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**No. ICC-01/14-01/18**

**Date: 8 May 2024**

**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 Prosecution Request for Authorisation to Disclose the  
Transcripts of D30-4756's Testimony to the *Said* Defence**

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 Prosecution Request for Authorisation to Disclose the Transcripts of D30-4756’s Testimony to the *Said* Defence’.

## **I. Procedural history**

1. On 24 April 2024, the Office of the Prosecutor (the ‘Prosecution’) requested the Chamber’s authorisation to disclose the transcripts of D30-4756’s testimony (the ‘Transcripts’)<sup>1</sup> to the defence in the case of *The Prosecutor v. Mahamat Said Abdel Kani* (the ‘*Said* Defence’ and the ‘Request’, respectively).<sup>2</sup>
2. On 29 April 2024, the Yekatom Defence informed the Chamber that it does not intend to respond to the Request and defers to its discretion.<sup>3</sup>
3. On 2 May 2024, the Ngaïssona Defence partly opposed the Request. It rejects the disclosure of the unredacted version of the Transcripts, and requests the Chamber to order the Prosecution to apply ‘discrete redactions’, as suggested by the Ngaïssona Defence, in order to preserve Mr Ngaïssona’s right to privacy and confidentiality (the ‘Redactions Request’ and the ‘Response’, respectively).<sup>4</sup>

## **II. Analysis**

4. The Chamber recalls that the disclosure of transcripts to participants in different proceedings before the Court would not vary the protective measures in this case,

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<sup>1</sup> See transcripts of hearing, 21 February 2024, ICC-01/14-01/18-T-268-CONF-ENG; 22 February 2024, ICC-01/14-01/18-T-269-CONF-ENG (the Request also includes the French versions of the Transcripts).

<sup>2</sup> Prosecution’s request for access and authorisation to disclose transcripts of the testimony of CAR-D30-P-4756 in the case *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/18-2463-Conf (with confidential Annex A, ICC-01/14-01/18-2463-Conf-AnxA), paras 1, 13.

<sup>3</sup> Email from the Yekatom Defence, 29 April 2024, at 09:37.

<sup>4</sup> Defence response to the “Prosecution’s request for access and authorisation to disclose transcripts of the testimony of CAR-D30-P-4756 in the case *Prosecutor v. Mahamat Said Abdel Kani*” (ICC-01/14-01/18-2463-Conf), ICC-01/14-01/18-2471-Conf (with confidential Annex A, ICC-01/14-01/18-2471-Conf-AnxA), paras 1, 7.

since they will remain in place towards the public. The Chamber therefore considers that Regulation 42(2) of the Regulations is applicable.<sup>5</sup>

5. The Chamber notes that D30-4756 testified with in-court protective measures.<sup>6</sup> Further noting that the disclosure of the Transcripts to the *Said* Defence would not negatively impact on the security and safety of D30-4756 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,<sup>7</sup> the Chamber sees no impediment for the Prosecution to disclose the Transcripts to the *Said* Defence.
6. However, the Chamber takes note of the Ngaïssona Defence's submissions, namely, that the Transcripts contain certain information that 'is wholly irrelevant to the charges and the case against Mr Said', encompassing 'private and sensitive details' relating to Mr Ngaïssona's relatives.<sup>8</sup> Having reviewed the redactions proposed by the Ngaïssona Defence,<sup>9</sup> and noting that they are limited and that the information does not appear to be of relevance to the *Said* Defence, the Chamber considers that the proposed redactions are appropriate.
7. In light of the above, the Chamber authorises the Prosecution to disclose the Transcripts to the *Said* Defence subject to the redactions proposed by the Ngaïssona Defence. The Prosecution is also instructed to inform the *Said* Defence of the nature of the protective measures of the concerned witness.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**GRANTS** the Request, subject to the redactions set out in ICC-01/14-01/18-2471-Conf-AnxA;

**GRANTS** the Redactions Request; and

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<sup>5</sup> See Decision on the Prosecution Request for Authorisation to Disclose Certain Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, 5 October 2021, ICC-01/14-01/18-1129, para. 7 with further references to the jurisprudence of the Court.

<sup>6</sup> See email from the Chamber, 19 February 2024, at 13:40.

<sup>7</sup> See also Request, ICC-01/14-01/18-2463-Conf, paras 11-12.

<sup>8</sup> See Response, ICC-01/14-01/18-2471-Conf, paras 4-6.

<sup>9</sup> See Annex A to the Response, ICC-01/14-01/18-2471-Conf-AnxA.

**ORDERS** the Prosecution and the Ngaïssona Defence to file public redacted versions of the Request, ICC-01/14-01/18-2463-Conf, and the Response, ICC-01/14-01/18-2471-Conf, respectively, within one week of notification of this decision.

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



**Judge Péter Kovács**



**Judge Bertram Schmitt**

**Presiding Judge**



**Judge Chang-ho Chung**

Dated 8 May 2024

At The Hague, The Netherlands