

ANNEX 14
PUBLIC
REDACTED

From: Trial Chamber V Communications
Sent: 19 May 2022 10:35
To: Vanderpuye, Kweku; [REDACTED]; Trial Chamber V Communications; D29 Yekatom Defence Team; D30 Ngaissona Defence Team; V44 LRV Team OPCV; V45 LRV Team; V44 LRV Team
Cc: OTP CAR IIB Operations; Chamber Decisions Communication; OTP CAR IIB Case Management
Subject: Decision on the Prosecution's Request for Clarification regarding the Disclosure of Trial Transcripts relative to ICC-01/14-01/18-1129 and ICC-01/14-01/18-1358

Dear Counsel,

The Chamber's Decision ICC-01/14-01/18-1129 entitled 'Decision on the Prosecution Request for Authorisation to Disclose Certain Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani*' was indeed limited to certain transcripts, notably those subject to the underlying Prosecution request ICC-01/14-01/18-1122.

Should the Prosecution intend to seek authorisation to disclose 'associated documents' linked to the witnesses subject to Decision ICC-01/14-01/18-1129 and/or subject to the pending request ICC-01/14-01/18-1358-Corr, it is instructed to file a request on the record.

The Prosecution is further instructed to give the Chamber notice as early as possible if it intends to request authorisation to disclose associated documents linked to the witnesses subject to the pending request ICC-01/14-01/18-1358-Corr, in order for the Chamber to consider whether this additional request regarding associated documents should be considered jointly with the pending request.

Kind regards, TC V

From: Vanderpuye, Kweku [REDACTED]
Sent: 18 May 2022 19:05
To: [REDACTED]; Trial Chamber V Communications [REDACTED]
D29 Yekatom Defence Team [REDACTED] D30 Ngaissona Defence Team
[REDACTED]; V44 LRV Team OPCV [REDACTED] V45 LRV Team
[REDACTED] V44 LRV Team [REDACTED] >
Cc: OTP CAR IIB Operations [REDACTED] Chamber Decisions Communication
[REDACTED] OTP CAR IIB Case Management
[REDACTED]
Subject: RE: Disclosure of Trial Transcripts relative to ICC-01/14-01/18-1129 and ICC-01/14-01/18-1358 - Clarification Requested

Dear Trial Chamber V,

Dear Counsel,

In the context of witness trial transcripts, the Prosecution understands 'associated exhibits to be those that a witness "uses or explains [] in the prior recorded testimony, and particularly when these are necessary to read and understand the prior recorded testimony" (see *Prosecutor v. Ruto*, ICC-01/09-01/11-1938-Corr-Red2, Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, para. 33). Such documents/material are correspondingly characterised as "an inseparable and indispensable part of the witness's written testimony" (see *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on the Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 bis (Witnesses for Sarajevo Municipality), 15 October 2009, para. 11). Thus, authorisation to disclose a witness's transcripts may indeed implicitly entail such

accompanying material. Hence, the requested clarification since the Chamber's previous decision refers to the prior transcripts of the witness's testimony.

Notably, the Prosecution's first request — granted in full by the Chamber — referred to the provision of the provision of the "entire transcripts" of testimony (see ICC-01/14-01/18-1122, paras. 2, 6). In its pending request, the Prosecution expressly notes that the transcripts constitute "prior statements made by the witnesses" (see ICC-01/14-01/18-1358, paras. 2, 13). The object and purpose of the Prosecution's requests are clearly such that Mr SAID's Defence may both obtain and be in a position to *understand* the relevant prior recorded testimony. Importantly, any associated documents forming a part of such prior testimony fall within the ambit of Regulation 42(2) of the Regulations to the same extent as the transcripts themselves (see ICC-01/14-01/18-1129, para. 7). Thus, the Ngaissona Defence's objections appears purely formalistic.

With that said, the Prosecution is disposed to file a formal request for authorisation to disclose associated documents, should the Chamber require one. Thank you.

Kind regards,

Kweku Vanderpuye

From: [REDACTED]
Sent: 18 May 2022 16:53
To: Vanderpuye, Kweku [REDACTED] Trial Chamber V Communications
 [REDACTED] D29 Yekatom Defence Team [REDACTED] D30
 Ngaissona Defence Team [REDACTED] V44 LRV Team OPCV [REDACTED]
 [REDACTED]; V45 LRV Team [REDACTED] V44 LRV Team [REDACTED]
Cc: OTP CAR IIB Operations [REDACTED] Chamber Decisions Communication
 [REDACTED] OTP CAR IIB Case Management
 [REDACTED]
Subject: RE: Disclosure of Trial Transcripts relative to ICC-01/14-01/18-1129 and ICC-01/14-01/18-1358 - Clarification Requested

Dear Trial Chamber V,

The Defence for Mr Ngaissona opposes the below request. The Prosecution should be directed to file a new request by way of formal filing.

The Prosecution's suggestion that it seeks 'clarification' of the Chamber's previous ruling on inter-case disclosure is inaccurate. The below email amounts to a new request to disclose additional items which did not form part of its previous requests for disclosure to the Saïd case, or the Chamber's ruling. Rather, the Prosecution's 29 September and 5 October requests (ICC-01/14-01/18-1122-Conf-AnxA and Prosecution email of 5 October, at 13:35) and the Chamber's associated ruling ICC-01/14-01/18-1129, were limited to requesting and authorising the disclosure of specific witness transcripts – not associated exhibits.

Similarly, in its more recent request for disclosure to the Saïd case (ICC-01/14-01/18-1358-Corr, see paras 1 and 17), the Prosecution has limited its request to specific transcripts which were clearly outlined in its Annex A (ICC-01/14-01/18-1358-Conf-AnxA). "Associated items" were not included in the request.

Should the Prosecution wish to request authorisation to disclose additional items to the Saïd case, it should do so by way of formal filing (see for instance, Trial Chamber V's email of 4 April, at 16:01). The Prosecution should also be directed to identify in its new request the specific items for which it seeks disclosure, by way of an annex or other.

Respectfully,

[REDACTED]
 Defence for Mr Ngaissona

From: Vanderpuye, Kweku [REDACTED]
Sent: 18 May 2022 16:04
To: Trial Chamber V Communications [REDACTED]; D29 Yekatom Defence Team
 [REDACTED] D30 Ngaissona Defence Team
 [REDACTED] V44 LRV Team OPCV <[REDACTED]>; V45 LRV Team
 [REDACTED] V44 LRV Team [REDACTED]
Cc: OTP CAR IIB Operations [REDACTED] Chamber Decisions Communication
 [REDACTED] OTP CAR IIB Case Management
 [REDACTED]
Subject: Disclosure of Trial Transcripts relative to ICC-01/14-01/18-1129 and ICC-01/14-01/18-1358 - Clarification Requested
Importance: High

Dear Trial Chamber V,

The Prosecution seeks clarification as to the scope of disclosure concerning documents relevant to the confidential transcripts of several witnesses who have testified, or will testify in the present case, to the Defence of Mr Mahamat SAID Abdel Kani ("Mr SAID"). In particular, the Prosecution seeks clarification on whether the Chamber's previous authorisation to disclose the transcripts of eight witnesses (*see* ICC-01/14-01/18-1129) or any perspective authorisation it may issue concerning the pending request regarding fifteen witnesses (*see* ICC-01/14-01/18-1358) subsumes the material used with or explained by the witness that forms a part of their testimonies – 'associated documents'.

Thus, it is unclear whether the Chamber requires a further specific request for authorisation to disclose certain types of associated items. For example, the Prosecution notes (i) that some witnesses have annotated maps on the stand, later assigned a Registry ERN (*see, e.g.*, CAR-REG-0001-0004 and CAR-REG-0001-0005 in relation to P-0966's April 2022 testimony); and (ii) that the *Yekatom* or *Ngaissona* Defence teams have used their own confidential items with certain witnesses (*see, e.g.*, CAR-D29-0010-0003, used with P-0884 in July 2021).

In conducting detailed assessments of the witnesses' trial testimonies for the purpose of the *SAID* case, it is apparent that the 'associated documents' in respect of the relevant transcripts may be material to the preparation of the *SAID* Defence. Therefore, in an abundance of caution, and in light of the approaching deadlines set by Trial Chamber VI in the *SAID* case (*see, e.g.*, ICC-01/14-01/21-305), the Prosecution seeks the above-referenced clarification on the Chamber's position and, if necessary, further seeks authorisation to disclose both the confidential transcripts and, as appropriate, any confidential items used in the courtroom during the witnesses' testimony that are deemed disclosable to Mr SAID's Defence.

The Prosecution is at your disposal for any further information and stand ready to follow your instruction should the Chamber prefer this request to be made in a formal filing.

Kind regards,

Kweku Vanderpuye

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