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

Date: **20 July 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 Annexes A, B, C and

Confidential, *EX PARTE*, only available to the Prosecution and VWU Annex D

**Corrected Version of “Public Redacted Version of “Prosecution’s Third Report on Disclosure and Related Matters”, ICC-01/14-01/21-114-Conf-Exp, dated 1 July 2021”,
2 July 2021, ICC-01/14-01/21-114-Red2**

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 Third Report on Disclosure and Related Matters (“Third Disclosure Report”) as requested in the Order on Disclosure and Related Matters (“Order”).¹ Additionally, the Prosecution submits in confidential Annex A an updated List of Disclosure Packages, in confidential Annex B an updated Table of Disclosed Witnesses, in confidential Annex C an updated Disclosure Schedule and in confidential, *ex parte* Annex D an updated Preliminary List of Witnesses.

II. CONFIDENTIALITY

2. The Third Disclosure Report and Annex D are classified confidential, *ex parte* in accordance with regulation 23bis of the Regulations of the Court (“Regulations”) because they include information related to witness protection and the ongoing investigation. Annexes A, B and C are classified confidential in accordance with regulation 23bis(2) of the Regulations as they relate to the Order and the Prosecution’s First Report on Disclosure and Related Matters (“First Disclosure Report”),² the Prosecution’s Second Report on Disclosure and Related Matters (“Second Disclosure Report”)³ and the Annex A to the Prosecution’s submission of a detailed table of its disclosed witnesses.⁴ A confidential redacted version of the Third Disclosure Report will be filed concurrently, and a public redacted version will be filed as soon as practicable.

¹ ICC-01/14-01/21-50-Conf, para. 30.

² ICC-01/14-01/21-55-Conf.

³ ICC-01/14-01/21-87-Conf-Exp.

⁴ ICC-01/14-01/21-103-Conf-AnxA.

III. SUBMISSIONS

3. In his Order, the Single Judge requested the Prosecution to provide updates on the progress relating to the following issues:

- a. the number and type of evidence and other materials disclosed during the relevant period,
- b. the number and type of items of evidence and other material that have been identified for disclosure but have yet to be disclosed,
- c. including a detailed explanation as to their relevance to the Prosecution's case,
- d. the obstacles preventing the Prosecutor from disclosing such items, and the steps taken to overcome them, and
- e. any relevant developments regarding the issues to be detailed in the initial report to be submitted on 16 April 2021.

A. Number and type of evidence and other materials disclosed during the relevant period

4. Since the start of the reporting period, the Prosecution has disclosed 27 Pre-Confirmation INCRIM packages, two Pre-Confirmation Rule 77 packages, one Pre-Confirmation PEXO package and two Pre-Confirmation Metadata Update packages for a total of 3,719 items (21,669 pages). The types of evidence and other items disclosed are listed in the Annexes provided with each disclosure notification. In confidential Annex A, an overview is provided which lists the disclosure packages, disclosure dates, number of items disclosed and describes the content of the disclosure packages.

5. Following the Single Judge's order,⁵ the Prosecution submits an updated and detailed table of disclosed witnesses in confidential Annex B.

6. In addition, the Prosecution submits an updated Disclosure Schedule in confidential Annex C. This updated Disclosure Schedule projects the estimated dates, types and amount of items identified for disclosure at this point in the review process. The review process is ongoing and accordingly, the schedule is continuously refined. Another updated schedule will be provided in the next disclosure report.

B. The number and type of items of evidence and other material that have been identified for disclosure but have yet to be disclosed

7. The Prosecution refers to the updated Disclosure Schedule in Annex B for details on the number and types of evidence and other items relevant to the case that have been identified for disclosure but have not yet been disclosed.

8. The Prosecution has updated its provisional list of witnesses for the purposes of the confirmation of charges hearing. This list has been reduced to 158 witnesses and is provided in confidential, *ex parte* Annex D. This list comprises all witnesses who provide incriminatory evidence in the case against Mr SAID and disclosed prior to confirmation. 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. Detailed explanation as to their relevance to the Prosecutor's case (items of evidence and other material)

9. The updated Disclosure Schedule in Annex C sets out to which parts of the Prosecution's case the evidence and other materials to be disclosed are relevant. The

⁵ Email received on 10 June 2021 at 8.28am.

packages are categorised by information relating to the incidents of the OCRB and the CEDAD or relevant to the chapeau elements of articles 7 and 8 of the Rome Statute (“Statute”). Evidence relevant to the individual criminal responsibility of Mr SAID is included in the INCRIM packages related to the two incidents. For packages with information considered to fall under rule 77 of the Rules and Procedure of Evidence (“Rule 77”) or article 67(2) of the Statute (“PEXO”), the types of documents are listed as well.

D. The obstacles preventing the Prosecutor from disclosing such items, and the steps taken to overcome them

10. The Prosecution continues to disclose all evidence on a rolling basis as updated and set out in Annex C of this submission. As outlined in the First Disclosure Report, the evidence that is relevant to the case has been identified, as well as related or supporting documents. A large portion of these items of evidence have been disclosed in the past reporting period as described in Annexes A and B.

11. As indicated in the previous report, the factors or obstacles that influence disclosure are: witness protection, the process of disclosure preparation, the amount of data to be reviewed and the ongoing investigation. The information provided in the previous report regarding the disclosure process is included here by reference.⁶

12. [REDACTED].⁷ [REDACTED],⁸ [REDACTED]. [REDACTED].

13. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁹ [REDACTED].

⁶ ICC-01/14-01/21-87-Conf-Exp, para. 17.

⁷ ICC-01/14-01/21-55-Conf, para. 11.

⁸ Witnesses identified as providing information under rule 77 of the Rules of Procedure and Evidence need to be cleared as well for disclosure.

⁹ ICC-01/14-01/21-87-Conf-Exp, para. 15.

14. The Prosecution's ongoing effort to "clear" all remaining witnesses to be disclosed prior to confirmation has been impaired due to a breakdown of the Orange Centrafrique telecommunications provider ("Orange"). On 6 June 2021, a fire destroyed vital servers and other equipment belonging to Orange, which is one of the most important telephone networks in the CAR with a total of 800,000 customers. On 7 June, the Director of Orange confirmed that all their customers had been affected by the breakdown. In the CAR, one person out of five was left without any mobile or internet network.¹⁰ The burden on the network as a whole has been substantial, with the other networks in the country, Telecel and Moov, struggling with the extra demand. Telecel has been forced to issue new numbers to cope with the requests for new accounts. Thus, the OTP has struggled to obtain telephone connections to speak with witnesses and potential witnesses on all networks. Most attempts to connect to mobile numbers fail. Orange has informed that the new network should be in service before the end of July 2021.

15. [REDACTED]. [REDACTED].¹¹ [REDACTED].

16. As outlined in the First Disclosure Report, the Prosecution is conducting discrete additional investigations.¹² [REDACTED]. [REDACTED]. [REDACTED].

17. [REDACTED]. [REDACTED]. [REDACTED].

18. [REDACTED].¹³

¹⁰ <https://www.jeuneafrique.com/1186357/politique/chronique-orange-en-rca-le-pre-carre-francais-deconnecte/>.

¹¹ ICC-01/14-01/21-112, para. 21.

¹² Ibid., paras. 17-19 and Confidential, *ex parte* Annex D.

¹³ See also ICC-01/14-01/21-108-Conf-Red, para. 4.

E. Any relevant developments regarding the issues to be detailed in the initial report submitted on 16 April 2021

19. Concerning translation requests, the Prosecution submits that at the time of writing there are now 25 pending requests to translate witness statements into French. The Languages Services Unit (LSU) is tasked to complete all these requests related to witnesses to be relied upon at confirmation by 5 August 2021 as stated in the First Disclosure Report.¹⁴

IV. CONCLUSION

20. The Prosecution is progressing in its review and disclosure of evidence relevant to the case against Mr SAID as outlined in Annex C. [REDACTED]. The next progress report will be provided for consideration by the Single Judge on 1 August 2021.



Karim A. A. Khan QC, Prosecutor

Dated this 20th day July 2021
At The Hague, The Netherlands

¹⁴ ICC-01/14-01/21-55-Conf, para. 9.