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No. ICC-01/14-01/18

Date: 27 January 2023

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
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Fourth Prosecution Request for Authorisation to Disclose
Certain Transcripts and Materials in the case of *The Prosecutor v. Mahamat Said
Abdel Kani* concerning witness P-1339**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2)(6)(c), (e), 67 and 68(1) of the Rome Statute, and Regulation 42(2) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Fourth Prosecution Request for Authorisation to Disclose Certain Transcripts and Materials in the case of *The Prosecutor v. Mahamat Said Abdel Kani* concerning witness P-1339’.

I. Procedural history

1. On 7 June 2022, the Chamber issued its ‘Decision on the Second Prosecution Request for Authorisation to Disclose Certain Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani* concerning witnesses 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, and P-2843’ (the ‘Second *Said* Decision’). In this decision, the Chamber rejected the disclosure of transcripts in relation to witnesses who were yet to be heard, including P-1339. It indicated that this was without prejudice to a new request pursuant to Regulation 42(2) of the Regulations, once these witnesses had testified.¹
2. On 10 January 2023, the Office of the Prosecutor (the ‘Prosecution’) requested authorisation to disclose transcripts of, and materials used during the testimony of witness P-1339 to the Defence in the case of *The Prosecutor v. Mahamat Said Abdel Kani* (the ‘*Said* Defence’), pursuant to Regulation 42(2) of the Regulations (the ‘Request’).²
3. On 11 and 13 January 2023, respectively, the Yekatom Defence and the Ngaïssona Defence (jointly, the ‘Defence’) informed the Chamber that they do not intend to respond to the Prosecution’s Request.³

¹ Second *Said* Decision, ICC-01/14-01/18-1448, paras 7-8, p. 6.

² Prosecution’s Request for Authorisation to Disclose Transcripts and Materials used in the Testimony of P-1339 to the Defence in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/18-1718 (with confidential Annex A, ICC-01/14-01/18-1718-Conf-AnxA, which lists the transcripts and materials concerned).

³ Email from the Ngaïssona Defence, 11 January 2023, at 15:18; email from the Yekatom Defence, 13 January 2023, at 15:03.

4. On 26 January 2023, the Common Legal Representative of the Former Child Soldiers and the Common Legal Representative of Victims of Other Crimes (the 'CLR') informed the Chamber that they do not intend to respond to the Prosecution's Request.⁴

II. Analysis

5. The Chamber notes that protective measures were ordered for P-1339⁵ and that the witness already testified.
6. The Chamber recalls that the disclosure of transcripts and items to participants in different proceedings before the Court would not vary the protective measures in this case, since they will remain in place towards the public. The Chamber therefore considers that Regulation 42(2) of the Regulations is applicable.⁶
7. The Chamber observes that neither the Defence nor the CLRV objected to the Request.
8. The Chamber further notes that the disclosure of the transcripts and the associated items subject to the Prosecution's Request⁷ to the *Said* Defence would not negatively impact on the security and safety of the concerned witness and that the *Said* Defence is bound by confidentiality obligations pursuant to Article 8 of the Code of Professional Conduct for counsel and a protocol on the handling of confidential information.
9. Accordingly, the Chamber authorises the Prosecution to disclose them pursuant to Regulation 42(2) of the Regulations. The Prosecution is instructed to inform the *Said* Defence of the nature of the protective measures of P-1339 and/or the confidentiality of transcripts of hearings held in private session.

⁴ Email from the Common Legal Representatives of the Former Child Soldiers to the Chamber's Legal Officer, 26 January 2023, at 12:49; email from the Common Legal Representative of the Victims of the Other Crimes to the Chamber's Legal Officer, 26 January 2023, 13:26.

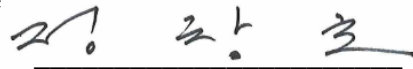
⁵ Decision on the Prosecution Requests for In-Court Protective Measures for 73 Trial Witnesses, ICC-01/14-01/18-906-Conf-Exp, confidential *ex parte*, only available to the Prosecution and the Registry (confidential redacted version notified the same day; public redacted version notified on 19 April 2021).

⁶ See Decision on the Prosecution Request for Authorisation to Disclose Certain Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/18-1129, para. 7, with further references to the jurisprudence of the Court.

⁷ See Annex A to the Request, ICC-01/14-01/18-1718-Conf-AnxA.

FOR THESE REASONS, THE CHAMBER HEREBY**GRANTS** the Prosecution's Request; and**ORDERS** the Prosecution to inform the *Said* Defence of the nature of the protective measures of the concerned witness and/or the confidentiality of items and hearings, where applicable.

Done in both English and French, the English version being authoritative.

**Judge Péter Kovács****Judge Bertram Schmitt****Presiding Judge****Judge Chang-ho Chung**

Dated 27 January 2023

At The Hague, The Netherlands