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No.: ICC-01/14-01/21
Date: 29 September 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

Public Redacted Version of “Prosecution’s Response to « *Requête visant à ce que soient prises les mesures nécessaires pour garantir la publicité de l’audience de confirmation des charges conformément à l’article 67(1) du Statut*”, ICC-01/14-01/21-179-Conf”, ICC-01/14-01/21-187-Conf, dated 29 September 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 Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

Ms Sarah Pellet

Ms Caroline Walter

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation
and Reparations Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby responds to the Defence’s *“Requête visant à ce que soient prises les mesures nécessaires pour garantir la publicité de l’audience de confirmation des charges conformément à l’Article 67(1) du Statut”* (“Request”).¹ The Request seeks an order for the Prosecution to revise its redactions to the public versions of the Document Containing the Charges (“DCC”) and Pre-Confirmation Brief (“PCB”). The Request should be rejected. The redactions are necessary and proportionate as they serve to protect the Prosecution’s witnesses and do not prejudice the Defence.

II. CONFIDENTIALITY

2. This response is filed as *Confidential* in accordance with regulation 23bis(2) of the Regulations of the Court since the Defence’s Request is of the same designation. A public redacted version will be filed concurrently.

III. SUBMISSIONS

3. The Defence argues that the redactions, as currently applied to both the DCC and PCB, *“risque d’affecter de manière considérable la publicité de l’audience de confirmation des charges puisque les ex purgations massives apposées par l’Accusation sur le DCC et le PCB empêcheront les Parties de plaider publiquement lors de l’audience”* (Emphasis added).²

A. The redactions to the public version of the Document Containing the Charges are necessary and proportionate

¹ ICC-01/14-01/21-179-Conf, hereinafter “Request”.

² Request, para. 11.

4. The Prosecution recalls that the charges in this case relate to [REDACTED].³ [REDACTED],⁴ [REDACTED].

5. A number of the alleged victim-witnesses were subjected to the crimes of imprisonment, torture, cruel treatment, other inhumane acts, outrages upon personal dignity and persecution. Pursuant to article 68(1) of the Statute, the Court, has an obligation not only to protect the safety and physical well-being of victims and witnesses but also their psychological well-being.

6. [REDACTED].

7. The redactions as currently implemented are also proportionate as they do not unduly prejudice Mr SAID and are the least intrusive measure possible to ensure the protection of the victim-witnesses. The redactions are *vis-à-vis* the public, not the Defence. While article 67(1) guarantees the right of Mr SAID to a “public hearing”, this right is not absolute. It has to be balanced against other equally important interests, such as the Court’s obligations pursuant to article 68(1). While the confirmation proceedings shall be held in public, article 64(7) explicitly foresees exceptions such that a Chamber may “determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence”.

8. [REDACTED].⁵ It is therefore not only in the interest of the witnesses but also in the interest of justice that measures be adopted so that the Prosecution can present its best case, including eventually at trial, [REDACTED].

9. The adopted redactions are also proportionate as they balance these concurring interests and do not disadvantage the Defence. Even if the Prosecution were to have

³ ICC-01/14-01/21-144-Conf, paras 33 and 64.

⁴ ICC-01/14-01/21-55-Conf, para. 11-12; see also ICC-01/14-01/21-148-Conf.

⁵ See most recently ICC-01/14-01/21-159-Conf, para. 18.

applied the narrowest of redactions to the sub-incidents in paragraphs 33 and 64 of the DCC, these narratives would have been truncated to the point of being illegible. The Prosecution opted instead to redact these narratives in their entirety. However, for the purposes of the oral submissions on 12 October 2021, the Parties and Participants, being officers of the Court with many years of experience before the ICC, know very well where to draw the line between those parts of the evidence of a witness that can be discussed publicly and which sensitive parts should be discussed in closed session. The Prosecution submits that during the confirmation hearing, it currently does not foresee requesting going into partial closed session for its submissions. However, if it were to be needed, the Prosecution will group any information that would need to be discussed in closed session, in order to avoid the disruptions caused by going extensively between public and closed sessions.

B. The redactions to the public version of the Pre-Confirmation Brief are also necessary and proportionate

10. The same considerations argued in relation to the redactions applied to the content of the DCC also apply to the redactions applied to the PCB. These are not only necessary but also proportionate as they serve the protection of Prosecution witnesses and safeguard the Prosecution's ongoing investigation.

11. In relation to the redactions applied to the PCB, the Defence additionally argues that since all footnotes containing references to the evidence have been redacted, it will be impossible to discuss publicly *"la qualité de la preuve si elle ne peut indiquer de quelle nature est le document qu'elle discute, à savoir est-ce qu'il s'agit d'un rapport d'ONG, d'un document administratif, d'une déclaration de témoin."*⁶ The Prosecution clarifies that it has redacted in bulk the footnotes that refer to the evidence in order to expedite the redactions process. However, all evidence

⁶ Request, para. 12.

disclosed with the Ringtail/eCourt disclosure field of “public” can obviously be discussed in public sessions. As stated above, even evidence categorised as “confidential” in Ringtail/eCourt may be discussed in part in public. In those circumstances, the “speaker” simply needs to be more attentive to the risk of disclosing information to the public that could lead to the identification of a witness or that is generally sensitive. Again, the Parties and Participants in this case have the necessary experience to know when to recognise these issues.

12. Last, if a Party or Participant were to inadvertently publicly refer to information that should have been mentioned in (partial) closed session, the Chamber can order that the delayed audio-visual retransmission of the hearing be redacted.

IV. RELIEF SOUGHT

13. For the above reasons, the Prosecution requests the Single Judge to reject the Request of the Defence.

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 29th day of September 2021
At The Hague, The Netherlands