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

Date: **4 August 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

**Public Redacted Version of “Prosecution’s Fourth Report on Disclosure and Related
Matters”, ICC-01/14-01/21-135-Conf, dated 2 August 2021**

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

Mr Karim A.A. Khan QC

Mr James Stewart

Mr Eric MacDonald

Counsel for Mahamat Said Abdel Kani

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby submits its Fourth Report on Disclosure and Related Matters (“Fourth 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 Fourth Disclosure Report and Annex D are classified confidential, *ex parte* in accordance with regulation 23*bis* 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 23*bis*(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 Annex A to the Prosecution’s submission of a detailed table of its disclosed witnesses,⁴ and the Prosecution’s Third Report on Disclosure and Related Matters (“Third Report”).⁵ A confidential redacted version of the Fourth 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.

⁵ ICC-01/14-01/21-114-Conf-Exp.

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,
 - i. including a detailed explanation as to their relevance to the Prosecution's case, and
 - ii. the obstacles preventing the Prosecutor from disclosing such items, and the steps taken to overcome them, and
- c. 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 39 Pre-Confirmation INCRIM packages, three Pre-Confirmation Rule 77 packages, one Pre-Confirmation PEXO package and four Pre-Confirmation Metadata Update packages for a total of 7,462 items (31,774 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. In confidential Annex B,⁶ the Prosecution submits an updated and detailed table of disclosed witnesses.

6. The Prosecution also submits its 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 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. The list contains 158 witnesses and is provided in confidential, *ex parte* Annex D. It includes 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.

a. Detailed explanation as to their relevance to the Prosecution 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 packages are categorised by information relating to the incidents of the OCRB and the

⁶ As ordered per the email received on 10 June 2021 at 8.28am.

CEDAD and/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.

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

10. In the last month, the Prosecution has continued to disclose its relevant 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 previous reports, 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.⁷

12. [REDACTED].⁸ [REDACTED].

13. [REDACTED].

⁷ ICC-01/14-01/21-114-Conf-Exp, para. 11; ICC-01/14-01/21-87-Conf-Exp, para. 17.

⁸ ICC-01/14-01/21-114-Conf-Exp, para. 13.

14. The Prosecution's ongoing effort to "clear" all remaining witnesses to be disclosed prior to confirmation has progressed significantly despite the breakdown of the Orange Centrafrique telecommunications provider ("Orange") in June 2021.⁹

15. [REDACTED].¹⁰

16. [REDACTED].¹¹ [REDACTED].

17. [REDACTED].¹²

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

18. Concerning translation requests, the Prosecution informs the Single Judge that there is presently one pending request to translate a witness statement into French and one pending request for transcription of an audio recorded interview. The Languages Services Unit (LSU) is tasked to complete all requests related to the witnesses to be relied upon at confirmation in order to allow for their disclosure by 16 August 2021.¹³

⁹ ICC-01/14-01/21-114-Conf-Exp, para. 14.

¹⁰ ICC-01/14-01/21-114-Conf-Exp, para 15. [REDACTED].

¹¹ ICC-01/14-01/21-114-Conf-Exp, paras. 16-17.

¹² See also ICC-01/14-01/21-108-Conf-Red, para. 4.

¹³ ICC-01/14-01/21-55-Conf, para. 9.

IV. CONCLUSION

19. 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 September 2021.

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

Karim A. A. Khan QC, Prosecutor

Dated this 4th day of August 2021
At The Hague, The Netherlands