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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 the Defence’s Request for the Reclassification to Confidential of the Arrest Warrant Application and Related Materials (ICC-01/14-01/21-115-Conf)”, ICC-01/14-01/21-125-Conf-Red2, 25 August 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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I. INTRODUCTION

1. The request of the Defence seeking the reclassification of the Prosecution's Arrest Warrant Application ("Warrant Application") and related material filed against Mr SAID should be rejected.¹
2. The reasons justifying the *EX PARTE* classification of the Warrant Application remain applicable.² Broadly, the classification is necessary to ensure the confidentiality and integrity of the Prosecution's ongoing investigation, and the security and wellbeing of witnesses. Additionally, the Defence is also in possession of the Warrant of Arrest for Mr SAID which details the nature and scope of the case alleged against Mr SAID, namely the charges and material facts with reference to the supporting evidence. Additionally, the Defence has been receiving on a rolling basis, the evidence the Prosecution will present at the Confirmation Hearing and will soon receive the Document Containing the Charges ("DCC") and the Prosecution's Pre-Confirmation Brief further detailing, well in advance of the Confirmation Hearing, the case against Mr SAID.

II. CONFIDENTIALITY

3. This Response is filed as Confidential, *EX PARTE*, available only to the Prosecution because it contains sensitive information pertaining to witness evidence and to confidential information about the Prosecution's ongoing investigation. A confidential redacted version of the Response will be filed contemporaneously.

¹ ICC-01/14-01/21-115-Conf ("Request").

² ICC-01/14-19-US-Exp, para. 275.

III. SUBMISSIONS

A. The current classification of the Warrant Application remains justified

- a. The ongoing investigation requires protection

4. [REDACTED].³ [REDACTED]. [REDACTED].

5. Providing the Warrant Application in a redacted form to the Defence will also not fully mitigate the above-mentioned risks. [REDACTED].

6. [REDACTED].

7. [REDACTED].

- b. Victims and witnesses require protection

8. The Prosecution has been disclosing the statements of witnesses it intends to rely on at the Confirmation Hearing on a rolling basis and as soon as they are cleared by the Protection and Strategies Unit (“PSU”). However, as previously stated, protection measures are currently being finalised for some of the prospective witnesses and their families, including witnesses cited in the Warrant Application. The security threats, including the risk of physical harm these individuals and their families may face given their cooperation with the Court are real; as is the risk of interference. A reclassification of the Warrant Application will augment these risks.

9. The Prosecution previously informed the Single Judge of security incidents related to witnesses [REDACTED] and [REDACTED].⁴ Furthermore, the Prosecution was recently informed by witness P-0839 of the following incident which is detailed in his statement:

³ ICC-01/14-19-US-Exp.

⁴ [REDACTED].

"[REDACTED]"⁵

10. Moreover, [REDACTED], it will have a negative impact on the security situation of (prospective) witnesses. [REDACTED].

B. Mr SAID is in possession of sufficient information concerning the charges against him at this stage

11. On 22 January 2021, the Central African Republic authorities confirmed that that Mr SAID had been provided with a copy of the redacted Warrant of Arrest in French.⁶ On 2 March 2021, the Defence was granted access to the unredacted Warrant of Arrest.⁷ The Warrant of Arrest fully informs the Defence of the nature and cause of the case alleged against Mr SAID, namely the charges and supporting evidence. It is clear, concise and comprehensive, and expressly refers to the underlying evidence used to support the charges. Not only has the Defence already received, almost,⁸ the totality of the evidence cited by the Single Judge in the Warrant of Arrest but it has also received, to date, more than the majority of the evidence to be presented by the Prosecution at the Confirmation Hearing.

12. The detailed information in the Warrant of Arrest combined with the evidence disclosed so far are sufficient, at this stage, for Mr SAID to be informed pursuant to article 67(1)(a) of the Statute and to effectively seek provisional release under article 60 of the Statute.

C. The Document Containing the Charges and Pre-Confirmation Brief are forthcoming

⁵ Statement of witness P-0839, CAR-OTP-2127-9780 at 9784, para. 20. [REDACTED].

⁶ ICC-01/14-01/21-6-Conf-Exp-Red2, para. 11.

⁷ ICC-01/14-01/21-28-Conf.

⁸ Only the statements of witnesses P-0547 and P-0481 remain to be disclosed. See ICC-01/14-01/21-114-Conf-Exp, p.13.

13. In addition, by 16 August 2021, Mr SAID will receive the DCC and list of evidence intended to be presented at the Confirmation Hearing.⁹ The DCC will be followed by the submission, on 30 August 2021, of the Prosecution's Pre-Confirmation Brief,¹⁰ which will further detail the legal and factual basis of the Prosecution's case against Mr SAID. It will also reference the supporting evidence. These two documents, in addition to material being disclosed on an on-going basis, will provide the Defence with all relevant and up-to-date information on the charges and evidence that the Prosecution intends to rely on for the Confirmation Hearing.

IV. CONCLUSION

14. For the above reasons, the Chamber should reject the Request and maintain the Under Seal, *EX PARTE* classification of the Warrant Application.

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

⁹ ICC-01/14-01/21-112, p. 9.

¹⁰ ICC-01/14-01/21-112, p. 9-10.