent the Chamber and/or the Office of the Prosecutor should receive an unredacted version of the transcript of the 2 February 2025 Call which may contain prejudicial information to the Accused and his case; and (ii) if the transcript of the 2 February 2025 Call should be redacted, who should redact such information.⁷

IV. SUBMISSIONS

- a. **The Chamber and the Prosecution Team in the SAID case should receive a redacted version of the transcript of the 2 February 2025 call**

7. The Prosecution respectfully submits that in order to protect the integrity of the proceedings and the rights of the accused in this case, the Chamber and the Prosecution Team in the SAID case should not be granted access to all those references in the transcript of 2 February 2025 call that could be considered

³ Trial Chamber VI, 11 December 2024 Decision, paras. 40-42.

⁴ Registry Request for Guidance on the Implementation of the Restrictions on Contact Ordered by Trial Chamber VI, 25 February 2025, ICC-01/14-01/21-923-Conf.

⁵ Registry Submission, ICC-01/14-01/21-923-Conf, para. 6.

⁶ Registry Submission, ICC-01/14-01/21-923-Conf, para. 7.

⁷ ICC-01/14-01/21-933-Conf, para. 8.

prejudicial to the accused or his case.’⁸ Instead, such information should be forwarded to the Prosecutor in a separate communication which excludes the Chamber and the Prosecution Team in this case.

8. However, the Chamber and the Prosecution should have access to the redacted version of the transcript of the 2 February 2025 Call since it relates to unauthorized disclosure by the Accused of confidential case related matters to a non-privileged contact, and the safety and security of witnesses among others.⁹ Accessing this information will enable the Chamber and the Prosecution to take appropriate remedial measures to protect the confidentiality of the information and the safety and security of witnesses in this case.

b. The redactions should be applied by an Independent Counsel

9. Furthermore, to safeguard the integrity of these proceedings and the rights of the Accused in this case, the Chamber should appoint an Independent Counsel who may be external or from the Registry, to review the transcript of the 2 February 2025 Call, and apply appropriate redactions to all those references that could be considered prejudicial to the Accused or his case, before the said transcript is disclosed to the Chamber and Prosecution in these proceedings.¹⁰ Proceeding in this manner will safeguard both the rights of the Accused and the integrity of the proceedings.
10. As the safety and security of witnesses are at stake following the unlawful disclosure of the name of a witness by the Accused, the appointment of the Independent Counsel and the review of the transcript of 2 February 2025 Call should be undertaken without undue delay to enable the Chamber and the

⁸ Article 64, 67(1)(g) of the Rome Statute

⁹ ICC-01/14-01/21-933-Conf, Order in Respect of the Registry’s Request for Guidance dated 5 March 2025, at para. 3.

¹⁰ Articles 64(2) and 64(6)(f) of the Rome Statute.

Prosecution to take appropriate remedial measures to protect the safety and security of witnesses.¹¹

c. The unredacted transcript of the 2 February 2025 Call should be disclosed to the Prosecutor (but excluding the SAID Prosecution Team)

11. Under the Rome Statute, the Prosecutor is mandated to investigate incriminating and exonerating circumstances equally and therefore, nothing bars him from receiving information which may be prejudicial to the accused or his case.¹² Moreover, the Chamber has the power to communicate prejudicial information to the Prosecutor who may initiate and conduct appropriate investigations.¹³
12. Consequently, the Registry should, in a sperate communication which excludes the Chamber and the Prosecution Team in this case, disclose to the Prosecutor the transcript of the 2 February 2025 Call in its entirety and without redactions, for his consideration and action as he may deem fit. The exclusion of the Chamber and the SAID Prosecution Team¹⁴ is solely intended, out of abundant caution, to safeguard the integrity of these proceedings and the rights of the accused in this case.¹⁵

¹¹ ICC-01/14-01/21-933-Conf, Order in Respect of the Registry's Request for Guidance, dated 5 March 2025 at para. 3.

¹² Article 54 of the Statute: see also Prosecutor v. Bemba, Decision on the "Defence application concerning Witness CAR-OTPWWW-0042's evidence," ICC-01/05-01/08-2830-Conf, 10 October 2013, para. 14.

¹³ Prosecutor v. Lubanga, Decision on the request of the Defence in relation to investigations conducted pursuant to article 70 of the Statute, ICC-01/04-01/06-3114, 17 June 2014, para. 19 : "The Appeals Chamber recalls that, pursuant to rule 165 (1) of the Rules of Procedure and Evidence, the Prosecutor "may initiate and conduct investigations with respect to the offences defined in article 70 [of the Statute] on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source".

¹⁴ Prosecutor v. Bemba, Kilolo, Mangenda, Babala & Arido, Decision on the requests for the Disqualification of the Prosecutor, the Deputy Prosecutor and the entire OTP staff, ICC-01/05-01/13-648-Red3, 21 October 2014, paras. 38-40. Where the Chamber stated : "However, despite the above finding, the Appeals Chamber wishes to underline that, notwithstanding any potential advantages of familiarity, it considers that it is generally preferable that staff members involved in a case are not assigned to related article 70 proceedings of this kind."

¹⁵ Prosecutor v. Bemba, Kilolo, Mangenda, Babala & Arido, Judgment on the Appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Narcisse Arido against their conviction, ICC-01/05-01/13-2275-Red A A2 A3 A4 A5, 8 March 2018, para. 483. Where the Appeals Chamber stated that "The Appeals Chamber is of the view that there is nothing particular in the circumstances of the present case which would justify that the Prosecutor be precluded from exercising the ordinary functions of investigation and prosecution of offences against the administration of justice attributed to her under the Statute and the Rules. In this regard, the Appeals Chamber also observes that the legal framework of the Court explicitly foresees the possibility that charges under article 70 of the Statute be joined with charges under articles 5 to 8. While no such joinder was ordered in the present case, its possibility indicates that, in

13. To avoid a possible conflict of interest, the unredacted transcript of the 2 February 2025 Call, including the prejudicial information, will be reviewed and acted upon by a Prosecution team separate from that involved in the current proceedings in the SAID case.

V. REQUEST

14. For the above reasons, the Prosecution respectfully requests the Chamber to:

- a) appoint an Independent Counsel to review the transcript of the 2 February 2025 Call and redact all references that could be considered prejudicial to the accused and his case¹⁶ before the said transcript is disclosed to the Chamber and the Prosecution in this case; and
- b) order the Registry to disclose, in a separate communication excluding the Chamber and the Prosecution in this case, an unredacted transcript of the 2 February 2025 call to the Prosecutor.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 17th day of June 2025

At The Hague, The Netherlands

principle, there exists no legal impediment for these matters to be dealt with by the same judges and the same Prosecutor.”

¹⁶ ICC-01/14-01/21-933-Conf, Order in Respect of the Registry’s Request for Guidance dated 5 March 2025, at para. 3.