



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 request for authorisation to access and disclose a document in the case *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiissona*”, ICC-01/14-01/21-215-Conf, dated 26 November 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”) requests the authorisation of Pre-Trial Chamber II (“Chamber”) to disclose ICC-01/14-01/21-146-Conf-Anx7, an annex to a Prosecution filing (“Annex 7”),¹ to the Defence in the case of the *Prosecutor v. Yekatom and Ngaissona* (“Yekatom and Ngaissona case”), pursuant to regulation 42(2) of the Regulations of the Court (“Regulations”).

2. The Defence of Mr YEKATOM requested the disclosure of Annex 7 used in support of events outlined in the Warrant of Arrest issued for Mahamat Said Abdel Kani (“SAID”)² as it is material to its preparation. Pursuant to its disclosure obligations, the Prosecution now seeks the Chamber’s authorisation to disclose to the Defence in the Yekatom and Ngaissona case the entirety of this confidential annex.

II. CONFIDENTIALITY

3. The Prosecution files this Request as ‘confidential’ as it concerns a confidential filing and its content. However, if the Chamber grants this Request, the Prosecution also requests that the Chamber reclassify this filing as ‘public’.

III. SUBMISSION

A. Request for authorization to disclose ICC-01/14-01/21-146-Conf-Anx7

4. The Prosecution considers that Annex 7 should be made available to the Defence in the Yekatom and Ngaissona case as it is material to their preparation. The Defence has shown that the Annex 7 specifically relates to the context of the confirmed crimes

¹ This annex to Prosecution’s filing ICC-01/14-01/21-146-Conf-Red was initially filed *ex parte* in ICC-01/14 Situation and reclassified as ‘confidential’ pursuant to the Chamber’s Instruction, dated 13 August 2021. See ICC-01/14-29-Conf-Anx7. In accordance with the Chamber’s instruction, dated 18 August 2021, the annex was transferred into the record of the case with the current record number: ICC-01/14-01/21-146-Conf-Anx7.

² ICC-01/14-01/21-2-Red2, fn.16.

against humanity and war crimes and a live issue in the case. The document is a map of the CAR with descriptions of [REDACTED].

5. Pursuant to regulation 42(2) of the Regulations, any protective measures ordered by the Chamber shall be respected and the Defence shall be informed of the nature of these measures.³ Regulation 42(2) recognises the Prosecution's obligation to disclose materials in related cases and requires that the Defence, in subsequent proceedings, be notified of any pre-existing protective measures, by which they are bound under regulation 42(1) of the Regulations.

6. The Defence in the Yekatom and Ngaissona case 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.⁴ Annex 7 does not contain information that could negatively impact the security and safety of the witnesses and should be disclosed without redactions to ensure that the Defence in the Yekatom and Ngaissona case has full access to this evidence.

B. Modalities of implementation

7. Should the Chamber grant the Request, the Prosecution proposes that access - and thereby disclosure - be implemented via Records Manager by the Registry as soon

³ Regulation 42(2) of the Regulation; *see also* ICC-01/05-01/13-338, page 4, para.3 ("Considering that the [Defence's use of material in another case] is without prejudice to Jean-Pierre Bemba's and his Counsel's duties to fully comply with any and all protective measures which are applicable and in force *vis-à-vis* the materials to be accessed").

⁴ *See* <https://www.icc-cpi.int/resource-library/Documents/COPCEng.pdf>. The Defence should be reminded of their specific obligations pursuant to the Code of Professional Conduct for counsel and in particular Article 8 "Respect for professional secrecy and confidentiality" and its paragraph 3 "Counsel may only reveal the information protected under paragraphs 1 and 2 of this article to co-counsel, assistants and other staff working on the particular case to which the information relates and solely to enable the exercise of his or her functions in relation to that case." *See also* Annex A to the Decision on a Protocol in the Handling of Confidential Information and Contacts with Witnesses in Yekatom and Ngaissona case, ICC-01/14-01/18-156-AnxA; Annex to Chambers Practice Manual, 29 November 2019 at <https://www.icc-cpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>.

as possible. In this way, Annex 7 in the case record can quickly and easily be made available to the Defence in the Yekatom and Ngaissona case.

IV.RELIEF SOUGHT

8. For the above reasons, the Prosecution requests the Chamber to allow disclosure of ICC-01/14-01/21-146-Conf-Anx7 without redactions to the Defence in the Yekatom and Ngaissona case.

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