

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/21**

Date: **2 March 2021**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

Confidential

with Confidential, *EX PARTE*, only available to the Prosecution Annexes A and B

**Prosecution's Response to "*Requête Urgente de la Défense* - ICC-01/14-01/21-26-
Conf"**

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

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Mahamat Said Abdel Kani

Ms Jennifer Naouri

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Defence for Mr SAID ("SAID") seeks, *inter alia*, to have access to some information redacted in a past Prosecution requests on contact restrictions concerning SAID, access to confidential decisions from other cases and to be given access to underlying documents via eCourt.¹ While the Prosecution requests that some information remain redacted, it agrees that a lesser confidential redacted version of its Request for contact restrictions concerning SAID can be filed. The Prosecution further agrees that all underlying documents, not sourced to redacted information, should be made available to the Defence in eCourt. Finally, one confidential decision cited by the Prosecution from another case is already publicly available.² Another confidential decision³ is not accessible to the Single Judge and therefore cannot be relied on for the upcoming decision. For that reason, the Defence does not suffer any prejudice from the mere reference to this confidential decision.

II. CONFIDENTIALITY

2. The Response is filed *confidential* pursuant to regulation 23bis(2) of the Regulations of the Court, as it relates to submissions of the same designation. The accompanying Annexes are filed confidential, Ex Parte. A public redacted version of the Request will be filed as soon as practicable.

III. HISTORY

3. On 21 January 2021, the Prosecution filed a "Request for Contact Restrictions concerning Mahamat Said Abdel Kani in Pre-trial Detention" ("Request").⁴ On 4

¹ ICC-01/14-01/21-26-Conf. See also Defence request by email dated 1 March 2021 at 17:59.

² Decision ICC-01/14-01/18-11-Conf-Exp is now publicly available see ICC-01/14-01/18-856-Red, para. 29.

³ ICC-01/14-01/18-484-Conf-Red.

⁴ ICC-01/14-133-US-Exp. The request was initially filed in the Situation in the Central African Republic II.

February, the Request was transferred to the SAID case record including its corresponding Confidential Redacted Version.⁵

4. On 22 February 2021, the Prosecution submitted a "Request for Extension of Contact Restrictions" ("Extension Request").⁶

5. On 1 March 2021, the newly appointed counsel for SAID filed a "*Requête urgente de la Défense visant à ce qu'il soit donné accès aux éléments lui permettant de répondre de manière suffisamment informée à la « Prosecution's Request for Extension of Contact Restrictions »*".⁷ Counsel for SAID seeks from the Prosecution: 1) a non-redacted version of its Request,⁸ 2) access to two decisions from the Yekatom and Ngaïssona case,⁹ and 3) access to documents that are footnoted in the Request and Extension Request.¹⁰

IV. SUBMISSIONS

a) Access to an unredacted version of the Request (ICC-01/14-01/21-10-Conf-Red)

6. For ease of reference, the Prosecution submits in Confidential, *ex parte* Annex A its Request with yellow highlights depicting the information that should remain redacted from SAID. The Prosecution argues that the sentence in paragraph 6 of the Request linked to footnote 3 simply cannot be unredacted. The reasons for the redactions will be obvious to the Single Judge and therefore, no further observations can be shared with SAID on this matter. The first two sentences linked to footnote 4 that provide information related to SAID can be lifted. However, the last two sentences of paragraph 6 should not be lifted pursuant to rules 81(2) and 81(4) of the

⁵ ICC-01/14-01/21-10-US-Exp.

⁶ ICC-01/14-01/21-22-Conf.

⁷ ICC-01/14-01/21-26-Conf.

⁸ *Ibid.*, p. 10.

⁹ *Ibid.*

¹⁰ *Ibid.*, para. 16 *in fine*, see also Defence request by email dated 1 March at 17:59.

Rules of Procedure and Evidence ("Rules"). The Prosecution is finalising the necessary protective measures to allow for this evidence to be disclosed. This should be completed in the near future.

7. The Prosecution submits that the redaction in paragraph 7 cannot, for reasons obvious to the Single Judge, be lifted. No further observations can be shared with SAID on the matter.

8. In Paragraph 14, the references in footnote 5 were erroneously cited by the Prosecution. They were added mistakenly and have no reference to what they purport to source. They are unrelated to the subject matter, are unhelpful to the Single Judge's enquiry and consequently, SAID's upcoming response. The sentence associated with footnote 6, 7 and 8 and the last sentence of paragraph 14 can be made available to SAID.

9. In paragraph 17, footnote 9 refers to a confidential, *ex parte* decision in the then Yekatom case.¹¹ This information has been reclassified as public by Trial-Chamber V in its decision ICC-01/14-01/18-856-Red, para. 29. The Defence can therefore access the decision.

10. The Prosecution provides in Annex B, the investigator's report that was submitted in support of the Request.¹² The yellow highlights depict the information that should remain redacted at this early stage of the proceedings pursuant to rules 81(2) and 81(4) of the Rules and because the necessary protective measures are not yet finalised. Both witnesses would be identifiable to SAID if the redacted portions of the report in Annex B were to be revealed. The Prosecution will disclose their evidence as soon as possible once all necessary protective measures are put in place.

¹¹ ICC-01/14-01/18-11-Conf-Exp.

¹² ICC-01/14-01/21-10-US-Exp-AnxA.

b) The Extension Request

11. In footnote 11 of its Extension Request, the Prosecution refers to a decision from the case against Yekatom and Ngaïssona. This decision of Trial Chamber V is not publicly available. The Prosecution regrets to have referred to a confidential decision which is not available to the Single Judge or Defence. However, since the Single Judge cannot access the decision nor rely on it, the Defence does not suffer any prejudice. At best, this decision accepts the principle that a period of three months is proportionate. Since the decision was issued by Trial Chamber V, only that Chamber could provide access to the Defence. Access to that decision should consequently be rejected.

c) Access to sourced documents via eCourt

12. The Prosecution will, at the time of filing this Response, release the documents requested in eCourt and if for some unforeseen reason this is not technically possible, will provide the documents in Pdf to the Defence.

V. RELIEF SOUGHT

For the reasons set out in paragraphs 6 to 12 above, the request of the Defence should be granted in part.



Fatou Bensouda, Prosecutor

Dated this 2nd day of March 2021
At The Hague, The Netherlands