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No.: **ICC-01/14-01/18**

Date: **11 April 2022**

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 *PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-EDOUARD NGAÏSSONA***

**Public
with Confidential Annex A**

**Prosecution's Request for Authorisation to Disclose Transcripts of the Testimony of
P-0287, P-0801, P-0808, P-0876, P-0889, P-0992, P-0966, P-0975, P-1339, P-1521, P-1719,
P-2232, P-2269, P-2658, P-2843 to the Defence in the case of *Prosecutor v. Mahamat
Said Abdel Kani***

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 Office of the Prosecutor (“Prosecution”) requests the authorisation from Trial Chamber V (“Chamber”) to disclose the transcripts of testimony of witnesses who have testified or are expected to testify in this case, to the Defence of Mahamat Said Abdel Kani (“Mr SAID”), pursuant to regulation 42(2) of the Regulations of the Court (“Regulations”).

2. These transcripts are prior statements of witnesses disclosed under the category of incriminating evidence in the *Said* case. The Prosecution is seeking the authorisation of the Chamber because part of the testimony of the witnesses was heard in closed session or is the subject of protective measures.

3. The trial of Mr SAID is set to begin on 26 September 2022.¹ Therefore, the Prosecution is making this Request in order to ensure that Mr SAID has access diligently and in advance of the start of the trial to these materials. The Prosecution is also requesting, for same reasons, to be authorised to disclose on a rolling basis the transcripts of the testimony of the witnesses set out in Annex A who have not yet testified but are scheduled to do so between July and December 2022.²

II. CONFIDENTIALITY

4. This Request is filed as public with confidential Annex A in accordance with regulation 23*bis*(2) of the Regulations as the Annex refers to information which is the subject of protective measures or otherwise confidential.

¹ ICC-01/14-01/21-243.

² These witnesses are P-0975, P-1339, P-1719, P-2269. This anticipated schedule of July-December 2022 is always subject to change.

III. BACKGROUND

5. On 7 September 2021, the Defence of Mr SAID filed its *“Requête de la Défense visant à ce que lui soient communiqués tous les éléments de l’affaire connexes Yekatom et Ngaissona utiles à la préparation de l’audience de confirmation des charges dans l’affaire Said”* before Pre-Trial Chamber II.³

6. On 10 September 2021, the Prosecution responded that it would provide the transcripts of those witnesses it intends to rely upon for the confirmation hearing and who also have testified or will be called to testify by the Prosecution in the *Yekatom and Ngaissona* case.⁴

7. On 27 September 2021, Judge Aitala, acting as Single Judge, rejected the request of Mr SAID, taking note of the Prosecution’s intended request to be filed before this Chamber.⁵

8. On 29 September 2021, the Prosecution submitted its “urgent request for authorisation to access and disclose transcripts of the testimony of eight witnesses in the case *Prosecutor v. Mahamat Said Abdel Kani*” in which it requested the Chamber’s authorisation to disclose unredacted transcripts of eight trial witnesses common to the *Said* case (“First Transcript Request”).⁶

9. On 5 October 2021, the Chamber granted the Prosecution’s request.⁷

³ ICC-01/14-01/21-161-Red.

⁴ ICC-01/14-01/21-166-Red.

⁵ ICC-01/14-01/21-182.

⁶ ICC-01/14-01/18-1122.

⁷ ICC-01/14-01/18-1129.

10. On 1 April 2022, the Defence of Mr SAID requested that the Prosecution provide access to the testimony of several additional witnesses who testified in the *Yekatom and Ngaissona* case.⁸

IV. SUBMISSIONS

A. Request for the authorisation to disclose the testimony of 14 witnesses

11. The Prosecution requests that the transcripts of the testimony of the witnesses set out in Annex A and who have testified or are expected to testify in the *Yekatom and Ngaissona* case should be made available to the Defence of Mr SAID. This encompasses the transcripts of their testimony, including those parts delivered in closed session.

12. The Prosecution hereby incorporates by reference its arguments as set out in its First Transcript Request.⁹ Regulation 42(2) recognises the Prosecution's obligation to disclose materials in related cases and the security interests of victims and witnesses. 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.¹⁰

13. The Prosecution has identified in Annex A the transcripts that are to be disclosed to the Defence of Mr SAID. These are prior statements made by the witnesses whose evidence the Prosecution has previously disclosed under the category of incriminating evidence. The Prosecution also requests that the transcripts of their testimony be disclosed without redactions to ensure that the Defence of Mr SAID has full access to their evidence.

⁸ E-Mail received on 1 April 2022, at 13:34.

⁹ ICC-01/14-01/18-1122, para. 6-10.

¹⁰ Regulation 42(2) of the Regulations; 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").

14. The Chamber has previously considered regulation 42(2) when it confirmed that the disclosure of transcripts to participants in different proceedings before the Court itself would not require a variation of the protective measures since they will remain in place towards the public.¹¹

15. The Defence of Mr SAID is bound by confidentiality obligations pursuant to the Protocol on the handling of confidential information and Article 8 of the Code of Professional Conduct for Counsel.¹² Additionally, it is the Prosecution's current assessment that the disclosure of the unredacted transcripts to the Defence and Mr SAID would not negatively impact the security and safety of the witnesses.

B. Modalities of implementation

16. The Prosecution proposes that access – and thereby disclosure – be implemented via Records Manager by the Registry as soon as possible for those witnesses who have already testified, and subsequently after completion of the testimony of those witnesses identified in Annex A, who have not yet testified.

¹¹ ICC-01/14-01/18-1129, para. 7.

¹² ICC-01/14-01/18-1122, para. 10.

V. RELIEF SOUGHT

17. For the above reasons, the Prosecution requests that the Chamber authorise the disclosure of unredacted transcripts of the testimony of the 15 witnesses as listed in confidential Annex A.

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 11th day of April 2022
At The Hague, The Netherlands