

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **15 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 PROSECUTOR *v.* ALFRED YEKATOM AND  
PATRICE-EDOUARD NGAÏSSONA**

**Public**

**Public redacted version of "Prosecution's request for access and authorisation to disclose transcripts of the testimony of [REDACTED] in the case *Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/18-2463-Conf, 24 April 2024**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests the authorisation of Trial Chamber V (“Chamber”) to disclose the transcripts of testimony of [REDACTED] in the *Prosecutor v. Yekatom and Ngaissona* to the Defence in the case of the *Prosecutor v. Mahamat Said Abdel Kani* (“SAID case”),<sup>1</sup> pursuant to regulation 42(2) of the Regulations of the Court (“Regulations”).

2. Pursuant to regulation 42(2) of the Regulations, when discharging its disclosure obligations, the Prosecution shall respect the protective measures as previously ordered by a Chamber, in this case Trial Chamber V, and shall inform the Defence of the nature of these measures.<sup>2</sup>

3. The Prosecution, in the SAID case, is relying for the purpose of trial on the evidence of [REDACTED], who is scheduled to testify between [REDACTED] 2024. Pursuant to its disclosure obligations, the Prosecution seeks the Chamber’s authorisation to disclose to Mahamat Said Abdel Kani (“Mr SAID”) the entirety of the transcripts of the testimony of this Witness since [REDACTED] is the subject of protective measures and that the transcripts of [REDACTED] testimony are confidential in part (see Annex A).

## II. CONFIDENTIALITY

4. This Request and its Annex A are classified as confidential in accordance with regulation 23*bis*(1) of the Regulations because they refer to information which is the

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<sup>1</sup> [REDACTED]

<sup>2</sup> Regulation 42(2) of the Regulations; *see also* ICC-01/05-01/13-338, page 4, para. 3 (“Considering that the [Defence’s use of material in another case] is without prejudice to Jean-Pierre Bemba’s and his Counsel’s duties to fully comply with any and all protective measures which are applicable and in force *vis-à-vis* the materials to be accessed”).

subject of protective measures and which is otherwise confidential. The Prosecution will file a public redacted version of this document in due course.

### III. BACKGROUND

5. On 7 September 2021, the SAID Defence filed its “*Requête de la Défense visant à ce que lui soient communiqués tous les éléments de l’affaire connexes Yekatom et Ngaissona utiles à la préparation de l’audience de confirmation des charges dans l’affaire Said*”.<sup>3</sup> The Defence requested access to presented, or disclosed evidence in the case of *Yekatom and Ngaissona*.<sup>4</sup>

6. On 10 September 2021, the Prosecution responded that it would provide the transcripts of those witnesses it intends to rely upon for the confirmation hearing<sup>5</sup> and who have also testified or will testify in the Prosecution’s presentation of evidence in the *Yekatom and Ngaissona* case (“common trial witnesses”) since they are considered material to the preparation of the Defence of Mr SAID.<sup>6</sup> Furthermore, the Prosecution communicated that it would submit a request for that purpose before Trial Chamber V copying Pre-Trial Chamber II.<sup>7</sup>

7. On 27 September 2021, the Presiding Judge of Pre-Trial Chamber II, acting in his capacity of Single Judge, rejected Mr SAID’s request in that the evidence disclosed or presented in the case of *Yekatom and Ngaissona* is not automatically material to the preparation of the Defence in the SAID case and considered that the Defence’s Request was moot in so far as the disclosure of common trial witnesses’ transcripts was concerned.<sup>8</sup>

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<sup>3</sup> ICC-01/14-01/21-161-Red.

<sup>4</sup> See ICC-01/14-01/21-161-Red, pp. 15-16.

<sup>5</sup> These are the witnesses which have been disclosed as INCRIM *and* that are on the Prosecution’s List of Evidence in its case against Mr SAID, see ICC-01/14-01/21-144-Conf-AnxB-Corr.

<sup>6</sup> ICC-01/14-01/21-166-Red, paras. 2 and 9-11.

<sup>7</sup> ICC-01/14-01/21-166-Red, paras. 2 and 11.

<sup>8</sup> ICC-01/14-01/21-182, paras. 12-16.

8. On 29 September 2021, the Prosecution asked authorisation from Trial Chamber V to allow access and disclose transcripts of eight common trial witnesses<sup>9</sup> in the SAID case.<sup>10</sup>

9. On 5 October 2021, Trial Chamber V granted the Prosecution request authorising the disclosure of transcripts of eight common trial witnesses.<sup>11</sup>

10. [REDACTED] in the *Yekatom and Ngaïssona* case.

#### IV. SUBMISSIONS

##### A. Request for authorisation to disclose the testimony of [REDACTED]

11. The Prosecution submits that the transcripts of Witness [REDACTED] in the *Yekatom and Ngaïssona* case are relevant to the SAID case because they are a prior statement of the witness with respect to the period of charges against Mr SAID. That, the transcripts of [REDACTED] testimony should be disclosed without redactions ensuring the Defence has full access to the information therein.

12. In its decision, granting disclosure of the prior transcripts of the eight common witnesses, Trial Chamber V found that the SAID Defence would not negatively impact on the security and safety of the concerned witnesses 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>12</sup> The Prosecution submits that, this finding is also applicable to the transcripts of [REDACTED].

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<sup>9</sup> P-0291, P-0884, P-0965, P-1847, P-2027, P-2251, P-2328 and P-2841.

<sup>10</sup> ICC-01/14-01/18-1122.

<sup>11</sup> ICC-01/14-01/18-1129.

<sup>12</sup> See ICC-01/14-01/18-1129, para. 8.

**V. RELIEF SOUGHT**

13. For the above reasons, the Prosecution respectfully requests the Chamber to authorise the disclosure of the unredacted transcripts of Witness [REDACTED] listed in confidential Annex A.

A handwritten signature in blue ink, consisting of a stylized initial 'K' followed by a horizontal line and a small dot.

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**Karim A. A. Khan KC, Prosecutor**

Dated this 15<sup>th</sup> day of May 2024

At The Hague, The Netherlands