

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/14
Date: **24 May 2021**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

Urgent

**Under Seal, *EX PARTE*, only available to the Prosecution and the Registry
With Under Seal, *EX PARTE*, only available to the Prosecution and the Registry
Annex A**

**Corrected Version of "Prosecution's Urgent Request for Additional Redactions to
the Arrest Warrant for Mahamat Said Abdel Kani", ICC-01/14-135-US-Exp, 24
January 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	Counsel for Mahamat Said Abdel Kani
Ms Fatou Bensouda	
Mr James Stewart	
Mr Eric MacDonald	

Legal Representatives of Victims	Legal Representatives of Applicants
---	--

Unrepresented Victims	Unrepresented Applicants (Participation/Reparation)
------------------------------	--

States Representatives	Amicus Curiae
-------------------------------	----------------------

REGISTRY

Registrar Peter Lewis	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

I. INTRODUCTION

1. The Office of the Prosecutor¹ urgently requests the Chamber to redact any reference to the location of the charged incidents in the Arrest Warrant² for Mahamat Said Abdel Kani ("Suspect") to be released to the public ("Request"). All direct or indirect references to the *Office central de répression du banditisme* "OCRB" and the *Comité Extraordinaire pour la Défense des Acquis Démocratiques* ("CEDAD") should not be made public as leaving these references unredacted could put victims and witnesses that are cooperating with the Prosecution at risk.

II. CONFIDENTIALITY

2. The Request is filed *Under Seal* and *Ex Parte*, pursuant to regulation 23bis(1) of the Regulations of the Court, as it relates to decisions and filings of the same designation and not to defeat the purpose of the Request. A confidential redacted version of the Request will be filed in due course.

3. This request is filed as *urgent* since the transfer of the Suspect to the seat of the Court is imminent.

III. SUBMISSIONS

A. Procedural History

4. On 7 January 2019, Judge Aitala acting as Single Judge ("Single Judge") issued the Arrest Warrant against the Suspect.³ On 31 January 2019, following a request of the Prosecution,⁴ the Single Judge authorised redactions for the eventual release of a

¹ Also referred to in this submission as "Prosecution" or "Office".

² ICC-01/14-42-US-Exp.

³ *Ibid.*

⁴ ICC-01/14-45-US-Exp, 11 January 2019. See also Request ICC-01/14-50-US-Exp seeking further redactions although for a different purpose.

public version of the Arrest Warrant.⁵ Since the issuance of this decision, the security situation in the Central African Republic has changed significantly and further deteriorated to the extent, that redactions to any direct or indirect reference of the location of the charged incidents are now necessary.

5. For the reasons detailed below, the Prosecution submits that the redactions sought are necessary pursuant to article 68(1) of the Statute and rule 81(2) and (4) of the Rules of Procedure and Evidence to enhance the safety, security and protection of the victims and witnesses that are cooperating with the Prosecution.

B. Additional Redactions to Protect Prosecution Witnesses

6. Additional redactions are proposed in relation to information contained in the Warrant of Arrest that may reveal the identity of current or prospective Prosecution witnesses and other victims, thereby potentially exposing them to the risk of interference or harm. This category of proposed redactions is marked in pink in the Annex. The proposed redactions relate to:

- all references to the locations OCRB and CEDAD;
- all details in relation to crimes allegedly committed at these locations during the time the Seleka were active there;
- all descriptions of the Suspect's role in relation to the two locations, and
- the crime of imprisonment.

7. These additional proposed redactions are marked in the Annex in highlights along with the previously requested and granted redactions.

⁵ ICC-01/14-54-US-Exp.

C. The redactions are necessary and proportionate

a. Prosecution witnesses are identifiable and at risk

8. While the Prosecution did not seek these additional redactions when the Arrest warrant was originally issued, the political and security situation now justifies the Request in order to protect Prosecution witnesses who would otherwise be left exposed and vulnerable to threat-actors.

9. The Suspect is charged in relation to crimes allegedly committed against victims who were in detention. In this case, the detention crimes were committed against "known" individuals who are members of a larger group of interlinked persons. Meaning, the Suspect and his associates who are the alleged perpetrators have a good level of knowledge not only of individual detainees they may personally have been in contact with but entire networks of persons they were allegedly targeting in 2013.

10. Where the victims are "known" and heavily interlinked, the ability of associates of the Suspect to identify the Prosecution's victims and witnesses is much greater than in instances when a crime against a less defined victim pool is being investigated and charged.⁶ The Prosecution witnesses and their wider networks in this case are identifiable to associates of the Suspect because they come from closed, known, networked groups. They are overwhelmingly from the Gbaya ethnic group, Christian and live in closed communities within certain parts of Bangui. Once the OCRB and CEDAD become known as the scope of the Prosecution's case against the Suspect, those networks could be easily identified again. Additionally, it can be deduced from

⁶ As is generally the case with attacks on villages or pillaging and arson operations. In those instances, the identity of the victims is not known to the perpetrators.

the nature of the crimes alleged that the Suspect and his associates have a sufficient ability to identify people who they believe pose a risk, to trace, abduct and harm them.

b. The security situation in CAR has deteriorated

11. The current situation in Bangui remains volatile and alliances have changed as already outlined in the Prosecution's request for contact restrictions.⁷ Most notably, since the issuance of the Arrest Warrant, the *Coalition des patriotes pour le changement* ("CPC")⁸ formed and formally brought together former members of the 2013 Seleka group and the Anti-Balaka in a coalition that seeks to overthrow the newly elected government. Senior members of the CPC include suspects at large such as Maxime MOKOM and Nouredine ADAM.⁹ This coalition erodes the "cocoons" in which the Prosecution's witnesses lived. The Prosecution's investigation has revealed that BANGUI consists of relatively segregated communities on ethnic and religious lines. The crime base victims, mostly members of the Gbaya ethnic community and Christian, live in communities which are predominantly Gbaya and Christian. The ability of threat actors who are overwhelmingly Rounga and Muslim, to operate in those environments had been limited. The CPC alliance poses a new and severe threat to which the Office needs to adapt to in terms of initiating viable protective measures.

12. This political development is exacerbated by the current security situation in Bangui and the limited access the Office has also due to Covid-19. The Office is working to strengthen its presence in CAR. While contacting witnesses is largely still possible the challenge of *instituting* protective measures is heightened.

13. In light of the current developments with the CPC alliance, the Chamber should redact, for the time being, any information that could reveal directly or indirectly the

⁷ ICC-01/14-133-US-Exp, and specifically paras 14 and 15.

⁸ Also known in English as "Coalition of Patriots for Change". See also CAR-OTP-2130-2018.

⁹ ICC-01/14-41-US-Exp.

location of the charged incidents from the public. Such redactions could remain in place until such time the Prosecution can report to the Chamber that the necessary measures, to protect the said witnesses potentially at risk, are in place.

c. No prejudice to the Suspect

14. The Prosecution submits that these redactions would be *vis-à-vis* the public and not the Suspect. The Suspect will be aware of the locations of the charged incidents and accordingly will be able to prepare his defence.

15. On 22 January 2021, the Chamber preliminarily authorised restrictions to the contacts of the Suspect.¹⁰ If these measures are successfully implemented, the potential co-Suspect, associates or supporters of the Suspect will not be made aware of the charged locations of the alleged crimes since they will be redacted from the public. The associates and co-accused of the Suspect are alleged to have been involved in a multitude of criminal activity during the relevant period of the charges. The mere reference to commissions of crimes under the Statute without reference to OCRB/CEDAD and the crime of imprisonment would not provide them with information specific enough as to which concrete incidents the Suspect or his co-Suspect are charged with.

¹⁰ Email received from the Office of the Single Judge at 18.45.

IV. RELIEF SOUGHT

16. For the above reasons, the Prosecution requests that the Chamber redact all direct or indirect references to the locations of the charged incidents as marked in Annex A from the public Arrest Warrant for the Suspect.



Fatou Bensouda, Prosecutor

Dated this 24th day of May 2021
At The Hague, The Netherlands