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No. ICC-01/14-01/18

Date: 5 October 2021

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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Prosecution Request for Authorisation to Disclose Certain
Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani***

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2)(6)(c), (e) and 68(1) of the Rome Statute (the ‘Statute’), and Regulation 42(2) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution Request for Authorisation to Disclose Certain Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani*’.

I. Procedural history and submissions

1. On 29 September 2021, the Office of the Prosecutor (the ‘Prosecution’) filed an urgent request for authorisation to access and disclose transcripts of the testimony of eight witnesses¹ in this case to the Defence in the case of *The Prosecutor v. Mahamat Said Abdel Kani* (the ‘Said Defence’ and the ‘Said case’, respectively), pursuant to Regulation 42(2) of the Regulations (the ‘Request’).²
2. It submits that it intends to rely on the evidence of these witnesses for the purpose of the confirmation of charges hearing to be held on 12 October 2021 and that the relevant transcripts have been identified as disclosable to the *Said Defence*. It explains that the Request is submitted because the concerned witnesses are either the subject of protective measures or the transcripts of their testimonies are confidential in part.³ The Prosecution submits that these transcripts should be disclosed without redactions to ensure that the *Said Defence* has full access to such evidence.⁴
3. On the same day, within the shortened time limit set by the Chamber,⁵ the Yekatom Defence informed the Chamber that it does not oppose the Request.⁶
4. On 30 September 2021, the Ngaïssona Defence, the Common Legal Representative of Victims of the Former Child Soldiers and the Common Legal

¹ P-0291, P-0884, P-0965, P-1847, P-2027, P-2251, P-2328 and P-2841.

² Prosecution’s urgent request for authorisation to access and disclose transcripts of the testimony of eight witnesses in the case *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/18-1122 (with confidential Annex A, ICC-01/14-01/18-1122-Conf-AnxA).

³ Request, ICC-01/14-01/18-1122, paras 1-2, 12.

⁴ Request, ICC-01/14-01/18-1122, para. 7.

⁵ See email from the Chamber, 29 September 2021, at 14:33.

⁶ See email from the Yekatom Defence, 29 September 2021, at 16:52.

Representatives of the Victims of Other Crimes indicated that they do not intend to respond to the Request.⁷

5. On 5 October 2021, the Prosecution informed the Chamber that two additional transcripts were inadvertently omitted from the Request. It requests that they be included ‘as among those for which the Request seeks disclosure’ (the ‘Additional Transcripts’).⁸

II. Analysis

6. The Chamber observes that the transcripts in question refer to witnesses for whom protective measures have been ordered and/or who have partly testified in private session.⁹
7. The Chamber notes that the disclosure of transcripts to participants in different proceedings before the Court would not vary the protective measures in this case, since they will remain in place towards the public.¹⁰ The Chamber therefore considers Regulation 42(2) of the Regulations applicable.¹¹

⁷ See, respectively, emails from the Ngaïssona Defence, the Common Legal Representative of Victims of the Former Child Soldiers, and the Common Legal Representatives of the Victims of Other Crimes, 30 September 2021, at 09:21, 09:31, and 09:36.

⁸ Email from the Prosecution, 5 October 2021, at 13:35.

⁹ Request, ICC-01/14-01/18-1122, paras 1-2; Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, ICC-01/14-01/18-906-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the VWU (confidential redacted version notified the same day; public redacted version notified on 19 April 2021).

¹⁰ See Trial Chamber IV, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Prosecution Request for Transfer of Parts of the Record of the Case into Another Case Record, 15 January 2021, ICC-01/09-01/11-2043-Conf (with confidential Annex I and confidential *ex parte* Annex II, only available to the Prosecution) (the ‘Ruto Decision on the Prosecution Request for Transfer’), para. 9; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the request from the defence in the *Katanga and Ngudjolo* case for disclosure of transcripts in the *Lubanga* case, 11 June 2010, ICC-01/04-01/06-2471, paras 28-29; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on ‘Prosecution’s Second Further Request for Disclosure of Evidence in a Related Article 70 Proceeding’, 26 June 2014, ICC-01/05-01/08-3098-Conf (public redacted version notified the same day, ICC-01/05-01/08-3098-Red), para. 14.

¹¹ See Trial Chamber III, *The Prosecutor v. Paul Gicheru*, Decision on the Prosecution Request to Transfer Part of the Ruto and Sang Case into the Case Record of the Gicheru Case, 23 August 2021, ICC-01/09-01/20-165-Corr (corrected version notified on 24 August 2021) (the ‘Gicheru Decision on the Prosecution Request to Transfer’), para. 11.

8. Further noting that the disclosure of the transcripts to the *Said* Defence would not negatively impact on the security and safety of the concerned witnesses¹² and that 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,¹³ the Chamber authorises the Prosecution to disclose the transcripts as requested, pursuant to Regulation 42(2) of the Regulations. The Prosecution is instructed to inform the *Said* Defence of the nature of the protective measures of the concerned witnesses.¹⁴

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request, including with regard to the Additional Transcripts.

Done in both English and French, the English version being authoritative.

 Judge Péter Kovács	 Judge Bertram Schmitt Presiding Judge	 Judge Chang-ho Chung
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Dated 5 October 2021

At The Hague, The Netherlands

¹² Request, ICC-01/14-01/18-1122, para. 10; *see also* Trial Chamber III, *The Prosecutor v. Jean Pierre Bemba Gombo*, Decision on “Prosecution’s Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding”, 27 May 2014, ICC-01/05-01/08-3074, para. 17.

¹³ Request, ICC-01/14-01/18-1122, para. 10.

¹⁴ *See Gicheru* Decision on the Prosecution Request to Transfer, ICC-01/09-01/20-165-Corr, para. 11; *Ruto* Decision on the Prosecution Request for Transfer, ICC-01/09-01/11-2043-Conf, para. 10.