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Date: 10 January 2023

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

**Urgent
Public
with Confidential Annex A**

**Prosecution's Request for Authorisation to Disclose Transcripts of and Materials
used in the Testimony of Witness P-1339 to the Defence in the case of *Prosecutor v.
Mahamat Said Abdel Kani***

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor ("Prosecution") requests the authorisation of Trial Chamber V ("Chamber") to disclose the transcripts of P-1339's testimony in the *Yekatom and Ngaïssona* case delivered between 1 and 14 September 2022, together with materials referenced during such oral testimony of P-1339 ("Associated Items"), as identified in Annex A, to the Defence of Mahamat Said Abdel Kani ("Mr SAID") in case ICC-01/14-01/21, pursuant to regulation 42(2) of the Regulations of the Court ("Regulations").

II. CONFIDENTIALITY

2. This Request is filed as public with confidential Annex A in accordance with regulation 23*bis*(1) of the Regulations as the Annex refers to information which is the subject of protective measures or otherwise confidential.

III. URGENCY

3. The Chamber's determination is requested on an urgent basis, since the trial in the *Said* case is underway, and the Prosecution's presentation of evidence likely to conclude in a matter of months. The Prosecution plans to submit a rule 68(3) request for P-1339 in the *Said* case; this request will incorporate both P-1339's statement and trial transcripts. However, if past practice is adhered to, the SAID Defence will not be required to respond to the Prosecution's rule 68(3) request until it has access to P-1339's trial transcripts and Associated Items. Once the SAID Defence has responded, Trial Chamber VI will need time to consider and decide on the Prosecution's rule 68(3) request. Therefore, this Chamber's urgent disposition of the present filing would serve the interest of justice and judicial economy, helping to avoid unnecessary delays in the *Said* case.

IV. BACKGROUND

4. On 29 September 2021, the Prosecution submitted its “urgent request for authorisation to access and disclose transcripts of the testimony of eight witnesses in the case *Prosecutor v. Mahamat Said Abdel Kani*” in which it sought the Chamber’s authorisation to disclose unredacted transcripts of eight Prosecution witnesses common to both the *Said* case and this case (“First Transcript Request”).¹

5. On 5 October 2021, the Chamber granted in full the Prosecution’s First Transcript Request (“First Transcript Disclosure Decision”).²

6. On 1 April 2022, the SAID Defence requested that the Prosecution provide access to the testimony of several additional witnesses who have testified in the *Yekatom and Ngaïssona* case.³

7. On 11 April 2022, the Prosecution filed its “Request for Authorisation to Disclose Transcripts of the Testimony of P-0287, P-0801, P-0808, P-0876, P-0889, P-0992, P-0966, P-0975, P-1339, P-1521, P-1719, P-2232, P-2269, P-2658, P-2843” to the Defence of Mr SAID, seeking the Chamber’s authorisation to disclose unredacted transcripts of 14 additional witnesses common to both this case and the *Said* case (“Second Transcript Request”).⁴

8. On 9 May 2022, the Ngaïssona Defence responded to the Second Transcript Request, in which it deferred to the Chamber’s discretion for the witnesses who have already testified in the present case, but opposed advance authorisation for the four witnesses who have yet to testify. In the alternative, Ngaïssona Defence proposed that the Chamber put in place a procedure to address any witness protection concerns after

¹ ICC-01/14-01/18-1122.

² ICC-01/14-01/18-1129.

³ E-Mail received on 1 April 2022, at 13:34.

⁴ ICC-01/14-01/18-1358.

the witness testifies and before disclosure in the *Said* case, should the Chamber grant the Prosecution's advance authorisation request.⁵

9. On 19 May 2022, by email, the Prosecution sought the Chamber's clarification as to the scope of the authorisation in the First Transcript Disclosure Decision and prospective decision to the Second Transcript Request, particularly on whether the authorisation of disclosure of the associated documents is implicitly included in these decisions. In this communication, the Prosecution noted that it stands ready to file on the record should the Chamber prefer.⁶ On the same day, the Ngaïssona Defence responded that the Prosecution should be directed to file a formal request.⁷

10. On 19 May 2022, the Chamber instructed the Prosecution to file the request in a formal filing given that the First Transcript Disclosure Decision was limited to the transcripts requested in the First Transcript Request.⁸

11. On 25 May 2022, the Prosecution filed its "Request for Authorisation to Disclose Materials from Transcripts of the Testimony of Witnesses P-0291, P-0884, P-0966, P-0975, P-1339, P-2232, P-2251, P-2269, and P-2328 to the Defence in the case of *Prosecutor v. Mahamat Said Abdel Kani*" to the Defence of Mr SAID, seeking the Chamber's authorisation to disclose documents associated with the testimony of these witnesses ("Third Disclosure Authorisation Request").⁹

12. On 7 June 2013, the Chamber rendered its decision to the Second Transcript Request ("Second Transcript Disclosure Decision"), in which the Chamber granted the Prosecution's request in respect of ten witnesses who have already testified, but rejected the Prosecution's request for advance authorisation to disclose the transcripts

⁵ ICC-01/14-01/18-1399, paras. 9-14.

⁶ E-Mail sent on 18 May 2022, at 16:04.

⁷ E-Mail received on 18 May 2022, at 16:53.

⁸ E-Mail received on 19 May 2022, at 10:35.

⁹ ICC-01/14-01/18-1435.

of four witnesses who have not yet testified.¹⁰ Among those four witnesses was the one at issue in this filing, P-1339. The Chamber noted that its decision rejecting the request in relation to P-1339 and the other three witnesses was without prejudice to a new request pursuant to regulation 42(2) of the Regulations, following the testimony of the relevant witness.¹¹

13. On 17 June 2022, the Chamber rendered its decision on the Third Disclosure Authorisation Request (“Third Transcript Disclosure Decision”).¹² The Chamber granted the Prosecution’s request to disclose associated documents in relation to the requested witnesses who had already testified, but rejected those in relation to witnesses yet to have testified, including P-1339. The Chamber again noted that this is without prejudice to a new request pursuant to regulation 42(2) of the Regulations, once these witnesses have testified.¹³

14. Between 1 and 14 September 2022, P-1339 testified in the *Yekatom and Ngaïssona* case. The complete English and French transcripts are now available enabling the Prosecution to submit this Request.

V. SUBMISSIONS

A. Request for authorisation to disclose transcripts and Associated Items

15. The Prosecution requests the Chamber’s authorisation to make available to the SAID Defence the transcripts and Associated Items related to P-1339’s testimony, as

¹⁰ ICC-01/14-01/18-1448.

¹¹ ICC-01/14-01/18-1448, para. 8.

¹² ICC-01/14-01/18-1465.

¹³ ICC-01/14-01/18-1465, para. 13.

detailed in Annex A. The Prosecution hereby incorporates by reference its previous arguments.¹⁴

16. The Chamber has held that its rejection of the Prosecution's previous requests in the Second Transcript Request and Third Disclosure Authorisation Request for advance authorisation to disclose the transcripts and Associated Items related to P-1339's anticipated testimony is without prejudice to a new request pursuant to regulation 42(2) of the Regulations, once the witness has testified.¹⁵ Considering P-1339 completed his testimony in the *Yekatom and Ngaissona* case on 14 September 2022, and the edited version of all transcripts are now available, the Prosecution seeks the Chamber's authorisation to disclose relevant materials as identified in Annex A.

17. The Prosecution also requests that the P-1339's trial transcripts be made available without redactions to ensure that the Defence of Mr SAID has full access to their evidence. For the Associated Items, the Prosecution considers them disclosable to the SAID Defence by definition under rule 77 of the Rules, and given the Prosecution's intention to rely on P-1339 in the *Said* trial.

B. Modalities of implementation

18. The Prosecution proposes that access – and thereby disclosure – of transcripts be implemented via Records Manager by the Registry as soon as possible. For the Associated Items, the Prosecution will disclosure through its normal disclosure process as soon as the request is granted.

¹⁴ ICC-01/14-01/18-1122, paras. 6-10; ICC-01/14-01/18-1358, paras. 12-15; ICC-01/14-01/18-1435, paras. 15-17.

¹⁵ ICC-01/14-01/18-1448, para. 8; ICC-01/14-01/18-1465, para. 13.

VI. RELIEF REQUIRED

19. For the above reasons, the Prosecution requests that the Chamber authorise the Prosecution to disclose to the SAID Defence the transcripts and Associated Items related to P-1339's testimony, as identified in Annex A.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Prosecutor

Dated this 10th day of January 2023

At The Hague, The Netherlands