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**No. ICC-01/14-01/21
Date: 27 January 2022**

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

Decision on Prosecution's request for authorisation to access and disclose a document in the case of *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*

Decision 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
Mr James Stewart
Mr Eric MacDonald

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

**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

JUDGE MIATTA MARIA SAMBA, acting as Single Judge on behalf of Trial Chamber VI of the International Criminal Court, having regard to Article 67 of the Rome Statute of the International Criminal Court (‘the Statute’), Rule 77 of the Rules of Procedure and Evidence (the ‘Rules’), Regulation 23 *bis* of the Regulations of the Court (the ‘Regulations’) and Regulation 14 of the Regulations of the Registry, issues this ‘Decision on the Prosecution’s request for authorisation to access and disclose a document in the case of *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*’.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 30 October 2018, the Office of the Prosecutor (the ‘Prosecution’) filed an application pursuant to Article 58 of the Statute for a warrant of arrest.¹
2. On 14 November 2018, Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) issued an Order for additional information, requesting the Prosecution to provide clarifications and further details.²
3. On 23 November 2018, the Prosecution submitted a filing with additional information, which contained a number of annexes that were all classified as Under Seal.³
4. On 13 August 2021, the Pre-Trial Chamber instructed the Registry to reclassify, *inter alia*, filing ICC-01/14-29-US-Exp-Anx7 as confidential. In accordance with the Pre-Trial Chamber’s instruction, ICC-01/14-29-Conf-Anx7 was subsequently transferred and assigned record number: ICC-01/14-01/21-146-Conf-Anx7 (‘Annex 7’).
5. On 26 November 2021, the Prosecution requested the authorisation of the Pre-Trial Chamber to disclose Annex 7, in the case of the *Prosecutor v. Alfred Yekatom and*

¹ ICC-01/14-19-US-Exp.

² ICC-01/14-25-US-Exp.

³ ICC-01/14-29-US-Exp; a confidential redacted version was filed on 6 August 2021.

Patrice Edouard Ngaïssona (the ‘*Yekatom and Ngaïssona Case*’) pursuant to Regulation 42(2) of the Court (the ‘Request’).⁴

6. The Request was made following a request from the defence of Mr Yekatom for the disclosure of Annex 7 on the basis that it was ‘material to its preparation’.⁵

7. On 3 December 2021, the Defence responded to the Request (the ‘Response’).⁶

8. On 9 December 2021, the Pre-Trial Chamber issued its ‘Decision on the confirmation of charges against Mahamat Said Abdel Kani’.⁷

9. On 14 December 2021, the Presidency issued a ‘Decision constituting Trial Chamber VI and referring to it the case of *The Prosecutor v. Mahamat Said Abdel Kani*’.⁸

10. On 16 December 2021, following the notification of the public redacted version of the Prosecution’s Request, the Defence filed a public redacted version of its Response.⁹

11. On the same day, the Pre-Trial Chamber informed the parties that Trial Chamber VI had been constituted and that, outside limited exceptions, it was no longer able to issue decisions in the present case – including as regards the present Request.¹⁰

⁴ [Prosecution’s request for authorisation to access and disclose a document in the case of *Prosecutor v Alfred Yekatom and Patrice-Edouard Ngaïssona*](#), ICC-01/14-01/21-215-Conf. A public redacted version was filed on 10 December 2021, ICC-01/14-01/21-215-Red (the ‘Request’).

⁵ [Request](#), para 2.

⁶ [Réponse de la Défense à la « Prosecution’s request for authorisation to access and disclose a document in the case Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona » \(ICC-01/14-01/21-215-Conf\)](#), ICC-01/14-01/21-217-Conf. A public redacted version was filed on 15 December 2021, ICC-01/14-01/21-217-Red.

⁷ [Decision on the confirmation of charges against Mahamat Said Abdel Kani](#), ICC-01/14-01/21-218-Conf. A public redacted version was filed on 9 December 2021, ICC-01/14-01/21-218-Red.

⁸ [Decision constituting Trial Chamber VI and referring to it the case of *The Prosecutor v Mahamat Said Abdel Kani*](#), ICC-01/14-01/21-220.

⁹ Email from the Defence to Pre-Trial Chamber II, 16 December 2021 at 14:07

¹⁰ Email from Pre-Trial Chamber II, 16 December 2021 at 17:15. The Trial Chamber confirmed it was seized of the matter by email dated 17 December 2021 at 13:36.

II. ANALYSIS

12. The Prosecution requests authorisation to disclose Annex 7, a confidential document originally filed in the record of this situation and subsequently transferred to this case record, to the defendants in another case pursuant to Regulation 42(2) of the Court. Annex 7 is a confidential map ‘used in support of events outlined in the Warrant of Arrest issued for Mahamat Said Abdel Kani.’¹¹ In its Request, the Prosecution notes that the Yekatom defence team considers that the information contained in Annex 7, ‘will assist its understanding of incriminating and exculpatory evidence’ in the *Yekatom and Ngaïssona* Case.¹² For the sake of clarity, while the request for the disclosure of Annex 7 came from Mr Yekatom’s defence team, the Chamber notes that the Prosecution’s Request seeks disclosure of the document to both defence teams in the *Yekatom and Ngaïssona* Case. Thus, the Chamber will proceed in its analysis on this basis.

13. The Chamber notes that the Prosecution relies upon Regulation 42(2) of the Court as the legal basis for its Request. However, the Chamber notes that Regulation 42(2) of the Court concerns the continued application of protective measures ordered by a Chamber in respect of witnesses or victims in the context of a particular situation or case when the Prosecution discloses affected documents or other materials in subsequent proceedings. In this instance, Annex 7 is an annotated map produced by the Prosecution, which had originally been filed under seal in the situation record. The Pre-Trial Chamber subsequently reclassified it as ‘confidential’ in the situation record and then ordered its inclusion into the case record of this case. This decision was thus not aimed at protecting a specific witness or victim and, therefore, Regulation 42(2) of the Regulations of the Court does not apply in this instance.

14. The Chamber is of the view that Regulation 23(1) *bis* of the Court addresses the current situation more adequately. Since the Pre-Trial Chamber re-classified Annex 7 as confidential in the situation record, the only restriction to its circulation is that it cannot be disclosed to the public.¹³ There is no indication that the Pre-Trial Chamber intended to limit access to Annex 7 to the parties and participants in this case. The

¹¹ [Request](#), para. 2.

¹² [Request](#), para. 4.

¹³ Regulation 14(b) of the Regulations of the Registry.

Prosecution is therefore free to disclose the map as a confidential document in the *Yekatom and Ngaïssona* case – either as an item of evidence or via an official filing into the record of the case.

15. It is further noted that, in its Response, the Defence does not object to the disclosure of Annex 7 in principle. However, it objects to the fact that it does not have access to the initial request filed by the defence for Mr Yekatom¹⁴ and requests that this filing be disclosed to the Defence. The Chamber notes that the present Request is at the behest of the Prosecution in the present case pursuant to its obligation under Rule 77 of the Rules to disclose materials in related cases. No initial request by the defence for Mr Yekatom has been filed into the record of this case. This Chamber therefore has no power to make Mr Yekatom's original filing available to the Defence. It also does not see any reason why this filing should be disclosed to the Defence pursuant to Article 67(2) of the Statute or Rule 77 of the Rules.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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



**Judge Miatta Maria Samba,
Single Judge**

Dated 27 January 2022

At The Hague, The Netherlands

¹⁴ [Response](#), para. 14.