

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **17 May 2021**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**with Confidential, *EX PARTE*, only available to the Prosecution Annexes A, B, C, D
and Confidential Annex E**

**Public Redacted Version of “Prosecution’s First Report on Disclosure and Related
Issues”, ICC-01/14-01/21-55-Conf, dated 16 April 2021**

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”) hereby submits its Report on the aspects detailed in paragraph 29 of the Order on Disclosure and Related Matters¹ (“Order”), together with its Confidential, *ex parte* Annexes A (Protection Information), B (Preliminary List of Witnesses), C (Other Non-Standard Redactions) and D (Investigative Activities) and Confidential Annex E (Disclosure Schedule).

II. CONFIDENTIALITY

2. The Report and Annex E are marked confidential pursuant to regulation 23*bis*(2) of the Regulations of the Court (“Regulations”) as the Report refers to the Order which is of the same classification. Annexes A, B, C and D are marked confidential, *ex parte* in accordance with regulation 23*bis* because they deal with matters pertaining to ongoing investigations and witness protection issues as further set out in the Annexes themselves.

III. SUBMISSIONS

A. Disclosure of Evidence cited in Warrant of Arrest

3. The Prosecution disclosed the great majority of the underlying evidence cited in the Warrant of Arrest against Mahamat Said Abdel Kani (“Mr SAID”) on 14 April 2021, with the exception of the evidence related to [REDACTED]. [REDACTED]. Further details are provided in Confidential, *ex parte* Annex A.

¹ ICC-01/14-01/21-50-Conf.

B. Estimated number and type of items to be relied upon for confirmation

4. The Prosecution intends to rely on an estimated 6,000 items for the purposes of the confirmation of charges hearing. This figure is based on the currently identified incriminatory evidence and includes the following types of evidence: [REDACTED]. As investigative activities as well as the review of data collections continue this figure is likely to rise.

5. A provisional list of [REDACTED] witnesses for the purposes of the confirmation of charges hearing is provided in Confidential, *ex parte* Annex B. This list comprises all witnesses who provide incriminatory evidence in the case against Mr SAID and will be disclosed prior to confirmation as incriminatory. This list is not a final determination either for purposes of the list of evidence for the Document Containing the Charges or for eventual possible trial proceedings.

C. Progress of Review

6. The Prosecution has identified the scope of its case and classified the relevant evidence and information to be disclosed as incriminatory. This concerns around 6,000 items. Information which could be considered potentially exculpatory evidence under article 67(2) of the Rome Statute ("Statute") ("PEXO") and evidence material to the preparation of the Defence under rule 77 of the Rules of Procedure and Evidence ("Rules") ("rule 77 information") has also been identified and is being prepared for disclosure.

7. The Prosecution cannot yet provide an accurate estimate of items identified in these latter categories as the process of reviewing and assessing the entirety of the evidence collection in the Situation of the Central African Republic II ("CARII") for any additional PEXO and rule 77 information is ongoing. So far around 500 items have been *preliminarily* identified as potentially falling under rule 77 and around 10 items

as qualifying as PEXO. However, as indicated, this review is not finalised. As the CARII evidence collection encompasses both the Anti-Balaka as well as the Seleka investigations, and comprises over 130,000 items, this review will take time.

8. On the application of rule 77 specifically, the Prosecution will apply the standard as in previous cases.² Overall, first and foremost the Prosecution will provide rule 77 information that has a direct connection to the concrete charges or pertains to a live issue in the case. All information in the Prosecution's possession from or about Mr. SAID is also considered to fall in this category.

D. Translations

9. The Prosecution has continuously ensured the translation of English documents into French. Currently, only 38 translation and transcription requests into French are pending. A further 12 items have been identified for translation into French. All translations will be finalised and disclosed on a rolling basis by 5 August 2021.

10. The Prosecution has not had any documents translated into Sango. In *inter partes* communications with the Defence, agreement was reached that the main items of evidence should be made available to Mr. SAID in the French language only, unless a specific request from the Defence for a Sango translation is communicated to and discussed with the Prosecution.³

E. Protective Measures

11. Due to the information available on Mr. SAID's affiliation with certain armed groups in CAR, as outlined in previous submissions⁴, as well as the generally volatile

² *Prosecutor v. Bemba*, Decision on the "Defence Motion for Disclosure Pursuant to Rule 77", ICC-01/05-01/08-1594-Conf, 12 July 2011, para. 21.

³ ICC-01/14-01/21-49-Conf.

⁴ ICC-01/14-133-CONF-RED.

security situation in CAR, the Prosecution is currently assessing whether or not the identities of the witnesses listed in Confidential, *ex parte* Annex B, and others identified for disclosure pursuant to rule 77 or article 67(2), may be disclosed without the need for additional protective measures. This assessment has started with the witnesses cited in the Warrant of Arrest, and continues with all those listed in Annex B and remains ongoing. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. If existing protective measures prove insufficient, then the Prosecution may need to file a request for delayed disclosure of these witnesses' identities, pursuant to rule 81(4) of the Rules (section G, below). A more detailed report will be provided by 1 June 2021, and any necessary request(s) pursuant to rule 81(4) on or before that date.

12. As indicated, of the witnesses reviewed thus far, [REDACTED] have been assessed as requiring additional protective measures before their identities can be disclosed. The details are set out in Confidential, *ex parte* Annex A. Currently, no further witnesses have been identified as in need of such additional protective measures. However, as indicated, the Prosecution assessments in this respect remain ongoing. The Prosecution cannot exclude that there may be more witnesses in need of additional protection measures after the necessary assessments are all completed. As forecast, a more detailed report on the status of witness protection will be provided on 1 June 2021.

F. Material affected by articles 54(3)(e), 72 and 93(8) of the Statute

13. There is no material affected by articles 54(3)(e), 72 or 93(8) of the Statute.

G. Requests for redactions to the identity of witnesses or other non-standard redactions

a) Identity redactions

14. The Prosecution does not intend to request pursuant to rule 81(4) of the Rules, to withhold the identity of any of the witnesses upon whom it seeks to rely for the purposes of the confirmation of charges hearing. [REDACTED]. [REDACTED].

15. However, the security situation in CAR remains volatile, changing frequently and precarious overall. The witnesses identified as most vulnerable - thus far [REDACTED] as stated in paragraph 12 above - [REDACTED]. In the event that it proves impossible to implement the necessary safeguards in respect of these [REDACTED] – and any other - witnesses, the Prosecution will file requests for identity redactions pursuant to rule 81(4) of the Rules at the earliest opportunity, and at the latest by 1 June 2021. Additional information will be provided in this regard in the next disclosure report.

b) Other non-standard redactions

16. The review completed thus far has identified only a few documents for which non-standard redactions under rule 81(2) of the Rules will be sought. These are described in Confidential, *ex parte* Annex C.

H. Investigative activities prior to confirmation of charges hearing

17. The Prosecution is carrying out [REDACTED] investigative activities prior to the confirmation of charges hearing. The planned activities are described in Confidential, *ex parte* Annex D. All activities related to evidence upon which the Prosecution seeks to rely for the purposes of confirmation will be finalised by 5 August 2021, to enable

their disclosure within a reasonable timeframe ahead of the confirmation of charges hearing and no later than 30 days before its commencement.

18. The timeline for the conclusion of investigative activities before confirmation reflects the Prosecution's ambition. However, the ongoing COVID-19 pandemic is severely impacting on the Prosecution's operational capacity to carry out investigative activities in CAR. Currently, the medical risk of travel is considered high. In addition, CAR is an environment where treatment and evacuation is difficult for staff and impossible for locals. The Prosecution is mindful that this increases risks for staff and the persons with whom they are in contact.

19. Since mid-January 2021, the CAR authorities announced a state of emergency and a national curfew, currently extended until August 2021, which further impacts on freedom of movement. In addition, the Prosecution is mindful of increased [REDACTED] in CAR.

I. Detailed estimation of the timeline for disclosure

20. The Prosecution submits that in accordance with article 61(3)(b) of the Statute a reasonable deadline for completion of all disclosure would be, at the latest, by 5 September 2021. However, as outlined in the attached schedule in Confidential Annex E the Prosecution aims to disclose the vast majority of the materials considered incriminatory, PEXO or rule 77 information by mid-July 2021.

21. The Prosecution has identified the bulk of its incriminatory evidence in the case against Mr. SAID and also identified PEXO or rule 77 information and is now preparing these materials for disclosure. This process not only includes the application of necessary redactions in line with the Protocol on Redactions but also the preparation of related materials the Defence is entitled to receive and which inform about an item of evidence, such as investigation reports, chain of custody information

or materials relevant to particular witnesses. Against this background, the Prosecution seeks to follow the general disclosure schedule outlined in Confidential Annex E.

22. [REDACTED]. [REDACTED]. [REDACTED].



Fatou Bensouda, Prosecutor

Dated this 17th day of May 2021
At The Hague, The Netherlands