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Date: **25 May 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 Materials from Transcripts of
the Testimony of Witnesses P-0291, P-0884, P-0966, P-0975, P-1339, P-2232, P-2251, P-
2269, and P-2328 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 of Trial Chamber V (“Chamber”) to disclose materials referenced during the oral testimony of certain witnesses, as identified in Annex A (“Associated Items”), to the Defence of Mahamat Said Abdel Kani (“Mr SAID”) in case ICC-01/14-01/21, pursuant to regulation 42(2) of the Regulations of the Court (“Regulations”). These Associated Items form part of the witnesses’ testimony and may be material to the preparation of the Defence of Mr SAID.

2. The Prosecution has previously requested authorisation to disclose to the SAID Defence the transcripts (including prospective transcripts) of in-court testimony of 22 witnesses common to this case and the *Said* case.¹ In this Request, the Prosecution seeks authorisation to further disclose certain Associated Items of nine witnesses (P-0291, P-0884, P-0966, P-0975, P-1339, P-2232, P-2251, P-2269, and P-2328) on whose evidence the Prosecution in the *Said* case seeks to rely on *and* which have a Registry or Defence Evidence Registration Number.

3. Additionally, for the witnesses P-0975, P-1339 and P-2269, who have not yet testified, the Prosecution requests advance authorisation to disclose, if necessary, the same types of Associated Items to the SAID Defence.

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-01/14-01/18-1122; ICC-01/14-01/18-1358.

III. BACKGROUND

5. On 7 September 2021, the SAID Defence filed a motion before Pre-Trial Chamber II requesting access to what it defined as evidence from the *Yekatom and Ngaïssona* case “useful” to the preparation of the confirmation of the charges hearing scheduled on 12 October 2021.²

6. On 10 September 2021, the Prosecution responded that it would provide the transcripts of those witnesses it intended 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 Ngaïssona* case.³

7. On 27 September 2021, the Single Judge of Pre-Trial Chamber II, rejected the request of Mr SAID, taking note of the Prosecution’s intended request to be filed before this Chamber.⁴

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 sought the Chamber’s authorisation to disclose unredacted transcripts of eight Prosecution witnesses common to both the *Said* case and this case (“First Transcript Request”).⁵

9. On 5 October 2021, the Chamber granted in full the Prosecution’s First Transcript Request (“First Transcript Disclosure Decision”).⁶

² ICC-01/14-01/21-161-Red.

³ ICC-01/14-01/21-166-Red.

⁴ ICC-01/14-01/21-182.

⁵ ICC-01/14-01/18-1122.

⁶ ICC-01/14-01/18-1129.

10. On 1 April 2022, the SAID Defence requested that the Prosecution provide access to the testimony of several additional witnesses who have testified in the *Yekatom and Ngaïssona* case.⁷

11. On 11 April 2022, the Prosecution filed its “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 of Mr SAID, seeking the Chamber’s authorisation to disclose unredacted transcripts of 14 additional witnesses common to both this case and the *Said* case (“Second Transcript Request”, and together with the First Transcript Request, “Transcript Requests”).⁸

12. On 9 May 2022, the Ngaïssona Defence responded to the Second Transcript Request, in which it deferred to the Chamber’s discretion for the witnesses who have already testified in the present case, but opposed advance authorisation for the four witnesses who have yet to testify. In the alternative, Ngaïssona Defence proposed that the Chamber put in place a procedure to address any witness protection concerns after the witness testifies and before disclosure in the *Said* case, should the Chamber grant the Prosecution’s advance authorisation request.⁹

13. On 19 May 2022, by email, the Prosecution sought the Chamber’s clarification as to the scope of the authorisation in the First Transcript Disclosure Decision and prospective decision to the Second Transcript Request, particularly on whether the authorisation of disclosure of the Associated Documents is implicitly included in these decisions. In this communication, the Prosecution noted that it stands ready to file on

⁷ E-Mail received on 1 April 2022, at 13:34.

⁸ ICC-01/14-01/18-1358.

⁹ ICC-01/14-01/18-1399, paras. 9-14.

the record should the Chamber prefer.¹⁰ On the same day, the Ngaïssona Defence responded that the Prosecution should be directed to file a formal request.¹¹

14. On 19 May 2022, the Chamber instructed the Prosecution to file the request in a formal filing given that the First Transcript Disclosure Decision was limited to the transcripts requested in the First Transcript Request.¹²

IV. SUBMISSIONS

A. Request for authorisation to disclose Associated Items

15. The Prosecution requests that the Chamber authorise the Prosecution to disclose to the SAID Defence, as necessary, the Associated Items related to the transcripts of the oral testimony of witnesses P-0291, P-0884, P-0966, P-0975, P-1339, P-2232, P-2269, P-2251, and P-2328, as detailed in Annex A. Specifically, the Prosecution requests authorisation to disclose under rule 77 the Associated Items listed in the Annex for the Witnesses P-0291, P-0884, P-0966, P-2232, P-2251, and P-2328 who have already testified.¹³ For the remaining three witnesses who are expected to testify,¹⁴ the Prosecution requests advance authorisation to disclose any items that are (i) used with the witness during their future oral testimony; and (ii) are classified with Registry or Defence Evidence Registration Numbers.

16. The Prosecution hereby incorporates by reference its arguments set out in its Transcript Requests.¹⁵ The Prosecution submits that the same rules apply to the

¹⁰ E-Mail sent on 18 May 2022, at 16:04.

¹¹ E-Mail received on 18 May 2022, at 16:53.

¹² E-Mail received on 19 May 2022, at 10:35.

¹³ See Sections 1 and 2(1) of the Annex.

¹⁴ See Section 2(2) of the Annex. These witnesses are P-0975, P-1339, and P-2269.

¹⁵ ICC-01/14-01/18-1122, paras. 6-10; ICC-01/14-01/18-1358, paras. 12-15.

Associated Items as their disclosure to the SAID Defence would not change the status of the protective measures towards the public.

17. The Prosecution submits that advance authorisation is necessary and appropriate in the given circumstances. The Associated Items of these witnesses may be material to the preparation of the SAID Defence pursuant to rule 77 of the Rules as they were referenced during the testimony of witnesses the Prosecution in the *Said* case intends to rely on at trial.

18. Furthermore, the Prosecution in the *Said* case currently plans to submit rule 68 applications for three witnesses (P-2269, P-1339, and P-0975), the deadline of which has been set by the Trial Chamber VI as 20 days after the completion of their respective testimony in the present case.¹⁶ The Prosecution considers that it is in the interests of justice that the SAID Defence has access to these materials without delay, and in any event, before the submission of the Prosecution's rule 68 applications for these witnesses. This will further assist the Parties, Participants and the Trial Chamber in the *Said* case to avoid additional last minute adjustments to the relevant deadlines. As concerns the prospective disclosure of Associated Items, the Prosecution would not oppose the establishment of a system in which a party may seek additional redactions within a reasonable period, should the Chamber deem it appropriate.¹⁷

B. Modalities of implementation

19. 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.

¹⁶ ICC-01/14-01/21-305, para. 17. The Prosecution currently intends to make rule 68(2)(b) applications for P-0975 and P-2269 and a rule 68(3) application for P-1339.

¹⁷ ICC-01/14-01/18-1399, para. 14.

V. RELIEF REQUIRED

20. For the above reasons, the Prosecution requests that the Chamber authorise the Prosecution to disclose, if necessary, certain Associated Items, as listed in confidential Annex A, to the SAID Defence in case ICC-01/14-01/21. The Prosecution further requests advance authorisation to disclose prospective Associated Items from the transcripts of witnesses who have not yet testified, as identified in Annex A.



Karim A. A. Khan QC, Prosecutor

Dated this 25th day of May 2022
At The Hague, The Netherlands