



Original: **English**

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

Date: **10 December 2021**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane

**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 de la Défense afin que l'Accusation informe la Chambre et la Défense des démarches entreprises conformément aux instructions du Juge Unique dans sa décision du 13 août 2021 (ICC-01/14-01/21-142-Conf) concernant des témoins anonymes afin que la Défense puisse préparer l'audience de confirmation des charges*"", ICC-01/14-01/21-197-Conf-Red, dated 5 October 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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Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby responds to the *“Requête de la Défense afin que l’Accusation informe la Chambre et la Défense des démarches entreprises conformément aux instructions du Juge Unique dans sa décision du 13 août 2021 (ICC-01/14-01/21-142-Conf) concernant des témoins anonymes afin que la Défense puisse préparer l’audience de confirmation des charges”* (“Request”)¹ and provides further information related to Witness P-2478 and [REDACTED] Witness P-0776.²

2. The Prosecution also recalls that it already has disclosed the identity of Witness P-0481.³ This part of the Request is therefore moot.

II. CONFIDENTIALITY

3. This Response is filed Confidential, *EX PARTE*, only available to the Prosecution and VWU in accordance with regulation 23 *bis*(2) of the Regulations of the Court as it refers to witnesses and information the subject of protective measures as well as to a previous request of the same designation.⁴ A confidential redacted version is filed concurrently.

¹ ICC-01/14-01/21-193-Conf.

² ICC-01/14-01/21-193-Conf, para.13.

³ Pre-Confirmation INCRIM package 043 16 August 2021; see also ICC-01/14-01/21-144-Conf-AnxB-Corr.

⁴ ICC-01/14-01/21-138-Conf-Exp.

III. SUBMISSIONS

A. Background

4. On 6 August 2021, pursuant to the Single Judge's order,⁵ the Prosecution filed its Request for Non-Disclosure of the Identities of Witnesses P-2478, P-0776 and P-2283 ("Request for Identity Redactions").⁶

5. On 13 August 2021, the Single Judge issued its "Decision on the Prosecution's request for non-disclosure and delayed disclosure of witnesses identities" (the "Single Judge's Decision") granting the requested redactions but refusing the delayed disclosure of P-0481.⁷

6. On 16 August 2021, the Prosecution disclosed the materials of Witnesses P-0776, P-2478 and P-2283 with identity redactions in place on 16 August 2021. The materials related to P-0481 were disclosed without redactions the same day.

B. Information related to Witness P-2478

7. The Prosecution submits that the redactions to the identity and identifying information applied to the disclosed materials of Witness P-2478 remain necessary and proportionate. Witness P-2478's current situation does not safely allow for the disclosure of [REDACTED] identity. [REDACTED].

8. The arguments put forward by the Prosecution in its Request for Identity Redactions remain valid.⁸ Withholding the Witness's identity is necessary to ensure [REDACTED] protection. The Prosecution submits that at this stage of the

⁵ ICC-01/14-01/21-112, para. 21.

⁶ ICC-01/14-01/21-138-Conf-Exp with confidential *ex parte* annexes A, B, C, D, E and F (only available to the Prosecution and the Victims and Witness Unit) (confidential redacted version filed on the same date (ICC-01/14-01/21-138-Conf-Red)).

⁷ ICC-01/14-01/21-142-Conf.

⁸ ICC-01/14-01/21-138-Conf-Red, paras. 10-17.

proceedings, the redactions to [REDACTED] identity are proportionate as there are no less intrusive alternative measures currently available or feasible, which would sufficiently mitigate the risks faced by P-2478 if [REDACTED] identity was to be disclosed.⁹

C. Information relating to Witness P-0776

9. The Prosecution submits that Witness P-0776's identity cannot be disclosed either at this stage of the proceedings. [REDACTED]. [REDACTED]. [REDACTED], the redactions to [REDACTED] identity remain necessary and proportionate.

10. [REDACTED]. The Prosecution recalls that the evidentiary standard of proof is lower than the one required at trial, and is met as soon as the Prosecutor offers concrete and tangible proof demonstrating a clear line of reasoning underpinning the specific allegations.¹⁰ The Pre-Trial Chamber II recently reiterated that the review of the evidence for the purposes of the confirmation of the charges must be seen in light of the standard of review provided in article 61(7) of the Rome Statute and is considered to be a "light review".¹¹ [REDACTED]. Further, the Single Judge should consider that while P-0776 is cited several times in the Pre-Confirmation Brief in support of the chapeau elements of war crimes, [REDACTED] is always corroborated by other sources, which are disclosed. Even when P-0776 is the only source cited for a proposition (paragraph 19, footnote 50 of the PCB), P-0776 is corroborated.¹² Further, [REDACTED] evidence does not go to the proof of the acts and conduct of the Mr SAID.

⁹ ICC-01/14-01/21-142-Conf, para. 26.

¹⁰ ICC-01/12-01/15-84-Red, 24 March 2016, para. 18.

¹¹ ICC-01/14-01/21-196, para. 21.

¹² See P-1167: CAR-OTP-2094-0002, paras. 29 – 32.

IV. CONCLUSION

11. For the above reasons, the Prosecution reiterates that the current situation of P-2478 and P-0776 are under constant review and that the redactions to the identity of both witnesses should remain in place at this stage of the proceedings. Further, the evidence of P-0776 should not be excluded for the purposes of the Confirmation of Charges Hearing.

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 10th day of December 2021

At The Hague, The Netherlands