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No.: **ICC-01/14-01/18**

Date: **28 March 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-2625 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. Pursuant to regulation 42(2) of the Regulations of the Court (“Regulations”), the Prosecution requests the authorisation of Trial Chamber V (“Chamber”) to disclose certain confidential items related to P-2625 to the Defence of *Mahamat Said Abdel Kani* (“*Said* Defence”) in case ICC-01/14-01/21.

2. These items (collectively, the “Requested Items”) are detailed in Confidential Annex A, and comprise: (1) three confidential transcripts of P-2625’s testimony in the *Yekatom and Ngaïssona* case and one confidential transcript of his solemn undertaking hearing; (2) nine items referenced in P-2625’s testimony which are unavailable to the *Said* Defence (“Associated Items”); and (3) four confidential filings related to the particular procedural history leading up to P-2625’s testimony.

3. The Prosecution is filing this Request because the Requested Items are relevant to the *Said* Defence’s consideration of the issues that will be raised in a motion the Prosecution intends to file shortly in the *Said* case. Specifically, the Prosecution plans to file a motion pursuant to regulation 35 (2) of the Regulations of the Court asking that Trial Chamber VI allow the late addition of P-2625 to the Prosecution’s list of witnesses and evidence in the *Said* case and also allow the Prosecution to file a motion pursuant to Rule 68(3) of the Rules for the witness (“*Said* Motion to Vary Time Limits”).

4. Making the Requested Items available to the *Said* Defence would not affect the safety or security of P-2625, especially given he is a public figure who testified mostly in open session.

II. CONFIDENTIALITY

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

III. URGENCY

6. An urgent determination of the Request is necessary as the Prosecution intends to file a motion seeking to add P-2625 as a witness in the *Said* case. While the *Said* trial is adjourned at the moment, once it resumes, the Prosecution expects to finish its presentation of evidence within a matter of months. Many of the Prosecution's remaining witnesses in the *Said* case will testify with the shortened rule 68(3) procedure, making a swift pace of proceedings likely.

7. The Prosecution expects that Trial Chamber VI may decide that it cannot rule on the Prosecution's request to add P-2625 as a witness until the *Said* Defence has access to P-2625's confidential trial transcripts, the Associated Items, and/or the confidential filings. Furthermore, it is already clear from past practice that Trial Chamber VI will not rule on any potential rule 68(3) motion for P-2625 until the *Said* Defence has had a chance to review all of the witness's testimony in this case.¹

8. Accordingly, the Chamber's urgent disposition of the present filing would serve the interest of justice and judicial economy. It would also contribute to the establishment of the truth by enabling Trial Chamber VI to have the option of allowing the Prosecution to rely on a witness with valuable and relatively unique information.

¹ See ICC-01/14-01/21-582-Red, 20 January 2023, para. 12 (referencing how, in a similar situation, Trial Chamber VI ordered that the deadline for responses to any rule 68 motion in respect of the witness [P-1399] would not run until the Prosecution confirmed by email that all related materials were made available).

Further, it would ensure that the *Said* Defence has sufficient time to review P-2625's entire evidence.

IV. BACKGROUND

9. Over the course of six days, between 16 and 24 January 2023, P-2625 testified in the *Yekatom and Ngaïssona* case. Three of those days he testified completely in open session. However, for the other three days, portions of his testimony were heard in private session.² An edited version of all English and French transcripts are now available, enabling the Prosecution to file this Request.

V. SUBMISSIONS

A. Applicable Law

10. In relation to the applicable law, the Prosecution incorporates by reference its prior submissions.³ The Chamber has already granted similar requests.⁴

B. Request for authorisation to disclose transcripts and Associated Items

11. The Prosecution considers that the items listed in Annex A are disclosable to the *Said* Defence because (1) they relate to a witness the Prosecution intends to seek to rely upon in support of its charges in the case against Mr Said; and (2) they are important to the *Said* Defence's consideration of the Prosecution's upcoming Motion to Vary Time Limits as well as its consideration of any future rule 68(3) motion for P-2625 that may be allowed by Trial Chamber VI.

² See Confidential transcripts of 16, 17 and 24 January 2023 (ICC-01/14-01/18-T-188, T-189 and T-193).

³ ICC-01/14-01/18-1122, paras. 6-10; ICC-01/14-01/18-1358, paras. 12-15.

⁴ ICC-01/14-01/18-1129; ICC-01/14-01/18-1448; ICC-01/14-01/18-1465; ICC-01/14-01/18-1736.

12. Of particular note, the Prosecution has requested that the *Said* Defence be allowed access to four relevant confidential filings in this case. The Prosecution intends to reference this part of the *Yekatom and Ngaissona* procedural history in its Motion to Vary Time Limits in the *Said* case, and a consideration of the underlying filings may be important to the assessment of the Prosecution's request.

13. Making the Requested Items available to the *Said* Defence would not negatively impact the security and safety of witness P-2625. The *Said* Defence is bound by confidentiality obligations pursuant to Article 8 of the Code of Professional Conduct for Counsel and a Protocol on the handling of confidential information. Furthermore, P-2625's security situation at this point is potentially less sensitive than many witnesses who testify before this Court, as demonstrated by the fact that: (1) P-2625 is a high-profile, public individual, whose work and political views are widely published; (2) P-2625's status as a witness is known to the public given that he testified without a pseudonym; (3) no other in-court protective measures besides occasional use of private sessions were ordered for P-2625;⁵ and (4) much of P-2625's testimony is already public.⁶

C. Modalities of implementation

14. The Prosecution proposes that access—and thereby disclosure—of the transcripts and filings be implemented via Records Manager by the Registry as soon as possible. For the Associated Items, the Prosecution proposes to disclose them through its normal disclosure process as soon as the request is granted.

⁵ See T-188, pp. 13 -15, 61 - 66; T-189, pp. 49 - 52; T-193, pp. 76 – 87, 92 - 96, 104-107.

⁶ As noted above, *see supra* para. 9, three of the six trial transcripts of P-2625 are already available publicly as P-2625 testified completely in open session those days.

VI. RELIEF REQUIRED

15. For the above reasons, the Prosecution requests that the Chamber authorise the Prosecution to disclose to the *Said* Defence certain transcripts, Associated Items, and filings related to P-2625'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 28th day of March 2023

At The Hague, The Netherlands